



# Deregistration criteria and associated guidance for registered social landlords

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## SECTION 1: DEREGISTRATION CRITERIA

### INTRODUCTION

Under section 4(4) of the Housing Act 1996 (the Act), a body registered as a social landlord, generally known as a housing association, may ask us to remove it from the register of social landlords.

Deregistration criteria were first introduced under Housing Corporation circular R4 38/96, using powers conferred by section 5(2) of the Act. The criteria applied to associations that owned or managed 50 homes or fewer and had received no more than £1m in capital public subsidy. Following a period of external consultation, we have now revised the deregistration criteria, increasing the present limit of 50 homes to 100 and the capital subsidy limit to £2.5m outstanding public subsidy. (See criterion 4 below.)

To apply for deregistration, associations should contact our RASA (Regulatory Arrangements for Small Associations) team in the relevant Corporation field office. When we receive such a request from an association, we will consider whether the following criteria have been met before we decide whether to remove it from the register. Applicants should note that while we will have regard to the criteria, we do have discretion to consider applications that fall outside them, **if there are very exceptional circumstances**. We also have discretion to reject an application, even if it meets the criteria. In all cases, the discretion lies with the Registration Committee, which has delegated authority from our Board to consider applications for deregistration.

If we decide not to remove an association from the register and it wishes to dispute the decision, it may appeal to the High Court (section 6(1) of the Act).

### REVISED CRITERIA

We will have regard to the following criteria when considering applications for deregistration. We are required to establish these criteria by section 5(2) of the Act. More details of the criteria are given in section 2 of these notes.

#### 1 Nature and scale of the association's operation

- (1) To identify the risks of deregistration and assess their effect on publicly funded assets and services to residents and tenants, we will consider the role, scope and constitution of an association. Only associations providing 100 or fewer homes\* (owned or managed) or, in the case of bodies providing shared housing, 100 or fewer bedspaces, will normally be considered for removal from the register.

\* In this context, 'homes' is taken to mean social housing units, which includes

homes for letting or low-cost home ownership and associated amenities and services, for people whose personal circumstances make it difficult for them to meet their housing needs in the open market. A more detailed description is included in our policy document, 'Regulating a Diverse Sector', available from our publications department.

- (2) Applicants must demonstrate that they have no current or planned development programme.
- (3) We will take into account whether an applicant will still be subject to other regulatory and/or management regimes, such as those of the Charity Commission or local authority inspection units, and to the requirements of the Financial Services Authority, the Chartered Institute of Housing, the Almshouse Association or the Abbeyfield Society, as appropriate.

## **2 Financial stability**

Applicants must demonstrate that they have operated on a sound and proper financial basis and will be able to continue to do so as a deregistered body. We will examine the latest audited accounts and ask the association to demonstrate its future viability by providing detailed financial projections for at least one year ahead. The association should also be able to demonstrate that it has adequate resources to maintain its housing stock in future and should identify any capital funding needs and sources of capital. For associations with over 50 homes, external auditors should validate the projections.

## **3 Residents' interests, services and consultation**

- (1) The association must demonstrate that it will continue to provide a good housing service, and that it has properly consulted its tenants and residents.
- (2) The association must fully inform tenants and residents about any change in their tenancy that may occur on deregistration, and the tenants and residents must agree to the change. It must take legal advice on this, and must confirm to us that, where applicable, it has fully informed tenants and residents of any statutory rights that will change on deregistration. Associations with more than 50 homes must demonstrate that the majority of their tenants and residents are content with the proposal to deregister.
- (3) The association must confirm its continued membership of an Independent Housing Ombudsman scheme in accordance with section 51 of the Act.

## **4 Public subsidy and safeguarding of public assets**

- (1) An applicant must normally have no more than £2.5m capital public subsidy outstanding when it applies for deregistration. 'Public subsidy' includes capital housing association grant (HAG) and social housing grant (SHG), from us or a local authority, and any other capital public sector subsidy for the purchase,

development or repair of housing. This includes other capital subsidy from a local authority, a new town corporation, a nationalised industry, the Crown, an urban development corporation, a housing action trust or a residuary body. The definition also includes funds generated from the Recycled Capital Grant Fund (RCGF), the Rent Surplus Fund (RSF) and Disposal Proceeds Fund (DPF).

- (2) The association must not have received or generated any such public subsidy within the three financial years before the date of applying for deregistration, except for any funding from the RCGF or RSF which it has applied towards major repairs projects.
- (3) The association need not repay housing association grant or social housing grant on deregistration but must repay it on any future event, such as a disposal, that gives rise to recovery of capital grant. These events are listed in our guidance on grant recovery, such as the Capital Funding guide.
- (4) If an association owns land or property at the time of its removal from the register of social landlords, section 9(6) of the Act continues to apply. This requires the association to obtain section 9 consent for the disposal of land or property, whether publicly funded or not.

