



Housing and Regeneration Act 2008

2008 CHAPTER 17

PART 2

REGULATION OF SOCIAL HOUSING

CHAPTER 6

REGULATORY POWERS

192 Overview

This Chapter—

- (a) allows the regulator to set standards for the provision of social housing (sections 193 to 198),
- (b) gives the regulator powers to monitor compliance (sections 199 to 210),
- (c) gives the regulator a degree of control over the governance of non-profit registered providers (sections 211 to 214),
- (d) requires the regulator to give guidance about complaints relating to registered providers and about the use of its powers under this Chapter and Chapter 7 (sections 215 and 216), and
- (e) allows the regulator to arrange for the accreditation of managers of social housing (section 217).

Standards

193 Provision of social housing

- (1) The regulator may set standards for registered providers as to the nature, extent and quality of accommodation, facilities or services provided by them in connection with social housing.

Status: This is the original version (as it was originally enacted).

- (2) Standards under subsection (1) may, in particular, require registered providers to comply with specified rules about—
- (a) criteria for allocating accommodation,
 - (b) terms of tenancies,
 - (c) levels of rent (and the rules may, in particular, include provision for minimum or maximum levels of rent or levels of increase or decrease of rent),
 - (d) maintenance,
 - (e) procedures for addressing complaints by tenants against landlords,
 - (f) methods for consulting and informing tenants,
 - (g) methods of enabling tenants to influence or control the management of their accommodation and environment,
 - (h) policies and procedures required by section 218A of the Housing Act 1996 (c. 52) in connection with anti-social behaviour,
 - (i) landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated, and
 - (j) estate management.
- (3) In setting standards the regulator shall have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

194 Management

- (1) The regulator may set standards for registered providers in matters relating to the management of their financial and other affairs.
- (2) In respect of profit-making registered providers, standards may be made in relation to the management of their affairs only so far as relating to the provision of social housing.
- (3) In setting standards the regulator shall have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

195 Code of practice

- (1) The regulator may issue a code of practice which—
 - (a) relates to a matter addressed by a standard, and
 - (b) amplifies the standard.
- (2) In considering whether standards have been met the regulator may have regard to a code of practice.
- (3) The regulator may revise or withdraw a code of practice.
- (4) The regulator shall make arrangements for bringing a code of practice to the attention of registered providers.

196 Consultation

- (1) Before setting standards, or issuing, revising or withdrawing a code of practice, the regulator shall consult the following or ensure that they have been consulted—

Status: This is the original version (as it was originally enacted).

- (a) one or more bodies appearing to it to represent the interests of registered providers,
 - (b) one or more bodies appearing to it to represent the interests of secured creditors of registered providers,
 - (c) one or more bodies appearing to it to represent the interests of tenants of social housing,
 - (d) the Audit Commission for Local Authorities and the National Health Service in England,
 - (e) one or more bodies appearing to it to represent the interests of local housing authorities,
 - (f) the HCA, and
 - (g) the Secretary of State.
- (2) Before setting a standard which would apply to charities, or issuing, revising or withdrawing a code of practice which applies or would apply to charities, the regulator must consult the Charity Commission.

197 Direction by Secretary of State

- (1) The Secretary of State may direct the regulator—
- (a) to set a standard under section 193,
 - (b) about the content of standards under section 193, or
 - (c) to have regard to specified objectives when setting standards under section 193 or 194.
- (2) The Secretary of State may give a direction under subsection (1)(a) or (b) only if it relates, in the Secretary of State's opinion, to—
- (a) quality of accommodation,
 - (b) rent, or
 - (c) involvement by tenants in the management by registered providers of accommodation.
- (3) In deciding whether to give a direction the Secretary of State shall, in particular, have regard to the regulator's fundamental objectives.
- (4) Before giving a direction the Secretary of State must consult—
- (a) the regulator,
 - (b) the HCA,
 - (c) the Audit Commission for Local Authorities and the National Health Service in England,
 - (d) one or more bodies appearing to the Secretary of State to represent the interests of local housing authorities,
 - (e) one or more bodies appearing to the Secretary of State to represent the interests of tenants of social housing, and
 - (f) one or more bodies appearing to the Secretary of State to represent the interests of registered providers.
- (5) Before giving a direction about a standard which would apply to charities the Secretary of State must consult the Charity Commission.

