

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 2 – Regulation of Social Housing

Chapter 3 - Registration

Introduction

Section 110 - Overview

229. This section describes the purpose of this Chapter which is to establish a register of providers of social housing.

Section 111 – The register

230. *Subsection (1)* of section 111 requires the regulator to keep a register of persons providing social housing. Only those persons on the register will be subject to regulation by the social housing regulator. This broadly replicates the effect of section 1 of the 1996 Act.
231. *Subsection (2)* of section 111 requires the regulator to make the register publicly available. This broadly replicates the effect of the more restrictive provision in section 1(1) of the 1996 Act which requires that the register is made available at reasonable times at the Housing Corporation’s head office.

Eligibility

Section 112 - Eligibility for registration

232. *Subsection (1)* of section 112 indicates that an English body is eligible for registration if it satisfies the conditions of this section, and does not fall within the exceptions specified in section 113. “English body” is defined in section 79.
233. This section removes the restrictions that applied under section 2 of the 1996 Act on the constitutional form and objectives of RSLs in England, but which continue to apply in respect of Welsh bodies.
234. Registration is not compulsory for persons that provide social housing as defined by section 68. However, grant funding might, for example, be conditional on being registered.
235. *Subsection (2)* requires that a body must be a provider of social housing in England, or intend to become one as a condition of registration.
236. *Subsection (3)* requires that the body must satisfy any relevant criteria that have been set by the regulator in respect of:
- its financial situation

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- its constitution, and
 - other arrangements for its management.
237. *Subsection (4)* requires that before the regulator sets any criteria for eligibility for registration, the regulator must consult:
- the HCA
 - one or more bodies representative of the interests of registered providers, and
 - one or more bodies representative of the interests of tenants.

Section 113 - Local authority non-registrable bodies

238. This section sets out the exceptions to section 112(1).
239. *Subsection (2)* specifies that local housing authorities, as defined in section 1 of the Housing Act 1985, are not eligible for registration.
240. *Subsection (3)* specifies that county councils are not eligible for registration.
241. *Subsection (4)* specifies that a person controlled by an authority that is within subsections (2) or (3) is not eligible for registration.
242. *Subsection (5)* gives the Secretary of State the power to make regulations defining when a person is controlled by an authority for the purposes of subsection (4).
243. *Subsection (6)* provides that the definition of person controlled by a local authority may be expressed by reference to a document identified in regulations under section 21(2) (b) of the Local Government Act 2003.

Section 114 – Registration of local authorities

244. This section allows the Secretary of State to make an order, under the affirmative resolution procedure, to amend or modify as necessary or desirable Part 2 of the Act or other legislation so as to enable the regulator to regulate local authorities. It also allows such an order to require the regulator to register a specific local authority or specific class of local authority. The section requires that before making an order the Secretary of State must consult an authority or person likely to be affected by it and such other persons as the Secretary of State thinks fit.

Section 115 - Profit-making and non-profit organisations

245. *Subsection (1)* of this section provides that the register kept under section 111 must designate each registered person as either a non-profit organisation or a profit-making organisation. The restriction in section 2(2) of the 1996 Act that requires RSLs to be non-profit making is not replicated.
246. *Subsections (2) to (6)* define a non-profit organisation.
247. *Subsection (2)* specifies a registered or non-registrable charity as a non-profit organisation.
248. *Subsection (3)* specifies that a body is also a non-profit organisation if it meets the conditions specified in subsections (4) to (6). These conditions are-
- that it does not trade for profit or that its constitution prohibits it from issuing capital with interest or dividend in excess of the specified rate (this condition replicates the definition of non-profit organisation in section 2(3) of the 1996 Act); and
 - a purpose of the body is the provision or management of housing; and

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- any other purposes of the body are connected with or incidental to the provision of housing.
249. *Subsection (7)* gives the Secretary of State the power to make regulations providing that a specified purpose is, or is not, connected with or incidental to the provision of housing.
250. *Subsection (8)* defines a profit-making organisation as any organisation which is not a non-profit organisation.
251. These definitions are the basis on which the regulator will make the designation in the register provided for in subsection (1).
252. *Subsection (9)* requires the regulator to change the designation in the register where a profit-making organisation becomes a non-profit organisation as defined in this section.

Procedure

Section 116 - Entry

253. *Subsection (1)* of this section provides that the regulator shall register any person who is eligible for registration as defined in section 112 and who applies to the regulator to be registered.
254. *Subsection (2)* gives the regulator the power to specify how an application should be made, including the form it should take, what information it should contain, and how it should be submitted. The regulator can also specify what will happen if an applicant for registration fails to comply with the regulator's requirements under this subsection.
255. *Subsection (3)* specifies that this section is subject to section 117 (fees).
256. *Subsection (4)* provides that once a body has been registered, it will remain registered unless and until it is removed under the provisions of section 118 or 119.
257. *Subsection (5)* specifies that a person entered in the register is to be presumed for all purposes to be eligible for registration while they remain on the register, regardless of whether or not they are later removed from the register, and the reason for that removal.

