



The regulatory framework for social housing in England from April 2010

The TSA's Consent to Disposals

TSA

**TENANT
SERVICES
AUTHORITY**

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Foreword

We are the regulator for Social Housing in England. In keeping with the recommendations expressed in the Cave Review and using the Housing and Regeneration Act 2008 as a platform, we have formulated a disposals framework aimed at safeguarding tenants' rights, public funds and the health of the sector, whilst reducing the administrative burden for registered providers.

This document records the outcome from our statutory consultation on consent to disposals within our regulatory framework for Social Housing providers in England. Our November 2009 Consultation Document TSA Consent to Disposals, was issued following our discussion paper published in May 2009 and targeted stakeholder engagement. We have also taken onboard comments stemming from our extensive process of engagement since our launch in December 2008, with tenants and providers from housing associations, councils, ALMOs and co-ops and other stakeholders.

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	Page
Foreword	3
Decision statement	5
Summary of key terms	7
Our approach to consent to disposals from April 2010	8
The General Consent 2010 under section 172 of the Housing and Regeneration Act 2008	10
Part I – the categories of disposal	11
Part II – general conditions applying to disposals	27
Part III – withholding access to the General Consent	28
Part IV – validity of General Consent	29
Schedule 1 – the meaning of terms used in the General Consent	30
The General Direction 2010 under section 176 of the Housing and Regeneration Act 2008	33
Schedule 1 – the meaning of terms used in the Direction	34
Unregistered Housing Associations General Consent 2010 made under section 9 of the Housing Associations Act 1985	36
Part I – the categories of disposal	36
Part II – general conditions applying to all disposals	38
Annex 1 - a summary of responses to the statutory consultation	40
Annex 2 - our commentary on responses	44

Decision statement

<p>TSA decision statement</p> <p>This sets out key information about the issues we have made decisions on, what effects we think these decisions could have, and who we have involved in reaching these decisions.</p>	
<p>If you have any queries about this document please contact:</p>	<p>Customer Service Team The Tenant Services Authority 1 Piccadilly Gardens Manchester M1 1RG</p> <p>Telephone: 0845 230 7000 Fax: 0113 233 7101 Email: enquiries@tsa.gsx.gov.uk</p>
<p>The main decisions of the TSA recorded in this document</p>	<p>Under the Housing and Regeneration Act 2008, the TSA has decided, following consultation to:</p> <ul style="list-style-type: none"> • give a General Consent under section 172 • give a general direction under section 176 to non profit providers only, releasing them from the obligation to notify the TSA of disposals other than Social Housing dwellings <p>Under the Housing Associations Act 1985:</p> <ul style="list-style-type: none"> • give a General Consent to unregistered housing associations to dispose of land built before 1974, except tenanted housing <p>This document should be read within the wider context of The Regulatory Framework for Social Housing In England from April 2010 (TSA, March 2010)</p>
<p>What it means for you</p>	<p>For tenants, landlords, lenders and other stakeholders who have an interest in the Social Housing sector, this document sets out the policies that will comprise the disposals framework from 1 April 2010.</p> <p>Under this framework it is only disposals by private registered providers that need consent from the TSA. Disposals by providers that are local authorities require the consent of CLG instead, unless the legislation exempts them.</p>
<p>Context for this Decision document</p>	<p>The Housing and Regeneration Act 2008 followed the 2007 Cave Review of Social Housing. The Cave Review recommended that restrictions on disposals and changes of</p>

	<p>use should be reviewed and relaxed in order to allow providers more easily to manage their stock in pursuit of objectives such as mixed communities. The review also recommended that some regulation should remain to ensure the continued supply of benefits from past public investment. This document sets out the TSA's policy on disposals.</p>
<p>Who has been consulted</p>	<p>The decisions in this document have been developed following a two stage consultation process.</p> <p>The first stage of engagement was our discussion paper on consents to disposals published in May 2009. We received 35 written responses and 52 more in response to our main discussion paper of June 2009, Building a New Regulatory Framework.</p> <p>The second stage was the publication in November 2009 of our statutory consultation document TSA consent to disposals. This set out our formal proposals on the disposals framework and included draft general consents. We received 26 responses. Non confidential responses are available from our website.</p> <p>The 2008 Act requires the TSA to consult a number of stakeholders or types of stakeholders before reaching decisions. The publications above comprise a significant consultation with everyone who has an interest in the disposals framework. The TSA is satisfied that its consultation processes have fulfilled our obligations.</p>
<p>Other versions of this document available</p>	<p>We can provide this document in large print, Braille and audio versions on request. Other language versions may also be available. These are available from our customer service team on 0845 230 7000.</p>