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- (6) A direction may disapply the requirement to consult under section 196 in relation to specified matters.
- (7) The regulator shall comply with any direction.
- (8) The Secretary of State shall publish—
 - (a) each proposed direction that is the subject of a consultation,
 - (b) each response to a consultation, and
 - (c) each direction.

198 Supplemental

- (1) Failure to meet a standard is a ground for exercising a power in this Chapter or Chapter 7.
- (2) The regulator shall make arrangements for bringing standards to the attention of registered providers.
- (3) The regulator may revise or withdraw standards; and section 196 applies to revising or withdrawing standards as to setting standards.
- (4) Standards may be expressed by reference to documents prepared by others.
- (5) Standards—
 - (a) may make provision generally or only in relation to specified cases, circumstances or areas, and
 - (b) may make different provision for different cases, circumstances or areas.

Monitoring

199 Survey

- (1) This section applies where the regulator suspects that a registered provider may be failing to maintain premises in accordance with standards under section 193.
- (2) The regulator may arrange for a survey of the condition of the premises by an authorised person.
- (3) In subsection (2) “authorised person” means a member of the regulator’s staff, or another person, authorised in writing by the regulator for the purposes of this section.
- (4) An authorised person may enter the premises at any reasonable time and carry out the survey.
- (5) Before carrying out the survey an authorised person must give the registered provider at least 28 days’ notice.
- (6) A registered provider who receives notice of a survey must give each occupier of the premises at least 7 days’ notice.
- (7) After carrying out a survey an authorised person must produce a written report.
- (8) The regulator must give the registered provider a copy of the report.

200 Survey: supplemental

- (1) An authorised person carrying out a survey, or seeking to enter premises in order to carry out a survey, must produce a copy of the authorisation on request by an occupier.
- (2) The regulator may require the registered provider to pay some or all of the costs of the survey and report.
- (3) A registered provider who fails without reasonable excuse to comply with section 199(6) commits an offence.
- (4) A registered provider, or an officer of a registered provider, who obstructs an authorised person in exercising a power under section 199 commits an offence.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Proceedings for an offence under this section may be brought only by or with the consent of—
 - (a) the regulator, or
 - (b) the Director of Public Prosecutions.

201 Inspections

- (1) The regulator may arrange for a person to inspect—
 - (a) a registered provider’s performance of its functions in relation to the provision of social housing, or
 - (b) the financial or other affairs of a registered provider.
- (2) The person must not be a member of the regulator’s staff.
- (3) If the purpose (or main purpose) of an inspection is to assess a registered provider’s performance by reference to standards under section 193 the regulator—
 - (a) shall invite the Audit Commission to carry out the inspection, and
 - (b) may arrange for another person to carry out the inspection only if the Audit Commission declines.
- (4) The regulator may direct a person carrying out an inspection to discontinue it.
- (5) An inspection may be general or specific.
- (6) The regulator shall reimburse costs incurred by the Audit Commission in carrying out an inspection.
- (7) If the regulator arranges for a person other than the Audit Commission to carry out an inspection the arrangements may include provision about payments.
- (8) In this section and sections 202 and 203 “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England.

202 Inspections: supplemental

- (1) After carrying out an inspection under section 201 the person carrying out the inspection must produce a written report.
- (2) The regulator—

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- (a) must give the registered provider a copy of the report, and
 - (b) may publish the report and related information.
- (3) The person who carried out the inspection may publish the report and related information (whether or not the regulator has done so).
- (4) The Secretary of State may by order authorise the regulator to charge fees for inspections.
- (5) An inspected registered provider must pay any fee charged.
- (6) Before making an order the Secretary of State shall consult—
- (a) the regulator,
 - (b) one or more bodies appearing to the Secretary of State to represent the interests of registered providers,
 - (c) the Audit Commission, and
 - (d) such other persons as the Secretary of State thinks appropriate.
- (7) The regulator shall prescribe a scale of fees for inspections, having consulted—
- (a) the Secretary of State,
 - (b) one or more bodies appearing to the regulator to represent the interests of registered providers, and
 - (c) the Audit Commission.

