



Homes &  
Communities  
Agency

# REGULATING THE STANDARDS

July 2016

## Foreword by the Chair of the HCA Regulation Committee



This version of 'Regulating the Standards' – the statement of our regulatory approach – updates the version published in June 2015.

The document is a key element of our commitment to be transparent with registered providers and other stakeholders about our operational approach and to help ensure that they know what to expect from the regulator.

This updated version of 'Regulating the Standards' explains the regulator's principal focus is on promoting a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs. It has been produced primarily to take account of changes in our approach to the Rent Standard which result from the Welfare Reform and Work Act 2016. We have also taken the opportunity to refresh other parts of the document, for example, to explain that work on value for money is now factored into all of our In Depth Assessments (IDAs).

The Welfare Reform and Work Act has introduced new legislative requirements relating to the rents that registered providers charge. Our expectation is that providers will ensure they understand the new rules and take the necessary action to comply. We explain that we expect providers to take care to ensure that they have considered their adherence with the new legislative position before they certify compliance with the Governance and Financial Viability Standard.

We continue to progress the delivery of our In Depth Assessment programme. Following successful pilots last year, a focus on compliance with the Value for Money Standard is now a core part of every IDA. We have taken the opportunity of this update therefore to refresh the IDA model so that it includes the approach we take as part of the process to assessing compliance with the Value for Money Standard.

When the Housing and Planning Act 2016 comes into effect there will be changes in the regulator's consent powers. In the meantime, we continue to act in line with our current statutory responsibilities. We intend to issue a revised version of 'Regulating the Standards' at the point that the act comes into force and anticipate quarterly updates to the document as other legislative changes come into effect during the remainder of the financial year.

A handwritten signature in black ink, which appears to read 'Julian Ashby'. The signature is written in a cursive, flowing style.

Julian Ashby  
Chair of the HCA Regulation Committee

# Regulating the Standards

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*Please note that this annex is a separate document which can be accessed on the HCA pages on GOV.UK.*

# Regulating the Standards

## 1 Introduction

- 1.1 'Regulating the Standards' outlines the regulator's operational approach to assessing providers' compliance with the economic and consumer standards.<sup>1</sup> Those standards and the requirements they place upon registered providers are set out in separate documents available on the HCA pages on GOV.UK.
- 1.2 A summary of our approach to different categories of provider and the requirements which apply to them is included at Annex A. In particular, it should be noted that:
- i. only the consumer standards (and not the economic standards) apply to local authority registered providers
  - ii. our approach to regulating providers against the economic standards is different for providers which own fewer than a thousand social housing units.<sup>2</sup>
- 1.3 Reflecting our commitment to transparency, 'Regulating the Standards' provides stakeholders with an outline of the way in which we carry out our operational regulation. It sets out the broad principles which underpin our approach and gives details of some of our key processes such as Stability Checks and In-Depth Assessments. As well as providing information on our planned work, the document also sets out our approach to reactive engagement, including consumer regulation. We rely upon providers supplying us with timely and accurate data and in the pages that follow we set out the regulatory data and information requirements as they apply to different categories of provider. The document also outlines the approach we take to issuing regulatory judgements, providing explanations of the straplines we use and provides information on other statutory activities we undertake, including registration and the issuing of consents.<sup>3</sup>

## The statutory basis for regulation

### *Our objectives*

- 1.4 Parliament has given us two fundamental objectives, an economic regulation objective and a consumer regulation objective. The Regulation Committee is accountable to Parliament for the discharge of these fundamental objectives.

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<sup>1</sup> This new version, dated July 2016 replaces the previous version of 'Regulating the Standards' published in June 2015.

<sup>2</sup> The calculation of the number of units that a provider owns is based upon the total of its social units/ bed spaces which are held freehold or on a lease of any duration.

<sup>3</sup> The Housing and Planning Act 2016 has removed the regulator's consent powers. Prior to commencement, our intention is to publish an updated version of 'Regulating the Standards' which will reflect the associated changes in our approach.

- 1.5 The economic regulation objective is:
- i. to ensure that registered providers of social housing are financially viable and properly managed and perform their functions efficiently and economically
  - ii. to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing)
  - iii. to ensure that value for money is obtained from public investment in social housing
  - iv. to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds
  - v. to guard against the misuse of public funds
- 1.6 The consumer regulation objective is:
- i. to support the provision of social housing that is well-managed and of appropriate quality
  - ii. to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection
  - iii. to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account
  - iv. to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated
- 1.7 The regulator also has a duty to exercise its functions in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable. These requirements underpin how the regulator carries out all its functions.

### **Achieving these objectives**

- 1.8 The Regulation Committee recognises that the social housing market has become increasingly complex and that the nature and extent of the risks which providers' boards must manage are correspondingly more challenging. It also recognises the importance of promoting continued private investment in the sector and facilitating the sector's growth (given its fundamental objective of supporting the provision of new social housing). Furthermore, it is committed to a proportionate approach to regulation.
- 1.9 In this context, the regulator's principal focus is on promoting a viable, efficient and well governed social housing sector able to deliver homes that meet a range of needs. Our regulatory approach is aligned to this principal focus by ensuring that we have a grip of short-term viability issues, and that when we engage in depth we have

a strategic conversation with providers about their financial strength, risk profile, approach to value for money and their quality of governance.

## **Our overall approach**

### *Co-regulation*

- 1.10 Mindful of our duty to minimise interference, our fundamental objective of supporting the provision of social housing and our commitment to proportionate regulation, we take a co-regulatory approach. This means:
- we regard board members and councillors as responsible for ensuring that providers' businesses are managed effectively and that providers comply with all regulatory requirements
  - providers must support tenants to shape and scrutinise service delivery and to hold boards and councillors to account
  - we operate as an assurance-based regulator, seeking assurance from providers as to compliance with the standards. In other words, the onus is on providers to demonstrate their compliance to the regulator. Where we lack the requisite assurance, this will be reflected in the judgements we reach.

