

## REGULATION OF RESIDENTIAL PREMISES— 2. SOCIAL HOUSING

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### A HOUSING AND REGENERATION ACT 2008

The primary objective of the Housing and Regeneration Act 2008 (H&RA) was to improve the supply and quality of social housing in England. (The Act does not apply to social housing providers in Wales where responsibility remains with the ministers of the Welsh Government.) To this end the H&RA established the Homes and Communities Agency (HCA) (which replaced the Housing Corporation) to support and finance the development of increased housing provision in England. The H&RA was amended by the Localism Act 2011 to provide that the HCA also has the responsibility for monitoring and regulating the supply and quality of social housing and providing support and guidance to both landlords and tenants. **21.01**

The most important part of the H&RA for the tenant is Pt 2, which creates a system for the registration of social housing providers and gives the HCA the power to impose and enforce standards in relation to the provision and management of social housing. **21.02**

### B WHAT IS SOCIAL HOUSING?

Social housing is defined by s 69 of the H&RA as being low cost rental accommodation or low cost home ownership accommodation. Accommodation will be low cost rental accommodation if: **21.03**

- (a) it is made available for rent;
- (b) the rent is below the market rent; and
- (c) 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.

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## C REGISTERED PROVIDERS OF SOCIAL HOUSING

- 21.04** The H&RA allows landlords who provide social housing in England to apply for registration as a ‘registered provider’. Local housing authorities and county councils were initially excluded from registration (s 113); however, an amendment made by the Housing and Regeneration Act (Registration of Local Authorities) Order 2010, SI 2010/844 has removed this restriction. The HCA is now required automatically to register any local authority that is, or intends to become, a provider of social housing. Registered providers will also include bodies which were previously described as ‘registered social landlords’ (such as housing associations) and the Act has also opened up the category of social landlords to include profit-making organizations which were previously excluded from registered social landlord status.

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## D REGULATION

- 21.05** When it initially came into force the H&RA provided for the establishment of a body known as the Office for Tenants and Social Landlords to regulate the provision of social housing. This body was abolished by the Localism Act 2011 and its functions taken over by the HCA’s Regulatory Committee.
- 21.06** Under the provisions of Ch 6 of Pt 2 of the H&RA the HCA is allowed to set standards for registered providers as to the nature, extent, and quality of accommodation, facilities, and services provided by them in connection with social housing (‘standards relating to consumer matters’: s 193) and in matters relating to the management of their financial and other affairs (‘standards relating to economic matters’: s 194).

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## E STANDARDS FOR THE PROVISION OF SOCIAL HOUSING

- 21.07** The HCA published its national standards in March 2012 (*The Regulatory Framework for Social Housing in England*). These standards came into force on 1 April 2012 and are divided into seven categories.

### Tenant involvement and empowerment standard

- 21.08** This standard obliges the registered provider to offer customer service and choice and to involve tenants in the management of their housing. It also requires the provider to have a clear and accessible complaints policy and to deal with complaints promptly and fairly. Emphasis is placed on the provider’s duty to consider equality issues and the diverse needs of its tenants when applying all of the standards.

### Home standard

- 21.09** This standard covers both the quality of accommodation and the repairs and maintenance service.

#### *Quality of accommodation*

- 21.10** Registered providers are required to meet the Government’s Decent Homes Standard (or the standard of quality that was required when the home was built, if that was higher). Provision is made, however, for the HCA to agree a period of non-compliance where it

would be reasonable. The Decent Homes Standard sets four key requirements: the minimum statutory standard, repair, modern facilities, and thermal comfort.

**Minimum statutory standard for housing** In order to meet this requirement the dwelling must be free from serious hazards (assessed by the Housing Health and Safety Rating System (HHSRS) as category 1 hazards, see 20.06 to 20.13). **21.11**

**Reasonable state of repair** A dwelling will not meet this requirement if one or more key building components are old and, because of their condition, need replacing or major repair. Key building components include the external walls and roof of the building, doors and windows, boilers, gas fires and heaters, and plumbing and electrics. The building may also fail to meet the repair requirement if two or more other building components (that are not key components) are old and need repair or replacement. **21.12**

**Modern facilities** A dwelling will not meet this requirement if it lacks three or more of the following facilities: **21.13**

- (a) a kitchen which is 20 years old or less;
- (b) a kitchen with adequate space and layout;
- (c) a bathroom which is 30 years old or less;
- (d) an appropriately located bathroom and WC;
- (e) adequate external noise insulation; and
- (f) adequate size and layout of common entrance areas for blocks of flats.

