

Briefing On Registration As a Registered Provider & Accessing Capital Funding From Homes England

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This briefing note is intended to be a simple guide to *registration as a Registered Provider* with the Regulator of Social Housing, which is a requirement for actually owning property which has been funded by Homes England or the GLA and is made available as affordable rented housing.

1. Access To Funding From Homes England

Homes England (HE) is the 'new' name for the organisation previously known as the Homes and Communities Agency. It allocates capital funding for a variety of government housing initiatives, including its *Affordable Homes Programme* and also the new *MHCLG £163m Community Housing Fund*.

*Details of **Phase 1** of the £163m Community Housing Fund were announced on 3rd July 2018 and dealt with revenue funding (which, being only revenue funding, does not require registration as a registered provider). Details of the **Phase 2** capital funding were announced in September 2018. (Grant rates in relation to capital allocations via the CHF programme are likely to be more generous than through the main Affordable Homes Programme). In February 2019 details of a matching CHF fund were announced for London, which is run by the GLA. To directly access CHF Phase 2 capital funding via Homes England, or the GLA, and to subsequently retain ownership of a rented property, it will be necessary to be a registered provider.*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721611/CHF_prospectus_-_FINAL.pdf

<https://www.gov.uk/government/news/phase-two-of-the-community-housing-fund-is-now-open>

Where an eligible organisation wishes to develop housing with HE funding, which it will not own once completed (for instance, where it will be sold), it may only be necessary to be registered as an Investment Partner, **but for organisations which wish to retain the ownership of any grant funded rented properties, it is also necessary to become a registered provider.** Access to grant funding in respect of properties which an organisation wishes to own, is a very common reason for organisations to seek registration as a registered provider.

However, for a Registered Provider to actually receive capital funding from HE, in order to develop housing, it's also necessary either:

- To be registered as an **Investment Partner** or
- To work through an **Investment Consortium** led by an Investment Partner (another Registered Provider), which then bids for funding on behalf of its members. An example of this is the Accent Housing Group Consortium which is led by Accent Housing (an Investment Partner in its own right) and has twelve registered provider member organisations.

Some organisations that have newly secured registration as a registered provider, are encouraged by Homes England to join an investment consortium, led by an organisation experienced in development and project management and to pay the consortium for the service. In the absence of an investment consortium, an alternative could be to work with another experienced individual registered provider.

2. Prerequisites for Registration As A Registered Provider

This section deals with who can get registered and what it costs. It's necessary to meet both the "eligibility requirements" and the "registration criteria". Read on.....

2.1 Meeting The Eligibility Requirement For Registration

First of all, *it's necessary to be an "eligible organisation"* in terms of having an eligible legal framework. The eligibility criteria set out in a publication from the RSH entitled "Guidance For New Entrants Applying For Registration As A Provider of Social Housing" January 2018.

<https://www.gov.uk/guidance/register-and-de-register-as-a-provider-of-social-housing> Section 1.9 of this Guidance states:

"Section 112 of the Housing & Regeneration Act 2008 sets out eligibility conditions that include the regulator's criteria that new entrants applying for voluntary registration must meet. Such applicants must first meet condition 1 of the statutory eligibility requirements (section 112(2) of the HRA 2008) (referred to in this guidance as the 'eligibility requirements')"

Section 112 of the Housing & Regeneration Act requires that applicants are English bodies and these include:

- a registered charity whose address for the purpose of registration by the Charity Commission is in England
- a registered society whose registered office for the purposes of the Co-operative and Community Benefit Societies Act 2014 is in England
- a registered company which has its registered office in England

Asset Locks: One important requirement to bear in mind is that the constitution must not include what is known as an 'asset lock'. This is not permitted, as a statutory asset lock interferes with the Regulator of Social Housing's over-arching intervention powers and once included in a constitution, a statutory asset lock cannot be removed.

Groups should be aware of this before incorporating as it could guide their choice of which legal format to choose and whether to include the asset lock.