### *Communication with the regulator*

- 1.11 The Governance and Financial Viability Standard includes a specific expectation that providers should communicate with the regulator in an accurate and timely way. As outlined in the Governance and Financial Viability Standard Code of Practice (the Code), this includes the provision of information in regulatory returns and we regard the submission of late, incomplete, or inaccurate regulatory data as evidence of a weak control environment and possibly evidence of a failure to comply with this standard.
- 1.12 The Governance and Financial Viability Standard sets out our specific expectation that providers must:
- certify their compliance with the standard in their annual accounts, and
  - communicate in a timely manner with the regulator on material issues that relate to non-compliance or potential non-compliance with the standards.

As explained in the Code, we view transparency on the part of registered providers as being a fundamental pillar of the co-regulatory approach and any failure to comply may affect our assessment of the provider.

- 1.13 Transparency is a key element of our approach to assessing value for money. The Value for Money Standard requires providers to articulate and deliver a comprehensive and strategic approach to achieving Value for Money in meeting their organisation's objectives. As part of that process, providers are required to publish annually a robust self-assessment which sets out in a way that is transparent and

accessible to stakeholders how they are achieving value for money in delivering their purpose and objectives. The Value for Money Standard sets a specific expectation that the assessment shall:

- set out the absolute and comparative costs of delivering specific services
- evidence the value for money gains that have been and will be made and how they have and will be realised over time
- enable stakeholders to understand the return on assets measured against the organisation's objectives.

### *The Regulators' Code*

- 1.14 We operate within the provisions of the Government's Regulators' Code and have due regard to it when developing policies and procedures that guide our regulatory activities. The code does not apply to the exercise by a regulator of any specific regulatory function in individual cases.

## **2 Our operational approach**

### **Regulating different providers**

- 2.1 Because we take a risk-based proportionate approach, we regulate providers differently depending on their level of risk-exposure.
- 2.2 Providers which own fewer than a thousand social housing units collectively account for less than 5% of the sector's total assets, turnover and debt and are subject to a lower level of regulatory engagement (see summary table at Annex A). In accordance with our risk based approach, our focus within this cohort is primarily on those providers which need to manage more significant exposures to deliver their business plans.
- 2.3 The economic standards do not apply to local authority registered providers. Accordingly, we do not regulate those providers against the economic standards (see summary table at Annex A).
- 2.4 We assess the risk profile of registered providers which own a thousand or more social housing units to determine our regulatory approach to them. To do this we refer to our sector risk profile analysis and other relevant information and resources at our disposal. This enables us to identify those providers we judge to be more complex and to have an increased level of risk exposure (taking into account providers' underlying financial strength and complexity). This then informs the way in which we allocate our regulatory resources.
- 2.5 Where a registered provider owns a thousand or more social housing units but is part of a group which has a registered provider parent, we assess compliance at the group level. This means that we do not publish separate judgements for each of the registered providers within the group. However, each individual registered provider

must comply with the standards and we do not restrict our regulation to looking at the parent entity. Indeed, where one or more registered providers sit within a group of organisations, we are likely to look at risks and exposures across the entire group in order to reach a realistic conclusion as to compliance with the standards.

## **Regulation of the economic standards**

2.6 The economic standards comprise:

- Governance and Financial Viability
- Value for Money
- Rent

The remaining standards are described as the consumer standards and our approach to regulating those is set out in the section below on reactive engagement.

2.7 Through our regulation of the economic standards, we seek to gain a strategic and evidenced understanding of both the short-term and longer-term risks to which providers are exposed, and to gain a comprehensive understanding of their approach to value for money. This helps us to make informed judgments as to their compliance. We may seek assurance in a variety of ways and from such sources as we consider appropriate to the particular provider's circumstances. We will always require evidence of compliance, rather than assuming it. Unless the available evidence provides us with adequate assurance of compliance, the judgment we issue will reflect our concerns.

2.8 Providers should be aware that in carrying out our regulation of the economic standards, we are likely - as a minimum - to seek assurance about providers' financial strength, their vulnerability to covenant breaches, their liquidity, their approach to value for money and the effectiveness of their governance and risk management and the risks to their social housing assets from non-social housing activity. This will include, for example, looking at the effectiveness of the organisation's stress testing.

2.9 We are aware that poor governance is often a leading indicator of financial weaknesses. For example, a failure to maintain an effective framework of risk management/internal controls assurance could compromise a provider's ability to meet its financial obligations. Poor governance can also be indicative of weaknesses in a provider's ability to deliver value for money and present broader risks to the reputation of the sector. Accordingly, we look for very clear assurance as to providers' compliance with the governance elements of the Governance and Financial Viability Standard. We may seek this directly (for example, by seeking assurance about how specific business critical decisions have been taken). We may also conclude that evidence of poor governance is indicated by other behaviours or events. For example, we may conclude, upon investigation of a breach of a consumer standard, or a failure to set rents in accordance with the relevant legal and



regulatory rules, that there is evidence of governance failures such as that the board had little oversight of performance/key operational data, that senior executive reporting was inadequate and that various internal controls failed. In other words, since we regard good governance as so fundamental, we will seek assurance on this subject from a wide range of sources.

## **Operational approach**

2.10 Providers retain primary responsibility for compliance with the standards. We have a responsibility to assess whether we have sufficient assurance that those standards are being met. We have three main ways of carrying out our planned regulatory engagement with private registered providers which own a thousand or more social housing units, each of which is explained in more detail below:

- Review of Quarterly Surveys
- Stability Checks
- In-Depth Assessments

2.11 We also need to respond to new issues as they emerge and our approach to reactive regulatory engagement (including the way in which we regulate the consumer standards) is also explained in more detail below.