Summary of key terms

The following provides a summary of the main terms used in this document:

- The 2008 Act – the Housing and Regeneration Act 2008. This Act established a Regulator of Social Housing, described in section 78 as the Office for Tenants and Social Landlords. We call ourselves the Tenant Services Authority. The Act also established the Homes and Communities Agency (HCA) which is responsible for public investment in housing and regeneration
- TSA – the Tenant Services Authority. The new Regulator of Social Housing in England. Regulation was previously undertaken by the Housing Corporation in relation to housing associations and registered social landlords. The 2008 Act has changed the TSA's powers of consent and added consent functions previously performed by the Department for Communities and Local Government
- Social Housing – this includes low-cost rented housing, low-cost home ownership and most other housing owned by existing registered social landlords (Social Housing is defined in sections 68 to 77 of the 2008 Act). Social Housing that is not subject to regulatory standards may nevertheless require consent for its disposal. However, we may give a general consent to certain categories of disposal
- Provider – this means a private registered provider within the definition in the 2008 Act, both profit making and non profit. All RSLs registered with the TSA at 31 March 2010 will automatically become registered as non profit providers on 1 April 2010. Providers include bodies to be newly registered from 1 April 2010 onward. A provider in this statement excludes those who are local authorities, as their disposals do not require the consent of the TSA

Our approach to consent to disposals from April 2010

The general principles to be adopted for consent to disposals

We have had regard to our fundamental objectives when considering what general consents to issue, and will also have regard to them when considering policies and individual applications for consent. We will take account of the interests of the provider, its tenants, its key stakeholders and the impact on public funds.

Providers are registered, and receive grant, to provide affordable housing to meet housing need. The TSA wishes to see stock continuing to be used for the purpose intended and tenants remaining secure. Despite Social Housing being a long term investment with a high capital cost, we acknowledge that circumstances may arise in which providers need to dispose of Social Housing Dwellings out of the sector. We will therefore be open to considering the circumstances.

Where providers propose to dispose of Social Housing, the requirement to obtain consent gives the TSA an opportunity to look into the reasons for disposal and at what would happen to the tenants. Some disposals are routine, uncontentious or scrutinised in some other way: these are suitable for a general consent.

How we will use our powers of consent: general consents and policies for disposals

We will make as much use as possible of general consents to minimise interference and reduce administration costs for all parties, while bearing in mind the TSA's other objectives.

In considering proposed disposals, and policies for disposals, we will consider the reasons for disposal and will expect a provider to have consulted interested parties. These include in particular the strategic housing authority, the Homes and Communities Agency, when grant is involved, and, where tenanted stock is transferred, the tenants.

Principles underpinning our approach to using our powers of consent: what providers can expect from us

We will give consent as quickly as possible. We will approve policies for disposals as quickly as possible depending on the volume received.

If we think it appropriate to turn down an application, we will explain our reasons and allow a provider an opportunity to make representations before doing so. We may suggest changes to a proposal that would allow us to give consent.

The policy expressed in the general consents

More information will be given on the policy background in the guidance which is to be issued.

However, for information, it is noted that:

- Social Housing Dwellings will mean completed Dwellings, not Dwellings in the course of construction or land intended for Dwellings. Dwellings include shared accommodation
- all the categories of the previous general consent will remain, so far as they relate to Social Housing Dwellings, except for the one that allows disposal of non-grant funded Social Housing Dwellings of low value. From 1 April, these must be included in an approved policy for disposals or have individual consent
- the new general consent has been expanded to cover easements and sales on equity percentage arrangements. It will also allow charges to lenders, given by a non profit provider that has a letter of authorisation to use that category. Subject to further guidance, the intention is that small providers, not required to send in financial returns, and providers subject to some regulatory concern that might affect borrowing, would not receive a letter. They could, of course, apply for an individual consent, which would give TSA the opportunity to look at it more closely
- profit-making providers will be excluded from certain categories of the general consent but that will be kept under review

In keeping with our commitment to a collaborative relationship with providers, we shall review policy on disposals from time to time.

