



Homes &
Communities
Agency

DISPOSING OF LAND

April 2015

Disposing of land

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Section 1 - introduction

Scope

- 1.1. This document gives guidance on:
- our general policy and principles that apply to considering disposal applications
 - our approach to considering different types of disposals
 - using the General Consent 2015
 - the legislative framework for requiring consent to dispose of social housing
 - the Land Registry requirements for the sale and acquisition of social housing
 - our interpretation of terms used in relevant legislation

Audience

- 1.2. This document is issued by the regulator and is intended for the boards of providers, and for those with delegated authority from those boards, who make disposal applications for consent from the regulator. It is designed to help private registered providers understand the regulator's approach to coming to decisions about disposal of social housing dwellings and other land, whether under the General Consent 2015 or where applications for specific consent are made. This guide does not apply to disposals by registered providers that are local authorities or by Arms Length Management Organisations (ALMOs), unless the ALMOs themselves are private registered providers.

Using this document

- 1.3. This document is not a substitute for professional legal advice, nor does it cover all the circumstances that providers may encounter. Authoritative interpretations of the law can only be given by the courts.
- 1.4. It is for a provider, taking legal advice if necessary, to establish whether a proposed disposal requires consent, and to certify to a purchaser, for purposes of land registration, when the consent requirements of the legislation do not apply to a disposal.
- 1.5. When applying for specific disposal consent, the provider will be expected to specify the relevant legislation that applies to their disposal application. The regulator will base its decision on the application and business cases made by providers. It is for providers to explain the context of the disposal and any relevant policy issues surrounding it.
- 1.6. If the regulator's written consent is not obtained or if conditions attached to a consent have not been fully complied with, any disposal relying on that consent is likely to be void. Providers need to be aware if that if they make a void disposal it may restrict

onwards sale of the property and they may be liable to legal challenge or claims from the purchasers. By making void disposals providers may also fail to demonstrate they are meeting our expectations on governance, effective risk management and internal controls.

Disposing of social housing dwellings and other land

- 1.7. Many types of disposal of a dwelling by a registered provider that is not a local authority ("a private registered provider") require the regulator's consent under various legislation. The relevant pieces of legislation are:
- Section 172 of the Housing and Regeneration Act 2008
 - Sections 81 and 133 of the Housing Act 1988
 - Section 173 of the Housing and Local Government Act 1989
 - Section 171D of the Housing Act 1985
- 1.8 Information on the legislative framework for each of these pieces of legislation is set out in section four of this document, but, again – providers should rely on their own legal advice.
- 1.9 With respect to disposals under s.133 of the Housing Act 1988, in some cases the requirement for consent can include disposals of land on which there are no dwellings– please see 7.11-18.

References and other defined terms used in this document

- 1.10 Short references:
- The Act or HRA 2008 The Housing and Regeneration Act 2008
 - HA 1985 The Housing Act 1985
 - HA 1988 The Housing Act 1988
 - LGHA 1989 The Local Government and Housing Act 1989
 - General Consent The General Consent 2015

Application forms

- 1.11 When making an application for consent, or recording your use of the General Consent, please ensure that you download the relevant form from the regulator's website on each and every occasion you use them – do not use a "save as" version of a previous application you have made. This is because the regulator revises these forms occasionally to keep them up to date. Application forms Disposal Consent (DC) 1-6 referred to in this guidance may be downloaded from the regulator's web site. The forms and their uses are listed below.
- 1.12 DC1 To apply for consent under s.172 HRA 2008 and/or s.171D HA 1988 to grant a charge to a private lender.

- DC2 To apply for consent under s.172 HRA 2008, s.133 HA 1988, s81 HA 1988, s173 LGHA 1989 to dispose by transfer, lease, option, legal charge (except to a private lender – please use DC 1) easement and miscellaneous other types of disposal. Also used to apply for consent under s.171D HA 1985 when disposing of less than the whole interest in a dwelling occupied by a tenant with PRTB.
- DC3 To seek the regulator's approval of a policy for disposals in connection with category 5 of the General Consent.
- DC4 To seek the regulator's approval of a policy for disposals in connection with category 18 of the General Consent.
- DC5 To give a certification that a disposal proceeded under the General Consent 2015. This form also serves as a Land Registry notification.
- DC6 To apply for a direction under s.76 HRA 2008 that a specified dwelling is to cease to be social housing.

Section 2 – general policy on disposal consents

Objectives and principles

- 2.1 The basis of the regulator’s decision making regarding individual applications for consent to dispose and issuing general consents is derived from its statutory fundamental objectives and the regulatory standards providers must meet.
- 2.2 The objectives of the social housing regulator are set out in the Housing and Regeneration Act 2008. In summary, we interpret our role as to regulate registered providers of social housing in England to:
- protect social housing assets
 - ensure providers are financially viable and properly governed
 - maintain confidence of lenders to invest into the sector
 - encourage and support supply of social housing
 - ensure tenants are protected and have opportunities to be involved in the management of their housing
 - ensure value for money in service delivery
- 2.3 We must perform our functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. We must also operate within the provisions of the government’s Regulators’ Code.
- 2.4 As a result of these objectives, the regulator will have particular regard to the following principles in considering the use of its powers in giving or withholding consents for disposals.
- preventing improper disposal of social housing
 - protecting public value invested in dwellings
 - balancing the needs of individual social housing providers with those of tenants and the sector overall
 - ensuring, where relevant, that disposals are at best consideration (usually open market value at point of disposal)
- 2.5 The regulator has issued a General Consent under which disposals may be made if they are consistent with the specific categories of consent and where associated conditions can be met. Registered providers may seek authorisation from the regulator to use the General Consent categories in relation to securing properties for financing arrangements or for a programme of disposals.
- 2.6 However, for disposals not covered by the General Consent, registered providers must seek specific consent and the regulator will scrutinise each disposal application.

Where the regulator is asked to consider specific consent, it will consider each application for disposal on its merits. The decision will take into account the business case provided by the applicant and will be considered in the round, balancing the principles above in the circumstances of each case. The regulator will take account of its policies and any regulatory concerns which are live at the time of the application.

- 2.7 It is for providers to satisfy the regulator that a disposal should be given consent. Where the provider does not do that and/or does not give sufficient assurance to the regulator regarding any concerns which the regulator might have, the regulator will withhold consent.
- 2.8 In some circumstances, the regulator's power to give consent is restricted by the legislation. Therefore the regulator:
- cannot give consent to a disposal by a non-profit provider if it appears to be made with a view to distributing assets to members (s.172(2))
 - cannot consent to a disposal by a non-profit provider of the landlord's interest under a secure tenancy to another non-profit provider, or to a local authority which is a registered provider, (s.171(2))

Applications to the regulator

Approval at an appropriate level within the organisation

- 2.9 The regulator expects that providers will consider decisions to dispose of dwellings at a level appropriate to the scale of the disposal and implications to the business. So consideration might need to be by the registered provider's governing body, a relevant sub-committee or under a system of delegation approved by the governing body.
- 2.10 A provider's assessment of disposal should involve the following:
- (a) the financial and non-financial implications for its business plan
 - (b) whether the disposal is consistent with its strategic objectives and in particular asset management and for value for money strategies
 - (c) whether the disposal complies with all relevant legislation
 - (d) the risks associated with the disposal, how they may be mitigated and what would happen if they were to crystallise
 - (e) where a disposal is large scale, involves a change of landlord for residents or is complex in nature, the regulator expects that the governing body will itself have fully considered the risks and implications associated with it.
- 2.11 Where the transaction is complex, novel or on a scale that represents significant risk to the business, registered providers should discuss plans for the disposal at an early stage with the regulator and prior to the formal submission of an application.

Disposals to be properly made

- 2.12 A provider can only dispose of dwellings in accordance with its governing instrument and other relevant legal considerations. This includes consideration of whether the terms of the disposal are consistent with its charitable objects or status, where this is relevant. Where it appears to the regulator that a disposal: may not be consistent with a provider's governing instrument or other legal obligations; raises matters of financial concern or impropriety; raises concerns about the registered providers compliance with the regulatory standards, the regulator may seek additional assurances or withhold consent, as referred to previously.

Business case for disposal

- 2.13 Providers are reminded that it should not be assumed that consent will always be given. Registered providers must make a business case for each disposal, setting out the reasons for the transaction, the benefits it will bring, and demonstrating that the proposed disposal is consistent with requirements of the regulatory standards and relevant policy. The regulator will scrutinise the business case including asking questions or asking for further information where necessary. While taking into account the co-regulatory nature of the regulator's regime, the regulator will only give consent to the disposal if it has sufficient assurance and if the disposal is in accordance with the policy issues referred to above.
- 2.14 Applications for consent should be made in a timely manner and usually prior to entering into any legal binding arrangement to dispose of the property. Where the registered provider wishes to enter into other legally binding arrangements connected with the disposal in advance of securing the consent of the regulator (particularly in the case of complex transactions), it should ensure that any such arrangement is conditional and dependent on, the requirement to secure the regulator's consent prior to the disposal. It should not be assumed that the regulator's consent will be given.
- 2.15 The application forms provided by the regulator set out the typical information required to support a disposal application. Registered providers should be aware that the regulator requires supporting documentation to confirm the details included on the application form. Registered providers are encouraged to submit all relevant supporting material as part of their initial application to assist the regulator in its consideration of the application. Failure to do so is likely to result in the extension of the decision times, whilst the regulator makes requests for any necessary additional information.
- 2.16 Each application for disposal must include a business case. The extent of the information to be provided will depend on the complexity of the transaction and must be sufficient for the regulator to understand the nature of the disposal, and any risks arising from it and mitigating actions for those. The business case should:
- be clear about the circumstances of the disposal
 - provide a clear and explicit rationale about why the provider considers it is in its best interest to dispose of the social housing in question

- include relevant and specific information about particular circumstances of the disposal application
- address the relevant considerations set out in disposing of land and other relevant guidance for the type of disposal
- demonstrate that any long term obligations, commitments or risks arising from the sale (for example in lease and leaseback arrangements) have been properly considered and will be effectively managed during and after the transaction
- set out how the proceeds of the disposal will be used (including what will be done with any grant monies if relevant). Where grant monies are involved the regulator will expect confirmation that the grant giving body has agreed to the treatment of any grant involved
- reference where specific legal or professional advice has been sought in relation to the transaction

Issuing consents

Timescale for considering applications

- 2.17 The decision will be taken based on the business case made by the provider. However the regulator may make reasonable requests for additional information to properly consider the disposal application.
- 2.18 The regulator aims to make a decision on straightforward disposal applications within 15 working days. However, providers should be aware that this timescale only applies once the regulator is satisfied that it has all the relevant information it needs.
- 2.19 Applications that are novel or have any complicating factors are likely to take longer for a decision and providers are encouraged to discuss these with the regulator at an early stage and prior to submission of the application. Once an application has been received, the regulator will notify applicants when it considers the normal timescale for dealing with the application is unlikely to be met and indicate a revised timescale. Where providers have transaction deadlines to meet, they should take into account that additional information may be needed and ensure that they apply for our consent to dispose in good time.
- 2.20 More complicated or novel consent applications should be made to the regulator as far as possible in advance of the deadlines to complete the transaction. Complex, novel or new types of disposal arrangements will take longer for the regulator to assess and providers should allow up to three months to obtain the necessary consent.

Conditions on consents

- 2.21 The regulator may impose conditions on any disposal consent that it issues to reflect any specific risks or arrangements relevant to the proposed disposal. Providers should note that all conditions attached to a disposal consent must be complied with.

If they are not, the disposal may be void. Providers may then be liable to legal challenge or claims from the purchasers and are likely to be subject to regulatory action by the regulator. This applies for both specific consent and disposals effected through use of the General Consent.

Revisions to consents

- 2.22 Where the regulator has consented to a disposal, there may be instances where a provider may want a revision to the consent issued, to resolve a typographical or other minor error. In these circumstances, the provider should contact the regulator, setting out the revision and the reasons for it. However, providers should be aware that any revision to a consent is entirely at the regulator's discretion. Where the regulator is of the view that the revision requested may alter the basis on which consent was given, it reserves the right to refuse the revision and/or require that a new application is submitted.

Disposals at best consideration

The "best" consideration

- 2.23 The regulator requires registered providers to obtain best consideration for the disposal, unless it is a disposal between non-profit registered providers. In practice, this means that the regulator usually expects providers to achieve open market value at the point of disposal (as assessed by an independent qualified valuer, see paragraphs 2.31-2.36). This is consistent with obtaining good value for money, and it enables recycling of the capital receipt within the provider. However, the regulator will consider applications where open market value is not achieved at the point of disposal. In each case, the regulator expects providers to be explicit about any underlying assumptions or conditions that providers have requested be taken into account in the assessment of open market value at the point of disposal. However, it is a matter for the regulator to determine whether those conditions or assumptions are appropriate in the particular circumstances of the disposal.
- 2.24 The regulator acknowledges that there may be many circumstances which affect the value; for example, where the price is fixed by statute, where a legal obligation arose before, or at the time of, acquiring the dwelling, or where the disposal arises in connection with a home ownership initiative. Providers should ensure that such factors are identified clearly in their valuations.
- 2.25 Where a provider is not receiving the open market value at the point of disposal, and it is not a disposal between non-profit registered providers, this will usually be because they are:
- giving a "discount" to the purchaser on the open market value to achieve other aims or meet non-financial objectives, or
 - receiving income or value after completion of the sale over a longer time period

- 2.26 In these circumstances the regulator will expect providers to set out a clear rationale within their business case why this is reasonable and in their best interests.
- 2.27 In such cases the provider would need to demonstrate how such disposals below open market value meet their objectives and/or the reasonableness of any discount (especially, for home ownership initiatives, if greater than that available under Right to Acquire, Right to Buy, or Social HomeBuy in line with paragraphs 3.14 and 6.15).
- 2.28 The regulator may seek assurance that the provider has considered adding clawback or overage conditions to mitigate for the loss of value and/or provide details of any other conditions or restrictions attached to the discount.
- 2.29 In some circumstances, the provider may consider that they will receive full value, not at the point of disposal, but at some point over time. In this circumstance the regulator will expect the provider to demonstrate that they will receive the full open market value over time. They will be expected to set out a clear explanation of why they want to adopt this approach, the assumed financial returns and how they have assured themselves that this value will be realised.
- 2.30 In reviewing these types of disposals, the regulator will consider:
- the difference between the anticipated value as opposed to open market value at the point of the disposal and the length of time it will take to recoup full value
 - the risks and dependencies of achieving those returns
 - what contingencies/mitigations the provider has or will put in place, to ensure those returns are received including any contractual covenants with the purchaser, and
 - the effect on the provider's financial position if these returns are not realised (or are not realised at the time anticipated)
- 2.31 Providers must make a business case for any disposal where they are not receiving open market value at the point of disposal. A case where the provider wishes to dispose of assets where they are not receiving open market value at the point of disposal is likely to be complex in nature from the regulator's point of view. As a result, providers should allow extra time for the regulator to assess the application and consider any further assurance that may be necessary and as a consequence should expect longer overall decision times.

Independent valuations

- 2.32 The regulator requires a provider to establish best consideration by reference to an up to date valuation from an independent qualified valuer. Providers should note:
- (a) an up to date valuation means one dated three months or fewer before the application is made

- (b) a qualified valuer means one holding a RICS qualification (i.e. MRICS or FRICS) or a District Valuer employed by the Valuation Office Agency. A valuation by a member or fellow of the National Association of Estate Agents would not be a sufficient qualification for these purposes. The guidance notes in form DC2 indicate how a valuer's credentials need to be displayed for purposes of applying for consent
 - (c) an independent valuer means one who is not in any business association with the provider other than for the provision of a valuation. Independence can be demonstrated by ensuring the valuation is explicit about who the valuer is employed by, or acting on behalf of. The valuer should not be:
 - i. employed by, or acting on behalf of, or a member of the family of, the provider, or a subsidiary of the provider, disposing of the property being valued, or
 - ii. employed by, or acting on behalf of, the purchaser of the property, or
 - iii. employed by, or acting on behalf of, the person, estate agency or auctioneer marketing the property.
- 2.33 Applicants should demonstrate the independence of the valuer, by ensuring that the valuation makes clear how the requirements above are satisfied, including being explicit about who the valuer is employed by, or acting on behalf of.
- 2.34 The valuation itself should be clear about the basis of the value and the source of any information used to inform the professional view of open market value. It should also be explicit about the basis of any discount, reduction or adjustments made to the price on the basis of that information.
- 2.35 Where a provider chooses to sell at auction, the independent qualified valuer's valuation should set a reserve price for purposes of the auction. For the avoidance of doubt, the reserve price should be the same as the open market value.
- 2.36 The following variations are permitted.
- (a) a connection with a marketer is acceptable in a situation where a provider appoints an independent professional RICS firm to both market and sell the dwelling and sale follows a robust and transparent marketing process which results in competitive bids, assessed by the same RICS firm's valuer and the winning bid is identified by that valuer as the best reasonably obtainable in the current market, given the conditions and restrictions placed on the disposal, with clear reasons for reaching this view.
 - (b) when a provider and a purchaser in a negotiated sale agree jointly to commission and accept an independent valuation. In that situation, the connection with the purchaser may be acceptable, but it would be prudent to seek the regulator's agreement of that arrangement in advance.