## **5 Consulting other stakeholders**

- (1) We will consult local authorities in whose area the association operates and will take account of their views. We will also inform them of our decision.
- (2) The association should have repaid all loans in full, or obtained the agreement of lender(s) and demonstrated this to our satisfaction. (This includes the agreement of a lender that has purchased our loan portfolio.)
- (3) We will consult any public-sector body that has provided capital subsidy to the applicant, and take account of its views.

## **6 General performance**

The association must be viable, properly governed and managed and capable of complying with the Regulatory Code and guidance. If an association is under supervision because of serious failures in performance, we will wish to agree a course of action to tackle any deficiencies and to see this implemented, before we decide whether to deregister it.

### **Re-registration**

An association that has met the deregistration criteria and is removed from the register will normally be eligible to re-apply for registration after five years. Registration will not be automatic, and applicants will have to meet the registration criteria then current.

## SECTION 2: DEREGISTRATION CRITERIA AND COMMENTARY ON THEM

This section gives a commentary on the above criteria that aims to help associations interpret them.

### 1 NATURE AND SCALE OF THE ASSOCIATION'S OPERATIONS

#### Extract from the criteria

- (1) To identify the risks of deregistering an association and assess their significance in relation to publicly funded assets and services to residents and tenants, we will consider its role, scope and constitution. We will normally consider deregistering only those associations providing 100 or fewer homes (owned or managed) or, in the case of bodies providing shared housing, 100 or fewer bedspaces.

#### Commentary

- 1.1 The size of the association, measured in terms of residents affected and amount of publicly funded assets, and the nature of its principal operations, are key factors that will satisfy us that deregistration would pose minimal risks to publicly funded assets or residents' interests. The size limit of 100 or fewer homes or bedspaces (owned or managed) will normally be applied. It forms a threshold for eligibility for deregistration; if the applicant passes this threshold, we will look at the other criteria.

Investment properties that are owned by registered charities, let on commercial terms and not occupied by people in need, do not count towards the total number of homes. Nor do market-rented schemes, student accommodation or registered care homes. However, as deregistered bodies still need our consent under section 9 to any future disposals, they will need to give us details of these properties at application stage.

## SECTION 2: COMMENTARY

### Extract from the criteria

- (2) Associations must demonstrate that they have no current or planned development programme.

### Commentary

- 1.2 An association undertaking any new development will not normally be eligible for deregistration if public funds are contributing to the scheme costs. However, if the association is undertaking small scale, self-financed development, we may approve deregistration if the 100 homes/bedspaces limit is not breached.

### Extract from the criteria

- (3) We will take into account whether the association will still be subject to other regulatory or management regimes (or both), such as those of the Charity Commission or local authority inspection units, and to the requirements of the Financial Services Authority, the Chartered Institute of Housing, the Almshouse Association or the Abbeyfield Society, as appropriate.

### Commentary

- 1.3 A condition of deregistration will be that associations must comply with regulatory or management regimes (or both) operated by other statutory or trade bodies.
  - a) Regulatory requirements — deregistered associations will be expected to continue to comply with regulatory requirements such as completing annual returns and providing financial statements to the Charity Commission, the Financial Services Authority or Companies House, as appropriate. Some of the requirements arise

because the association must seek consent to constitutional changes and submit financial reports. For bodies providing supported housing, other agencies – such as local authority inspection units – may also monitor the services they provide.

- b) Management requirements — deregistered associations should comply with any good practice we have endorsed.

We will accept an agreement by an almshouse or Abbeyfield society seeking deregistration to continue to meet the management standards set by the Almshouse Association and the Abbeyfield Society, as we have previously endorsed these standards as good practice.

## 2 FINANCIAL STABILITY

### Extract from the criteria

The association must demonstrate that it has operated on a sound and proper financial basis and will be able to continue to do so as a deregistered body.

### Commentary

- 2.1 This criterion seeks to reduce the likelihood that a recently deregistered body will face insolvency, thus endangering residents' interests and publicly funded assets. We will wish to take into account the current financial strength of the association, and particularly whether or not it has adequate and appropriate systems of control. We will also look at the current financial position as shown in the audited annual accounts, and the future forecast as shown in its budget. The budget will need to demonstrate that the body will be able to continue operating as a going concern, and should assume current levels of activity will continue. For associations with more than 50 homes, the external auditor should validate the budget or other financial projections. In some cases, depending on the size of the association and the nature of the stock owned, we may request further financial projections.
- 2.2 We will need to be satisfied that the association has assessed likely repair and maintenance needs, and can meet them from future rental income or other identifiable resources. A good way for the association to meet this criterion will be to provide enough recent information on its stock condition to demonstrate that it has adequate reserves or can make provision out of its rental income.