When registering as a community benefit society its possible to avoid an asset lock since there are various options. , The National CLT Network model rules for CBSs have three options - non-charitable with asset lock, non-charitable without asset lock, and charitable with an asset lock.

However, even if you have incorporated as a non-charitable CBS with an asset lock, there are some options to alter your legal format become an RP:

1. Dissolve the current CBS and set up a new organisation without an asset lock.
 - the simplest option but is more suited to early stage groups without substantial assets.
2. Set up a new organisation without an asset lock as a subsidiary or arm of the original CBS and then transfer assets across.
 - more suited to more established groups who already have assets.

2.2 Meeting The Registration Criteria For Registration As A Registered Provider

Para 1.9 of the Guidance goes on to state that:

*"Applicants will be assessed against the registration criteria that the regulator has set (pursuant to section 112(3) of the HRA 2008) (referred to in this guidance as the 'registration criteria'). These criteria concern an applicant's **financial situation, its constitution and other management arrangements**". See 3 below.*

2.3 Registering A Subsidiary Organisation as A Registered Provider

There are some organisations that are well established and already embrace a range of community based activities, but want to get involved in housing provision. For them setting up a subsidiary housing organisation as a registered provider might be an option, where it is felt that it would be problematic or inappropriate to have all of the organisation's activities subject to regulation from the RSH.

An applicant which is associated with, or is part of, a larger organisation will need to show that it is not controlled by the larger organisation. The regulator's standards require that a subsidiary body operates both at board and operational level with an appropriate level of independence so that the provider remains sufficiently protected from the actions of other non-registered bodies within the group. This ensures that it can always meet the Regulator's standards which do not apply to the parent or other group members. Also, there are specific requirements about arrangements between a non-registered parent and subsidiaries, that a RP can seek the support of its parent body when necessary. While the RSH does not have present requirements relating to the number board members it's understood that it has previously insisted that at least two thirds of the applicant's board must be individuals who are not directors of the parent body and presumably this would apply to employees as well. Otherwise requirements to register with the RSH would be as with normal applications and applicants would need to show that they are compliant with the governance and financial viability standards for Registered Providers, in order to be allowed on to the Register.

2.4 The Cost Of Registration

A fee for registration was introduced in October 2017. This is currently £2,500 per application but is subject to review and may be increased. There is also an on-going fee for continuing registration which is currently £300 per year.

There is currently a Grants Programme, supported by the Community Housing Fund, which provides grants of up to £10k to cover the cost of registration, plus the cost of securing help and support from a community housing advisor in relation to dealing with the registration process itself.

<https://www.communityledhomes.org.uk/get-funding/becoming-registered-providerinvestment-partner>

3. The Registration Process: Applying To The Regulator of Social Housing For Registration As A Registered Provider

This section deals with the actual process of registration.

3.1 Registration As A Two Stage Process: Preliminary Stage & Detailed Stage

Stage 1. The Preliminary Application

Applicants must first complete a preliminary application form to enable the Regulator to assess whether the applicant is capable of being registered under the HRA 2008. Applicants must meet the eligibility requirements for registration set out in section 112(2) of the HRA 2008. That is to say:

- The applicant is an English Body
- The applicant is a provider or intended provider of housing
- The housing in question is social housing &
- The social housing is or will be in England

This two-stage process has been designed to ensure that applicants who cannot meet the eligibility requirements do not waste time completing the detailed application.

You can access the Preliminary Application Form & Guidance Document via this general link:
<https://www.gov.uk/guidance/register-and-de-register-as-a-provider-of-social-housing>

Stage 2. The Detailed Application

In the second stage of the process, applicants need *to provide information that will enable the regulator to determine whether they meet the registration criteria* established under section 112(3) of the HRA 2008. This is the detailed application process.

Applicants need to provide the information and evidence that, in their view, will satisfy the regulator that they meet the eligibility requirements and the registration criteria.