- 2.37 When reviewing a valuation the regulator will also take into account the basis of the valuation and whether it is appropriate in the circumstances. For example, if a provider wished to sell social housing sold to a commercial landlord, the regulator would not expect the valuation to be done on an existing use social housing basis because there would not be an expectation that it would continue as low cost housing.

Public funding and other funds

Recovery of grant

- 2.38 The regulator requires a provider to repay, recycle or otherwise deal with capital grants and/or financial assistance in accordance with the guidance published in the Affordable Housing Capital Funding Guide issued from time to time by the Homes and Communities Agency or the Greater London Authority or any contractual agreement between the provider and a relevant public grant giving body. The regulator normally expects to see evidence that (where required by funding conditions) the relevant body had agreed the proposal for the use of the grant funds following the disposal.

Disposal proceed funds

- 2.39 Registered providers are required to show the net proceeds of certain types of disposal (and payments of grant and repayments of discount) separately in their accounts as a Disposal Proceeds Fund (DPF). They must then use or allocate the sums in the DPF only as directed by the regulator. Details of the regulator's requirements are set out in its document DPF Requirements and the associated guidance published on the regulator's website.
- 2.40 The DPF requirements are different for certain disposals made by profit-making private registered providers compared to similar disposals by non-profit registered providers. In summary, a profit-making private registered provider must show in its DPF
- net proceeds arising from a disposal of a dwelling which that registered provider or another profit-making private registered provider had previously acquired from a non-profit registered provider or local authority registered provider
 - net proceeds arising from a disposal of a dwelling acquired, constructed, converted or otherwise provided, in whole or in part, with sums from the DPF of that registered provider or any other profit-making private registered provider
- 2.41 In order that a profit-making private registered provider can comply with the regulator's DPF requirements it must identify and clearly record the source of its social housing dwellings to ensure it can identify whether the DPF requirements will apply to any particular disposal. When considering an application for disposal from a profit-making private registered provider, the regulator will require assurance as to

whether the circumstance of the disposal is subject to the DPF requirements and that the relevant proceeds of disposal will be reflected in the registered providers DPF.

- 2.42 The DPF requirements are detailed and not replicated here and therefore registered providers should ensure they are familiar with those requirements when considering any disposal.

Relevant consultations

- 2.43 The regulator expects meaningful and appropriate consultation with all relevant stakeholders who may have an interest in a disposal. This guidance focuses on the local authority and tenants, but providers should be aware the relevant stakeholders may extend beyond these categories. For example, if the application related to the disposal of a care home the regulator would usually expect the provider to have consulted with the tenants' relatives or representatives.
- 2.44 Whatever the nature of the stakeholder(s), the consultation should be, open and honest about the circumstances and implications of the disposal for those stakeholders.

Consultation with the local authority

- 2.45 Further to 2.43, the regulator expects providers to arrange meaningful consultation with a local authority, recognising its strategic responsibilities for housing.
- 2.46 For consultation to be meaningful, a provider should find out who, within the local authority, is the appropriate contact, how long a local authority needs in order to give a considered response, and the sort of information it would need. The provider will also need to formally respond to any objections raised by local authority setting out what action, if any they have taken to deal with objections raised or their reasons for proceeding despite those objections.
- 2.47 Where a provider intends to dispose of a number of properties within a local authority's area, it may be useful to agree a standard list of information to provide to the local authority.
- 2.48 Normally, the regulator would expect to see evidence of the consultation and a copy of the response from the local authority. Where the local authority fails to respond the regulator expects the provider to demonstrate their reasonable efforts to obtain a reply.
- 2.49 Where the local authority raises objections, the regulator will need to see evidence of the provider attempts to resolve the objections or their response including an explanation of why they are unable to do so. However, this only applies where specific objections to the proposal have been raised.
- 2.50 The regulator does not see it as its function to mediate in unresolved objections between a provider and local authority. However, the regulator might not be able to progress an application where such an objection may have a material impact on the

regulator achieving its fundamental objectives or on a provider meeting the regulatory standard requirements.

- 2.51 Consultation is not necessary when the disposal is to the relevant local authority itself. Such disposals can usually be effected under category 3 of the General Consent, provided that they are at best consideration.

Consultation with tenants

- 2.52 Where the disposal involves the sale of tenanted dwellings applicants should supply the regulator with full information and explanation about the consultation with tenants. This should include:

- adequate and clear explanation of circumstances of sale;
- clear explanation of any change to tenant's rights or status, including the impact and potential disadvantages of moving out of the social housing regulated sector, particularly where transfer is to a commercial landlord or might in the future mean a move to the commercial sector;
- assurances that any concerns raised during the process have been properly addressed; and
- explanation of any mitigations put in place (and their limitations).

Circumstances when the regulator may consider withholding consent

- 2.53 The regulator will consider each application on its merits. While it is always for the provider to satisfy the regulator about the proposal to dispose (see above), there are some circumstances to which the regulator would give particular attention, and be more likely to consider withholding consent. These include (but are not limited to) the following:

- (a) Disposal of a tenanted social housing dwelling to any person other than another registered provider or to the tenant
- (b) Disposal at less than best consideration (unless from one non-profit private registered provider to another non-profit private registered provider, where a price up to best consideration can be negotiated). The regulator may be prepared to agree to a sale at less than best consideration, where the provider makes a strong business case for this (please see 2.23-2.31). However, the regulator would not normally consent to a disposal outside the sector at less than open market value at the point of disposal in respect of tenanted property
- (c) A disposal that appears to be contrary to a provider's governing instrument
- (d) A disposal that raises issues of financial concern or impropriety
- (e) A disposal that raises concern about the registered provider's compliance with the regulatory standards

- (f) A disposal of tenanted social housing dwellings to another provider, where the transferring provider has not carried out adequate and appropriate consultation with its tenants
- (g) Disposal of social housing dwellings for rent, even when the housing is vacant at the time of sale, where there has not been consultation with the local authority sufficiently far in advance to allow a considered response, and where, if the local authority did raise objections it has not been explained to the regulator how the provider dealt with those objections

2.54 Although the regulator would consider withholding consent in the circumstances described above, the regulator's decision on consent would not be based on these factors alone. The regulator will take account of the extent to which one or more of the factors apply, together with the reasons why they apply, but the regulator will also consider the reasons given in support of the application for consent to the disposal and all other factors relevant to the proposed disposal. This will include any information that becomes available about non-compliance with the Homes and Communities Agency (HCA)'s or Greater London Authority (GLA)'s rules on repayment and recycling of capital grants and financial assistance.

Section 3 – specific policy on different types of disposals

Vacant dwellings

Disposal of vacant dwellings within the social housing sector

- 3.1 Non-profit providers have General Consent to transfer vacant social housing dwellings under s.172 and s.133 to other non-profit providers and to local authorities that are registered providers. However, if a provider cannot comply with the conditions of the General Consent, it should seek specific consent for the disposal. The business case should set out why the transaction does not meet the conditions set out in the General Consent. There is no General Consent to disposals under s.81 HA 1988 or s.173 LGHA 1989, as the regulator has no power to give a General Consent.

Disposals of vacant dwellings out of the sector

- 3.2 These need specific consent, no matter what legislation they are under. However, for disposals under s.172, the regulator may approve a programme of disposals, under category 5 of the General Consent, which would allow providers to proceed with individual disposals under the General Consent, provided they comply with the terms of that policy. Details of the procedure for applying for approval for a programme of disposals are included at section 6.
- 3.3 The business case should set out why the dwellings are not no longer suitable or viable for use as social housing.

Disposals of vacant dwellings at auction

- 3.4 When a provider chooses to sell at auction, we would usually expect to see a business case explaining why the provider has chosen this method for disposing of their properties. Generally, this explanation would demonstrate how providers have assured themselves that can obtain best consideration at auction and why disposing of properties in this way is cost effective for them.
- 3.5 The regulator would usually expect a reserve price to be set which reflects open market value at point of sale, (as assessed by an independent valuation as set out).

Tenanted transfers

- 3.6 There is no General Consent for tenanted transfers. When a change of landlord is proposed, the regulator will look to see that the tenants' best interests are properly balanced against those of other interested parties.
- 3.7 To assist this, the regulator requests additional information on the application form. These considerations apply to transfer of tenanted dwellings between registered providers and transfer outside of the regulated sector. "Tenant" in relation to social housing includes "other occupiers".

- 3.8 The regulator requires a provider to consult the tenants on the change of landlord. The consultation should be appropriate to the circumstances. Consultation should take account of the nature of the tenants and the degree of change that they are likely to experience with regard to their tenure, rent levels, security, statutory rights, losing their status as a social housing tenant and any future regulation. A more detailed explanation of the types of things that should be covered in tenant consultation can be found at paragraph 2.52.
- 3.9 Because of the provisions of s.171(2) of the Act, the regulator could not give consent under s.172 to transfer the landlord's interest in a dwelling let on a *secure tenancy* from a non-profit provider to any organisation other than another non-profit provider or a local authority which is a registered provider.

Tenanted transfers outside the regulated sector

- 3.10 In considering any application for specific consent to a transfer outside the registered provider sector, the regulator will ensure that such changes of landlord proceed only when the tenant's best interests are properly balanced against those of other interested parties. In particular, the regulator will normally only issue consent to tenanted disposals out of the sector where the following principles are adhered to:
- that adequate protection must be in place for the tenants and that the regulator would expect this to be regulation by another authority whose control is likely to be sufficient
 - that disposals should be at best consideration and that the regulator would expect this to be Open Market Value at point of disposal
 - that tenants have been consulted in an open way covering the implications to them of the change in landlord and loss of protections available to them through the regulatory standards
 - that appropriate protections are in place regarding the loss of any Right to Buy/Right to Acquire that may result from the disposal
- 3.11 The regulator will normally withhold consent to tenanted disposals to a non-registered body unless the tenants have first been offered the opportunity to be rehoused within the social housing sector. But we may look more favourably at cases where some or all of these factors have been addressed;
- there is alternative regulation that provides some of protection of tenants' rights
 - contractual arrangements that enshrine some or all of the rights tenants had with the SHR that can be enforced directly by tenants
 - where tenants have made an informed choice to leave the regulated sector
- 3.12 However, providers should be aware that this is not a checklist that guarantees consent. As with all disposal applications, the regulator will need to balance the factors in light of the specific circumstances of the disposal application.

Disposals to sitting tenants

- 3.13 Subject to consideration of the reasons for disposal, the regulator will normally consent to disposals to sitting tenants, either by giving specific consent for an individual disposal or, where consent is to be given under s.172, by approving a programme of disposals that would allow the provider to proceed under the General Consent without applying for individual consents on each occasion of disposal.
- 3.14 In either circumstance, where a discount is offered, the regulator's normal policy is that it should not exceed the discount available under the Right to Acquire for the relevant location. A provider would need to demonstrate to the regulator why discounts greater than that would be appropriate in the particular circumstances of the disposal.

Solar panels on the roof

- 3.15 Providers wishing to fit solar panels (or other sources of micro generation) to the roofs of social housing dwellings may find that their transaction with a solar energy company involves disposals. These could be leases of the airspace, rights of way for repair, easements for meters and cables and the grant of options. To find out whether consent is required, a provider or its legal advisor needs to examine the agreement and the titles to see:
- what disposals the agreement requires
 - the legislation that governs those disposals. Many dwellings are subject to s.172 HRA 2008. Former local authority stock may be subject to s.133 HA 1988 (for a lease), s.172 HRA 2008 (for rights of way and easements) and, if the tenant has the preserved RTB, s.171D HA 1985 (for disposing of less than the whole interest)
 - whether any of these disposals are exempt or covered by general consents
 - if legislation requires the regulator's consent, apply for a specific consent under s.172, s.133 and s.171D(2), as applicable
- 3.16 The regulator considers that the following aspects of solar panel agreements present risks. It may seek assurances from the provider in relation to the following:
- that it has obtained the agreement of its lenders or has determined none is required
 - that the contract does not tie the provider to termination clauses that make it inordinately difficult or costly to dispose of the dwelling in future, or under which disposals depend on the consent of the energy company
 - that the contract contains a stop-loss clause where relevant to the particular agreement, so that the method of calculating payments to the energy company does not lock the provider into damaging losses which cannot be stopped
 - that the contract does not hamper tenants exercising statutory rights to buy
 - that panels will be fitted only if the tenants have positively opted for them

Section 4 – using the General Consent

(under s.172 Housing and Regeneration Act 2008, s.133 Housing Act 1988, and s.171D Housing Act 1985)

Introduction

- 4.1 The regulator has made use of its powers to give a General Consent to certain categories of disposal where particular conditions, are met, where those disposals are routine, low risk or governed by other regulatory process. From time to time, the regulator will review the categories of the General Consent and its availability.
- 4.2 The objective of the General Consent 2015 is to reduce administration for providers disposing of social housing dwellings. However, not all providers can use the General Consent – providers should make sure whether they are entitled to do so. For those that can use it, and provided they can satisfy the Specific and General conditions in Parts I and II of the General Consent, providers may make disposals in the categories in part I without applying to the regulator for a specific consent. Instead, they certify themselves that their disposal complies with the requirements of the relevant legislation. Thus they are responsible for ensuring that all disposals are lawful and comply with regulatory requirements. If a provider cannot meet the conditions and requirements in the General Consent, the disposal will require a specific consent.
- 4.3 Please note that where there is discrepancy between this guidance and the General Consent, the wording of the General Consent takes precedence. Providers should familiarise themselves with the terms of the General Consent and ensure all conditions are met for each disposal reliant on the General Consent.
- 4.4 The General Consent 2015 applies to disposals that take place on or after 01 April 2015. Previous general consents from 2008 and 2010 continue to have effect for those disposals made whilst those general consents were live. They also continue to have effect in relation to those disposals which were agreed by the regulator under those general consents.

Availability of the General Consent 2015

- 4.5 The General Consent is not available for disposals by:
- former registered providers
 - unregistered housing associations, and
 - bodies removed from the register of the Housing Corporation and the regulator between 1 April 1975 and 31 March 2010

There is guidance on the consents required by these bodies in sections 10 and 11.

- 4.6 The General Consent 2015 does not apply to disposals that need consent under s.81 of the Housing Act 1988 or s.173 of the Local Government and Housing Act 1989, or any legislation other than that specified in the General Consent itself.

Key features of the General Consent 2015

- 4.7 There are many categories of the General Consent, which are not all listed here. However among other things, the General Consent allows private registered providers to:
- transfer vacant dwellings to other not for profit private registered providers and local authorities under categories 1 and 4
 - dispose of vacant dwellings under a policy allowing a programme of disposals that meet the relevant conditions approved by the regulator under Category 5. Procedures for this appear in section 6
 - Grant charges to private finance providers under category 6. Category 6 (charges to lenders) is available only to providers with a letter of authorisation from the regulator, and is not available to profit-making providers or providers with an unregistered parent. Where a letter of authorisation is issued, the registered provider named will be listed on the regulator's website
 - Grant legal charges to grant-givers or developers under categories 7 & 8. (The General Consent does not allow the granting of charges in respect of overage agreements)
 - Sell dwellings to sitting tenants under a policy allowing a programme of disposals that meet the relevant conditions approved by the regulator under category 18
 - Transfer the freehold or superior leasehold interest to enable a change in joint leaseholders or freeholders in blocks where there is no management company under category 27

- 4.8 The individual categories of the General Consent do not all apply equally to disposals under s.172 HRA 2008, s.133 HA 1988 and s.171D HA 1985. Each category specifies which piece(s) of legislation it relates to.