203 Inspector's powers

- (1) An inspector may by notice require a person to provide specified documents or information.
- (2) The power under subsection (1) may be exercised only in relation to documents and information of a kind in respect of which the regulator can impose a requirement under section 107.
- (3) Sections 107(3) to (7) and 108 apply for the purposes of subsection (1) (with any necessary modifications).
- (4) An inspector may at any reasonable time—
- (a) enter premises occupied by the registered provider which is being inspected, and
 - (b) inspect, copy or take away documents found there.
- (5) The reference to documents found on premises includes—
- (a) documents stored on computers or electronic storage devices on the premises, and
 - (b) documents stored elsewhere which can be accessed by computers on the premises.
- (6) The power to inspect documents includes the power to inspect any computer or electronic storage device on which they have been created or stored.
- (7) An inspector may require any person on the premises to provide such facilities or assistance as the inspector reasonably requests.

- (8) For the purposes of subsections (5) and (6) an inspector may require any person having charge of a computer to provide such assistance as the inspector reasonably requests.
- (9) It is an offence for a person without reasonable excuse to obstruct an inspector exercising the powers conferred by subsections (4) to (8).
- (10) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) Proceedings for an offence may be brought only by or with the consent of—
 - (a) the regulator, or
 - (b) the Director of Public Prosecutions.
- (12) In this section “inspector” means—
 - (a) a person authorised in writing by the Audit Commission to exercise the powers under this section for the purpose of an inspection carried out by the Audit Commission under section 201, or
 - (b) a person authorised in writing by the regulator to exercise the powers under this section for the purpose of any other inspection under that section.

204 Performance information

- (1) The regulator may require a registered provider—
 - (a) to prepare an annual report assessing the provider’s performance by reference to standards under section 193 or 194, and
 - (b) to send the report to the regulator within a specified period.
- (2) A requirement may specify matters to be covered by a report.
- (3) Failure to comply with a requirement without reasonable excuse is an offence.
- (4) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Proceedings for an offence may be brought only by or with the consent of—
 - (a) the regulator, or
 - (b) the Director of Public Prosecutions.

205 Publication of performance information

- (1) The regulator shall publish, at least once a year, information about the performance of registered providers.
- (2) In particular, the regulator shall include information likely to be useful to—
 - (a) tenants,
 - (b) potential tenants, and
 - (c) local authorities.

206 Inquiry

- (1) If the regulator suspects that the affairs of a registered provider may have been mismanaged, the regulator may hold an inquiry.

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- (2) The regulator shall appoint one or more individuals to conduct the inquiry.
- (3) An individual is eligible for appointment only if the individual is independent of the regulator.
- (4) Individuals are independent of the regulator if they and the members of their family—
 - (a) are not members, employees or consultants of the regulator, and
 - (b) have not been members or employees of the regulator within the previous five years.
- (5) “Consultant” means an individual providing services to the regulator otherwise than by virtue of employment with the regulator or an appointment under this section.

207 Inquiry: supplemental

- (1) The individual or individuals conducting an inquiry (“the inquirer”) shall determine its procedure.
- (2) The inquirer may consider the affairs of a profit-making registered provider only so far as relating to social housing.
- (3) The inquirer may consider affairs of a body which at the material time was a subsidiary or associate of the registered provider.
- (4) The inquirer may make interim reports.
- (5) The inquirer shall make a final report on matters specified by the regulator.
- (6) The regulator may arrange for the publication of all or part of an interim or final report.
- (7) A local authority may contribute to the regulator’s expenses in connection with an inquiry.

208 Inquiry: evidence

- (1) The inquirer may by notice require a person to provide specified documents or information.
- (2) The notice may, in particular, require evidence to be given on oath (and the inquirer may administer oaths for that purpose).
- (3) The power under subsection (1) may be exercised only in relation to documents and information of a kind in respect of which the regulator can impose a requirement under section 107.
- (4) Sections 107(3) to (7) and 108 apply for the purposes of this section (with any necessary modifications).

209 Inquiry: charities

- (1) An inquiry may be held in relation to a registered charity only if it has received public assistance.
- (2) An inquiry in relation to a registered charity may only relate to its activities relating to housing.

- (3) If an inquiry is held in relation to a registered charity the regulator shall notify the Charity Commission.