The Tenant Services Authority (TSA), the Regulator of Social Housing

The General Consent 2010 under section 172 of the Housing and Regeneration Act 2008 in respect of Disposals of Social Housing Dwellings by Private Registered Providers

The Office for Tenants and Social Landlords, referred to in the Housing and Regeneration Act 2008 (the Act) as the Regulator of Social Housing (the Regulator) and referred to in this General Consent as the Tenant Services Authority, in exercise of its powers under section 172 of the Act, consents to the disposal of a Social Housing Dwelling or of any interest in a Social Housing Dwelling by a Private Registered Provider under the categories of disposal listed at Part I below on the specific and general conditions and other terms set out in this General Consent.

Unless otherwise indicated, this General Consent applies equally to profit-making Private Registered Providers and non-profit Private Registered Providers.

Exclusions

If the Tenant Services Authority issues a notice in writing to a Private Registered Provider withdrawing its ability to use this General Consent in whole or as regards any one or more categories (or parts of categories) then this General Consent will not apply to the Private Registered Provider to the extent of such withdrawal.

This General Consent does not apply to former Private Registered Providers de-registered under sections 118 and 119 of the Act, former registered social landlords removed from the register of the Tenant Services Authority between 1 October 1996 and 31 March 2010 and former registered housing associations removed from the register of the Housing Corporation between 1 April 1975 and 30 September 1996.

Interpretation

Certain terms have the meaning given in schedule 1 below.

Effective date

This General Consent will come into effect on 1 April 2010.

Superseded consents

This General Consent supersedes the General Consent 2008 given under Housing Corporation seal reference 79207 on 1 February 2008 and the General Consent 1992

(Mortgage Rescue Schemes) given under Housing Corporation seal reference C23820 on 7 February 1992 in respect of all disposals on or after 1 April 2010.

Part I

The categories of disposal

Private Registered Providers may make disposals of Social Housing Dwellings described in each of the categories below subject to compliance with (a) the specific conditions described within the relevant category and (b) the general conditions in Part II (to the extent they are not disapplied or altered for the individual category).

Transfers of vacant Social Housing Dwellings within the Social Housing sector

Category 1

A non-profit Private Registered Provider may dispose of a vacant Social Housing Dwelling by transfer or lease to another non-profit Private Registered Provider.

Specific conditions

- This category is not available to a profit-making Private Registered Provider
- This category of consent excludes a disposal which, on its own or forming part of a larger transaction, reduces the number of Social Housing Dwellings of a Private Registered Provider by more than 50%
- A transfer or lease under this category of consent may be at any consideration agreed between the transferor and transferee (or lessor and lessee) Private Registered Providers so long as it does not exceed Best Consideration and general condition 3A is varied to that extent
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 2

A non-profit Private Registered Provider may dispose of a vacant Social Housing Dwelling by transfer or lease to a local authority which is a Registered Provider.

Category 3

A non-profit Private Registered Provider may dispose of a vacant Social Housing Dwelling by transfer or lease to a local authority when:

- the local authority has made a compulsory purchase order for that Social Housing Dwelling but that compulsory purchase order has not yet been confirmed
- the Social Housing Dwelling lies within the area covered by the compulsory purchase order
- the purpose of the disposal is substantially the same as that of the compulsory purchase order

Category 4

A non-profit Private Registered Provider may dispose of a vacant Social Housing Dwelling by transfer or lease to an Arm's-Length Management Organisation which is a Private Registered Provider.

Disposals of vacant Social Housing Dwellings out of the Social Housing sector

Category 5

A Private Registered Provider may dispose of a vacant Social Housing Dwelling in accordance with the terms of a policy for disposals submitted by the Private Registered Provider to the Tenant Services Authority and approved by the Tenant Services Authority.

Specific condition

- In addition to the certification required by general condition 5 in part II below, a provider shall certify to the person(s) to whom the disposal is made (or their solicitor) that the disposal is in accordance with the terms of a policy for disposals submitted by the Private Registered Provider to the Tenant Services Authority and approved by the Tenant Services Authority

Disposals by charge and other security interest to private finance providers

Category 6

A non-profit Private Registered Provider may grant a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures, or is given on terms that may in future secure, Private Finance Facilities in favour of the Private Registered Provider or one or more of its Group Members.

Specific conditions

For the avoidance of doubt, the conditions in this category apply in substitution for the general conditions in part II of this General Consent and therefore the general conditions in part II of this General Consent do not apply to this category.