Using the General Consent 2015

- 4.9 Registered providers wishing to use the General Consent 2015 must familiarise themselves with the document in its entirety, including all conditions and defined terms contained within it.
- 4.10 The General Consent contains multiple categories, which define various types of disposal that may be effected under the General Consent. Each time a provider uses the General Consent, they must ensure that the terms of the disposal meets all relevant conditions.

- 4.11 The General Consent is available to those providers who meet the requirements of the relevant category, Please note that some categories are not available to for profit providers.
- 4.12 Note that the regulator can withhold, withdraw or restrict in whole or in part a provider's ability to use the General Consent – see Part III of the General Consent.
- 4.13 The General Consent contains conditions that require providers to record certain information about each disposal made under the General Consent in a form specified by the regulator (currently DC5). Registered providers should keep these records in a register, which must be made available to the regulator if requested.
- 4.14 In order to register a purchaser's title or a charge, the Land Registry needs evidence of the regulator's consent to a provider. This is dealt with in section 13 of this document, land registration Information

Withdrawing access to the General Consent 2015

- 4.15 The regulator may withhold, withdraw or restrict a provider's access to the General Consent, either in whole or in part. The regulator does not expect to do this often, but reserves the right to do so whenever it sees fit. Examples include the following circumstances (this list is not exhaustive):
- if there is a possibility that the provider is in distress (including where there is a moratorium, the regulator considers that disposals should be assessed individually
 - where there are concerns about the provider (including when the regulator is exercising powers of intervention and enforcement, the regulator has some concern about disposals and wishes to restrict them or consider them individually
 - where there are concerns over whether or not a provider is meeting the Governance and Financial Viability Standard
 - concerns over fraud or mismanagement, where the relevant investigations have not begun or are on-going
 - failure to comply with the conditions of an original consent or authorisation, such as the category 6 disposals or a programme of disposals under category 5 or 18

Procedures for withdrawal

- 4.16 The regulator may, in some cases, choose to remove access to the General Consent (as a whole or in part) to particular providers. These may include restricting access to categories 5 and 18 (policies for disposals) or category 6 (granting charges or security interests). Where access to category 6 is withdrawn, the regulator will remove the provider from the public list of providers authorised to use that category of the General Consent.

- 4.17 When the regulator withdraws a provider's access to the General Consent, it will add that provider's name to a public list, on its web site, of providers whose access to the General Consent is partly or fully withdrawn.
- 4.18 Sometimes the regulator may take a decision to withhold, withdraw or restrict a provider's use of the General Consent, and notify the provider. More often, where the regulator is considering withdrawal etc. of the General Consent, the regulator will notify the provider in writing and give the opportunity to make representations to the regulator. The regulator will consider any response from the provider to the notification or any representations and may agree to waive the withdrawal of their access to the General Consent or decide not to withdraw access.
- 4.19 Where the General Consent (or categories of it) is not available, a provider may apply for specific consent under the relevant legislation.

Section 5 – consent to disposals by way of security interests to a private lender under S.172 of the Housing and Regeneration Act 2008 and S.171D of the Housing Act 1985

Introduction

- 5.1 Providers may dispose of security interests in social housing dwellings by way of charge or mortgage, provided they have the consent of the regulator. Legislation restricts the requirement for consent to social housing dwellings only, and in the case of disposals under s.171D HA 1985, to tenanted dwellings subject to the Preserved Right to Buy (PRTB).
- 5.2 Consent can be obtained by making an application to the regulator for individual consent or by using Category 6 of the General Consent 2015. Access to category 6 is only available to non-profit providers who have a valid letter of authorisation from the regulator allowing it to grant charges to private lenders. Profit-making registered providers and those non-profit registered providers that are subsidiaries of parents that are not registered with the regulator are not eligible to access category 6.

Due diligence by third parties

- 5.3 It is for any third party contracting with a private registered provider to carry out its own credit assessment of whether or not the private registered provider is currently able and will in future be able to fulfil its payment and other obligations to that third party. The granting of consent by the regulator should not be taken in any way as a representation of the private registered provider's financial well-being or business viability.

Using category 6 of the General Consent 2015

- 5.4 Category 6 of the General Consent 2015 allows non-profit providers to grant security interests to Private Finance Providers on the terms in the General Consent if they hold a letter of authorisation from the regulator. Full details of the procedure for obtaining a letter of authorisation is set out at paragraphs 5.12-16.
- 5.5 As with all categories of the General Consent, registered providers must ensure that the disposal meets all the relevant conditions set out in the General Consent in order to rely on that consent. In particular, when exercising their permissions under category 6, providers are referred to schedule 1 of the General Consent for definitions of the terms used in this chapter, e.g., - "security interest", "Private Finance Facilities", "Private Finance Provider" etc.. Registered providers should therefore note that "charge", "loan" and "lender" are termed differently and defined in a detailed way for the purposes of the General Consent. For the avoidance of doubt, the regulator considers the term "Private Finance Provider" to include security trustees.
- 5.6 If the charge does not match one or more of the definitions in schedule 1 to the General Consent, then the General Consent will not cover the charge and a specific application will be necessary. Please see paragraph 5.19-23.

- 5.7 Where a letter of authorisation is granted, the provider's name will appear on our website on the public list of providers who have access to Category 6 of the General Consent.
- 5.8 For the avoidance of doubt:
- (a) Category 6 of the general consent is intended to cover the initial grant of a security interest and any subsequent activities which would otherwise require a revised consent, such as increasing the amount of the Private Finance Facility or changing the Private Finance Provider, provided that these activities are within the scope of category 6 and that the provider's letter of authorisation remains valid.
 - (b) Category 6 is available to a provider who wishes to revise a consent given before the provider received its letter of authorisation, again provided that this is within the scope of category 6
- 5.9 The regulator's letter of authorisation allows a provider to grant security interests under Category 6 of the General Consent. A provider should not use category 6 if:
- (a) the proposed transaction is not within the scope of the category, or
 - (b) granting a Security Interest would put the provider in breach of an undertaking to the regulator

For an example of (a): if the Private Finance Provider, the Private Finance Facilities or the security interest given do not fit the definitions provided in the General Consent schedule 1, then the transaction will not be within the scope of the category.

For an example of (b): a provider would be in breach of an undertaking if it relied on category 6 but on-lent the finance outside its group. As far as the Private Finance Provider is concerned, if a provider has certified that category 6 applies, the Private Finance Provider can rely on that unconditionally and the consent will be valid. However, the provider would be going beyond its undertakings to the regulator.

It is therefore important that a provider considers, with appropriate professional advice if necessary (from an officer or, if deemed necessary by the provider, an external advisor), whether category 6 covers a proposed transaction. Where category 6 does not cover the transaction, the provider can apply for individual consent.

- 5.10 All disposals under Category 6 of the General Consent must comply with the conditions and undertakings contained within the category. Failure to comply fully will risk the provider making a purported (void) disposal (please see paragraph 1.6 above).

Transitional arrangements

- 5.11 A provider, who had access to Category 6 of the General Consent 2010, prior to 1st April 2015, should note changes made in the General Consent 2015; some disposals

which were permitted under the General Consent 2010 are not allowed under the General Consent 2015. This includes disposals of security interests in respect of index linked finance or in respect of finance from other private registered providers (other than group members). Consequently, disposals in these circumstances require specific consent. However, if you entered into a legally binding arrangement prior to 1 April 2015, (which met the requirements of category 6 and other conditions of the General Consent 2010) and the terms of such arrangements require the provider to make a further disposal after the 1 April 2015, the disposal is deemed to have taken place under the General Consent 2010 and no specific consent is required.

Procedure for obtaining a letter of authorisation to use Category 6 of the General Consent.

- 5.12 Letters of authorisation are only available to non-profit providers. Usually, the regulator will invite providers to apply for a letter of authorisation. However, providers may request the opportunity to apply for the letter of authorisation.
- 5.13 Whether to invite a provider to apply for a letter of authorisation, or whether to agree a request for a letter of authorisation are at the discretion of the regulator. The regulator may consider any matters relevant to the issue. These may include, but are not limited to:
- the current and expected volume of applications for consent to grant security interests
 - the group structure and any planned restructuring
 - the extent and quality of regulatory information supplied by the provider
 - the regulatory rating of the provider, and
 - the history of previous applications for consent by the provider.
- 5.14 The regulator will create and maintain on its web site a public list of providers to which it has given a letter of authorisation to use Category 6 of the General Consent. The primary purpose of this list is to be available for reference by a Private Finance Provider seeking certainty that a provider has the necessary authority to use Category 6 of the General Consent. All registered providers wishing to have access to category 6 must agree to have their names on the public list.
- 5.15 If the regulator subsequently withdraws the letter of authorisation (see paragraph 5.17 below) it will remove the provider's name from that list.
- 5.16 If the regulator's web site should be unavailable, a Private Finance Provider may enquire about the status of a registered provider's letter of authorisation by contacting an Assistant Director of Regulatory Operations - please call the HCA switchboard on 0300 1234 500.

Withdrawal of access to the General Consent

- 5.17 The regulator may choose to withhold, withdraw or restrict a provider's access to category 6 (or the General Consent as a whole) for a variety of reasons. Some circumstances when the regulator is likely to consider this are set out in paragraph 4.15.
- 5.18 Providers should note that, even if access to category 6 is withdrawn, they will still be able to apply for specific consent on form DC1. The procedure for doing so is set out below.

Applying for specific consent to grant a security interest

- 5.19 An application for a specific consent will be necessary when:
- a provider has no letter of authorisation
 - a letter of authorisation has been withdrawn or limited to an extent that the desired transaction is not covered
 - a provider with a letter of authorisation wishes to grant a security interest that does not fit the scope of category 6
- 5.20 Once a provider has established that it needs specific consent, it may obtain application form DC1 from the regulator's web site. The application form should be completed taking into account the relevant guidance notes on the form. The notes indicate when a provider must provide supporting documents. Once completed, the form should be certified by an officer or employee specifically authorised by the provider's governing body and sent to the regulator according to the details given on the form.
- 5.21 The application should explain any way in which the applicant is unable to comply with the normal conditions of consent in relation to category 6 and any variation sought. The regulator will require a business case setting out the reasons for the variation and, where applicable, explaining how the disposal will meet the regulator's standards. The regulator would expect a provider to supply any additional supporting information requested and, normally, to satisfy the conditions in DC1.
- 5.22 Any specific consent granted will usually be conditional on the social housing dwelling subject to the security interest continuing to be social housing unless it ceases to be social housing through one of the routes outlined in section 72 to 76 of the Act or unless a Private Finance Provider exercises power of sale in default. This is the same condition as applies to Category 6 of the General Consent.
- 5.23 The regulator will consider each application on its merits. Depending on the circumstances, the regulator may, for example (and without limitation), withhold consent from a provider subject to intervention or enforcement, or if the terms of the private finance facilities threaten the provider's financial viability or would lead to a breach of a standard.

Schedules of social housing dwellings to specific consents

- 5.24 There is no requirement to obtain consent to charge property which is not a social housing dwelling. Schedules must include social housing dwellings only. If that is not possible, please discuss with the regulator but when property other than social housing dwellings is included in a schedule of properties to be charged, the consent will be relevant only to the social housing dwellings within the schedule.

Procedure for revised consents for security interests

- 5.25 Where details relating to the disposal change or require amendment (but subject to exclusions at 5.26) the registered provider may need to seek a revised consent from the regulator by submitting a fresh DC1 form. For minor changes, the regulator may accept a notification by letter or email, but this will be at the regulator's discretion.
- 5.26 It is not normally necessary to obtain further consent to:
- draw down all or any part of the facility stated in the original consent
 - change the terms and conditions of the facilities as set out in the Annex to form DC1, unless it means that the provider would no longer be able to satisfy the regulator's conditions in DC1
 - remove dwellings from the security
 - reinstate the same dwellings removed from the security under the bullet above

Section 6 – consent for programmes of disposals under the General Consent 2015

Introduction

- 6.1 The HRA 2008 gives the regulator the ability to give consent by reference to policies for disposals under s172. This allows providers to dispose of multiple dwellings without the need for specific consent for each property as it arises. The term “policy” is taken directly from the Act, but it may be more useful to think of this as seeking approval to a programme of disposals. This guidance will refer to a programme rather than a policy.
- 6.2 Before a provider can use the General Consent to dispose of individual or groups of properties as part of a programme, it needs to obtain the regulator’s approval of the programme as a whole.
- 6.3 Under the General Consent, the regulator allows both programmes of disposals of vacant dwellings (category 5) and programmes of disposals to sitting tenants (category 18). Although the two are derived from the same legislation, there are operational differences in issuing consent for them.
- 6.4 As disposals will proceed under the General Consent, they will need to satisfy the conditions in Part II of the General Consent, as well as the specific requirements of the approved programme.
- 6.5 The programme must have specific parameters which allow providers to dispose of social housing without specific consent for each property and must be time limited, typically 2-3 years. For the avoidance of doubt, programmes that are not sufficiently restricted in this way are unlikely to be approved, although the regulator may consider extending the scope of a programme on receipt of an updated application from the provider.
- 6.6 If consent for a programme of disposals is granted, the registered provider is required to carry out an independent audit of its use of the relevant category of the General Consent, (i.e. category 5 or 18) every 12 months from the date of the approval of the relevant policy. The audit need not be carried out externally. A copy of the audit report must be provided to the regulator on request.
- 6.7 A provider should read this section in full before, considering a programme of disposals before submitting an application. A provider uncertain about preparing a programme of disposals should contact the regulator for guidance.

The regulator’s approach to considering programmes of disposals under the General Consent

- 6.8 The purpose of making the approval of a programme of disposals under the General Consent is to minimise interference, reduce the administrative burdens on both registered provider and the regulator and encourage efficiencies – in circumstances where it is proportionate to do so. It is not suitable for ad hoc and piecemeal disposals that do not flow from a clear strategy.

- 6.9 In deciding whether to approve a programme of disposals, the regulator will consider its objectives set out in section 2 and take account of the factors listed in the paragraphs below.
- 6.10 The regulator will generally only consent to programmes of disposals that:
- fit within a clearly defined (and appropriate) strategy of asset management that involves multiple disposals;
 - are likely to involve more than 25 disposals a year; and
 - fit within the registered providers value for money strategy.
- 6.11 Therefore if a registered provider is considering seeking approval for a programme that would involve fewer than 25 applications a year, it should speak to its regulatory contact to discuss whether the administrative savings justify the cost of setting up and approving a programme.
- 6.12 The regulator would normally insert a condition allowing it to end its approval before this date if it discovered that disposals had been proceeding in a manner contrary to the terms of approval or if the regulator's assessment of the provider, as notified to the provider, had deteriorated.

When consent is required under legislation other than s.172 H&RA 2008 (e.g. s.133 HA 1988)

- 6.13 The guidance in this section does not apply to disposals which need consent under s.133 HA 1988, s.81 HA 1988 or s.173 LGHA 1989. Disposals requiring these consents cannot be made under a programme for disposals agreed under s.172 HRA 2008, because none of these pieces of legislation contain a provision equivalent to that for policies of disposals under s174(3). However, for disposals made in support of the Agency's Affordable Rent programme, the regulator has devised a special form of words for a specific consent which would have very similar effect.

Applications for approval of a programme of disposals under the General Consent

- 6.14 The regulator will consider the programme of disposals in line with the objectives and principles set out in section 2. Additionally in considering applications for a programme of disposals the regulator will seek assurance that the programme has been considered alongside and fits within the registered provider's value for money strategy.
- 6.15 In particular, the regulator will expect to see an application which:
- (a) sets out the reason(s) for, and objectives of, the programme of disposals and shows what the proceeds will be used for. When it is associated with disposals referenced in a delivery agreement with the Agency or GLA in support of the provision of new dwellings it is enough to refer to the agreement.
 - (b) assures the regulator that the provider's governing body has approved the programme after full consideration of:

- i. the implications for the business plan, for value for money and any alternative options
- ii. whether the programme of disposals complies with all relevant legislation
- iii. the risks associated with the programme, how they may be mitigated and what would happen if they were to crystallise

The governing body may have delegated this consideration and approval to a sub-committee of two or more officers. As a minimum, the regulator will require a copy of the minutes of the meeting at which the decision was agreed. It may additionally request a copy of the proposal submitted to the provider's board in respect of the programme of disposals.