- meet the *Governance and Financial Viability Standard* at the point of registration and demonstrate it can sustain its financial viability on an ongoing basis
- have in place *management arrangements* that enable it to demonstrate the capacity to meet the other regulatory standards.

Until 2015, it was enough to be able to demonstrate that an applicant was working towards meeting the requirements relating to governance in the Governance and Financial viability standard, but post 2015 this was changed to needing to be fully compliant at the point of registration, which thus makes it more difficult to qualify at the point of application.

The amount of information and evidence provided is likely to reflect factors such as:

- size of the applicant,
- constitution and governance structure,
- experience in social housing and development,
- the nature of their funding and future plans &
- risks associated with their business models and equalities.

However, a variety of documentation will be expected which includes:

- a business plan setting out the applicant's objectives and how it intends to deliver them
- financial forecasts of income and expenditure, financial position (formerly balance sheet) and cash flow for at least the next five years
- an assessment of the key risks to the delivery of the financial plan and how it intends to manage those risks
- the applicant's previous two years' financial statements and most recent management accounts
- detailed evidence as to the actual and assumed levels of rent and rent increases and their relation to the statutory and regulatory requirements on registered providers in relation to rents
- where financial viability is dependent upon receipt of loan finance, evidence that the funds will be available for drawdown at the time that they are required and on terms consistent with the financial plan and risk assessment
(Ref P11 of Detailed Application)

You can access the Detailed Application form here and see exactly what is expected:

<https://www.gov.uk/guidance/register-and-de-register-as-a-provider-of-social-housing>

Completing this form and assembling the required accompanying documentation may be challenging and it may be necessary/advisable to secure assistance in doing so from someone who is familiar with the registration process.

3.2 How Long Will Registration Take?

The regulator aims to take a decision on the **preliminary application** within 15 working days of the application being received and should notify applicants if it is likely to take more than this to assess the preliminary application. However, rather than decide that an applicant has not met the eligibility requirements, the regulator would usually ask for more information within the 15 working days and it may take some time to answer these additional questions.

It's likely to take at least six months from the time that the regulator receives a complete **detailed application** to the point where the regulator has satisfied itself that the applicant has demonstrated whether it meets the registration criteria. However the length of time it may take to complete this process will vary according to the level of detail available, such as accounts and business plans, and the status and complexity of the applicant. The Regulator should notify applicants if it is likely to take more than this to process the detailed application.

Thus, the time taken will depend on the nature of the application submitted, especially whether it raises any novel issues for the regulator, the responsiveness of the applicant to requests for additional information and the number of other applications under consideration at the same time.

Unfortunately the Regulator does not provide advice or guidance to applicants trying to demonstrate they meet the registration requirements or faced with having to respond to requests for further information in relation to their application. Feedback from organisations seeking registration suggests that this can slow things down as it may take a number of attempts to satisfy the Regulator. For this reason, if you are considering registration, then by applying for one of the grants detailed in Section 8, it will be possible to also secure funding for support from a CLH advisor to help you through the process.

3.3 The Decision Process

Each application is assessed by the Registration Team, and the decision on whether an applicant meets both the eligibility requirements and the registration criteria and so should be registered, is usually taken by the Assistant Director Registrations Notifications & Small Providers (ADRNS).

If the recommendation to the ADRNS is for the application for registration to be refused, the draft paper containing that recommendation will be copied to the applicant.

The applicant will be given no less than 28 (calendar) days in which to make representations about a proposal to refuse an application. The representations should include any comments about factual inaccuracies and/or additional evidence demonstrating that the applicant meets the eligibility requirements or registration criteria.

In May 2019 the Regulator published new Guidance on Registration which can be found here; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/801982/Becoming_a_registered_provider.pdf

4. Getting An Allocation Of Funding From Homes England

As explained above, for a Registered Provider actually to receive funding from Homes England and also to go on to develop affordable rented housing which they will own, it's necessary also to either:

- Be an Investment Partner or
- To work through an Investment Consortium, led by an Investment Partner. An example of this is the Accent Housing Group Consortium which is led by Accent Housing (an Investment Partner in its own right) and has 12 member organisations.

