
D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No.

HOUSING, ENGLAND

The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State, in exercise of the powers conferred by sections 93 and 214(6) of the Housing and Planning Act 2016(a), makes the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with section 214(2) of that Act.

PART 1

Introductory

Citation, commencement and application

1.—(1) These Regulations may be cited as the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 and come into force on the day after the day on which they are made.

(2) These Regulations apply in relation to England only.

(3) These Regulations do not apply to a private registered provider(b) which is—

(a) a wholly-controlled subsidiary of a local authority; and

(b) a non-profit organisation within the meaning of section 115 of the Housing and Regeneration Act 2008(c).

(4) For the purposes of paragraph (3)(a) a private registered provider is to be treated as wholly-controlled by a local authority if it has no members apart from—

(a) the local authority;

(b) a subsidiary of that authority; or

(c) a person acting on behalf of the authority or a subsidiary of the authority.

(a) 2016 c. 22.

(b) “Private registered provider” means a private registered provider of social housing as set out in Part 2 of the Housing and Regeneration Act 2008 (c. 17); see section 93(5) of the Housing and Planning Act 2016.

(c) 2008 c. 17. Section 115 has been subject to amendments but none is relevant.

(5) A person is to be treated as a “subsidiary” of another person for the purposes of paragraph (3) or (4) if any of the conditions in section 271 of the Housing and Regeneration Act 2008 is satisfied.

(6) These Regulations apply notwithstanding any inconsistent provision either in a contractual arrangement to which the private registered provider is a party or in the private registered provider’s constitution.

Interpretation

2. In these Regulations—

“appointed day” is the day after the end of the period of six months beginning with the day on which the regulations are made;

“board” means—

(a) in the case of a charity which is not a registered company, a board of trustees,

(b) in the case of a company, a board of directors, and

(c) in the case of a registered society, the society’s committee^(a);

“constitution” relates to terms set out in any documentation providing for the constitution of a private registered provider;

“local authority officer” means an officer^(b) appointed to the board of a private registered provider by a local authority.

PART 2

Officers

Officers of private registered providers

3.—(1) The percentage of officers of a private registered provider who are local authority officers may not, on or after the appointed day, exceed the designated percentage of the total number of officers who are members of the board.

(2) Any appointment of a new local authority officer which would result in that percentage being exceeded on or after the appointed day is of no effect.

(3) The registered provider must remove a sufficient number of local authority officers to secure that the requirement in paragraph (1) is complied with.

(4) The local authority must nominate the local authority officers who are to be removed under paragraph (3); but if it fails to notify the private registered provider of the nomination before the appointed day, the members of the board who are not local authority officers must select by majority vote the persons who are to be removed.

(5) For the purposes of this regulation the designated percentage is 24%.

Further provision in relation to officers

4. Any provision in a constitution of a private registered provider that requires one or more local authority officers to be present in order for a meeting of the board of the provider to be quorate shall have no effect on or after the appointed day.

(a) See section 275 of the Housing and Regeneration Act 2008 (c. 17) for the meaning of “registered company” and “registered society”.

(b) “Officer” in relation to a private registered provider, has the meaning given by section 270 of the Housing and Regeneration Act 2008 (c.17), which includes a trustee in the case of a charity which is not formed as a company, a director in the case of a company, and in the case of a registered society a person co-opted to serve on the society’s committee; see section 93(5) of the Housing and Planning Act 2016.

PART 3

Voting rights of local authorities as members

Voting rights of local authority

5.—(1) On and after the appointed day a local authority may not hold or exercise any local authority voting rights in relation to a private registered provider.

(2) Where the constitution of a private registered provider provides for local authority voting rights, that provider must by the appointed day amend that constitution to re-assign those voting rights pro-rata amongst the remaining voting membership.

(3) Where a constitution has not been amended in accordance with paragraph (2) by the appointed day, such voting rights are deemed from that date to have been re-assigned pro-rata amongst the remaining voting membership.

(4) In this regulation “local authority voting rights” mean the voting rights of the local authority itself as a member of the private registered provider.

Other provisions as to voting rights

6.—(1) A provision in the constitution of a private registered provider which requires that a resolution of the board be approved other than by a majority of the members of the board is to have effect on and after the appointed day as a provision requiring that the resolution be approved by at least 75% of the votes cast (or such lower percentage as may be specified in the constitution).

(2) Paragraph (1) does not apply to a private registered provider whose board contains no local authority officers.

(3) Where the constitution of a private registered provider makes provision for the consent of a local authority in order for a change to the constitution to be effective such provision shall have no effect on or after the appointed day.

Signed by authority of the Secretary of State for Communities and Local Government

Date *Name*
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations make provision to reduce the amount of local authority influence over private registered providers (PRPs). PRPs are defined in Part 2 of the Housing and Regeneration Act 2008 (c.17).

These regulations apply notwithstanding any provision in a PRP’s constitution or any contractual arrangement a PRP may have in relation to its constitutional arrangements.

These regulations do not apply to a body which is both a wholly-controlled subsidiary of a local authority and is a non-profit organisation within the meaning of section 115 of the Housing and Regeneration Act 2008.

Regulation 3 requires that the percentage of a PRP’s total board membership which is comprised of officers appointed by a local authority must be no more than 24%. A local authority must nominate before the appointed day (which falls six months from the date the instrument is made) which of its officers is to be removed. In the event that it does not, a PRP itself may, after that date, select which of those officers to remove.

Regulation 4 provides that any provision of a constitution of a PRP requiring local authority officers to be present for a quorum to be reached shall have no effect on and after the appointed day.

Regulation 5 is concerned with the voting rights a local authority may have as part of its membership of a PRP. It provides for the re-assignment of voting rights of a local authority which are held before these regulations come into force. If a PRP's constitution is not amended accordingly by the appointed day, local authority membership voting rights are thereafter re-assigned to the remaining members, in a pro-rata proportion to their existing share of votes.

Where a constitution of a PRP (whose board contains local authority officers) provides for a resolution to be approved other than by a majority, regulation 6 provides that, on and after the appointed day, that provision has effect to require a majority of no more than 75% of the eligible votes cast. It also makes provision to ensure amendment of the constitution of a PRP to reflect this requirement.

A full regulatory impact assessment has not been prepared for this instrument as no impact on business or the private or voluntary sector is foreseen. PRPs are classified to the public sector at the time this instrument is made.

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