

**EXPLANATORY MEMORANDUM TO**  
**THE CHARITABLE INCORPORATED ORGANISATIONS (NOTIFICATION**  
**REQUIREMENTS: SOCIAL HOUSING) REGULATIONS 2023**

**2023 No. 1311**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing & Communities (DLUHC) and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument ensures that a private registered provider of social housing (“PRP”) that is a Charitable Incorporated Organisation (CIO), or wishes to become one, must notify the Regulator of Social Housing (“RSH”) when certain significant changes are made affecting their business. This instrument also makes provision related to the registration of certain successor bodies and about notifications under these Regulations.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of most of this instrument (that is, where the instrument produces a practical effect) is England and Wales, however the territorial application of the provisions that apply only to PRPs and/or the RSH is England only as PRPs are, necessarily, based in England.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Social Housing (Regulation) Act 2023 (“the 2023 Act”) amends the Housing and Regeneration Act 2008 (“the 2008 Act”) to facilitate a new, proactive approach to regulating social housing landlords on consumer issues such as safety, transparency, tenant engagement and competence and conduct. The 2023 Act also refines the existing economic regulatory regime (which is focused on good governance and financial viability) and strengthens the RSH’s enforcement powers, as well as amending the special housing administration regime in the Housing and Planning Act 2016.

- 6.2 The refinements made by the 2023 Act to the economic regulatory regime include amendments, made by sections 16 to 18 of that Act, to requirements to notify the RSH of the occurrence of certain insolvency or restructuring events involving PRPs that are registered societies and companies, and to requirements imposed on the RSH relating to the registration of successor bodies.
- 6.3 This instrument makes provision about notifications relating to restructuring events involving PRPs that are CIOs or wish to become CIOs, and about insolvency events involving CIOs.

## **7. Policy background**

### *What is being done and why?*

- 7.1 PRPs in England need to meet both economic and consumer standards set out by the RSH. At the moment for the large PRPs (that own over 95% of PRP stock) the RSH proactively monitors compliance with its economic standards but does so only reactively (ie where evidence emerges of potential problems) on consumer matters.
- 7.2 The 2023 Act not only introduces a new proactive consumer regulation regime, it also includes many refinements, often technical in nature, to the existing regulatory regime to ensure that framework continues to operate as effectively as possible.
- 7.3 This instrument makes provision requiring PRPs that are CIOs or want to become one to notify the RSH about events affecting their businesses that is equivalent to those that will apply to PRPs that are companies and registered societies (when the relevant sections of the 2023 Act are brought into force). This ensures the RSH is informed where there are significant changes in an organisation that it is responsible for regulating.
- 7.4 To regulate effectively, the RSH needs to have up-to-date information. The notification requirements in this instrument make the RSH aware when a PRP proposes to restructure its business or a CIO enters a voluntary arrangement under the Insolvency Act 1986 as these changes could be of interest to how it regulates the PRP. The events triggering notifications in regulations 3 to 7 represent significant changes in relation to corporate form that might reflect a significant change in a PRP's strategy or risk exposures and could mean the RSH wishes to engage further with the relevant PRP to properly understand the nature and potential consequences of the change. A notification under regulation 8 would indicate that there are matters relating to the financial viability of the PRP that the RSH would want to be aware of and understand.
- 7.5 The Charity Commission is the regulator of charities in England and Wales and maintains the charity register. As registrar, the Charity Commission is responsible for maintaining an accurate and up-to-date register of charities. This instrument requires the Charity Commission to be supplied with a statement confirming that the RSH has been notified in accordance with these Regulations. Where a PRP proposes to restructure, the Charity Commission cannot approve or confirm the proposed change unless it receives this confirmation. This means that the proposed restructuring event cannot proceed unless the RSH has been notified as required. It also ensures both regulators share the same understanding of the status of bodies that are regulated by both.
- 7.6 Regulation 2 applies the RSH's powers under section 169D of the 2008 Act to requirements to notify the RSH under these Regulations. This enables the RSH to give directions about, for example, the period within which such notifications must be

given and the content of those notifications. This avoids the need for Government to set out detailed procedural requirements in legislation and provides operational flexibility for the RSH. A requirement to notify the RSH under these Regulations arises in connection with:

- (i) the conversion of a PRP that is a charitable company or a community interest company into a CIO;
- (ii) the amalgamation of two or more CIOs (where at least one is a PRP);
- (iii) the transfer of the undertaking of a PRP that is a CIO to another CIO;
- (iv) the transfer of the undertaking of a CIO that is not a PRP to one that is; or
- (v) the entering into of a voluntary arrangement under Part 1 of the Insolvency Act 1986 by a CIO that is a PRP.