## **Review of Quarterly Surveys**

2.12 All private registered providers which own a thousand or more social housing units are required to complete Quarterly Surveys. These returns provide us with a regular source of information about providers' financial health, in particular their access to cash and their liquidity position. The exact details of the information required are specified in the return and are reviewed annually.

2.13 Where any of the information supplied via the Quarterly Survey gives us cause for concern, we follow up the matter directly with providers. The information provided through the survey is critical in alerting us to short-term viability issues and, as such, it is vital that the returns supplied are timely and accurate.

## **Stability Checks**

2.14 In addition, we carry out an annual Stability Check of all private registered providers which own a thousand or more social housing units. We do this to ascertain whether any material changes have occurred since our last detailed assessment. We review the provider's financial position, its governance arrangements and its approach to value for money and consider whether there is evidence of changes which are significant enough to cause us to reconsider our existing published judgements.

- 2.15 In carrying out a Stability Check we primarily extract information from existing regulatory returns, in particular the Financial Forecast Return (FFR) and the annual accounts. We use the FFR to gather medium to long term business planning data in a standard format. Our expectation is that registered providers will complete the FFR at group level (in other words that groups will submit a consolidated FFR which includes unregistered parts of the group rather than separate returns for the different registered providers within the group). The information provided through the FFR helps, in particular, to inform our assessment of a provider's ability to meet the requirements of the viability elements of the Governance and Financial Viability Standard and the Value for Money Standard.
- 2.16 We expect the financial forecast information to reflect a provider's strategy and to have been tested against changes to key assumptions. As part of the Stability Check we will review providers' Value for Money self-assessments to help us determine if they are meeting the requirements of the Value for Money Standard. We do not anticipate that providers will be required to supply supplementary information for a Stability Check, unless our review generates concerns or doubts about an existing published judgement.
- 2.17 If, following a Stability Check, we conclude that there is no evidence to indicate we need to change a provider's current published judgement, we refresh its date in the table of current judgements published on the HCA pages on GOV.UK. We make it clear in the table that the judgement has been refreshed upon the basis of regulatory returns received, rather than as a result of a new IDA.
- 2.18 On the other hand, where a Stability Check generates evidence indicating that an existing judgement may need to be revised, further assessment may be undertaken. This may involve follow-up with the provider and in some cases an IDA .

### **In-Depth Assessment (IDA)**

- 2.19 Private registered providers which own a thousand or more social housing units are also subject to periodic IDAs. For most providers we anticipate conducting an IDA every three or four years. As a general principle, the frequency with which we carry out an IDA is linked to our assessment of the relative risk profile of providers, including the occurrence of any significant changes in the scale and nature of activities a provider undertakes. Our risk-based approach considers both the probability of risks materialising and the impact given the inherent nature of providers (including size and complexity), to determine where we need to carry out IDAs more often.
- 2.20 Through IDAs, we assess providers' compliance with the economic standards. Each IDA is a bespoke piece of work and will consider in detail the provider's viability (their ability to meet financial obligations), their approach to value for money and their governance. The IDA is likely to encompass assessment of risk profiles, exposures, financial strengths and weaknesses, governance and the delivery of value for money in the broadest sense. Each IDA is scoped to ensure we focus on the key issues

impacting upon the particular provider's compliance. However, IDAs are framed around a consistent model, as set out in the table below:

*IDA Model*

	<b>Component</b>		<b>Element</b>	<b>Assessment focus</b>
<b>1</b>	<b>Strategy</b>  The clarity of the provider's strategic direction, priorities and its operating markets	1.1	Strategic direction	The provider's short and medium term priorities and ambitions and how they relate to its operating environments and markets.  The provider's strategic approach to the delivery of Value for Money in meeting its objectives.
<b>2</b>	<b>Structure</b>  The provider's structure, the interaction between it and the various organisations connected with it and the activities they each carry out	2.1	Organisational dynamics	The interaction between the provider and the various organisations (including registered providers, non-registered providers, joint ventures and special purpose vehicles) connected to it; the legal identity of and activities carried out by all these organisations; how risks flow between them; transactional (including recourse) arrangements; board and committee structures and memberships; and levels of accountability.
<b>3</b>	<b>Financial Resilience</b>  In-depth analysis of the provider's long term viability: financial strength and financial	3.1	Financial performance	Understanding the provider's inherent financial strength; its ability to respond/headroom e.g. committed development, covenant headroom, how aggressive/defensive are its assumptions; return on investment.

	Component		Element	Assessment focus
	management.	3.2	Debt, liquidity and future funding	Understanding the sources of liquidity available to a provider, how much debt it is carrying, the price of that debt, associated exposures to changes in the market, as well as new and non-standard types of funding. Alignment between strategic direction and forecast funding requirements. Availability of security.
		3.3	Cost structure and efficiency	<p>So that we can assess the sustainability and deliverability of cash flows and operating efficiencies, we need to understand the provider's costs and the main drivers for those costs (including its actual and projected operating costs as well as its capital investment and stock re-investment costs)</p> <p>As part of our consideration of Value for Money, we use unit cost data derived from a provider's annual accounts and FFRs to determine its approach to optimising efficiency in achieving its overall objectives. Where, for example, data identifies that a provider has unusually high costs, we will look for evidence of the additional benefits those higher costs deliver, whether as a result of a conscious business decision (high investment for high outcomes) and if not, what the provider is doing to reduce costs or improve outcomes.</p>
<b>4</b>	<b>Risk profile and mitigation</b>	4.1	Reasonableness of assumptions	Past performance; how the provider compares to the rest of the sector; the view of economic forecasters and HCA market intelligence.
	Rounded assessment of the provider's understanding of the			

	<b>Component</b>		<b>Element</b>	<b>Assessment focus</b>
	significant risks facing its business and how effectively through its governance it is managing them in the context of its risk appetite so that it can deliver its objectives and maintain its financial position.	4.2	Risk identification	Understanding the significant risks arising from the provider's operating environment, strategy and structure and its financial position and how these risks flow around the organisation (drawing upon our sector risk work and the provider's identification of risks).
		4.3	Stress testing	Analysing the rigour of the provider's stress testing and how the board handles the results from it, including the adequacy of the controls which it has in place and how they align with the risks identified under 4.2.
		4.4	Materiality and impact of risks	Assessing the materiality and possible impacts of the risks identified under 4.2 above.