- (c) sets out the timetable for the programme, including the end date, and the maximum number of dwellings to be disposed of, the means of knowing that the programme was complete and what other events might bring the programme to an end (e.g. a merger or a de-registration). If the programme is open-ended, the regulator will nevertheless wish to stipulate a date when the programme will end (or be re-approved by the regulator). In that case, please propose a date for this
- (d) shows how the governing body will control and monitor the programme of disposals to meet the audit requirement, should the application be successful
- (e) attaches evidence of appropriate consultation with local authorities and the responses of the local authorities. It is important that evidence shows that local authorities have been given an opportunity to comment on and influence the programme, where appropriate

Note that after having approved a programme of disposals, the regulator does not require a provider to engage in any further consultation with local authorities when it has identified individual dwellings for disposal under the programme. Any further consultation at this point would be a matter for agreement between providers and local authorities. The regulator does not require a provider to notify it of unresolved objections from local authorities that may arise when individual dwellings are subsequently selected for disposal within a programme to which the regulator has previously given its approval

- (f) assures the regulator that it has taken account of the views of other interested parties, especially local authorities, and gives details of any unresolved issues or disputes.
- (g) confirms to the regulator that disposals under the programme will meet the conditions of the General Consent, including that which expects the repayment or recycling of capital grants according to the instructions of the Agency or the GLA.

Disposals of vacant dwellings under an approved programme

- 6.16 Registered providers with a programme of disposals tied to a delivery agreement with the Agency or the GLA may apply for the regulator's approval to make those disposals under the General Consent.
- 6.17 A programme of disposals of vacant dwellings might be suitable when a large number of dwellings need to be sold individually or in small groups as they become vacant. This might be, for example, under an asset management strategy or to a local authority in a regeneration area. (For the avoidance of doubt the regulator would not normally consider a programme that combined disposals under a delivery agreement with other disposals.)
- 6.18 Applications must state the criteria that the provider would adopt for choosing individual dwellings for inclusion in the programme of disposals and the type of purchasers to whom the properties would be marketed. If open market, just confirm "open market". Please note that the property selection criteria are not required for a programme associated with a delivery agreement with the Agency or the GLA. It is not necessary to know the property addresses in advance.

Disposals to sitting tenants under an approved programme

- 6.19 Under category 18 of the General Consent, disposals to sitting tenants under bespoke homeownership initiatives devised by registered providers are permitted. Such initiatives, whilst they offer the benefits of home ownership to tenants, must also support the provider's wider asset management value for money strategies.
- 6.20 Given the availability of the statutory Right to Buy and Right to Acquire for many social tenants, and of Social HomeBuy for tenants not covered by these rights, it will be necessary for providers offering their own schemes to set out:
- the reasons why the programme is necessary i.e. why the routes above are not available to their tenants and what the wider strategy of the programme is.
 - the eligibility criteria that the provider would adopt, in respect of both tenants and properties, for inclusion in the programme of disposals.
 - any discounts that will be offered to purchasers, bearing in mind the provisions of 6.21 below.
 - evidence of the appetite among tenants who would be eligible for the programme.

The regulator appreciates that it may not be possible to know the addresses of properties that will be sold in advance, but providers should be able to give the addresses of properties that could potentially be included.

Discounts on disposals to sitting tenants

- 6.21 Providers operating a programme of disposals to sitting tenants not under Social HomeBuy may choose to offer a discount to purchasers. The regulator expects such discounts to be no greater than the equivalent Right to Acquire discount for the area in which the property is situated. Where the provider proposes any discount greater than this, they must make a robust business case to regulator specifying why the increased level of discount is appropriate and how any impact on the provider's viability will be mitigated.
- 6.22 The regulator would also require details of any clawback arrangements or restrictions to be placed on future sales. It is important to note that, where properties were originally developed with grant from the Housing Corporation, HCA or GLA, grant recovery rules may prevent properties being sold at a discount other than under Right to Acquire or Social HomeBuy.

Application procedure

- 6.23 Applications for programmes of disposals of vacant dwellings should be submitted on form DC3. Applications for programmes of disposals to sitting tenants not under Social HomeBuy should be submitted on for DC4. Individual disposals under a programme must be recorded on form DC5. All forms are available on the regulator's website.
- 6.24 For purposes of land registration, the programme needs to be expressed sufficiently clearly for a solicitor to certify on form DC5 that any particular disposal is part of an agreed programme of disposals covered by category 5 or category 18 of the General Consent, as applicable. Therefore the plan needs to be named in a way which the regulator may cite in its approval and so that a provider and the purchaser can demonstrate the link to the Land Registry if necessary. For example:
- “The Jupiter Housing Association Limited policy for disposals under the Affordable Rent Framework Delivery Agreement with the HCA, 2011-15”;
- “The Piccadilly Housing Association Asset Management Strategy for West Manchester, Disposals Programme 2013-15” or
- “The London Housing Association Own Your Home, Disposals Programme 2013-15”
- 6.25 The regulator may ask for further or missing information. If a programme of disposals is approved, the approval will be given to the provider by letter. The regulator will create and maintain on its web site a public list of agreed programmes of disposals. Registered providers wishing to operate a programme must agree to have their names on the public list.
- 6.26 The regulator may choose to amend, suspend or withdraw a provider's access to category 5 and/or 18 for a variety of reasons, especially where there are concerns over whether or not a provider is meeting the governance and financial viability standard. Other reasons for amending, suspending, or withdrawing access could include things such as concerns over fraud or mismanagement or failure to comply

with the conditions of the original authorisation. However, the provider would be permitted to make representations to the regulator regarding the issues leading to the downgrade and the measures it had put in place in order to rectify the situation. Depending on the circumstances, the regulator may agree to waive the withdrawal.

Circumstances in which the regulator would consider withholding consent for a programme of disposals under the General Consent

6.27 The regulator may withhold consent for a programme of disposals where it considers alternative arrangements for consent are more appropriate or the proposals do not appear consistent with category 5 or 18 of the General Consent. Consent may in particular be withheld in the following circumstances:

- (a) when dwellings do not meet the necessary occupancy criterion for the type of programme i.e. vacant or tenanted as applicable
- (b) when specific consents are sufficient. For instance, when addresses are known, a specific consent can often be framed to cover them. So a provider planning to sell flats in a particular block as they become vacant may just as easily obtain consent through the specific route, where it is expected that sales will be on the open market at best consideration
- (c) when the projected number of disposals is insufficient to generate savings greater than the extra cost of administration involved in setting up a programme of disposals. Typically, the minimum number of disposals considered sufficient to enable the administration savings is 25 disposals per year. This could make a programme unsuitable for smaller providers
- (d) when the disposals require consent under legislation other than s.172 HRA 2008 (e.g. under s.133 of the Housing Act 1988)
- (e) when the regulator has identified particular regulatory concerns in relation to the registered provider or when the regulator considers that the registered provider's record in preparing applications for specific consent to individual disposals indicates inadequate procedures
- (f) when the dwellings are shared ownership properties
- (g) when the programme is not consistent with the registered providers value for money strategy or the regulator's value for money standard

Section 7 – the legislative framework for consent

Introduction

7.1 Many types of disposal of a dwelling by a registered provider that is not a local authority (“a private registered provider”) require the regulator’s consent under various legislation. When you apply to the regulator for a specific consent, you will be expected to specify which legislation you are applying under. The relevant pieces of legislation are:

- s.172 of the Housing and Regeneration Act 2008
The majority of disposals requiring regulator consent will fall under s.172 of the HRA 2008. Please see paragraph 7.2
- s.133 of the Housing Act 1988
You will only need consent under s.133 of the Housing Act 1988 if you acquired the property you wish to dispose of from a local authority as defined by section 4(e) of the Housing Act 1985. Please see paragraph 7.5.
- s.173 of the Housing and Local Government Act 1989
You will only need consent under Section 173 of the Housing and Local Government Act 1989 if you acquired the property you wish to dispose of from a New Town Corporation. Please see paragraph 7.36.
- s.81 of the Housing Act 1988
You will only need consent under s.81 of the Housing Act 1988 if you acquired the property you wish to dispose of from a Housing Action Trust Please see paragraph 7.44.
- s.171D of the Housing Act 1985
You will only need consent under s.171D of the Housing Act 1985, if the property you wish to dispose of houses a tenant that has PRTB under s.171A of the Housing Act 1985. Please see paragraph 7.50.

Consent to disposal of interests in social housing dwellings under S.172 HRA 2008

7.2 Consent under s.172 is only required for disposals of dwellings that meet the definition of social housing under s68-77 of the Act. However, where such dwellings are subject to a requirement for consent under s.133, s.173 or s.81, consent under s.172 will not be required. A provider should apply for a specific consent only after checking that the disposal is:

- of a social housing dwelling (or former dwelling)
- not a type of disposal excepted from the requirement for consent by section 173 of the Act (listed in section 2 above)

- not one that can proceed under the General Consent (in which case a provider should follow the General Consent and the guidance relevant to that) or
- not one that needs s.133, s.173 or s.81 consent instead (in which case a provider should refer to and follow the guidance earlier in this chapter and the General Consent if appropriate)

7.3 Application for consent should be made on form DC2.

7.4 When tenanted dwellings are to be transferred to a new landlord, the regulator will consider the steps taken to consult the tenants and to have regard to the responses of the tenants. Providers should give full details of the tenant consultation, including confirmation that the tenants have been fully informed of the implications of the change as well as details of any objections and how these have been resolved. Please see paragraph 2.52 for more details on tenant consultation.

Consent to make the first onward disposal of property originally transferred from a local authority (under S.133 HA 1988)

7.5 A registered provider will only need consent under s.133 of the Housing Act 1988 if it acquired the property it wishes to dispose of from a local authority as defined by section 4(e) of the Housing Act 1985.

7.6 Where a private registered provider acquires land or dwellings from a local authority the local authority will first have had to obtain its own disposal consent from the Department of Communities and Local Government (DCLG) for the original disposal (this consent is granted by DCLG under sections 32 - 34 or 43 of the Housing Act 1985).

7.7 DCLG usually makes it a condition of its 1985 Act consent that any onward disposal by the receiving private registered provider will then require another disposal consent - under section 133(1) of the Housing Act 1988 this time from the regulator, this 's.133 consent' supplants our usual section 172 Housing and Regeneration Act 2008 consent regime.

How to find out if section 133 consent applies

7.8 If a private registered provider did not acquire the relevant social housing from a local authority as defined by section 4(e) of the Housing Act 1985, then s.133 consent will not apply.

7.9 A private registered provider can find out if it might require s.133 consent (rather than section 172 consent) for the first onward disposal of a property by examining the Land Registry Official Copy of the Register (the property title). If s.133 applies then, in the Proprietorship Register on the Official Copy, there will appear a restriction on title in the standard wording of form X, schedule 4 of the Land Registration Rules 2003 (see section 13 below).

The meaning of 'social housing' for the purposes of section 133

7.10 Whereas the disposal consent required under section 172 HRA 2008 covers only the disposal of social housing dwellings (as defined by ss.68-77 and s.275 HRA 2008), disposal consent under section 133(1) covers land or houses. This means that a wider range of disposals require consent under s.133, particularly for legacy stock acquired before 1 April 2010.

‘Legacy’ social housing stock and ‘non-legacy’ social housing stock

7.11 HRA 2008 says that some property is ‘social housing’ even if it does not meet the definition of social housing within s68-70 of HRA 2008. Seek legal advice as needed on this type of social housing, which is sometimes referred to as ‘legacy stock’. However, one practical approach to this is to look at the restrictions on the title at Land Registry. If the restriction says that disposal consent is required only from the ‘Secretary of State’ (DCLG) this means the land or housing was transferred to the private registered provider when it was still a ‘registered social landlord’, before 1 April 2010 (and so the property is ‘legacy stock’).

7.12 If however the restriction says the private registered provider requires disposal consent from the ‘regulator of social housing’ (form X(a)) this means the land and housing was transferred on or after 1 April 2010.

7.13 The scope of section 133 is slightly different depending on whether consent is required for the disposal of legacy social housing stock or for the disposal of social housing stock transferred to the provider on or after 1 April 2010 (see below at 7.16-7.20).

7.14 In either case disposal consent is required from the regulator, even where the restriction says that consent is required from ‘the Secretary of State’ (see section 191(3) Housing and Regeneration Act 2008).

First onward disposal

7.15 A ‘first onward disposal’ means where a provider subsequently disposes of an interest in the land or buildings transferred to it from a local authority, usually by outright sale or by lease. Disposing of a security interest for a loan is not a ‘first onward disposal’ for the purposes of s.133, but will still require the regulator’s consent under s.172 HRA 2008 (DC1/Category 6 of the General Consent).

Stock originally transferred from local authority that was held on 31 March 2010 by a registered social landlord (RSL) who automatically became a non-profit private registered provider.

7.16 For legacy stock, the regulator interprets social housing as including:

- Vacant land
- Land on which stand disused dwellings or other buildings
- Land on which buildings have been cleared (i.e. cleared before or after 1 April 2010)

- Land on which dwellings are still under construction
- Dwellings, including shared accommodation

7.17 The exceptions are those non-grant funded categories listed in sub-sections 77(4) to 77(8) HRA 2008. These are not social housing.

Stock transferred from a local authority to a private registered provider on or after 1 April 2010

7.18 Social housing that is a dwelling and which transferred from a local authority with DCLG's consent, including consent under sections 32 or 43 HA 1985, will cease to be social housing unless DCLG attaches a condition that it continues to be low cost rental or low cost home ownership accommodation (s.75(1A)(a) and s.75(3) HRA 2008).

7.19 The regulator's interpretation is that, in respect of any housing land transferred from a local authority on or after 1 April 2010, only dwellings can be social housing for purposes of s.133, and only then if they meet the criteria in ss.68-70 HRA 2008. Dwellings include shared housing accommodation but not incomplete dwellings.

7.20 If a dwelling ceases to be used as a dwelling, and DCLG had placed on it a condition that it should continue to be low cost rental or low cost home ownership accommodation, it will continue to require consent under s.133. If a dwelling ceases to be a dwelling, and DCLG had not placed on it the continuation condition referred to in paragraph 9.16 above, the requirement for consent would arise under ss.187 and 172 of the HRA 2008.

To check whether consent is required under s.133

7.21 The following factors affect the requirement for s.133 consent:

- (a) If the land is not a dwelling but is social housing, s.133 consent for an onward disposal is required if the transfer from the LA occurred before 1 April 2010 but not if the transfer from the LA occurred on or after 1 April 2010.
- (b) Did DCLG make the consent conditional on the dwelling continuing to be low cost rental or low cost home ownership?
 - i. no - but if DCLG applied no condition of continuing to be low cost rental or low cost home ownership, a private registered provider would nevertheless need s.133 consent if it had actually made the dwelling available as low cost rental or low cost home ownership
 - ii. yes - if DCLG did impose the condition of continuing to be low cost rental or low cost home ownership, and the dwelling has indeed continued to be low cost rental or low cost home ownership, s.133 consent is required
 - iii. yes - if DCLG did impose the condition of continuing to be low cost rental or low cost home ownership, but the provider failed to keep the dwelling

available for such use, the disposal would still need consent. The condition is that the dwelling continues to be low cost rental or low cost home ownership, not that the provider continues to use it as low cost rental or low cost home ownership

- (c) If (b) above indicates that s.133 applies, is the disposal of a type that is exempted from the need for consent by s.81(8)? If so, consent is not required under s.133 but it may be required under s.172 HRA 2008.

Disposals exempt under section 81(8) from the requirement for s133 consent

7.22 An exempt disposal means:

- (a) a disposal to a person who has the Right to Buy, regardless of whether the disposal is in fact made under the statutory right or otherwise. Such a disposal would also be exempt from the requirement for consent under s.172 if it took place under the exercise of the statutory right, but would require s.172 consent if it took place on any other terms
- (b) a disposal to a person who has the Right to Acquire, regardless of whether the disposal is made under the Right to Acquire provisions or otherwise. Such a disposal would also be exempt from the requirement for consent under s.172 if it took place under the exercise of the statutory right, but would require s.172 consent if it took place on any other terms;
- (c) a compulsory disposal, within the meaning of Part V of the Housing Act 1985
- (d) disposal of an easement or rent charge (which includes the grant of a new one). These require consent under s.172 where they relate to social housing dwellings, and may require consent under s.171D HA 1985 where the tenant has the PRTB
- (e) disposal of an interest by way of security for a loan or other private finance facility. These require consent under s.172 where they relate to social housing dwellings, and may require consent under s.171D HA 1985 where the tenant has the PRTB
- (f) grant of a secure tenancy. These are also exempt from the need for s.172 consent
- (g) grant of an assured tenancy (which includes most shared ownership leases). These are exempt from the need for s.172 consent
- (h) the transfer of an interest held on trust for any person where the disposal is made in connection with the appointment of a new trustee or in connection with the discharge of any trustee

Restructuring of registered societies

- 7.23 A restructuring under sections 110 and 112 of Co-operative and Community Benefit Societies Act 2014 is not a disposal for purposes of ss.81 and 133 HA 1988 and s.173 LGHA 1989.