- 2.3 Associations with over 50 homes should have undertaken a stock survey within the last two years. For almshouses registered with the Almshouse Association, the most recent five-yearly review will be acceptable for these purposes. For other associations with 50 homes or fewer, a stock condition survey undertaken within the previous five years will be sufficient. In all cases, the survey must be undertaken by an independent qualified surveyor.

Associations that need help with this requirement can obtain a stock condition survey template, based on a model recommended by the Almshouse Association, from the relevant RASA team.

Alternatively, they may wish to visit the House Condition Survey Software & Hcond website on [www.uwe.ac.uk/fbe/hcond](http://www.uwe.ac.uk/fbe/hcond), where they can view general information on condition surveys and approaches to stock condition.

### 3 RESIDENTS' INTERESTS, SERVICES AND CONSULTATION

#### Extract from the criteria

The association must demonstrate that it will continue to provide a good housing service, and that there has been proper consultation with tenants and residents.

#### Commentary

- 3.1 We will seek assurance that the level of housing service provided to residents will not be significantly reduced if deregistration is agreed. We will consider the applicant's previous record as a demonstration that it can provide a good service, and also consider any undertakings and statements it has made to residents during consultation.
- 3.2 We will expect associations to be able to demonstrate that they have fully consulted their residents and responded to feedback. For associations with more than 50 homes, we will require evidence that a majority of their residents are content with the proposal to deregister. To meet this requirement, applicants may consider appointing an external verifier such as their legal advisor, external auditor, a local authority representative, or some other independent person.
- 3.3 For associations with fewer than 50 homes, we will need to be satisfied that a consultation process has taken place that is appropriate to their size and the nature of their activities. We may require evidence, such as minutes of meetings with residents.
- 3.4 We will wish to examine the information that the association has issued to residents. We will consider the level and nature of its responses to the consultation, and any

action it proposes to take on residents' concerns. Where applicable, the information provided must clearly explain any loss of statutory rights due to deregistration. The association must inform residents whether it will be replacing these by contractual rights on similar terms. We will need to be satisfied that tenants whose tenancies are affected have agreed to the change in their tenancy status.

- 3.5 Residents should also be made aware that the Regulatory Code and guidance will not apply to an association that has been removed from the register. In addition, we will need to see the legal advice commissioned by the association that it has used as a basis for informing residents of any change to their status that may occur on deregistration.
- 3.6 Section 51 of and Schedule 2 to the Act came into force in April 1997. They oblige bodies seeking deregistration to confirm to us their membership of an Independent Housing Ombudsman scheme. Section 51 applies to any body that was at any time registered with us and that owns or manages publicly funded property.
- 3.7 Associations that apply voluntarily for removal from our register of social landlords must certify that they are, and will remain, members of an approved Independent Housing Ombudsman scheme.

#### 4 PUBLIC SUBSIDY AND SAFEGUARDING OF PUBLIC ASSETS

##### Extract from the criteria

The association will normally have no more than £2.5m outstanding capital public subsidy for the purchase, development or repair of social housing.

##### Commentary

- 4.1 An association should be able to confirm the total amount of capital public grant or other capital subsidy outstanding from public funds to buy, develop or repair housing. We will take into account capital public subsidy from all sources (as defined in Section 1 paragraph 4(1)). In addition to the types of grant and public subsidy specified in the criteria, we will take into account any subsidy in the form of land received from a local authority free or at below market value. Therefore ‘capital public subsidy’ includes any acquisition of land or property that would be called a ‘gratuitous benefit’ under section 25(5) of the Local Government Act 1988.
- 4.2 Revenue grants are excluded from ‘capital public subsidy’, as they generate value for money for the public purse, in the form of services provided until the grant ceases. These criteria are concerned with the type of capital grant that creates an ongoing public asset we have a duty to safeguard.
- 4.3 At deregistration, associations need not repay Housing Association Grant (HAG) or Social Housing Grant (SHG) that they have already received, but conditions attached to these grants continue to apply, unless specifically removed on deregistration. If associations are still using grant from sources outside the Recycled Capital Grant Fund (RCGF) to finance properties, they

need only repay it if they later dispose of the property, or some other relevant event occurs which gives rise to recovery. For details of the repayment of HAG and SHG on ‘relevant events’, please refer to the Capital Funding Guide, accessible via our website. The deregistering association must enter into a contractual obligation, to repay grant on a future relevant event.

- 4.4 Applicants must repay uncommitted balances on their RCGF. On deregistration they must also repay money received from VPG (Voluntary Purchase Grant) and RTA (Right to Acquire) sales, held in a Disposal Proceeds Fund, unless the funds have been committed.