	Component		Element	Assessment focus
5	Governance	5.1	Overall governance control	<p>Analysing how far we have assurance that the provider is mitigating key risks to acceptable levels. Includes:</p> <ul style="list-style-type: none"> <li>• quality of business plans</li> <li>• quality of management reporting and forecasting</li> <li>• timely arrangement of financing</li> <li>• overall and specific controls assurance</li> <li>• board skills, effectiveness and interface with the executive</li> </ul> <p>Our assessment of the overall quality of governance arrangements (including evidence relating to how the board has taken significant decisions, transparency) will be linked to how well providers are delivering their corporate strategy and managing the associated risks.</p> <p>Boards' ability to articulate and deliver a comprehensive and strategic approach to Value for Money is a leading indicator of good governance. We seek assurance that boards have a comprehensive strategy to deliver ongoing improvements in efficiency and ensure they are using their resources and assets in the most cost-effective way to deliver the provider's overall strategy.</p>

- 2.21 When the regulator determines that it is going to carry out an IDA of a registered provider it notifies the organisation of its decision. On occasion, the regulator may need to carry out an IDA at short notice, but generally it will seek to give providers at least six weeks' notice of its intention and to discuss the planned process. Each IDA is led by a senior member of staff, supported by staff with a range of skills from across the regulator. The size of the team and the particular skills required reflect what is appropriate for the specific assessment.
- 2.22 The regulator produces a document setting out the proposed scope of the IDA. This will be shared with the provider for comment. In accordance with our co-regulatory approach, we will always start by looking at the assurance the board receives to assure itself that it is compliant with the standards. The documents required by the

regulator for an IDA and the timescale by which they will be required will vary depending on the scope and on our duty to be proportionate and to minimise interference, but we always require the following:

- business plan and risk assessment
- accounts and financial statements
- audit management letter
- organisational/group structure chart

- 2.23 The regulator specifies a date by which written evidence for the IDA must be submitted. Each IDA will be an assessment of the provider's compliance at a given time and our expectation is that providers will supply requested information within the agreed timescales for completion of the assessment.
- 2.24 Each IDA involves a mixture of desktop research and on-site work. We will normally want to interview the board chair individually as part of our work as well as other members of the board and the executive leadership team. We will keep the provider informed of the regulator's requirements throughout the process.
- 2.25 Upon the conclusion of an IDA we will advise the provider of the outcome. Where there is no change to a provider's published grades' results, we will not produce a narrative report.<sup>4</sup> We will, however, give oral feedback to the provider and update our published table of judgements to indicate that the grades are now based upon an IDA. Where our assessment has changed, we will discuss this with the provider and publish a report explaining the reasons for the re-assessment. This report will be shared with the provider for factual accuracy checking, prior to publication.

### **Reactive engagement**

- 2.26 As well as our planned work, we also respond to new issues as they emerge (what we call reactive engagement). Our remit here encompasses all categories of registered provider.
- 2.27 The regulator receives information and allegations about providers from various sources, including complaints. We seek to ascertain whether any of this information suggests a breach of one of the economic or consumer standards that might warrant further regulatory action. We take a slightly different route depending on whether it is an economic or a consumer standard which may be impacted.

### *Possible breach of economic standards*

- 2.28 To ensure we use our resources to best effect in meeting our statutory objectives and in accordance with the regulatory principles set out in this document, the regulator

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<sup>4</sup> If a provider's IDA confirms its existing non G1/V1 straplines then it is likely we will issue a narrative report to update the basis of our continuing judgement. Where a provider has a narrative report because it was previously upgraded, for example, from G2 to G1 and following an IDA it remains on G1 then we will archive its previous narrative report.

investigates matters which relate to the economic standards only in the following circumstances:

- where the issues relate to the viability of an organisation, or
- where the issue, if proven, may affect our regulatory judgement of the organisation, or
- where the issues, if proven and unaddressed, could have a significant reputational risk for the sector

2.29 Furthermore, in the case of providers which own fewer than a thousand social housing units we will only investigate where the issue, if proven, might trigger the use of our statutory powers by reason of either:

- a failure to comply with the standards, or
- mis-management.

2.30 Where we are seeking further assurance on a particular issue, we will always make a rounded judgement based on all of our knowledge about a provider and seek to act in a proportionate and transparent way.

2.31 The possible outcomes from any investigation we undertake are:

- no regulatory action necessary
- further action incorporated into planned regulatory engagement
- a downgraded regulatory judgement or a regulatory notice (as applicable)
- enforcement action

#### *Possible breach of consumer standards*

2.32 In addition to the economic standards there are four consumer standards:

- Home
- Tenancy
- Neighbourhood & Community
- Tenant Involvement & Empowerment

2.33 Our approach to consumer regulation is set out in legislation and is reactive only. We do not have a role in monitoring providers' performance on consumer standards. We only use our regulatory and enforcement powers where we judge that there has been a breach of a consumer standard which has or could cause serious detriment. In line with our overall regulatory approach we take a proportionate approach to each case in reaching these judgements. Further guidance about how we deal with consumer standards is set out in more detail at Annex B.