Certification to the Land Registry upon disposal

- 7.24 See the chapter on land registration.

What consents are needed after the first onward disposal?

- 7.25 It is the responsibility of the private registered provider to establish whether any further consent is required and, if so, under which legislation.
- 7.26 Section 133 applies to the first onward disposal. Where that disposal is out of the social housing sector, there are no further consent requirements, (except for compliance with any specific condition attached to the disposal).
- 7.27 Where consent was given (by DCLG or, after 1 April 2010, by the regulator) to a first onward disposal of a dwelling subject to s.133 in which the dwelling did not leave the private registered provider sector, the position is as follows:
- (a) if the first onward disposal was exempt under s81(8) HA 1985, and the title to the social housing remained with the same private registered provider, the property will continue to require s.133 consent. This would be the case for a disposal such as a charge given to a lender or an easement.
 - (b) a disposal such as a leasehold transfer, where the freehold title remains with the private registered provider, will exhaust the requirement for s133 consent. Any future leasehold transfer of the property would therefore require s172 consent.
 - (c) upon a disposal of the social housing to another private registered provider, the acquiring provider would not require consent under s.133 for any further disposal. However, if the disposal was of a dwelling, the regulator would normally attach a condition to the s.133 consent that the dwelling should continue to be low cost rental or low cost home ownership (S.75(3) HRA 2008). This would mean a further disposal may require consent under s.172.

Procedure for applying for a specific consent under s.133

- 7.28 It is the responsibility of the private registered provider to establish whether consent is required and, if so, under which legislation.
- 7.29 Legislation aims to avoid duplicating the need for consent. If a social housing dwelling is to be disposed of, and s.133 does not apply, it is likely that s.172 will apply instead.
- 7.30 Applications should be made on form DC2.

7.31 When tenanted dwellings are to be transferred to a new landlord, s.133(5) HA 1988 obliges the regulator to consider the steps taken to consult the tenants and to have regard to the responses of the tenants. Providers should give full details of the tenant consultation, including confirmation that the tenants have been fully informed of the implications of the change as well as details of any objections and how these have been resolved.

Other General Consents

7.32 On 21 March 2005, the Secretary of State (DCLG) gave general consents under s.133 to certain categories of disposal. However, with effect from 1st April 2015 these consents are no longer in effect for those disposals by a provider which require consent from the regulator (that is, disposals of social housing). Instead, the provider may be able to use the General Consent 2015, which now applies to s 133 disposals as well as s 172 disposals.

7.33 However, note that some s 133 disposals - of property which is not social housing – will still need consent from the Secretary of State (DCLG) and the General Consent 2005 may still apply. Providers should contact DCLG for information regarding this.

7.34 The General Consent 2015 applies to some disposals under s.133. This is covered in section 4.

Consent to dispose of dwellings originally transferred from a new town corporation under S.173 of the Local Government and Housing Act 1989

7.35 Consent under s.173 is required when:

- a new town or development corporation has disposed of a dwelling *that was subject to a secure tenancy* to the appropriate local authority or to an approved person (who may be a private registered provider) and
- the private registered provider subsequently proposes to dispose of that dwelling, tenanted or otherwise

7.36 The reference to an approved person means a person approved by the Housing Corporation, which would normally have been a RSL. RSLs still on the regulator's register at 31 March 2010 will automatically have become non-profit private registered providers on 1 April 2010.

7.37 Where the requirement for consent under s.173 now applies to a private registered provider, applications for consent will be decided by the regulator from 1 April 2010. The regulator has power to attach conditions to a consent.

7.38 Where the provider has been removed from the regulator's register before or after 1 April 2010, or where the landlord is a local authority or an approved person that is not a private registered provider, consent will be given by DCLG (s.190 HRA 2008).

- 7.39 The requirement for consent applies only to a dwelling, which includes a flat.
- 7.40 Certain types of disposals are exempt from the need for consent under s81(8) HA 1988. Refer to paragraph 7.23 above. If a dwelling is to be disposed of, and s.173 does not apply, it is possible that s.172 will apply instead. If s.173 consent is required, then s.172 consent would not be needed.
- 7.41 There is no General Consent, because the legislation does not contain any provision for consent to be given generally. Application for consent should be made on form DC2.
- 7.42 When tenanted dwellings are to be transferred to a new landlord, s.173(5) LGHA 1989 obliges the regulator to consider the steps taken to consult the tenants and to have regard to the responses of the tenants. Providers should give full details of the tenant consultation, including confirmation that the tenants have been fully informed of the implications of the change as well as details of any objections and how these have been resolved. Please see paragraph 2.52 for more details on tenant consultation.

Consent to dispose of dwellings originally transferred from a housing action trust under S.81 of the Housing Act 1988

- 7.43 Consent under s.81 is required when:
- a Housing Action Trust has disposed of a house subject to a secure or introductory tenancy to a private registered provider, and
 - the private registered provider subsequently proposes to dispose of that house, tenanted or otherwise
- 7.44 Where the requirement for consent under s.81 applies to a private registered provider, the regulator will give that consent. Where the provider has been removed from the regulator's register before or after 1 April 2010, consent will be given by DCLG (s.190 HRA 2008).
- 7.45 The requirement for consent applies to houses, which includes flats. We are satisfied that the definition of a 'dwelling' under s.275 HRA 2008 is sufficiently analogous to the definition of a 'house or flat' under s.92(1)(b) HA 1988 that for practical purposes our consent is required under s81 in the same manner as it would be under s172 HRA 2008.
- 7.46 Certain types of disposals are exempt from the need for consent. Refer to paragraph 7.22 above. If a dwelling is to be disposed of, and s.81 does not apply, it is possible that s.172 will apply instead. If s.81 consent is required, then s.172 consent would not be needed.
- 7.47 There is no General Consent, because the legislation does not contain any provision for consent to be given generally. Application for consent should be made on form DC2.

7.48 When tenanted dwellings are to be transferred to a new landlord, s.81(5) HA 1988 obliges the regulator to consider the steps taken to consult the tenants and to have regard to the responses of the tenants. Providers should give full details of the tenant consultation, including confirmation that the tenants have been fully informed of the implications of the change as well as details of any objections and how these have been resolved. Please see paragraph 2.52 for more details on tenant consultation.

Consent under s.171D(2) HA 1985 (tenants with the preserved right to buy (PRTB))

NB – consent under s.171D is only required where the dwelling contains a tenant with the PRTB under s171A of the Housing Act 1985. It may arise in connection with one of the other consents mentioned above.

- 7.49 Section 171D protects the PRTB of secure tenants by requiring consent for the disposal of less than the whole interest in the tenant's dwelling. The legislation requires consent when:
- a secure tenant's dwelling has been transferred to a body that is not a landlord whose tenants have the Right to Buy (ss. 80 and 171D HA 1985), and the tenant thus obtains the PRTB, and
 - that body disposes of less than its whole interest as a landlord (but not to the tenant), such as granting a charge to a lender or selling and leasing back its freehold interest, and
 - the disposal is not to a body that can grant a secure tenancy.
- 7.50 Under Category 6 of the General Consent, security interests in dwellings subject to s171D can be disposed of by not for profit providers with a letter of authorisation from the regulator.
- 7.51 The definition of a "qualifying dwelling" in s.171B (1) HA 1985 means that only tenanted dwellings require consent under s171D. A provider does not require the regulator's consent to dispose of vacant dwellings. The presence of a restriction on the title does not change this. For more details on restrictions, please see section 13.
- 7.52 The definition of a "qualifying person" in s.171B (2) HA 1985 means that a disposal to the sitting tenant having the PRTB does not require the regulator's consent under s.171D. However, a disposal not under the statutory scheme may require consent under s.172 HRA 2008.
- 7.53 If the disposal is by a private registered provider, the regulator will give consent. For other disposals, including disposals by bodies no longer on the regulator's register, DCLG will give consent.

7.54 Dwellings subject to s.171D will have a restriction on title, in standard form “W” which appears in schedule 4 to the Land Registration Rules 2003. A requirement for consent under s.171D can be associated with a requirement for consent under any of these sections:

- s.81 of the Housing Act 1988
- s.133 of the Housing Act 1988
- s.173 of the Local Government And Housing Act 1989

For information on satisfying the restriction, refer to section 13.

7.55 On 21 March 2005, DCLG gave a General Consent under section 171D to disposals by way of security for a loan. This no longer applies to disposals under s.171D that require the regulator’s consent. Where such disposals require the consent of the Secretary of State, the General Consent may still apply. Providers should contact DCLG for information regarding this. However, the General Consent 2015 does apply to some disposals under s171D – please see section 4.

7.56 For disposals not covered by a General Consent, please apply on form DC2.

Section 8 – direction under s/176(2) HRA 2008 dispensing with the notification requirement

- 8.1 The regulator has made a General Direction dispensing with the requirement for non-profit private registered providers to notify the regulator of a disposal of land other than a social housing dwelling. This is the General Direction (under section 176(2) of the Act), which may be found on the regulator’s web site.

Section 9 – directions under s.76 HRA 2008

- 9.1 Section 76 of the Act enables a provider to apply to the regulator for a direction that a specified dwelling is to cease to be social housing.
- 9.2 This section applies only to social housing that is a dwelling. As mentioned in the Annex, the regulator interprets a dwelling as including shared accommodation.
- 9.3 The regulator will only use its power under section 76 on application by the provider and on an exceptional basis. It is up to the provider to set out the business case for the direction. In particular the regulator will consider whether there is any other way of achieving the provider’s stated aim. The regulator will not allow section 76 to be used for large scale reclassification of dwellings from the status accorded to them by the Act. Whether or not to issue such a direction is at the regulator’s discretion. Generally, the regulator would not wish to give a direction unless there is a specific need for the property to cease to be social housing, which is not met by ss73-75 of the Act.
- 9.4 A provider may wish to apply for a direction declassifying one or more of its dwellings because there is an exceptional reason for doing so and because there is no way of the dwelling ceasing to be social housing under ss73-75 of the Act. In such cases, providers should apply on form DC6.

Section 10 – unregistered housing associations

- 10.1 Under section 9(1A) of the Housing Associations Act 1985, an unregistered housing association that is not a registered charity requires the regulator’s consent to dispose of grant-aided land. Grant-aided land is defined in Schedule 1 to the Housing Associations Act 1985. In brief, however, it means land that has been in receipt of certain public loans or subsidies starting before 24 January 1974, for which the subsidies or repayments continued after that date. The public loans or subsidies in question are specified in Schedule 1 to the Housing Associations Act 1985
- 10.2 An unregistered association is one which satisfies the criteria in section 1 of the Housing Associations Act 1985 but has never been registered with the Housing Corporation or the regulator.
- 10.3 In theory, such grant-aided land could also be owned by an unregistered housing association that was formerly registered with the Housing Corporation or the regulator. However, as transitional arrangements make provision to treat these as

- former providers, the regulator will give consent under those arrangements. (See the section on deregistered bodies.)
- 10.4 The regulator believes that, in England, all the annual subsidies have now ended but some long term loans may remain outstanding. There remains, nevertheless, an obligation on these unregistered associations to obtain the regulator's consent to any disposal of the publicly assisted land, together with the housing or communal facilities constructed on it.
- 10.5 The regulator has no power to regulate unregistered housing associations, other than in giving consent to disposals. The regulator has simplified the consent requirements by giving a General Consent to many disposals, such as:
- disposal of land or property that is not housing accommodation
 - disposal of housing accommodation that is vacant
 - disposal of tenanted dwelling to a sitting tenant at a discount no greater than that available under the Right to Buy
 - granting an easement
 - charging any land, including tenanted stock, to raise finance, and
 - extending leases and selling reversionary interests
- 10.6 The regulator considers individual applications for consent to dispose of tenanted dwellings and any other disposal that does not fit the description in the General Consent or for which the association is unable to comply with the conditions of the General Consent.
- 10.7 This General Consent may be found on the regulator's web site and is known as the Unregistered Housing Associations General Consent 2010 made under section 9 of the Housing Associations Act 1985.
- 10.8 When individual consent is needed, an unregistered housing association should apply on form DC2, identifying it as an application under the 1985 Act from an unregistered association.

Section 11 – former providers

- 11.1 Section 186 provides that the consent requirements under section 172 continue to apply to the social housing dwellings of providers removed from the regulator's register on or after 1 April 2010.
- 11.2 The regulator has chosen for the time being to consider applications individually and give specific consent where appropriate. Former providers are excluded from the General Consent 2015.

- 11.3 The transitional arrangements provide that disposals by housing associations and social landlords removed from the register of the Housing Corporation and the regulator between 1 April 1975 and 31 March 2010 are to be treated as if they were disposals by former registered providers.
- 11.4 For all bodies falling into this class therefore, consent is required only for disposals of social housing dwellings held at the time of removal from the register.
- 11.5 A former registered private registered provider, whether it had been designated as non-profit or profit-making, should apply on form DC2. The form should state the former registration number and the fact that the provider has been removed from the register.
- 11.6 Former RSLs and former registered housing associations should apply on form DC2, quoting the previous HC/TSA/HCA registration number and stating whether the applicant is a former HA or RSL as applicable.

Section 12 – consent under section 156A HA 1985

- 12.1 A provider that owns housing in a National Park, an Area of Outstanding Natural Beauty or an area designated by the Secretary of State as a Rural Area may, if properties are sold under Right to Buy or Right to Acquire, wish to invoke an option to impose a covenant on those particular sales. The covenant would oblige the purchaser to offer the provider first refusal in the event of a re-sale within the first ten years. It would replace the default covenant which, unless the provider specifically permits the owner to offer the property more widely, restricts re-sale to someone who has lived or worked locally for at least three years. Please note that the Right to Buy and Right to Acquire are restricted in some rural areas; it will be for the provider to seek its own legal advice on this matter prior to disposing of the property to the tenant.
- 12.2 A provider wishing to replace the locality covenant with the buyback covenant needs the regulator's consent under section 156A HA 1985 (as amended).
- 12.3 Application may be made by email or letter. The regulator welcomes and prefers electronic applications and scans of supporting documents when they originate from an email address of a provider or its legal advisor. Scanned applications should be sent to reg.consent@hca.gsi.gov.uk. Please do not follow up a scanned application with the original through the post.

Postal applications may be sent to either:

The Statutory Processes Team, Homes and Communities Agency, The Social Housing Regulator, 4th Floor, One Piccadilly Gardens, Manchester M1 1RG

or

The Statutory Processes Team, Homes and Communities Agency, The Social Housing Regulator, 2 Marsham Street London SW1P 4DF

Section 13 – land registration

13.1 This section deals with the registration of land and compliance with restrictions on disposals.

Restrictions already on title at 1 April 2010

13.2 Registered land owned by a private registered provider and acquired after the enactment of the Housing Act 1974 should have, entered on the Land Register, a restriction stating that consent must be obtained for any disposal except those that are exempt.

13.3 This section deals with:

- (a) restrictions on land which, up to 31 March 2010, was subject to section 9 of the Housing Act 1996.
- (b) land requiring a consent under section 133 of the Housing Act 1988
- (c) land requiring a consent under section 81 of the Housing Act 1988
- (d) consent under section 173 of the Local Government and Housing Act 1989
- (e) consent under section 171D(2) of the Housing Act 1985

Disposals requiring consent under section 172 of the Housing and Regeneration Act 2008

13.4 Under s172 of the HRA 2008, consent is only needed for disposals of social housing dwellings or former dwellings. How “social housing dwelling” is to be interpreted is explained elsewhere in this guide. Existing restrictions will remain on land which is not a social housing dwelling, although that class of land will no longer require the regulator’s consent to its disposal. It is not necessary to ask the Land Registry to remove restrictions from land which is not a social housing dwelling. This will be done when a disposal of the full interest takes place (other than to another private registered provider). Also, certain types of disposal will continue to be exempt from the requirement to obtain consent (s.173 HRA 2008).