Section 117 - Fees

258. The regulator may make the initial registration under section 116 conditional on payment of a fee, and may make continued registration conditional upon payment of an annual fee.
259. *Subsection (3)* gives the regulator the power to set the amount of the fee to be charged under this section, and to make provisions for the arrangements for annual fees, both when they are paid, and in respect of which period.
260. *Subsection (4)* gives the regulator the power to set fees on a differential basis according to different cases or circumstances. For example, the regulator may, if it chooses, set a variable fee scale according to the number of homes owned, or relate it to the amount of income a provider receives in an annual period.
261. *Subsection (5)* provides that fees will be set in accordance with principles which aim to ensure that so far as is reasonably practicable:
- a) aggregate fee income the regulator receives matches the amount of expenditure it incurs in performing its functions,
 - b) each fee is reasonable and proportionate to the costs to which it relates, and
 - c) actual or potential registered providers can see the relationship between the amount of a fee and the costs to which it relates.

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262. *Subsection (6)* specifies that the principles under *subsection (5)* for setting fees:
- a) shall provide for section 95(3) (the regulator's power to give financial assistance to a registered provider by lending money or giving a guarantee or indemnity with the consent of the Secretary of State) to be disregarded for the purpose of subsection (5)(a),
 - b) may provide for specified or potential expenditure under the remainder of section 95 (financial assistance) to be disregarded.
263. *Subsection (7)* specifies that the principles do not have effect until they are approved by the Secretary of State.
264. *Subsection (8)* requires that in preparing or revising principles, the regulator shall consult persons appearing to it to represent the interest of fee payers.
265. *Subsection (9)* specifies that the regulator's accounts shall show both fees received and fees outstanding.

Section 118 - De-registration: compulsory

266. *Subsection (1)* gives the regulator the power to remove a body from the register, if it thinks that the body-
- is no longer eligible (as provided for in sections 112 and 113)
 - has ceased to carry out activities, or
 - has ceased to exist.
267. *Subsection (2)* requires the regulator in the cases of subsection (1)(a) or (b) to take all reasonable steps to give the body it proposes to de-register 14 days' notice of its action, and to consider any representations that the body may make during that period.
268. *Subsection (3)* requires the regulator to take all reasonable steps to inform a body that it has been deregistered on the grounds that it is no longer eligible for registration or has ceased to carry out activities. This will ensure that the body knows it no longer has to comply with regulation, though will still be required by section 172 to seek disposal consent (see section 186).

Section 119 - De-registration: voluntary

269. *Subsection (1)* allows registered providers to ask the regulator to remove them from the register.
270. *Subsection (2)* gives the regulator the power to comply with a request under subsection (1) where one or more of the specified conditions applies as follows:
- the registered provider no longer is, or does not intend to continue to be, a provider of social housing in England
 - the registered provider is subject to regulation by another authority whose control the regulator believes to be sufficient, or
 - in accordance with such other criteria as the regulator has published in respect of de-registration, in accordance with *subsection (7)*.
271. *Subsection (3)* requires the regulator to consult relevant local authorities (as defined in the Housing Associations Act 1985) in whose area the registered provider carries out its activities as it considers appropriate, before deciding whether or not to comply with a request under subsection (1).

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272. *Subsection (4)* provides that the regulator may not consent to a de-registration application from a non-profit registered provider if it considers it is sought with a view to enabling the body to distribute assets to its members.
273. *Subsection (5)* requires the regulator, when considering whether to grant a request to de-register by a registered provider (profit-making or non-profit), to have particular regard to any conditions the regulator has placed on disposals of land (for example relating to the use of disposal proceeds) and any conditions of grant.
274. *Subsection (6)* provides that the regulator must notify the registered provider, and any local authority consulted, of its decision.
275. *Subsection (7)* provides that the regulator must publish criteria on the additional grounds that a registered provider may de-register.

Section 120 - Notice

276. This section requires the regulator to take certain actions as soon as reasonably possible after it has registered or deregistered a body. These actions are to notify other registrars who have related duties or powers depending on the constitutional form of the body that the regulator has registered or de-registered. Therefore, the regulator notifies:
- the Charity Commission, if the registered provider is a registered charity,
 - the Financial Services Authority, if the registered provider is an industrial and provident society,
 - the registrar of companies for England and Wales, if the registered provider is a registered company.
277. *Subsection (2)* provides that in notifying these bodies, the regulator will advise whether the body has been registered with a profit-making or non-profit designation under section 115(1).
278. *Subsection (3)* provides that if the regulator changes the designation under section 115(9), the regulator will also advise the relevant bodies.
279. *Subsection (4)* provides that a person to whom notice is given by the regulator under this section must keep a record of that notice.

Section 121 - Appeal

280. *Subsection (1)* gives a body the right of appeal to the High Court against a decision of the regulator:
- to refuse to register that body
 - to deregister that body
 - to refuse to deregister that body.
281. *Subsection (2)* prohibits the regulator from de-registering a body while an appeal to the High Court is pending.
282. *Subsection (3)* permits the Secretary of State to provide by order for any appeals to be heard by the First-tier tribunal instead of the High Court. This covers appeals against a decision by the regulator to refuse to register a body, to de-register a body, or to refuse to de-register a body.