2.34 When a provider fails to meet one or more of the consumer standards, we can use our powers if we judge that there are reasonable grounds to suspect:



- that the failure has resulted in serious detriment to the provider's tenants (or potential tenants)
- that if no action is taken by the regulator, there is a significant risk that the failure will result in a serious detriment to the provider's tenants (or potential tenants)

- 2.35 Where we become aware of an issue which is indicative of a possible consumer standards breach and possible serious detriment, the matter is referred to our Consumer Regulation Panel. Information we receive in the form of a statutory referral will always be considered by the panel.<sup>5</sup> This panel will determine whether and how the issue should be followed up. In most cases that we investigate, we are likely to seek further information from the provider.
- 2.36 Where we judge that there are reasonable grounds to conclude that the breach of standards has resulted in, or could result in, serious detriment to tenants, we publish a regulatory notice setting out our findings.
- 2.37 The threshold for regulatory intervention in consumer standards is intended to be significantly higher than that in relation to economic standards, and so a finding of consumer standard breach and serious detriment raises questions about the effectiveness of a provider's governance arrangements. It may also be the case that issues are raised about the governance of a provider even where the serious detriment threshold has not been met. We will consider the provider's compliance with the economic standards and where we consider that a provider's grading should change, we will publish a narrative judgement.

#### *Possible next steps*

- 2.38 If further regulatory action is needed to ensure compliance with the any of the standards, then we will consider the use of our powers in accordance with the guidance set out in Annex C. (Please note this is a separate document available on the HCA pages on GOV.UK.)

### **Rent Standard**

- 2.39 For a four year period from 2016/17, the Welfare Reform and Work Act 2016 (and regulations made under it) have introduced new legislative requirements in relation to the rents charged by registered providers. **We expect providers to take steps to ensure that they fully understand these new rules, taking appropriate advice where necessary.** Where the legislative requirements apply, we regard compliance with them as a key part of the Governance and Financial Viability Standard obligation

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<sup>5</sup> A statutory referral is a referral from an authority, representative body, or individual specified in the Housing and Regeneration Act 2008 (as amended). These include: the housing ombudsman, tenant representative bodies, MPs, a councillor of the local housing authority for the district in which the property concerned is located, the Health and Safety Executive and fire and rescue authorities.

to adhere to all relevant law. As such, we expect providers to take care to ensure that adherence with this legislative regime has been considered before they certify compliance with the Governance and Financial Viability Standard. Where the Welfare Reform and Work Act 2016 (and regulations made under it) do not apply, we expect providers to comply with the Rent Standard and Rent Standard Guidance.

- 2.40 Where we become aware of any material non-compliance with the legislative rent requirements or the Rent Standard (as appropriate), we will investigate and determine the appropriate regulatory response.
- 2.41 We have published a separate explanatory note in relation to our powers (which are subject to the consent of the Secretary of State) to issue exemption directions under the Welfare Reform and Work Act 2016 (and regulations made under it).

### **3 Data and information requirements**

- 3.1 As explained in paragraphs 1.11 to 1.13 above, the regulator relies upon providers supplying it with timely and accurate data. This is fundamental to the success of co-regulation.
- 3.2 We regard the submission of late and incomplete or inaccurate regulatory data as evidence of a weak control environment. Failure to provide accurate and timely data may be reflected in our judgement of a provider's compliance with the regulatory standards. In particular, but not exclusively, it may provide evidence of a breach of the specific expectation in the Governance and Financial Viability Standard to communicate with the regulator in an accurate and timely manner, including through regulatory returns to the regulator.
- 3.3 We require the following data returns from private registered providers which own a thousand social housing units or more:
- Financial Forecast Returns (FFR)
  - Electronic Annual Account Returns (EVAR)
  - Quarterly Survey
  - annual report on fraud losses
  - annual return about providers' social housing and its use (Statistical Data Return)
  - annual return on Disposal Proceeds Fund (DPF)
- 3.4 We also require the following non-standardised information from these providers to enable us to carry out our regulation:
- business plan (this may be a single document or take the form of a number of corporate documents covering the strategic objectives of the organisation, the key risks associated with their delivery and how the provider plans to address them and tested financial forecasts that reflect organisational priorities)
  - financial statements

- Value for Money self-assessment
  - audit management letter
- 3.5 We require the following data returns from private registered providers which own fewer than one thousand social housing units:
- annual return about social housing and its use (Statistical Data Return but with only a limited data requirement)
  - financial statements
  - audit management letter (if applicable)
- 3.6 We do not require any data returns from local authority registered providers.
- 3.7 The regulator collects its data through the NROSH+ system. All providers are required to make their returns using this system online at <http://nroshplus.homesandcommunities.co.uk>
- 3.8 We have a duty to minimise the burdens we place on the organisations we regulate. Our data collection policy is to collect once and use many times. We do not collect data and information which is not necessary. We have systems in place, such as NROSH+, to help us achieve this. Where appropriate, we may share information with other regulators, in accordance with the Data Protection Act 1998.
- 3.9 The HCA is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). Both pieces of legislation provide a right of access to information held by the agency. We work daily with third parties not subject to FOIA/EIR and our statutory obligations should not affect the information sharing required for us to carry out our regulatory duties. Upon receipt of a request and where possible and appropriate, we will consult with affected third parties to discuss any concerns where disclosure of the information could harm their interests.

## 4. Regulatory Judgements<sup>6</sup>

4.1 For all providers which own a thousand social housing units or more, we publish regulatory judgements of their compliance with the governance and the viability requirements in the Governance & Financial Viability Standard.