How to comply with restrictions placed on title before 1 April 2010

13.5 Two types of restriction were placed on title before 1 April 2010:

The "1974 restriction"

13.6 This was placed on land registered between 1974 and 12 October 2003. It is worded as follows:

“Except under an order of the registrar no disposition by the proprietor of the land is to be registered and none shall take effect unless made with the consent of the Housing Corporation when such consent is required under the provisions of section 9 of the

Housing Act 1996" (or it may refer to earlier legislation on consent to disposals, such as section 2 of the Housing Act 1974 or section 9 of the Housing Associations Act 1985

13.7 If a provider's land is registered subject to the 1974 restriction, the Land Registry will require:

- (a) for disposal of a social housing dwelling, certified true copies of a form DC5, DC1 or of the individual consent from the regulator. Providers should therefore give the purchaser's solicitors or licensed conveyancer a certified true copy (certified by the provider's authorised officer, solicitor or licensed conveyancer) of the completed and signed DC5 or the individual s.172 consent. The Land Registry does not need supporting papers for DC5. These should be kept with the original DC5 on the register maintained by the provider, **OR**
- (b) for disposal of land which is not a social housing dwelling, and which does not form the site of a prior social housing dwelling, a provider should give the disponee a copy of the original certificate (not DC5 or any individual consent) certified by the provider's authorised officer, solicitor or licensed conveyancer, worded as follows:

"We certify that the provisions of section 172 of the Housing and Regeneration Act 2008 do not apply to the disposition."

13.8 For both (a) and (b), however, the Land Registry will not require such documents or any alternative documents from an provider when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.

The "2003 restriction"

13.9 This was placed on land registered between 13 October 2003 and 31 March 2010. It reads as follows:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of the proprietor by its secretary (or by two trustees, if a charitable trust) or its solicitor or licensed conveyancer that the provisions of section 9 of the Housing Act 1996 have been complied with".

13.10 If a provider's land is registered subject to the 2003 restriction, the Land Registry will require:

- (a) For a disposal of a social housing dwelling which requires an individual sealed consent, Land Registry will require the following certificate:

"We certify that the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with."

Providers should give the purchasers' solicitors or licensed conveyancers a copy of the original certificate (not DC5 or any individual consent) certified by

the provider's authorised officer, solicitor or licensed conveyancer. The purchaser or transferee will need to lodge this certificate at the Land Registry with their application to register their new title; **OR**

(b) For a disposal made under the General Consent, the Land Registry will accept either the certification in (a) above or a certified true copy of form DC5, which includes a certification in a form acceptable to the Land Registry. A provider should therefore give the purchaser's solicitors a copy of form DC5 certified as a true copy by the provider's authorised officer, solicitor or licensed conveyancer; **OR**

(c) For disposal of land which is not a social housing dwelling, and which does not form the site of a prior social housing dwelling, Land Registry will require the following certificate:

"We certify that the provisions of section 172 of the Housing and Regeneration Act 2008 do not apply to the disposition."

A provider should give the disponee a copy of the original certificate (not DC5) certified by the provider's authorised officer, solicitor or licensed conveyancer.

13.11 For both (a) and (b), however, the Land Registry will not require such a certificate or any alternative document when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.

Requirements for private registered providers under the Land Registration Rules

13.12 Under Rule 183A(1) of the Land Registration Rules 2003, a private registered provider, profit-making or non-profit, must certify to the Land Registry, when applying to register land, that it is a private registered provider. This informs the Land Registry that its title may be subject to statutory consent to disposals. It is important that all private registered providers certify their status as a private registered provider in order that the Land Registry can deal with the application appropriately. It is also an expectation under the regulator's governance standard.

13.13 Normally, an individual application is needed to place a restriction on each title. However, Housing Corporation circular 08/03 instructed RSLs to enter into an arrangement under which the Land Registry would automatically enter a restriction upon all new registrations. For RSLs who transfer to the regulator's register as non-profit private registered providers, this arrangement will continue without the need to make a new application.

The "2010 restriction"

13.14 The restriction entered on the register for registrations on or after 1 April 2010 reads as follows:

"No disposition of the registered estate by the proprietor of the registered estate is to be completed by registration without a certificate by the registered proprietor signed

by their secretary or by two trustees if a charitable trust or by their conveyancer that the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with [or that they do not apply to the disposition].”

- 13.15 The restriction is applied regardless of the intended use of the land. However, where the land is not used as a social housing dwelling, all which is necessary upon disposal is to certify that the provisions of section 172 of the Act do not apply.

Requirement to enter into an arrangement with the Land Registry

- 13.16 It is a requirement of the regulator that newly registered private registered providers (and any existing providers who have not yet done so), both non-profit and profit-making, enter into such an arrangement with the Land Registry. This will enable Land Registry to add a restriction which prevents invalidity or unlawfulness in respect of disposals. The regulator will also review, when considering an application for consent under s.172, the progress a provider has made in setting up an arrangement. The forms for applying for such an arrangement are at the schedules in the Annex. See further below for registering land before an arrangement is in place.

How to comply with restrictions placed on title from 1 April 2010

- 13.17 If a provider's land is registered subject to the 2010 restriction, the Land Registry will require:

- (a) for a disposal of a social housing dwelling which requires an individual sealed consent, Land Registry will require the following certificate:

"We certify that the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with."

(However, the Land Registry will not require such a certificate or any alternative document when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.)

Providers should give the purchasers' solicitors or licensed conveyancers a copy of the original certificate (not DC5 or any individual consent) certified by the provider's authorised officer, solicitor or licensed conveyancer. The purchaser or transferee will need to lodge this certificate at the Land Registry with their application to register their new title.

For a disposal made under the General Consent, the Land Registry will accept either the certification above or a certified true copy of form DC5, which includes a certification in a form acceptable to the Land Registry. A provider should therefore give the purchaser's solicitors a copy of form DC5 certified as

a true copy by the provider's authorised officer, solicitor or licensed conveyancer, **OR**

- (b) for disposal of land which is not a social housing dwelling, and which does not form the site of a prior social housing dwelling, a provider should give the disponent a copy of the original certificate (not DC5 or any individual consent) certified by the provider's authorised officer, solicitor or licensed conveyancer, worded as follows:

"We certify that the provisions of section 172 of the Housing and Regeneration Act 2008 do not apply to the disposition."

- 13.18 For both (a) and (b), the Land Registry will not require such a certificate or any alternative document when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.

Signing certifications in respect of restrictions

- 13.19 The certification required by the above restriction should be signed by the disposing private registered provider's secretary or by two trustees if a charitable trust or by their conveyancer.
- 13.20 If the disposal is made in accordance with the General Consent 2015, a private registered provider has the alternative option of providing the disponent with a true copy of form DC5, which contains certificates required by both the Land Registry and the regulator. On form DC5, the signatures should be those of the secretary and one other authorised person. If a private registered provider has no post of secretary, an equivalent such as the Treasurer or Clerk of Trustees may sign. For a private registered provider that is a charitable trust, if the secretary or equivalent provides the first signature, the second authorised signatory may be either a trustee or an officer.

Registering land before an arrangement is agreed

- 13.21 Providers should enter into an arrangement with Land Registry for registration of a restriction on land, as described above. If ownership of land needs to be registered before the arrangement is made, a provider would need to apply in form RX1 instead. The provider's secretary or its conveyancer must give the following information in its application so that the status of the association can be ascertained and the correct restriction(s) entered in the Land Register:

- (a) Status: state that the provider is:
- a private registered provider of social housing within the meaning of the Housing and Regeneration Act 2008;
 - an industrial and provident society within the meaning of the Industrial & Provident Societies Act 1965; or
 - a company registered under the Companies Act 1985; and/or

- a charity registered with the Charity Commission.
- (b) Enclose if appropriate a certified copy of the provider's governing instrument. If the Land Registry has already been supplied with a copy of that document, the provider should certify this to the Land Registry, quoting Land Registry HQ's reference.
- (c) If an instrument, such as a transfer to a private registered provider that is a charity or an exempt charity is lodged with the Land Registry for registration, a statement taken from section 37(5) of the Charities Act 1993 must be inserted into the instrument in the form indicated by Rule 179 of the Land Registration Rules 2003.

Note that in the absence of that statement, the Land Registry may assume that the receiving association is not a charity.

- (d) Similarly if an instrument such as a transfer by a private registered provider that is a charity or an exempt charity is lodged with the Land Registry for registration, a statement taken from section 37(1) of the Charities Act 1993 must be inserted into the instrument in the form indicated by Rule 180 of the Land Registration Rules 2003.

Certified true copies of consents

13.22 Paragraphs above refer to providing certified true copies. Land Registry advise that, for their purposes, plain copies such as photocopies will normally suffice, though they remain entitled to call for a certified true copy in a particular case. In practice, however, purchasers' solicitors may still insist on providers providing certified true copies. Providers may consider that if this custom is entrenched they may as well provide certified true copies as a matter of course.

Part completion of form DC 5

13.23 Providers need not complete the 'date of completion of sale, charge etc.' and 'provider register entry number' boxes before copying DC5 for Land Registry use. However, providers must do this before filing the form on the register.

Retaining form DC5 and supporting documents

13.24 Anyone may make a claim under a disposal by deed within 12 years of the date of disposal. The regulator therefore recommends that a provider retains form DC5 and supporting documents for 12 years from the date of disposal. This will enable it to demonstrate, if necessary, that the disposal was validly made.

A provider disposing of land not subject to a restriction

13.25 If a provider's land happens to be registered without any restriction on title, the Land Registry will not need to see any consent or certificate. Note that section 172 of the Act applies even when there is no restriction on the register.

Providers applying restrictions in respect of purchasers upon disposal

- 13.26 Providers sometimes require purchasers to apply for other types of restriction. When devising such restrictions, providers should bear in mind that Land Registry has a statutory power to reject restrictions. It will not generally accept a restriction that calls for Land Registry staff to make a judgement such as whether a provision in a deed has been complied with. Further information is contained in the Land Registry's latest Practice Guide No. LRGP 019, "Notices, Restrictions and the protection of third party interests in the register", published under "Forms & Publications" and accessed through "Practice Guides" on www.landregistry.gov.uk.

Registrations by unregistered housing associations

- 13.27 Upon application to register proprietorship, if a company is an unregistered housing association within the meaning of the Housing Associations Act 1985 and the application relates to grant-aided land as defined in schedule 1 to that Act, the application must contain or be accompanied by a certificate to that effect. If, in connection with the registration of trustees as proprietor, the registered estate or charge to which the application relates is held on trust for an unregistered housing association within the meaning of the Housing Associations Act 1985 and is grant-aided land as defined in schedule 1 to that Act, the application must contain or be accompanied by a certificate to that effect. (Land Registration Rules 2003, rule 183(A)(2))

Disposals by unregistered housing associations

- 13.28 The consent requirement applies only to grant-aided land as defined in schedule 1 to HAA 1985. For disposals that require consent, an unregistered association must supply the purchaser with either:
- (a) a certified true copy of the regulator's consent under Section 9 of the Housing Associations Act 1985, or
 - (b) where the disposal is permitted under the Unregistered Housing Associations General Consent 2010 made under section 9(1A) of the Housing Associations Act 1985, a certificate as follows:

We certify that the provisions of section 9 of the Housing Associations Act 1985 have been complied with."

- 13.29 For both (a) and (b), however, the Land Registry will not require such documents or any alternative documents from an provider when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.

Disposals by former registered providers, former RSLs and former registered housing associations.

- 13.30 This refers to housing associations removed from the Housing Corporation's register between 1 April 1975 and 30 September 1996, RSLs removed from the Housing Corporation's register between 1 October 1996 and 30 November 2008, RSLs removed from the regulator's register between 1 December 2008 and 31 March 2010, and private registered providers removed from the register of the regulator on or after 1 April 2010 (referred to collectively here as former providers).
- 13.31 Under the transitional arrangements for implementing the HRA 2008, disposals by all these bodies are subject to s.172 of the HRA 2008. This means that only disposals of social housing dwellings, or former social housing dwellings, held at the point of removal from the register will need consent. It is also possible for a specific social housing dwelling to have been declassified by the regulator as social housing under s.76 HRA 2008. There is no General Consent to disposals by former providers.
- 13.32 Land could therefore be subject to the 1974 restriction, the 2003 restriction or the 2010 restriction. A former provider should consider whether a dwelling subject to a restriction is a social housing dwelling the disposal of which requires consent under s.172. Upon disposal, a former provider should follow the instructions given above for each of the three types of restriction, disregarding those relating to a General Consent.

Disposals requiring consent under section 133 of the Housing Act 1988

- 13.33 Section 7 of this guide explains that:
- from 1 April 2010, where a private registered provider requires consent under s.133, that consent will be given by the regulator rather than by the DCLG
 - the regulator's consent will be required for disposals of social housing only (s.190 and s.191(3)(a) HRA 2008)
 - the General Consent 2015 applies to certain disposals under s133, and
 - the General Consents under s.133 given on 21 March 2005 by DCLG no longer apply to disposals requiring consent from the regulator. However, they may still apply to disposals requiring consent from the Secretary of State. Please contact DCLG regarding this
- 13.34 Land made subject to a requirement for s.133 consent, both before and after 1 April 2010, will have a restriction on title in the Land Registry's Standard Form X, found in schedule 4 to the Land Registration Rules 2003.
- 13.35 Restrictions in this form placed immediately before 1 April 2010 will read:
- No disposition by the proprietor of the registered estate or in exercise of the power of sale or leasing in any registered charge (except an exempt disposal as defined by section 81(8) of the Housing Act 1988) is to be registered without the consent of the [Secretary of State *or* Welsh Ministers] to that disposal under the provisions of

[choose whichever bulleted clause is appropriate]

- s.81 of that Act.
- s.133 of that Act.
- s.173 of the Local Government and Housing Act 1989."

13.36 Restrictions in this form registered from 1 April 2010 onwards will read:

"No disposition by the proprietor of the registered estate or in exercise of the power of sale or leasing in any registered charge (except an exempt disposal as defined by section 81(8) of the Housing Act 1988) is to be registered without the consent of-

- (a) in relation to a disposal of land in England by a private registered provider of social housing, the regulator of social housing
- (b) in relation to any other disposal of land in England, the Secretary of State, and
- (c) in relation to a disposal of land in Wales, the Welsh Ministers

to that disposition under [as appropriate [Section 81 of that Act] or [Section 133 of that Act] or [Section 173 of the Local Government and Housing Act 1989]"

13.37 To meet the requirements of a restriction in standard form X, where the consent required (from the regulator) is under s.133 of the Housing Act 1988, a private registered provider should:

- (a) When the regulator gives an individual consent, supply to the disponee a certified true copy of that consent.
- (b) If the consent proceeded under the General Consent 2015, certify to the disponee along the following lines:

"We certify that the provisions of section 133 of the Housing Act 1988 have been complied with."
- (c) When the land is not social housing, certify to the disponee along the following lines:

"We certify that the provisions of section 133 of the Housing Act 1988 do not apply to the disposition."

Disposals requiring consent under section 81 of the Housing Act 1988

13.38 Section 7 of this guide explains that, from 1 April 2010, where a private registered provider requires consent under s.81, that consent will be given by the regulator rather than by the DCLG.

- 13.39 A house made subject to a requirement for s.81 consent, both before and after 1 April 2010, will have a restriction on title in the Land Registry's Standard Form X, as described above under s.133 consents.
- 13.40 To meet the requirements of a restriction in standard form X, where the consent required (from the regulator) is under s.81 of the Housing Act 1988, a private registered provider should provide the disponee with a certified true copy of the regulator's consent

Disposals requiring consent under section 173 of the Local Government and Housing Act 1989

- 13.41 Section 7 of this guide explains that, from 1 April 2010, where a private registered provider requires consent under s.173, that consent will be given by the regulator rather than by the DCLG.
- 13.42 A dwelling made subject to a requirement for s.173 consent, both before and after 1 April 2010, will have a restriction on title in the Land Registry's Standard Form X, as described above under s.133 consents.
- 13.43 To meet the requirements of a restriction in standard form X, where the consent required (from the regulator) is under s.173 of the LGHA 1989, a private registered provider should provide the disponee with a certified true copy of the regulator's consent.