**Thermal comfort** Landlords are expected to ensure not only that the dwelling has an efficient heating system but also that it has effective insulation. **21.14**

#### *Repairs and maintenance*

This part of the standard requires registered providers to provide an efficient and cost-effective service and also requires them to consult with tenants about the standard and timing of repairs. **21.15**

### **Tenancy standard**

#### *Allocations and mutual exchange*

This part of the standard requires the registered provider to cooperate with local authorities in meeting local housing needs, most importantly by providing assistance with local authorities' homelessness duties. The registered provider is also obliged to make efficient use of its housing stock and allocate housing, fairly taking into account the specific needs of individual tenants. Registered providers are also required to enable tenants to gain access to opportunities to exchange their tenancy with that of another tenant. **21.16**

#### *Tenure*

Registered providers are obliged to meet all applicable statutory requirements in relation to the form and use of tenancy agreements. They are also obliged to provide tenants with the most secure form of tenancy possible in the given circumstances and to prevent unnecessary evictions. **21.17**

### **Neighbourhood and community standard**

This standard requires registered providers to keep the common areas associated with their housing clean and safe according to a local standard to be agreed with the tenants. Providers are also expected to cooperate with other relevant authorities in promoting the **21.18**

social and economic environment where their properties are situated and in preventing and tackling anti-social behaviour in these neighbourhoods

### Value for money standard

- 21.19** Registered providers are obliged to publish annual information to their tenants setting out how they have allocated expenditure. They must be able to demonstrate that they have secured value for money in that expenditure and explain how they will allocate future resources.

### Governance and financial viability standard

- 21.20** This standard requires all registered providers (other than local authorities) to adhere to all relevant legislation and to comply with regulatory requirements. It emphasizes the provider's duty to account to the tenants and the HCA and to safeguard the taxpayer's interest. Registered providers are also obliged to manage their resources effectively to ensure their own future viability.

### Rent standard

- 21.21** Registered providers are restricted in the weekly amount of rent they can charge. A formula for calculating the maximum rent recoverable for different types of accommodation is set out in the *Rent Standard Guidance* annexed to the Regulatory Framework. Provision is, however, made for the HCA to allow registered providers an extension of time to comply with the rent standard if meeting the standard would mean that the provider was unable to meet other standards, particularly in respect of financial viability.
- 21.22** Further details of the standards and advice on how to access the services of the HCA are available on the agency's website <<http://www.homesandcommunities.co.uk>>.

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## F ENFORCEMENT

- 21.23** The HCA, as regulator under the H&RA, is required to monitor the performance of registered providers and is given the power to inspect premises and require registered providers to prepare an annual report (ss 198A to 205). The HCA may also conduct an inquiry if it believes that the registered provider may have mismanaged its affairs (ss 206 to 210). If the HCA finds that the registered provider has failed to meet a standard under s 193 or 194 or has mismanaged its affairs the HCA may serve the registered provider with an enforcement notice. The powers of the HCA are, however, limited by s 198A(2) (inserted by the Localism Act 2011, Sch 17, para 9) which provides that such powers may only be exercised if the regulator has reasonable grounds to suspect that the failure has resulted (or if no action is taken there is a serious risk that the failure will result) in a serious detriment to the registered provider's tenants or potential tenants.
- 21.24** Failure to comply with an enforcement notice may result in the imposition of a fine (s 226), an order for the appointment of a manager (s 246), or the transfer of land (s 253). Most importantly from the tenant's point of view the HCA also has the power to award compensation to tenants who have suffered as a result of a registered provider's failure to meet standards set under s 193 or 194 (s 236).

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## KEY DOCUMENTS

Housing and Regeneration Act 2008

Localism Act 2011

*A Decent Home: Definition and guidance for implementation* Department for Communities and Local Government <<http://www.communities.gov.uk>>

*The Regulatory Framework for Social Housing in England from April 2012* Homes and Communities Agency <<http://www.homesandcommunities.co.uk>>

Printed copies of all legislation can be ordered from the Stationary Office at <<http://www.tsoshop.co.uk>>. All legislation from 1988 onwards and most pre-1988 primary legislation is available online at <<http://www.opsi.gov.uk>>.

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