4.2 There are four governance grades:

<b>G1</b>	The provider meets our governance requirements.	}	Compliant
<b>G2</b>	The provider meets our governance requirements but needs to improve some aspects of its governance arrangements to support continued compliance.		
<b>G3</b>	The provider does not meet our governance requirements. There are issues of serious regulatory concern and in agreement with us the provider is working to improve its position.	}	Non-Compliant
<b>G4</b>	The provider does not meet our governance requirements. There are issues of serious regulatory concern and the provider is subject to regulatory intervention or enforcement action.		

4.3 All providers should seek to be assessed at G1. Where we judge a provider to be G2 this will be because we have identified some deficiencies in its governance which it needs to address. Although material, the deficiencies are not judged to affect our overall assessment of compliance. Our expectation is that providers assessed at G2 will take timely remedial action to address the issues identified. A G3 judgement means that the provider is not compliant with governance requirements. In these circumstances we will be actively involved with the provider as it works to address the failures in governance and move back into compliance with regulatory requirements. A G4 judgement also signifies that the provider is non-compliant with governance requirements but it is applied where the severity of the governance failures are such that we are actively intervening or taking enforcement action.

4.4 We reflect the level of assurance that we have on a provider's compliance with the Value for Money Standard through our published governance judgement.

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<sup>6</sup> This section only applies to private registered providers which own one thousand or more social housing units.

4.5 There are also four viability grades:

<b>V1</b>	The provider meets our viability requirements and has the financial capacity to deal with a wide range of adverse scenarios.	}	Compliant
<b>V2</b>	The provider meets our viability requirements. It has the financial capacity to deal with a reasonable range of adverse scenarios but needs to manage material risks to ensure continued compliance.		
<b>V3</b>	The provider does not meet our viability requirements. There are issues of serious regulatory concern and, in agreement with us, the provider is working to improve its position.	}	Non-Compliant
<b>V4</b>	The provider does not meet our viability requirements. There are issues of serious regulatory concern and the provider is subject to regulatory intervention or enforcement action.		

4.6 Providers at V1 will have provided the regulator with sufficient assurance that they have met the viability requirements of the standard. Typically they will have a strong financial profile, built on robust and prudent assumptions, good headroom on their financial covenants and appropriate levels of liquidity. The level of financial risk being taken on by the organisation is not considered to be unreasonable and the regulator has assurance that the crystallisation of the identified risks can be mitigated successfully by the organisation in most circumstances.

4.7 Providers at V2 will have provided the regulator with sufficient assurance that they have met the viability requirements of the standard. However, there are areas of concern for the regulator about the provider’s ability to meet the standard in certain circumstances. In particular, the regulator may be concerned about an underlying financial profile that whilst viable on current assumptions would be vulnerable to the crystallisation of significant downside risks, potentially including changes in market conditions beyond the provider’s control. Unlike with the governance grading, a provider could be at V2 for a prolonged period and this would not necessarily be a cause for regulatory concern. If the V2 grading is the result of a conscious decision to import more risk into a business to deliver strategic goals and if the risks are well managed (as reflected in the governance grading), then this may well be an appropriate business decision.

4.8 Providers at V3 have been unable to provide the regulator with sufficient assurance that they meet the requirements of the standard. In these circumstances the regulator will be working closely with the provider to try and remedy the issue as soon as possible. Providers at V4 are in serious financial difficulty and the regulator will be working with the provider and others (as appropriate) to remedy the situation, potentially using the regulator’s full range of intervention powers.

- 4.9 In some cases, as well as publishing a provider's grades, we will also issue a narrative regulatory judgement report. We will usually do this where, for any reason, our assessment of that provider has changed, or there are new issues we want to make public. If our assessment of a provider's grades has not changed since the last publication, we will normally only refresh the published date in our online table.

## **5. Regulatory Notices and Gradings under Review**

### **Regulatory notices**

- 5.1 As well as issuing regulatory judgements, we also issue regulatory notices. Regulatory notices are issued in response to an event of regulatory importance (for example, a finding of a breach of a consumer standard that has or may cause serious harm) that, in accordance with our obligation to be transparent, we wish to make public. Some of the more particular circumstances in which this may be appropriate are set out in the following paragraphs.
- 5.2 We do not publish regulatory judgements in relation to local authority registered providers because the economic standards are not applicable to them. However, the consumer standards do apply to local authority registered providers and, as with all registered providers, if we find serious detriment in relation to such a standard, we may issue a regulatory notice as we would for other providers.
- 5.3 We also do not publish regulatory judgements for registered providers which own fewer than a thousand social housing units. However, if we have evidence that such a provider is in breach of an economic standard, or we find serious detriment in relation to a consumer standard, we may issue a regulatory notice.
- 5.4 On occasion, we use regulatory notices to put specific findings about a provider into the public domain, even though they do not impact on the provider's existing published grades. This might happen, for example, where a provider has been found not to comply with the Value for Money Standard, but is already graded below G1 and there is no need to change that grade.

### **Gradings under Review**

- 5.5 We maintain an online Gradings under Review list. Where we are investigating a matter and we consider that this investigation might result in a provider (currently judged to be compliant) being re-assessed as non-compliant in relation to the economic standards, we will add it to this list. The purpose of the list is to alert stakeholders to the possibility that the provider may be moving towards non-compliance. Once we have concluded our investigation, we publish a new narrative regulatory judgement for the provider (or regulatory notice, in the case of a provider which owns fewer than a thousand social housing units) and remove it from the

Gradings under Review list. We endeavour to publish a narrative judgement or notice<sup>7</sup> within six to eight weeks of the provider being placed on the list.

## **6 Other statutory activity**

- 6.1 The regulator has specific statutory responsibilities in relation to the registration of applicants, granting consents for disposal of social housing and constitutional changes and maintaining the register of social housing providers. The Housing and Planning Act 2016 will, when it comes into effect, make changes to the regulator's consent powers, but until this time the regulator will continue to act in line with its current statutory responsibilities.