Disposals requiring consent under section 171d(2) of the Housing Act 1985

- 13.44 Section 5 of this guide explains that a requirement for consent under s.171D can be associated with a requirement for consent under any of the following sections:
- s.81 of the Housing Act 1988
 - s.133 of the Housing Act 1988
 - s173 of the Local Government and Housing Act 1989

and that:

- from 1 April 2010, where a private registered provider requires consent under s.171D, that consent will be given by the regulator rather than by the DCLG
- the General Consent 2015 applies to certain disposals under s133
- the General Consents under s.133 given on 21 March 2005 by DCLG no longer apply to disposals requiring consent from the regulator. However, they may still apply to disposals requiring consent from the Secretary of State. Please contact DCLG regarding this

13.45 Dwellings subject to the requirement for consent under s.171D will have a restriction on title, in standard form "W" which appears in schedule 4 to the Land Registration Rules 2003. This reads:

"No disposition (except a transfer) of a qualifying dwelling-house (except to a qualifying person or persons) is to be registered without the consent of the [Secretary of State or Welsh Ministers] given under section 171D(2) of the Housing Act 1985 as it applies by virtue of the Housing (Preservation of Right to Buy) Regulations 1993."

13.46 Restrictions in form W registered on or after 1 April 2010 will read:

"No disposition (except a transfer) of a qualifying dwelling-house (except to a qualifying person or persons) is to be registered without the consent of-

- (a) in relation to a disposal of land in England by a private registered provider of social housing, the regulator of social housing;
- (b) in relation to any other disposal of land in England, the Secretary of State; and
- (c) in relation to a disposal of land in Wales, the Welsh Ministers.

to that disposition under section 171D(2) of the Housing Act 1985 as it applies by virtue of the Housing (Preservation of Right to Buy) Regulations 1993."

13.47 To comply with the requirements of a restriction in standard form W, where the consent required (from the regulator) is under section 171D(2) of the Housing Act 1985, a private registered provider should provide the disponee with a certified true copy of the DC5 or the regulator's consent.

13.48 Where the disposal is of a type that does not require consent under s.171D (2), such as a disposal of an untenanted dwelling, a provider may certify to the disponee on the following lines:

"We certify that the provisions of section 171D (2) of the Housing Act 1985 do not apply to the disposition."

Schedules to this section are included below. These are as follows:

Schedule I

Application for an arrangement regarding the entry of restrictions under Section 172 of the Housing and Regeneration Act 2008

Schedule II

Notice to the regulator of social housing that application has been made to the Land Registry for an arrangement regarding the entry of restrictions under Section 172 of the Housing and Regeneration Act 2008

Schedule III

Notice to the regulator of social housing that confirmation has been received from the Land Registry that an arrangement is in place regarding the entry of Section 172 restrictions

Schedule IV

Restriction to be applied for on a Form RX1 in respect of applications made before confirmation that an arrangement is in place with the Land Registry in respect of Section 172 restrictions (transitional arrangements)

Section 13 – schedule I

Application for an arrangement regarding the entry of restrictions under Section 172 of the Housing and Regeneration Act 2008

BY REGISTERED POST

To: Commercial Arrangements Section

Land Registry Head Office

Trafalgar House

1, Bedford Park

Croydon

CR0 2AQ

1. [specify name of private registered provider of social housing], having its registered address at [specify registered address] hereby requests a special arrangement under which the Land Registry will enter the form of restriction set out in the Appendix below whenever the Land Registry enters [specify name of private registered provider of social housing] as proprietor, without a separate application having to be made in respect of each transaction.
2. [specify name of private registered provider of social housing] waives its right to notice under Section 42 (3) of the Land Registration Act 2002.

APPENDIX

"No disposition of the registered estate by the proprietor of the registered estate is to be completed by registration without a certificate by the registered proprietor signed by their secretary or by two trustees if a charitable trust or by their conveyancer that the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with [or that they do not apply to the disposition]."

Dated the day of 201X

Company Secretary / Trustee*

Trustee*

**This application is to be signed by the Company Secretary, or if the Private Registered Provider is a charitable trust, by two trustees*

Section 13 - schedule II

Notice to the regulator of social housing that application has been made to the Land Registry for an arrangement regarding the entry of restrictions under Section 172 of the Housing and Regeneration Act 2008

To: The Registry
HCA The Social Housing Regulator
1 Piccadilly Gardens
MANCHESTER
M1 1RG

This is to give NOTICE that [specify name of private registered provider of social housing] having the regulator of social housing's registration number [specify number] has applied to the Land Registry in accordance with the form set out in disposing of land on the [specify date on which application was made] for an arrangement relating to the entry of section 172 restrictions on the titles of land in respect of which it is registered as proprietor.

Dated the day of 201X

Company Secretary / Trustee*

Trustee*

**This Notice is to be signed by the Company Secretary, or if the Private Registered Provider is a charitable trust, by two trustees*

Section 13 - Schedule III

Notice to the regulator of social housing that confirmation has been received from the Land Registry that an arrangement is in place regarding the entry of Section 172 restrictions

To: The Registry
HCA The Social Housing Regulator
1 Piccadilly Gardens
MANCHESTER
M1 1RG

This is to give NOTICE that [specify name of private registered provider of social housing] having the regulator of social housing's registration number [specify number] has received confirmation from the Land Registry that an arrangement is in place relating to the entry of section 172 restrictions on the titles of land in respect of which it is registered as proprietor.

Dated the day of 201X

Company Secretary / Trustee*

Trustee*

**This Notice is to be signed by the Company Secretary, or if the Private Registered Provider is a charitable trust, by two trustees*

Section 13 - schedule IV

Restriction to be applied for on a Form RX1 in respect of applications made before confirmation that an arrangement is in place with the Land Registry in respect of Section 172 restrictions (transitional arrangements)

No fee will be payable for the entry of the following restriction if application in form RX1 is made contemporaneously with an application on which a Scale fee is paid.

"No disposition of the registered estate by the proprietor of the registered estate is to be completed by registration without a certificate by the registered proprietor signed by their secretary or by two trustees if a charitable trust or by their conveyancer that the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with [or that they do not apply to the disposition].

Annex

Interpretation of terms used in the Housing and Regeneration Act 2008

Section A: Social Housing – general points, legacy provision and new provision

Section B: Dwelling

Section C: Disposal

In order to operate the powers of consent given to it in the Act, the regulator interprets terms used in the Act as follows, for purposes of giving consent under s.172 of the Act.

A. Social housing

General points

Ownership

1. Providers, only private registered providers require the regulator's consent under to dispose of their social housing.
2. Social housing is defined in sections 68 and 77 of the Act and encompasses low cost rental accommodation and low cost home ownership accommodation.
 - (a) To establish whether accommodation first provided on or after 1 April 2010 is social housing, it is necessary to refer to sections 68-70 of the Act.
 - (b) To establish whether property is social housing when it was already held by RSLs on 1 April 2010, when they were added to the regulator's register as private registered providers, it is necessary to refer to section 77. This category is referred to here as "legacy housing" or "legacy".

Grant funding

3. The absence of public funding does not mean that a dwelling is not social housing. The Act does not refer to the source of finance as a determining factor. The only exception to this is in determining whether those dwellings referred to in sections 77(4) to 77(8), are to be social housing. If the following did not receive the grants referred to in s.77(3), they are not social housing.
 - dwellings that are let on the open market, which the regulator interprets as including long leases
 - dwellings that are made available only to students in full-time education or training

- dwellings that are a care home (within the meaning of the Care Standards Act 2000) in which nursing is provided
- dwellings that are provided in response to a request by the Secretary of State under section 100 of the Immigration and Asylum Act 1999
- dwellings that are of a kind specified by regulations of the Secretary of State for Communities and Local Government. None have yet been specified

Open market sale

4. A dwelling developed for open market sale is not social housing and will not normally require consent for its disposal on the open market. It will require consent only if it is a former social housing dwelling or stands on the site of a former social housing dwelling.

Open market acquisition

5. Where a provider is refurbishing existing dwellings that:
 - were purchased on the open market
 - have housed tenants in the past and
 - are to be used as social housing in the future

the default position is that these dwellings would constitute social housing dwellings and therefore consent would be required in order to dispose of them.

6. For the avoidance of doubt, if the dwellings were purchased before 01 April 2010, they would constitute social housing even if they were not to be used for this purpose in the future, unless excepted under s77 of the Act.

Ceasing to be social housing

7. A dwelling ceases to be social housing only through the routes set out in sections 72-76 of the Act. If a provider ceased to use a dwelling as social housing, the dwelling would nevertheless remain classed as social housing in law (and so a disposal would still need consent) until one of the events in sections 72-76 happened. The happening of one of these events (with an exception – see the fifth bullet below) will mean that the dwelling is no longer classified as social housing. The events are, in brief:

- declassification by regulations of the Secretary of State (none have yet been made)
- sale to the tenant under a statutory right
- ending of equity percentage or shared ownership arrangements (except where the former shared owner continues to hold the original lease)

- expiry of the provider's leasehold interest
- disposal with the regulator's or the Secretary of State's consent under s.172 of the Act; s.81 or s.133 of the Housing Act 1988; or s.171D of the Housing Act 1985 – unless the consent contains a condition that the social housing should continue to be low cost rental accommodation or low cost home ownership accommodation, (ie social housing). In these circumstances, the regulator's consent would then be needed for a future disposal
- a direction is made by the regulator under section 76 to declassify a specific dwelling as social housing

Legacy housing as at 1 April 2010

8. Legacy housing refers to the housing property owned on 1 April 2010 by RSLs who had automatically become designated, under s.278 of the Act, as non-profit providers on the regulator's new register. Section 77 classifies most of this existing housing property of RSLs as social housing, except for those non-grant funded categories listed in sub-sections 77(3) to 77(8) and para 2.3 above. Consent is required to dispose of a dwelling if the dwelling is social housing (section 172(1)), so providers will need consent to dispose of any dwellings within this social housing legacy. (See also paragraph 7.5 for details of disposals that require consent under s.133 HA 1988, under which there is a wider definition of social housing.)
9. Within this legacy, 'social housing' includes certain reversionary interests in leasehold dwellings.

Residential care and nursing care

10. This refers to accommodation provided with the primary purpose of the provision of residential care or nursing care.
 - A care home from the legacy is social housing when no nursing care was provided, as at 1 April 2010, even when it was provided without the aid of capital grant.
 - A care home from the legacy in which nursing care was provided at 1 April 2010 is social housing only if it was provided with the aid of capital grant (ss. 77(3) and (6) of the Act refer).
 - A care home provided on or after 1 April 2010 would be social housing only if it satisfied the criteria in s.69 of the Act.

Former shared ownership leases from the legacy

11. A dwelling, (normally this would be a flat) let on a shared ownership lease before 1 April 2010, in which the shared owner staircased to own 100% of the lease before 1 April 2010 but does not own the freehold, is social housing. The dwelling continues to be social housing if the former shared owner assigns the lease. A provider requires

consent to dispose of its interest in such a dwelling. Category 14 of the General Consent permits disposal of the freehold reversion, grant of a new lease or extension of an existing lease. After a disposal under category 14 of the General Consent, the dwelling ceases to be social housing - and any subsequent extension or grant of a new lease would need no further consent. Please note that category 14 does not extend to schemes designed specifically for older people.

12. A dwelling (normally this would be a flat) let on a shared ownership sub-lease before 1 April 2010, in which the shared owner staircased to own 100% of the sub-lease before 1 April 2010 but did not take over the provider's superior leasehold interest is social housing. The dwelling continues to be social housing if the former shared owner assigns the sub-lease. A provider requires consent to dispose of its interest in such a dwelling. Category 14 of the General Consent permits disposal of the superior leasehold reversion, grant of a new sub-lease or extension of an existing sub-lease. After a disposal under category 14 of the General Consent, the dwelling ceases to be social housing - and any subsequent extension or grant of a new lease would need no further consent.

Shared ownership dwellings made available before 1 April 2010

13. A dwelling made available before 1 April 2010 would continue to be social housing if used for low cost rental or low cost home ownership accommodation within the meaning of sections 69 and 70 of the Act, whether or not it had received any of the grants mentioned under s.77(4), This means that most shared ownership leases that were made available before 1 April 2010 are likely to be social housing.
14. For those dwellings still in shared ownership that are social housing, the following things do not need consent:
 - (a) staircasing does not need consent. Intermediate staircasing (i.e. to less than 100% ownership) is not classed as a disposal, and ss.73 and 75 of the Act effectively exclude final staircasing (i.e. to 100% ownership) from the disposal consents regime
 - (b) an extension of the lease still in shared ownership would not require consent where the lease provides for extension and the lease can continue to be an assured tenancy

while the following things **do** need consent:

- (c) further to (b) above on extensions, consent may be required if, upon final staircasing, a shared owner requests a longer new lease than is provided for under the terms of the original shared ownership lease. Category 14 of the General Consent would cover it
- (d) a transfer of the freehold or superior leasehold reversion to another landlord would need a specific consent

15. This paragraph deals with a dwelling that was let on a shared ownership lease before 1 April 2010, which was still in shared ownership at 1 April 2010, which is social housing as established under paragraph 1.8 above, and in which the shared owner takes to full ownership on or after 1 April 2010.
16. The grant of the freehold or a new lease to the shared owner would not need consent if done as prescribed by the terms of the shared ownership lease, where the shared ownership lease is an assured tenancy. If outside the terms of the lease, or if the shared ownership lease is not an assured tenancy, category 14 of the General Consent would cover the grant of the freehold or the grant of a new lease. Following a disposal under category 14 of the General Consent, a dwelling ceases to be social housing and no further consent would be required for disposals.
17. Where the shared owner takes the freehold or a new lease under the terms of the original shared ownership lease under 1.14 above, then, under the provisions of section 73(3) of the Act, the dwelling ceases to be social housing and no further disposals require consent. If, however, the former shared owner and successors in title continue under the original shared ownership lease, section 73(3) does not apply and the dwelling continues to be social housing. Where the dwelling continues to be social housing, in these circumstances, consent is required for further disposals.
18. Extension of the lease, grant of a new lease and sale of the freehold are all covered by category 14 of the General Consent. Following a disposal under category 14 of the General Consent, a dwelling ceases to be social housing and no further consent would be required for disposals.

Accommodation let on the open market on leases granted before 1 April 2010 (excluding shared ownership)

19. Accommodation let on the open market on leases granted before 1 April 2010 on a dwelling which was not grant funded is not social housing. Therefore, no consent is required for the disposal of the freehold or superior leasehold interest, grant of a new lease or extension of an existing lease.
20. However, accommodation let on the open market on leases granted before 1 April 2010 on a dwelling which was grant funded is social housing. Grant funding is defined in section 77(3) of the Act as HAG, SHG and s.19 assistance, i.e. grant paid no earlier than 1 April 1975. Examples of disposals which fit in this category of grant funded dwelling would also include leases to sitting tenants under the Right to Buy, Right to Acquire, Social HomeBuy (outright sale only), earlier government schemes for assisting sales to tenants, and voluntary sales to tenants (other than on a shared ownership basis).
21. For grant funded accommodation let on the open market on leases granted before 1 April 2010, the General Consent allows a provider to sell the reversionary interest (category 28).
22. The General Consent does not allow the disposal of the reversionary interest in a scheme designed for people aged 55 or over. These disposals would need individual

consent. However category 15 of the General Consent permits providers to grant new leases or extend existing ones in such schemes.

Newly provided or acquired from 1 April 2010

23. Social housing which is not 'legacy' housing will need consent by the regulator to a disposal if it is a dwelling which satisfies the definition of 'social housing' in section 68 of the Act, as expanded in sections 69 to 71. This requirement applies to registered providers designated both as profit-making and non-profit organisations, as defined in section 115 of the Act. The regulator's powers to consent to disposals by non-profit registered providers are circumscribed by section 172(2), which says that the regulator shall not consent to a disposal which it thinks is being made to enable the provider to distribute assets to members

Low cost rental accommodation provided on or after 1 April 2010

24. Accommodation is low cost rental social housing if:
- it is made available for rent
 - the rent is below the market rate and
 - the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market

The rules referred to in the third bullet are not necessarily limited to the rules of the provider itself. They could be, for example, rules of a body giving a capital grant. For purposes of assisting registered providers to establish which of their properties are social housing dwellings (and therefore that the requirement for consent to dispose applies), the regulator gives the following advice.