In the case of newly registered organisations without the experience or the capacity to manage Home England's Investment Management System (IMS) and to develop housing on their own, they will most often be encouraged to join an investment consortium led by another registered organisation experienced in undertaking development or work with an experienced registered provider willing to provide a similar service.

If, however, HE feels that the organisation can receive funding directly and manage it unassisted, then it's necessary to also register as an Investment Partner in their own right.

For information, the Investment Partner Status Application Form can be found here: <https://www.gov.uk/government/publications/shared-ownership-and-affordable-homes-programme-2016-to-2021-qualification>

Notwithstanding the possible attraction of being an investment partner in your own right, membership of an investment consortium led by an experienced HE investment partner can be advantageous, especially in as much as managing an allocation of funding via the HE's IMS (Information Management System), can in itself be challenging! The HE can introduce newly registered organisations to an investment consortium.

5. Operational Considerations Relating To Being Registered

If you were to become a registered provider, then there are certain obligations that go with this, to which you may or may not want to be subjected. These should be taken into account:

5.1 Regulation Of Registered Providers

All registered providers are required to comply with the **Regulator's Regulatory Standards** which require that they comply with **a set of standards which are split into economic and consumer standards. All registered providers of any size must meet these standards and the regulator adopts a co-regulation approach** which places the responsibility for meeting the regulatory standards on the registered provider. The regulator will monitor and undertake periodic assessments to see how large providers are performing. However, for organisations with less than 1,000 units there is a "light touch" form of monitoring.

Regulatory standards include requirements to:

- reporting to residents on compliance with the standards
- reporting on the Value for Money standard in the annual accounts
- conducting a regular review of compliance with the governance and viability standard & certifying that compliance as part of the audited financial statements.

The Regulator sets seven key Standards for registered providers. The seven Standards are:

- **Economic**
 - *Governance and Financial Viability*
 - *Value for Money: VFM statement*
 - *Rents: compliance with existing requirements*
- **Consumer**
 - *Tenant Involvement and Empowerment: customer service*
 - *Home: quality of accommodation/repairs*
 - *Tenancy: tenure/allocations*
 - *Neighbourhood and Community: neighbourhood management/local area co-operation*

In terms of **Submissions to the Regulator** itself, these are limited to:

- **The annual statistical return (short form)** – details of key officers, stock owned and/or managed by type, by local authority. Compliance with the Decent Homes Standard, Average weekly rent and service charge and details of units voids at the end of the financial year.
<https://nrshplus.regulatorofsocialhousing.org.uk/>
- Submission of the **annual audited financial statements, auditor's management letter and audit findings report.**
- Compliance with reporting requirement in respect of any disposals of land or stock, if applicable.

The Regulator could be expected to take action if it felt that a provider was not complying with one of the economic standards, but it's understood that it would only get involved in respect of the consumer standards if there was a suggestion of serious detriment. That said, the Regulator has recently been getting involved increasingly over Health & Safety failings.

The Regulator does an annual report on consumer regulation which can be found here

<https://www.gov.uk/government/collections/consumer-regulation-review>

The 2017 Publication “**Regulating The Standards**” sets out in some detail the Regulator’s approach to ongoing regulation of registered providers.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638146/Regulating_the_Standards_July_2017.pdf

The Housing Ombudsman Scheme

As a registered provider you will be required to become a member of the Housing Ombudsman scheme, which adjudicates on complaints from tenants. There is an annual subscription, based on the size of your housing stock, which for small organisations will be a nominal amount.