### **Registrations**

- 6.2 We assess applications for registration against criteria set out in guidance on the regulation pages of the HCA's website. The regulator also provides guidance on how to register and a suite of application forms and associated documents, again published on the HCA pages on GOV.UK.

### **Consents to constitutional changes**

- 6.3 Currently, not-for-profit providers require the regulator's consent before making certain changes to their organisational structures and to their governing instruments. In particular, approval is required for:
- Constitutional changes (including amalgamations, group structure changes and mergers). Guidance on this requirement for consent is set out in documents on the HCA pages on GOV.UK, including the procedural guidance notes
  - certain changes to providers' governing instruments (that is, changes relating to the objects, the distribution of profits and the subsidiary status of not-for-profit providers)
- 6.4 Where a change is made to a provider's governing instrument which does not require the regulator's consent, the provider must notify the regulator that the change has been made.

### **Consents to disposal of social housing**

- 6.5 The regulator's consent, either through the issue of its General Consent or on an individual disposal basis, is currently required for the disposal of social housing by registered providers. Guidance set out in Disposing of Land and associated forms for disposal consents is published on the HCA pages on GOV.UK.

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<sup>7</sup> We will only issue a regulatory notice for a provider which owns fewer than a thousand social housing units if we conclude that it is non-compliant.

- 6.6 Where providers seek the regulator's consent they will normally be required to submit a business case.
- 6.7 The regulator can withdraw a provider's access to all or part of the General Consent. Further information on when this might be considered is in Section 4 of the regulator's Disposing of Land guidance which is available on GOV.UK.

### **Handling consents**

- 6.8 Where applications for consent propose significant disposals or constitutional changes, the regulator will seek assurance that the proposal will not adversely impact on the provider's compliance with the Governance and Financial Viability Standard.
- 6.9 In the course of dealing with an application for consent, the regulator may be presented with evidence as to how a provider's governance arrangements operate in practice. The regulator may equally become aware of a scenario where a provider has failed to obtain a required consent before making a regulated disposal or constitutional change and conclude that this demonstrates a failure to meet our expectations on governance, effective risk management and internal controls. Depending on its seriousness, information such as this, gathered in the course of our consents work, may be considered in reactive engagement or as part of an IDA or a Stability Check of the affected provider and may result in an alteration to our published judgement on that provider. Where the provider in question is one which owns fewer than a thousand social housing units and we have evidence of breach of an economic standard, we may alternatively issue a regulatory notice.

### **Operation of the Disposal Proceeds Fund**

- 6.10 Providers are currently required to operate a disposal proceed fund when they dispose of properties in particular circumstances. Such funds must be operated in accordance with requirements set by the regulator, including restrictions on the use of the fund and the time period over which funds generated must be used. If funds cannot or are not used in accordance with the requirements providers may need to pay over the proceeds in the fund or seek agreement from the regulator to retain the proceeds beyond the prescribed time period. Details of our requirements are set out in the Disposal Proceeds Fund Requirements and associated guidance published on the HCA pages on GOV.UK.

## **7 Appeals against regulatory decisions**

- 7.1 The regulator's appeals protocol (available on the HCA pages on GOV.UK) explains that anyone affected by a decision to use certain regulatory or enforcement powers can appeal against that decision.
- 7.2 In some cases, a provider or individual affected by the exercise of our powers will have a statutory right to appeal to the High Court. The regulator's appeals process is not intended to replace any such statutory right.



## Summary of our approach by provider type

### Private registered providers which own a thousand social housing units or more

- economic and consumer standards applicable
- data return requirements applicable
- must publish Value for Money self-assessment
- must complete Quarterly Survey
- subject to annual Stability Check
- subject to periodic In-Depth Assessments
- regulatory judgements published
- regulatory notices applicable for findings of serious detriment and where otherwise appropriate
- Gradings Under Review list applicable

### Private registered providers which own fewer than one thousand social housing units

- economic and consumer standards applicable
- limited data requirements applicable
- not required to complete Quarterly Survey
- not subject to annual Stability Check
- not subject to periodic In-Depth Assessments
- subject to annual review of financial statements and, if relevant, the audit management letter and, if developing new homes, regulator normally seeks and assesses financial forecast information
- regulatory judgements not applicable
- regulatory notices issued where the regulator has evidence that provider is in breach of an economic standard or for serious detriment finding

### Local authority registered providers

- only consumer standards applicable
- no data return requirements
- regulatory notices published where regulator judges serious detriment

## Consumer Regulation Guidance

- 1 The Housing and Regeneration Act 2008 (the Act) places a restriction on the regulator's ability to use its powers in relation to a provider failing to meet a consumer standard. We may use our regulatory and enforcement powers only if we think that a standard has been failed and there are reasonable grounds to suspect that:
  - the failure has resulted in a serious detriment to the provider's tenants (or potential tenants), or
  - there is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the provider's tenants (or potential tenants)
- 2 This is the basis of what is called the 'serious detriment test'. Regulatory powers in Chapter 6 of the Act can be used to investigate where the regulator thinks that there is risk of failing a standard and has reasonable grounds to suspect that - if the failure occurs - the failure will or may result in serious detriment to tenants (or potential tenants).
- 3 We are required to issue guidance about how we apply the 'serious detriment test' and we also publish an annual report about our consumer regulation work.
- 4 In defining serious detriment, it is clear that the threshold for regulatory intervention is intended to be significantly higher than that in relation to the economic standards. Failure to meet one or more of the consumer standards does not in itself lead directly to a judgement of serious detriment by the regulator. We consider that the meaning of serious detriment is when there is risk of, or actual, serious harm to tenants.
- 5 In line with our proportionate approach to regulation, we judge whether a consumer standard has been breached and, if so, whether actual or potential serious detriment exists depending on the circumstances of each case and based on an evaluation of the harm or potential harm to tenants. It is not feasible or desirable for the regulator to attempt to produce a prescriptive list of issues that constitute harm. Such a list would inevitably fail to cover all current or potential eventualities and would need frequent updating to reflect changes in the policy and operational environment of providers. In addition, the same issue might have very different implications in different circumstances, leading to the risk of a disproportionate regulatory response. In order to ensure we use our powers proportionately, we must take the circumstances of each case into consideration.
- 6 Our assessment of serious detriment is based on the degree of harm or potential harm that may be caused to tenants by a breach of standards. The judgement is