Financing

25. The source of finance, public grant or otherwise, is not among the defining criteria for social housing. In practice, however, a dwelling provided with grant or other financial assistance from the HCA and GLA will generally be deemed social housing.

Market rate when the commercial market is limited or non-existent

26. For housing of a type usually made available only by the non-profit sector, it may be impossible to establish the market rate by comparison with commercial provision. The commercial sector may offer either no comparable housing or insufficient provision to make a comparison. This might be, for example, housing provided on an emergency, short-term, or care and support basis, such as emergency accommodation for the homeless, hostel provision for short-term residency, or intensive care and support for residents with severe disabilities. Although the market rent criterion cannot be properly tested for such accommodation, a provider should regard it as social housing if it is made available in accordance with rules designed to

ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

Market rents that fall behind the market

27. When market rents generally rise above a market rent agreed with a tenant, and so long as the provider's intention is to restore market rent at the next opportunity, the dwelling remains as market rent rather than becoming social housing.

Not technically a "rent"

28. Section 275 of the Act provides that rent includes payments under a licence to occupy accommodation. It makes no difference that there is no formal "rent"; the property is still capable of being social housing if the other requirements are met. Residents of almshouse charities, for example, pay a weekly maintenance contribution rather than a rent or, in other cases, occupiers have licence arrangements.

Rent which is part of an inclusive charge

29. When a rent is part of a charge which also covers the provision of services or care and support, the appropriate comparison with market rent would be made after separating the rental element from the remainder of the charge. If there is no comparable market rent, a provider should regard this as social housing if the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

Temporary accommodation provided under Part 7 of the Housing Act 1996

30. This is accommodation provided in response to the homelessness duty on local authorities. Temporary accommodation provided under Part 7 of the Housing Act 1996 is not considered to be social housing unless it is provided at a rent below market rate (and the regulator's understanding is that usually it will be provided at or above market rate).

Low cost home ownership accommodation provided on or after 1 April 2010

31. The criteria in section 70 of the Act apply.
32. A dwelling becomes social housing by being "made available". Thus a dwelling provided for sale on low cost home ownership terms becomes social housing when it is both practically complete and made available for sale. This means that the actual sale of a dwelling into low cost home ownership can be a disposal requiring consent. Examples might be sale by a provider on equity percentage terms under HomeBuy Direct, or a shared ownership lease that is not an assured tenancy.

Equity percentage arrangements entered into on or after 1 April 2010

33. If the provider itself disposes of the dwelling while entering into equity percentage arrangements with the purchaser, the dwelling is social housing. That disposal may be covered by category 10 of the General Consent. However, when such disposals involve a change to the use of existing rented stock, specific consent will be required. Where the purchaser buys from the private sector and their relationship with the provider is solely in obtaining the equity loan, as in the former "Open Market HomeBuy" scheme, the dwelling is not social housing.
34. The remaining reversionary interest in an equity percentage dwelling is social housing. Its disposal requires consent if the equity percentage arrangements still exist and were entered into by the disposing landlord or by a predecessor provider. Category 12 of the General Consent may cover it.
35. As an equity loan is itself an interest in a social housing dwelling, a provider would need consent to dispose of an existing equity loan. Category 11 of the General Consent would normally cover it.

Shared ownership leases granted on or after 1 April 2010

36. The Act does not specify that the rent on a shared ownership property should be below market rate. However, it does specify that it should be made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market. The level of rent may form part of that assessment.
37. A shared ownership lease is social housing if it fits the definition in s.70(4) of the Act, which most will, even if no grant assisted its construction.
38. While in shared ownership, the following things do not need consent:
 - (a) staircasing does not need consent. Intermediate staircasing (i.e. to less than 100% ownership) is not classed as a disposal, and ss.73 and 75 of the Act effectively exclude final staircasing (i.e. to 100% ownership) from the disposal consents regime
 - (b) an extension of the shared ownership lease while still in shared ownership would not require consent where the lease provides for extension and the lease can continue to be an assured tenancy

while the following things **do** need consent:

- (c) further to (b) above on extensions, consent may be required if, upon final staircasing, a shared owner requests a longer new lease than is provided for under the terms of the original shared ownership lease. Category 14 of the General Consent would cover it
- (d) a transfer of the freehold or superior leasehold reversion to another landlord would need a specific consent

39. A shared ownership lease granted on or after 1 April 2010 that does not fit the definition in s.70(4) of the Act is not a social housing dwelling (unless it was the lease of a dwelling already being used for social housing, or one which had previously been used for social housing). Disposals of the landlord's interest in such a dwelling do not require consent.
40. This paragraph deals with a dwelling that was let on a shared ownership lease on or after 1 April 2010, which is social housing as established above, and in which the shared owner staircases to full ownership on or after 1 April 2010. The grant of the freehold or a new lease to the tenant/shared owner would not need consent if done as prescribed by the terms of the shared ownership lease, where the shared ownership lease is an assured tenancy. If outside the terms of the lease, or if the shared ownership lease is not an assured tenancy, consent is needed; however, no specific application is needed because this consent is given by category 14 of the General Consent. This category 14 of the General Consent would cover the grant of the freehold or the grant of a new lease. Following a disposal under category 14 of the General Consent, a dwelling ceases to be social housing and no further consent would be required for disposals.
41. Where the tenant/shared owner takes the freehold or a new lease under the terms of the original shared ownership lease under 1.36 above, then under the provisions of section 73(3) of the Act, the dwelling ceases to be social housing and no further disposals require consent. If, however, the former tenant/shared owner and successors in title continue under the original shared ownership lease, section 73(3) does not apply and the dwelling continues to be social housing. In these circumstances, consent is required for further disposals. However, no specific application is needed because this consent is given by category 14 of the General Consent. Category 14 allows extension of the lease, grant of a new lease or sale of the freehold. Following a disposal under category 14 of the General Consent, a dwelling ceases to be social housing and no further consent would be required for disposals.

Accommodation let on the open market on leases granted on or after 1 April 2010 which are not shared ownership leases

42. Some leases do not fit the definition of social housing in sections 68-70 of the Act. This may be the case for any shared ownership or equity percentage leases that, for some reason, do not fit that description. Providers should bear in mind, however, that where a dwelling is already social housing or former social housing (e.g. because it is legacy housing), a disposal would normally require consent even if the current terms of use do not fit the statutory definition.
43. With that caveat, the grant of a long lease that does not fit the definition of social housing in sections 68-70 does not require consent, as the dwelling is not social housing. So the disposal of the reversionary interest, extension of the lease or grant of a new lease on such dwellings does not require consent.

B. Dwelling

44. Disposal of social housing which is a dwelling will require the consent of the regulator. A dwelling is defined in section 275 of the Act. For the purposes of section 172, the regulator interprets this to mean that:
- the asset which is intended to be disposed of is capable of being let or sold
 - until a dwelling has reached that state, usually upon practical completion, its disposal requires consent only if it stands on the site of a former social housing dwelling. Practical completion is a term without a standard definition and whether practical completion has been reached may require some professional judgement by the registered provider or its professional advisor. The dwelling should be available for beneficial occupation and use as a dwelling but that may allow for some minor defects to remain which can be corrected without too much disturbance to a residential occupant
 - as well as self-contained accommodation, a dwelling includes shared accommodation such as hostels, shared housing and residential care
 - a dwelling includes a former dwelling or land on which once stood a dwelling
 - a dwelling includes its curtilage and appurtenances usually enjoyed with the dwelling, such as garden, garage or outbuildings, across which easements such as drains, conduits and rights of way or access may pass
 - a dwelling includes the subsoil and the airspace above the roof

Former dwellings

45. When a social housing dwelling which is subject to the requirement for consent under s.172 undergoes a change of use, a demolition or a redevelopment into any new form – or otherwise ceases to be a dwelling - the disposal of all or part of that dwelling, or its site, continues to require consent by virtue of section 187 of the Act. Former dwellings include land on which dwellings had stood before demolition, buildings constructed on the site of demolished dwellings and dwellings that have been put to a different use. However, ceasing to be a dwelling does not include a void between tenancies, a long term void that is difficult to let, a void awaiting repair, improvement or sale, or where a decision has been made not to re-let a dwelling while its future is decided. The regulator considers that a dwelling cannot be anything other than a dwelling or a former dwelling. There is no intermediate category which avoids the requirement for consent to disposal.
46. No consent is required for the disposal of a former dwelling which (had it remained a dwelling) would have fallen into one of the exceptions from being social housing under s.77(4) to (7) of the Act.
47. Certain disposals of former dwellings may proceed under the General Consent 2015 in the same way as dwellings.

When s.133 of the Housing Act 1988 does not apply and s.172 HRA 2008 does apply

48. The regulator takes the view that section 187(1) of the Act does not require it to give consent to a disposal of land which was already a former dwelling when it was acquired by the current provider. This would be the case regardless of whether the provider acquired it before or after 1 April 2010 and regardless of whether it ceased to be a dwelling, under its former ownership, before or after 1 April 2010.
49. Therefore the regulator's consent to disposal of a former dwelling is required only if it ceased to be a dwelling while in the ownership of the current provider.
50. The one exception to this is land which was already a former dwelling when it was acquired on or after 1 April 2010 from another private registered provider under category 1 of the General Consent 2010. The onward disposal of that land would require a specific consent under s.172 of the Act.

When s.133 of the Housing Act 1988 applies

- and when land ceased to be a dwelling before 1 April 2010

51. Under s.133, the requirements for legacy land are different from those for s.172. When a former dwelling ceased to be a dwelling before 1 April 2010, and the land is subject to a requirement for consent under s.133 HA 1988 to a disposal, the requirement for s.133 consent continues – even if the land had ceased to be a dwelling before being acquired by the current provider. This is because s.133 applies not just to dwellings but also to all social housing within the wide meaning given by Part 2 of the Housing and Regeneration Act 2008, especially section 77 of the Act, which can include land. For more on this meaning, see the section of this guide dealing with s.133 consents.

- but when land ceased to be a dwelling on or after 1 April 2010

52. When land subject to s.133 HA 1988 ceased to be a dwelling on or after 1 April 2010, section 187(2) HRA 2008 continues the requirement for consent to disposal. It provides for the regulator to give the necessary consent under s.172 HRA 2008, rather than under s.133 HA 1988.

Doubt about the previous use of land that is not a dwelling

53. Occasionally, a provider may be unsure whether its land had previously been a dwelling. So that providers are assisted to perform their functions efficiently, a provider can dispose on the basis that consent is not required where it is able to give the person to whom the disposal is being made a certification that, to the best of the provider's knowledge, the land has not previously been a social housing dwelling since its acquisition by the provider. If a provider made such a certification, the regulator would not take regulatory activity for failure to obtain consent. A purchaser can therefore regard as valid a statement from the provider that the provisions of s.172 of the Act do not apply.

C. Disposal

54. The definition of 'disposal' of a dwelling is contained in section 273 of the Act. It is widely defined to include sale; lease; mortgage; charging; or disposal of the dwelling, or any interest in it, in any other way. An option to require a disposal is also to be treated as a disposal. A disposal therefore includes a charge given as security to raise finance.
55. The regulator believes that disposals of dwellings outside England that are owned by a private registered provider on the regulator's register are still subject to the consents regime, and the necessary consent should be sought from the regulator. It will be for providers to seek their own legal advice and satisfy themselves that they have sought all the necessary consents for disposals outside England.

Disposals that are excepted from the requirement to obtain consent

56. Section 173 of the Act excepts the following disposals from the requirement for consent under s.172:
- (a) Lettings to tenants under an assured tenancy or an assured agricultural occupancy, or what would be an assured tenancy or assured agricultural occupancy if it were not set out otherwise in other statutes referred to in s.173(2) of the Act. These include lettings to members of co-ownership societies, fully mutual co-operatives and family intervention tenancies.

Because they are assured tenancies, shared ownership leases, and any intermediate (i.e. to less than 100% ownership) permitted under those leases, is usually exempt from the need for consent. Sections 73 and 75 of the Act effectively exclude final staircasing (i.e. to 100% ownership) from the disposal consents regime. The General Consent includes a category of consent allowing the grant of shared ownership leases that fail to qualify as an assured tenancy;
 - (b) Lettings to tenants under a secure tenancy or what would be a secure tenancy but for the circumstances set out in s 173(2) of the Act;
 - (c) Disposals to tenants who exercise the Right to Buy or who exercise a statutory Right to Acquire. The regulator interprets this to include deeds which rectify errors in the original Right to Buy (or Right to Acquire) sale. However, sales made voluntarily to tenants are not excepted.
 - (d) Disposals do not require an additional consent from the regulator under s.172 HRA 2008 when they require consent under the following legislation - sections 81 and 133 of the Housing Act 1988 or section 173 of the Local Government and Housing Act 1989 section 7.
57. A rather wider range of disposals is similarly exempted by s.81(8) HA 1988 from the requirement for consent under ss.81 or 133 HA 1988, or under s.173 LGHA 1989. The consequence is that certain categories of disposal (e.g. easements and charges

to lenders) are exempt from the requirement for s.133 consent but still need s.172 consent. For more detail, refer paragraph 7.22.

Other transactions that do not require consent

58. The following vestings, restructurings and other transactions are not disposals requiring the consent of the regulator under s.172 HRA 2008 or s.133 HA 1988:
- (a) disposals following the service of a compulsory purchase order which has been confirmed in writing by the Secretary of State for Communities and Local Government or any successor body
 - (b) amalgamations and transfers of engagements under the provisions of ss.109 and 110 of the Co-operative and Community Benefit Societies Act 2014 of private registered providers that are registered also as industrial and provident societies
 - (c) a registered society converting itself to a company, or amalgamating with or transferring its engagements to, a company under s.112 of the Co-operative and Community Benefit Societies Act 2014.
 - (d) For both (b) and (c) above, although the Land Registry has to register the change of proprietor, these restructurings are not disposals within the meaning of s.133 HA 1988, s.173 LGHA 1989 or s.172 HRA 2008. Therefore a provider should not apply to the regulator for consent under those sections. Any restrictions on the proprietorship register which note the requirement for s.133, s.173 or s.172 consent should remain in place. Any land which is social housing before the restructurings will continue to be social housing afterwards. These restructurings nevertheless do require a separate category of consent from the regulator, to be applied for under s.163 HRA 2008; this is consent to the restructuring and does not operate as a consent to land disposal
 - (e) disposal to a leaseholder acquiring the freehold under the Leasehold Reform Act 1967 (relevant only where it is a social housing dwelling)
 - (f) where one or more are social housing dwellings, disposal to leaseholders acquiring collectively their freehold, (Leasehold Reform, Housing and Urban Development Act 1993 - s.37, schedule 10, paragraphs 1 (1) and 1 (2) (b))
 - (g) where land forming part of a social housing dwelling is affected, adoption of sewers and roads (section 104 of the Water Industry Act 1991 and section 38 of the Highways Act 1980)
 - (h) granting a licence of a social housing dwelling
 - (i) entering into a management agreement, because these do not entail any lease or tenancy being created

- (j) the demolition of a social housing dwelling - but consent would still be required for a disposal of that prior dwelling (para 2.46 above)
- (k) changing the use of a social housing dwelling is not in itself a disposal but consent would still be required for a disposal of that former dwelling (para 2.46 above)
- (l) granting a pre-emption right of first refusal to buy a dwelling. While the grant of a pre-emption right may not be regarded in law as creating an interest in land, a subsequent offer made under the pre-emption right and the disposal pursuant to the offer being accepted are both disposals of interests in land, which would require the regulator's consent. Hence a provider should be careful not to grant a pre-emption right under which it could not proceed if consent were not forthcoming
- (m) forfeiture of a lease under the exercise of landlord's rights in the lease

Granting charges on social housing dwellings

- 59. Only charges of social housing dwellings require consent, and in the case of disposals under s.171D HA 1985, consent is only required in respect of tenanted dwellings subject to the PRTB. If, therefore, the security for a charge includes any social housing dwellings, the charge needs consent. .
- 60. As the regulator interprets a social housing dwelling as being a completed dwelling (or a former dwelling), providers will not need consent to grant charges on dwellings under construction or development land (see the interpretation section above for advice on "Dwellings").
- 61. Section 171(2) of the Act states that a provider may not dispose of the landlord's interest in a secure tenancy other than to a non-profit provider or a local authority which is a registered provider. The regulator interprets this as allowing a dwelling subject to a secure tenancy to be part of the security for a charge, as a charge leaves the landlord-tenant relationship unaltered.

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