‘Committed’ for this purpose refers to a contractual commitment, as defined in the guidance on RCGF in the Capital Funding Guide.

- 4.5 If an applicant has funds of less than £20,000 in its Rent Surplus Fund (RSF) Re-investment Fund, it need not repay the money on deregistration or future disposals. If the balance is over £20,000, the applicant should use the funds only for those works permitted by Circular F4–02/98.

##### Extract from the criteria

Where an association owns land or properties at the time of its removal from the register of social landlords, section 9(6) of the Act continues to apply. This requires the body to obtain section 9 consent for the disposal of land, whether this land was publicly funded or not.

##### Commentary

- 4.6 We will maintain a register of voluntary deregistrations that will include details of properties for which section 9 consent will

be required if the deregistered body wishes to dispose of them in future — that is, all the land and property that it owns at the time of deregistration. Associations that are removed from the register still need to obtain section 9 consent from us for the disposal of any such land, whether the land was publicly funded or not.

(The Land Registry places a restriction on the Titles of property and land owned by associations, so that any disposal requires our consent.)

## 5 CONSULTATION WITH OTHER STAKEHOLDERS INVOLVED

### Extract from the criteria

We will consult with the local authorities in whose area the association operates and will take account of their views. We will also inform those authorities of our decision.

### Commentary

- 5.1 We will consult local authorities in whose areas the association operates. Where relevant we will also seek the views of the appropriate housing, social services and health authorities. This is appropriate, as even small associations may provide a service to a specific client group who have little alternative provision in the area; the associations may therefore be strategically significant for the local authority. We have a duty to inform the relevant local authorities of any decision on deregistration.
- 5.2 We will also wish to consult other stakeholders who may have provided capital subsidy to the association seeking to deregister.

### Extract from the criteria

Associations should have repaid all their loans in full, or obtained the agreement of lender(s) and demonstrated this to our satisfaction. This includes the agreement of a lender that has purchased our loan portfolio.

### Commentary

- 5.3 We need confirmation that loans from public or private sector bodies have been

redeemed or that a lender agrees that the landlord can be removed from our register of social landlords, because the lender may have made the loans on the understanding that the landlord was a registered body. Therefore any change of status may breach loan covenants. We will wish to ensure that the association meets its obligations regarding loans and a lender does not object to the association being deregistered.

## 6 GENERAL PERFORMANCE

### Extract from the criteria

An applicant applying for deregistration, must be viable, properly governed and managed and capable of complying with the Regulatory Code and guidance.

### Commentary

- 6.1 This criterion seeks to establish, before possible deregistration, that on the evidence of recent performance the association is capable of providing adequate future services. It is therefore closely linked to criterion 3 and the concern to protect residents' interests. We will assess the association's current performance to ensure that it complies with the Regulatory Code and guidance. Where an association is under supervision because of serious failures in performance, we will wish to agree a course of action to tackle any deficiencies and to see this implemented, before deciding whether to remove the body from the register.
- 6.2 We do not intend to allow any association to deregister while it is classified as 'under supervision'. If the association does not fully meet our regulatory requirements, or if other serious regulatory concerns have not been resolved to our satisfaction, then the association may not be able to continue with deregistration, until it has dealt with any outstanding issues of concern.

## RE-REGISTRATION

### Extract from the criteria

A body that has met the deregistration criteria and is removed from the register will normally be eligible to re-apply for registration after five years. Registration will not be automatic, and applicants will have to meet the registration criteria then in force.

### Commentary

- 7.1 We will inform associations seeking removal from the register that they will have to re-register if they wish to be eligible for Corporation grants in the future. Re-registration will depend on being able to meet our registration criteria then in force. At the time it applies for deregistration, the body should be able to demonstrate that it has no need of, or intention of, applying for grants from us in the foreseeable future. We do not intend that bodies should be able to opt in and out of the regulatory regime according to their funding needs.

## SECTION 3

### SECTION 3: HOW TO APPLY FOR REMOVAL FROM THE REGISTER OF SOCIAL LANDLORDS

- 1 Before making a formal application, an association will need to carefully consider the deregistration criteria it will have to meet. The criteria and this associated guidance set out issues the applicant must address, and action it must take, before formally seeking deregistration. We advise making informal contact with our RASA team at the relevant field office at an early stage to discuss the criteria.
- 2 The RASA team will assess the application against the deregistration criteria and will ensure that all information requirements are met. All applications are submitted to the Registration Committee, which has delegated authority from our Board to consider whether to remove a body from the register. The Registration Committee also has discretion to consider applications that fall outside the criteria or to reject an application even if it meets the criteria.
- 3 If an association disputes our decision not to deregister it, it may appeal against the decision to the High Court, in accordance with section 6 of the Act.

## HOUSING CORPORATION OFFICES

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