formed on the regulator's opinion of the actual or potential impact on tenants, irrespective of the nature of the issue that gives rise to the concern.

- 7 In assessing whether to consider if there could be breach of standard and serious detriment or reasonable grounds to suspect this may be the case, we consider the following initial questions. They are:
  - if the issue raised were true, is it likely that there has been, or could be, a breach of a consumer standard?
  - if the issues raised were true, would there be any impact on tenants which would cause serious actual harm or serious potential harm?
- 8 If we are satisfied that there could be breach of a standard and serious detriment or that there are reasonable grounds to suspect this, we then seek to determine whether this is the case through examining the evidence of a breach of a standard and the nature and extent of the impact or potential impact on tenants. In reaching the serious detriment assessment, the regulator will require evidence of harm or potential harm, in particular but not exclusively in relation to:
  - health and safety
  - loss of home
  - unlawful discrimination
  - loss of legal rights
  - financial loss
- 9 Irrespective of from where and how information is received, the regulator is ultimately responsible and accountable for the decisions it takes. Therefore, we retain the right to conduct, or agree that the provider commissions, appropriate investigations in order to determine whether there is evidence of a breach of standard and serious detriment.
- 10 Ultimately, decisions on a breach of the consumer standards and serious detriment are a judgement by the regulator, based on the evidence available and its published approach. It is also possible that issues under one consumer standard may result in problems under one or more of the other standards, indicating a systemic failure.
- 11 The circumstances of each case will inform the regulator's response. In some cases, the regulator may need to intervene directly to address the problem(s) identified.
- 12 Where we judge that the serious detriment threshold has been crossed in relation to consumer standards, or may be crossed if effective remedial action is not taken, for private registered providers we will also assess the implications of the issue against the economic standards in accordance with our published approach. We will

investigate the issues, determining what assurances on governance may be required of the provider's board and whether any further regulatory action is required.

- 13 If we find serious detriment as a result of a breach by a local authority housing service, we may use relevant powers. The economic standards do not apply to local authorities, however, the investigation of a case of serious detriment may raise concerns about governance issues. In these circumstances, as well as taking any necessary action to deal with the presenting serious detriment problem, it may also be necessary for the regulator to refer concerns about governance to the authority's monitoring officer and others where relevant, such as its auditors, chief executive and lead councillor, the Local Government Association and the Department for Communities and Local Government.
- 14 It is possible in some cases of serious detriment that other agencies or regulators will have responsibility for dealing with the presenting issue. We may refer the issue directly to the relevant authority if this has not already been done. However, in such cases the regulator may also act in anticipation of, or at the same time as, other agencies, with particular reference to implications for the provider's governance that may arise from the problem.
- 15 The regulator will give reasons for its decisions to intervene or investigate, or for not taking any action. Where a referral does not, in the regulator's opinion, constitute serious detriment, the regulator will advise the referring party of alternative routes to take, if applicable. If the referral appears to us to be misdirected, we will advise the referring party of the options available to them.
- 16 Where we follow up a referral, we will give an indication of our anticipated timetable and keep the referring party informed of the action that is being taken and the outcomes.
- 17 In considering whether failure of a consumer standard has or may lead to serious detriment, we are obliged to have regard to information received from a number of authorities, representative bodies and individuals that are specified in the Act . These include the ombudsman, tenant representative bodies, MPs, a councillor of the local housing authority for the district in which the property concerned is located, the Health and Safety Executive or a fire and rescue authority. Information received in this context from these specified bodies is designated a statutory referral.
- 18 We consider relevant information we receive from all sources, including during the course of our economic regulation work. Such information will be assessed in the same way as information received through the statutory referral routes.
- 19 We do not have a statutory mandate to deal with individual complainants and cannot mediate in disputes between landlords and tenants. The regulator has no locus in the contractual relationship between a provider and its employees and cannot become involved in disputes between them or in any other contractual disputes. In relation to such issues, the regulator will direct tenants or other complainants towards the provider's own complaints system and the Housing Ombudsman.

- 0 Providers have principal responsibility for dealing with and being accountable for, complaints about their service and the Tenant Involvement and Empowerment Standard requires that they have clear and effective mechanisms for responding to tenant complaints. A tenant with a complaint against their landlord should raise it with them in the first instance and follow their complaints policy. Should the complaint remain unresolved tenants can contact a designated person (a local housing authority councillor, MP or recognised tenant panel). Or after eight weeks they can also pursue the matter directly with the Housing Ombudsman.
- 21 The authorities which are able to make statutory referrals to the regulator include parties which may be or could become involved in local complaints resolution processes. Where the regulator receives a referral from one of these specified authorities (or any other party), the regulator's role is not to seek redress for an individual complainant. Rather, we will assess whether, in our judgement, the serious detriment test has been met in accordance with the approach set out above.
- 22 Although the regulator will not become involved in the resolution of individual complaints, we recognise that assessments of a breach of the consumer standard and serious detriment can stem from individual tenant referrals.

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