



Homes &
Communities
Agency

GUIDANCE FOR CONSTITUTIONAL CONSENTS (SECTIONS 212 TO 214), RESTRUCTURING AND DISSOLUTION (SECTIONS 160 TO 165)

April 2015

Guidance for constitutional consents (sections 212 to 214), restructuring and dissolution (sections 160 to 165)

- 1 This document gives general advice and guidance on how the regulator may exercise the power to give consent to requests to rule changes made by registered societies, changes to objects by charities and article changes by registered companies. The specific provisions are set out in chapter six, sections 212 to 214 of the act and relate only to non-profit registered providers. The provisions are included at the end of this note.

Proposals for using this power

- 2 When considering applications for changes to constitutions, the regulator will balance a range of factors including the need to safeguard tenants' rights, relevant legislation, its duties as a public body, its fundamental objectives and the standards the regulator expects registered providers to meet.

- 3 The regulator's expectation is that non-profit registered providers' objects will include the following clauses:

- not for profit
- the provision of social housing
- non distribution of assets to members

Dealing with 'group structures'

- 4 Groups structures are not defined in the act, but we treat registered providers as being in a group structure where any combination of two or more organisations are working together and where one, the parent, has constitutional control of the other(s), subsidiaries.

- 5 The term "subsidiary" and "associate" are defined in section 271 of the act.

- 6 Applications for registered providers becoming or ceasing to be a subsidiary or associate of another body will be considered in the context of the regulator's fundamental objectives, the regulator's eligibility criteria and conditions for registration and the standards for social housing providers. Factors that the regulator will, therefore, take into consideration when appraising applications include:

- the overall business case
- the level and quality of consultation with tenants and relevant stakeholders in particular local authorities and lenders
- evidence that the new structure will improve services to current and future residents
- rationalisation of stock holding and management issues
- value for money of the proposal
- simple, clear and straight forward governance structures
- desirability of maintaining a choice of providers and competition in a region

Procedural guidance

- 7 To help applicants in this process, the regulator has published a detailed procedural note for registered providers to follow when amending their constitutions. The note includes the specific requirements and arrangements for registered societies, registered companies and registered charities which are not also registered companies. The note includes details of:
 - who the note applies to
 - what documentation we will require
 - where applications should be sent
 - how long it will take us to deal with your application
 - contact details

- 8 Chapter four of the act includes some general provisions relating to non-profit registered providers. The following processes are only effective if the regulator has first consented:
 - (a) Restructuring and dissolution
 - (b) Section 160: company arrangements and reconstructions
 - (c) Section 161: company conversion into a society
 - (d) Section 162: company winding up
 - (e) Section 163: society restructuring
 - (f) Section 164: society winding up
 - (g) Section 165: society dissolution

- 9 Although these processes are not governed by the requirement to issue guidance under section 215, the regulator considered it helpful to applicants to publish guidance on these processes so that they can see how they will work. As in the case with constitutional consents, the regulator has published a procedural note for registered providers to follow when applying for any of these processes.

- 10 When considering applications the regulator will have regard to residents' rights, relevant legislation, its duties as a public body, its fundamental objectives and the standards we expect registered providers to meet.

- 11 Applications for these processes will be considered in the context of any ring fencing arrangements and policy constraints the regulator has in place. Factors that we are likely to take into consideration when appraising applications include:
 - the overall business case
 - the level and quality of consultation with tenants and relevant stakeholders in particular local authorities and lenders
 - evidence that the new structure will improve services to current and future residents
 - rationalisation of stock holding and management issues
 - value for money of the proposal
 - simple, clear and straight forward governance structures

12 Relevant sections of the act:

211 Non-profit providers only

This group of sections applies only to non-profit registered providers.

212 Registered Society: change of rules

- 1 This section applies to a registered society.
- 2 An amendment of the society's rules requires consent if it:
 - (a) alters the society's objects
 - (b) makes provision about the distribution of assets to members, or
 - (c) enables the society to become, or cease to be, a subsidiary or associate of another body
- 3 An amendment of the rules which requires consent is effective only if the regulator has first consented.
- 4 The regulator may not consent to an amendment which it thinks would turn the society into a profit-making organisation.
- 5 The society must notify the regulator of an amendment of the rules which does not require consent.
- 6 In relation to an amendment which requires consent, the requirement in section 16(1) of the Co-operative and Community Benefit Societies Act 2014 (c 14) (sending copies of amendment of rules to FCA) is satisfied only if the copies are accompanied by a copy of the regulator's consent.
- 7 The preceding provisions of this section shall be treated as if they formed part of that act as well as of this act.
- 8 The Secretary of State may by order amend the list in subsection (2).

213 Charity: change of objects

- 1 This section applies to a registered charity which is not a registered company.
- 2 An amendment of the charity's objects is effective only if the Charity Commission has first consented.
- 3 Before giving consent the Charity Commission must consult the regulator.

214 Companies: change of articles

- 1 This section applies to a registered company.
- 2 An amendment of the company's articles of association requires consent if it:
 - (a) alters the company's objects
 - (b) makes provision about the distribution of assets to members, or

- (c) enables the company to become, or cease to be, a subsidiary or associate of another body
- 3 An amendment of the articles of association which requires consent is effective only if the regulator has first consented.
- 4 The regulator may not consent to an amendment which it thinks would turn the company into a profit-making organisation.
- 5 The company must notify the regulator:
 - (a) of an amendment of the articles of association which does not require consent, or
 - (b) of a change to its name or registered office
- 6 In relation to an amendment which requires consent the requirement in section 30 of the Companies Act 2006 (c 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator's consent.
- 7 The Secretary of State may by order amend the list in subsection (2).

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