<https://www.housing-ombudsman.org.uk/wp-content/uploads/2018/05/Housing-Ombudsman-Scheme-May-2018.pdf>

5.2 Rents

Rent Reductions of 1% Over Four Years: The Welfare Reform and Work Act 2016 imposes an obligation on social landlords (Registered Providers) to reduce rents by 1% per year from April 2016 for a four-year period. However, the Government has announced a new rents policy from 2020 which will allow annual increases linked to the Consumer Price Index CPI +1% for 5 years from 2020.

<https://www.gov.uk/government/news/2-billion-boost-for-affordable-housing-and-long-term-deal-for-social-rent>)

Meantime, fully mutual co-operatives and Community Land Trusts are not subject to the rent cut for the full four year period. <http://www.communitylandtrusts.org.uk/about-the-network/our-campaigns/past-campaigns--1-rent-cut> The exemption for Supported Housing, which was initially made, ended in April 2017.

If you’re considering getting registered then you need to take a view as to how any future directive from the RSH regarding rents might affect you and whether or not you’re prepared to give up your current freedom to set your own rents. You may also wish to consider registering a subsidiary to cover only part of your stock or any new build or additional units requiring grant.

5.3 The Right To Buy

Since 2015 the Government has signalled its intention to introduce the Right-To-Buy for tenants of registered providers, with the undertaking that they would be guaranteed funding to cover the cost of replacing housing that had been sold. However, it was omitted from the subsequent housing legislation, on the basis that housing associations would accept it on a voluntary basis – a deal offered by the National Housing Federation to Government. This meant that although it would not be mandatory, HAS would be expected not to decline selling properties to eligible tenants unless there were extenuating circumstances. To date only a couple of pilot schemes have taken place in the Midlands, but the Housing Green Paper published in August 2018 outlines the government’s intention to roll out a further £200m large scale pilot programme for the Voluntary Right To Buy among housing association tenants. It’s not clear how this will work.

Fully Mutual housing co-ops are explicitly exempted from the legislation. Community Land Trusts are not excluded but following campaigning by the Community Land Trust Network, they are referenced as being exempted in the National Housing Federation’s Voluntary Right To Buy offer to Government.

https://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/Editorial/RTB/Fed_RT_B_Offer.pdf

However, it remains to be seen what exactly will happen in terms of how VRtB is rolled out. Accordingly, when it comes to contemplating registration it's advisable to check on the current position vis a vis any new grant funded housing that will be developed with Homes England funding. Housing previously developed with other funding will not be affected by VRtB.

5.4 Bedroom Tax

The bedroom tax is a reduction in housing benefit for people housed in council or housing association accommodation, who are classed as occupying a property which has more bedrooms than they are deemed to require. Some guidance about how this policy works can be found here:

https://england.shelter.org.uk/housing_advice/housing_benefit/bedroom_tax_are_you_affected

Some social landlords have side stepped this by re-classifying properties as being "smaller" and having fewer bedrooms. <https://www.theguardian.com/housing-network/2013/may/03/housing-providers-beat-bedroom-tax>

5.5 Tenancies And Nominations

Tenancies: Registered Providers are expected to use Assured Tenancies and so this should not be problematic.

Nominations: Registered Providers have a duty to co-operate with local authorities in relation to accepting nominations (Housing Act 1996 Sections 170 & 213) if they request assistance. Where this is the case, it may be necessary to agree a Local Lettings Policy acceptable to the local authority, based perhaps on the premise that you are creating an additional supply of housing, which protects your ability to house your members/constituents.

6. Transfer of Stock Between Registered Providers

This might be a consideration in leading you to think about securing registration.

There are circumstances in which it's possible for properties to be transferred from one registered provider to another registered provider, without the need for a payment from one to the other. This could make registration attractive, were there the prospect of a number of properties being transferred from another registered provider in this way (for instance, in the case of surplus street properties which an association no longer wants). However, it would require another registered provider to be willing to otherwise forego receiving a capital receipt from a straightforward sale.

This can be a relatively uncomplicated transaction once a suitable valuation and deal has been agreed. Any outstanding liabilities/historic debt are then transferred along with the property to the receiving organisation and become a balance sheet item.