- 7.7 Section 169D is amended by paragraph 15 of Schedule 5 to the 2023 Act which it is intended will be brought into force on 1 April 2024, the same date as this instrument comes into force.
- 7.8 Regulation 3 applies the provisions of regulation 7 of the Charitable Incorporated Organisations (General) Regulations 2012 to requirements to supply information to the Charity Commission under these Regulations. This enables the Commission to impose requirements relating to the form, authentication and manner of sending the information. It also requires the information to be supplied to an address specified by the Commission and makes provision relating to the sending of information in electronic form. This avoids the need for Government to set out detailed procedural requirements in legislation and provides operational flexibility for the Charity Commission. This applies to requirements under these Regulations to provide a statement to the Commission confirming that the RSH has been notified in connection with the events described at paragraph 7.6(i) to (iv) above.
- 7.9 Regulation 4 provides that where there is a resolution for the conversion of a PRP that is a charitable company or a community interest company into a CIO the PRP must notify the RSH and, when it applies to the Charity Commission for conversion to and registration as a CIO, provide a statement to the Charity Commission that it has done so. The Commission must refuse such an application if the RSH has not been notified.
- 7.10 Regulation 5 provides that where there is a resolution for the amalgamation of two or more CIOs (where at least one is a PRP) that an amalgamating PRP must notify the RSH. It also requires the old CIOs to provide a statement to the Charity Commission confirming this when they apply to the Charity Commission for amalgamation. The Commission must refuse such an application if the RSH has not been notified.
- 7.11 Regulation 6 provides that where there is a resolution for the transfer of the undertaking of a PRP that is a CIO to another CIO the transferor must notify the RSH and supply a statement to the Charity Commission confirming it has done so. The Commission must refuse to confirm the resolution of the transferor if the RSH has not been notified.
- 7.12 Regulation 7 provides that, where there is a resolution for the transfer of the undertaking of a CIO that is not a PRP to one that is, the PRP must notify the RSH. It also requires the transferor to provide a statement to the Charity Commission confirming that this has been done. The Commission must refuse to confirm the resolution of the transferor if the RSH has not been notified.

- 7.13 Regulation 8 provides that where a CIO that is a PRP enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986 it must notify the RSH.
- 7.14 Regulation 9 provides that where the RSH receives a notification as result of either of the events described at paragraph 7.6 (ii) or 7.6 (iii) the provisions in section 163A of the 2008 Act apply, as modified by that regulation, in relation to the registration of the successor body by the RSH. Section 163A is inserted by section 17 of the 2023 Act which it is intended will be brought into force on 1 April 2024, the same date as this instrument comes into force.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 There are no plans to consolidate this instrument.

## **10. Consultation outcome**

- 10.1 Section 348(4)(b) of the Charities Act 2011 requires that the Secretary of State consults such persons or bodies of persons as the Secretary of State considers appropriate before exercising his power to make regulations under that Act.
- 10.2 The provisions in this instrument are largely technical in nature. They make equivalent provision to that which will apply to PRPs that are registered societies and companies (when the relevant sections of the 2023 Act are brought into force on 1 April 2024). They require notification when certain events happen. They do not prevent any of these events proceeding (subject to compliance with requirements to notify the RSH and the Commission).
- 10.3 DLUHC has therefore consulted with the RSH and the Charity Commission (the bodies which the Secretary of State considers it appropriate to consult) to ensure these provisions operate as effectively as possible in practice. Both the RSH and the Charity Commission fully supported the changes that were proposed but given the technical nature of this instrument their engagement on the detailed drafting has ensured the requirements identify all of the circumstances that we wish to capture and work procedurally for those needing to notify and for both the RSH and the Charity Commission.

## **11. Guidance**

- 11.1 Both the Charity Commission and the RSH intend to provide guidance on what is required by these provisions. The RSH and the Charity Commission already provide detailed guidance for the sectors they are responsible for which will be updated and subject to subject to sector engagement.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because of the very small administrative burden potentially imposed on a small number of bodies.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 While this instrument has direct impacts on small businesses, we do not anticipate the requirement to notify of events that occur infrequently will have any significant impact on small businesses.

### **14. Monitoring & review**

- 14.1 The Department does not propose to monitor the effects of this instrument. Undertaking a review about the impact of this instrument in isolation would be disproportionate to the changes being made. However, the government will continue to monitor the effectiveness of the regulation of social housing.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Baroness Scott, Parliamentary Under Secretary of State for Faith and Communities has confirmed: ‘Given the minor scale of the measures required by this instrument, it is my view that it would not be a proportionate use of public resources to monitor the changes being made.’

### **15. Contact**

- 15.1 Shayne Coulson at the Department for Levelling Up, Housing and Communities (DLUHC), [email: shayne.coulson@levellingup.gov.uk](mailto:shayne.coulson@levellingup.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Nick Burkitt, Deputy Director for Affordable Housing Regulation and Investment at DLUHC can confirm that this explanatory memorandum meets the required standard.
- 15.3 Baroness Scott, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities, can confirm that this explanatory memorandum meets the required standard.