210 Extraordinary audit

- (1) Where an inquiry in respect of a registered provider is being held, or has been held, under section 206, the regulator may require the registered provider to allow its accounts and balance sheet to be audited by a qualified auditor appointed by the regulator.
- (2) “Qualified auditor” means a person eligible for appointment as auditor of the registered provider’s ordinary accounts.
- (3) On completion of the audit, the auditor shall report to the regulator about such matters and in such form as the regulator determines.
- (4) The revenue accounts of a registered charity may be audited under this section only insofar as they relate to its housing activities.
- (5) The registered provider shall pay the costs of the audit (including the auditor’s remuneration).

Management and constitution

211 Non-profit providers only

This group of sections applies only to non-profit registered providers.

212 Industrial and provident society: change of rules

- (1) This section applies to an industrial and provident society.
- (2) An amendment of the society’s rules requires consent if it—
- (a) alters the society’s objects,
 - (b) makes provision about the distribution of assets to members, or
 - (c) enables the society to become, or cease to be, a subsidiary or associate of another body.
- (3) An amendment of the rules which requires consent is effective only if the regulator has first consented.
- (4) The regulator may not consent to an amendment which it thinks would turn the society into a profit-making organisation.
- (5) The society must notify the regulator of an amendment of the rules which does not require consent.
- (6) In relation to an amendment which requires consent the requirement in section 10(1) of the Industrial and Provident Societies Act 1965 (c. 12) (sending copies of amendment of rules to FSA) is satisfied only if the copies are accompanied by a copy of the regulator’s consent.
- (7) The preceding provisions of this section shall be treated as if they formed part of that Act as well as of this Act.

(8) The Secretary of State may by order amend the list in subsection (2).

213 Charity: change of objects

- (1) This section applies to a registered charity which is not a registered company.
- (2) An amendment of the charity's objects is effective only if the Charity Commission has first consented.
- (3) Before giving consent the Charity Commission must consult the regulator.

214 Companies: change of articles

- (1) This section applies to a registered company.
- (2) An amendment of the company's articles of association requires consent if it—
 - (a) alters the company's objects,
 - (b) makes provision about the distribution of assets to members, or
 - (c) enables the company to become, or cease to be, a subsidiary or associate of another body.
- (3) An amendment of the articles of association which requires consent is effective only if the regulator has first consented.
- (4) The regulator may not consent to an amendment which it thinks would turn the company into a profit-making organisation.
- (5) The company must notify the regulator—
 - (a) of an amendment of the articles of association which does not require consent, or
 - (b) of a change to its name or registered office.
- (6) In relation to an amendment which requires consent the requirement in section 30 of the Companies Act 2006 (c. 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator's consent.
- (7) The Secretary of State may by order amend the list in subsection (2).

Guidance

215 Use of intervention powers

- (1) The regulator shall publish—
 - (a) guidance about complaints to the regulator about the performance of registered providers, and
 - (b) guidance about how it uses and intends to use powers under this Chapter and Chapter 7.
- (2) Guidance under subsection (1)(a) must, in particular, specify—
 - (a) the procedure to be followed in making a complaint,
 - (b) the criteria used by the regulator in deciding whether to investigate a complaint, and

- (c) periods within which the regulator aims to inform complainants of the result of complaints.
- (3) The regulator shall have regard to guidance under this section.

216 Consultation

Before giving guidance under section 215 the regulator must consult—

- (a) one or more bodies appearing to it to represent the interests of registered providers,
- (b) one or more bodies appearing to it to represent the interests of tenants,
- (c) one or more bodies appearing to it to represent the interests of local housing authorities,
- (d) the Audit Commission for Local Authorities and the National Health Service in England, and
- (e) the HCA.

Managers of social housing

217 Accreditation

- (1) The regulator may operate a scheme for the purpose of accrediting persons who provide services in connection with the management of social housing.
- (2) The regulator may approve a scheme operated by someone else for that purpose.
- (3) Approval may be withdrawn.
- (4) A scheme may include provision about—
 - (a) eligibility for accreditation;
 - (b) standards to be met by accredited persons (which may operate by reference to standards under section 193);
 - (c) monitoring compliance;
 - (d) complaints against accredited persons;
 - (e) renewal, suspension and withdrawal of accreditation.
- (5) Accreditation, or continued accreditation, may be conditional on the payment of fees.
- (6) Standards under section 193 may refer to accreditation under this section.