"Property transfers or disposals between providers are not deemed a Relevant Event for grant recovery purposes. Responsibility for grant will pass from the transferring provider to the recipient provider". Capital Funding Guide Sec 9 6.2.2.

(See HE Capital Funding Guide Chapter 9 Section 6 Transfers Between Providers)

<https://www.gov.uk/guidance/capital-funding-guide/8-procurement-and-scheme-issues>

7. Pros & Cons Of Registration - Summary

Pros:

- **Access To Capital Funding Via Grants:** Registration will provide access to capital grants making it easier to develop and own new housing. There is no set amount of grant per scheme/project and this will vary from time to time and possibly between regions: it could be as little as 25% or even in excess of 50% (more likely in the case of CHF capital funding). Bear in mind that either way, it will normally be necessary to raise the balance via loans.

- **Long term Ownership of Assets:** Ownership of assets, in the form of property, guarantees a long term revenue stream and opens up the possibility of raising loan finance against the asset base.

- **Transfer of Properties From Other Registered Providers:** It may be possible to persuade another registered provider to transfer stock without there being any payment.

Cons:

- **Regulation By The Regulator Of Social Housing:** Your activities/business will be subject to regulation by the Regulator of Social Housing and the terms and conditions may change from time to time. In the event of perceived failure on the part of a registered provider, the Regulator has extensive powers to intervene in the organisation.

- **Rent Setting:** The rents you charge to your tenants may be subject to variations specified by Homes England/RSH in grant agreements or the Regulator's standards.

- **Right To Buy:** If the right to buy is rolled out in the future for the tenants of registered providers, then it may apply to you, in relation to HE funded properties – subject to exemptions set out above. You'll need to check-up on the latest developments/ruling.

- **Bedroom Tax:** If this is likely to adversely affect your existing tenants then this may be a consideration.

- **Nominations:** The local authority may exercise its right to ask you to co-operate in accepting a percentage of nominations and in response you may need to agree a lettings policy with them which includes their accepting your choice of tenants.

- **Homes England Information Management System (IMS):** This is the challenging system that it used to manage project finance, which all RPs must use. However, as part of an investment consortium you can expect the lead partner to handle this.

8. Contacts At Homes England & Grants to Cover The Cost Of Registration

1. Contacts At Homes England

The Regulator of Social Housing does not give advice about whether to register or not, but it's understood that they are prepared to talk to people who are thinking about registration and have particular questions to ask.

Alternatively, if you're considering applying for registration and want to talk to Homes England about the prospects for securing funding via the Community Housing Fund or the Affordable Housing Programme, then it's possible to speak to a member of staff.

Following the announcement of the Fund in July 2018, Homes England have designated lead people within each region to discuss scheme proposals and bidders are invited to contact the area investment teams.

<u>Homes England Operating Area</u>	<u>Contact name</u>	<u>Email address</u>	<u>Telephone number</u>
Midlands	John Mather	John.Mather@homesengland.gov.uk	0115 852 6905
North East, Yorkshire and the Humber	Graham Brookfield	Graham.Brookfield@homesengland.gov.uk	0113 394 9369
North West	Craig Bradley	Craig.Bradley@homesengland.gov.uk	01925 644 819
South East	Francine Peck	Francine.Peck@homesengland.gov.uk	0122 337 4002
South West	Helen Bone	Helen.Bone@homesengland.gov.uk	0117 937 7224
London	Lev Kerimol	Lev@communityledhousing.london	0203096 7796

2.Grants To Cover The Cost of Registration

There is currently a Grants Programme, supported by the Community Housing Fund, which provides grants of up to £10k to cover the cost of registering as an RP, plus the cost of securing help and support from a community housing advisor in relation to dealing with the registration process itself.

Details can be found here: <https://www.communityledhomes.org.uk/get-funding/becoming-registered-providerinvestment-partner>

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