1. This category is not available to a profit-making Private Registered Provider.
2. This category of consent is available only to a non-profit Private Registered Provider that has received a letter from the Tenant Services Authority authorising the non-profit Private Registered Provider to use this category of consent.
3. In relation to each grant of a Security Interest, not earlier than two Business Days before the Security Interest is entered into, a non-profit Private Registered Provider shall certify to the Private Finance Provider as follows:
 - (a) That it has a letter from the Tenant Services Authority (following an application made by the Private Registered Provider to the Tenant Services Authority) authorising it to use this category of the General Consent and that the authorisation has not been revoked.
 - (b) That the Private Registered Provider gave the following undertakings to the Tenant Services Authority when applying for a letter of authorisation to use this category of the General Consent:
 - (i) It will not on-lend the Private Finance Facilities other than to a Group Member.
 - (ii) Before entering into any agreement to on-lend Private Finance Facilities to:
 - a body which is not a Private Registered Provider and which is a Group Member
 - a profit making Private Registered Provider which is a Group Member

The disposing Private Registered Provider will obtain independent professional advice that the proposed agreement is on reasonable commercial terms for parties at arm's length.

- (iii) It will not on-lend the Private Finance Facilities to any Group Member which is a non profit Private Registered Provider that does not itself have a valid letter of authorisation from the Tenant Services Authority to use this category of the General Consent.
- (iv) Security Interests under this category will have the authority of the disposer's governing body and decisions will be properly minuted. Subject to its constitution, the governing body may delegate authority to a sub-committee or to two or more Officers, according to an appropriate scheme of delegation.

- (v) Security Interests under this category will only be made when within the Private Registered Provider's governing instrument (and applicable law including where relevant charity law).
- (vi) It will not make for purpose of this category of the General Consent any certificate to a Private Finance Provider which is incorrect, incomplete or misleading.
- (vii) It will enter in a register (which is to be the same register as that required by general condition six for recording information about other disposals) the following information:
 - that the grant of the Security Interest accords with the General Consent and that the conditions of the General Consent have been complied with
 - that this category of the General Consent applies;
 - the interest or title being disposed of
 - the Social Housing Dwelling(s) which are the subject of the Security Interest
 - the identity of the Private Finance Provider; and
 - the date of the Security Interest

and it will supply or make this information available to the Tenant Services Authority if requested.

- (viii) The Security Interest will not confer any benefit on any of the Private Registered Provider's Officers or employees or on any of their relatives or on any business trading for profit in which any such party has an interest.

- (c) That the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with, that this category of the General Consent applies to the disposal and that the conditions of the General Consent have been complied with.

- 4. If the Private Registered Provider is in breach of any of the undertakings to the Tenant Services Authority referred to in certification (b) or if any of the certificates in (a) (b) or (c) is incorrect the Private Finance Provider can nonetheless rely on certifications (a), (b) and (c) and the consent given to a particular disposal under this category will remain effective; **but** if the Tenant Services Authority publishes a notice of revocation of the consent given under this category and/or a notice withdrawing the letter of authorisation referred to in certification (a) above then (and until such time as the Tenant Services Authority issues a further notice to the Private Registered Provider reinstating its consent or that letter or a further letter of authorisation), the Private Finance Provider will not, after the date of publication, be able to rely on certifications (a), (b) and (c) above and any disposal after the date of that publication (and

prior to the issue of such further notice) will be void under section 175 of the Act. Such notice may be published on the Tenant Services Authority's web site.

5. It is a condition of consent under this category that a Dwelling subject to a Security Interest shall continue to be Social Housing and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act. The only exception to this condition is that a Dwelling will cease to be Social Housing when a Private Finance Provider exercises a right under the terms of a Security Interest to dispose or procure a disposal of that Dwelling and any period of moratorium in respect of the exercise of such right has expired. An exercise of a right under a Security Interest includes (for the purpose of this paragraph five of Category 6) an exercise of such right by the Private Finance Provider or by an insolvency practitioner appointed by it and includes any such exercise which is, under the terms of the Security Interest, treated as made by or on behalf of the Private Registered Provider.

Other legal charges

Category 7

A Private Registered Provider may grant a Security Interest over a Social Housing Dwelling to:

- (a) a developer or seller taking the Security Interest solely for the duration of the development or sales period; or
- (b) a registered charity with a financial interest in the development.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- General condition 3 of part II below does not apply, so there is no requirement to obtain Best Consideration or a Valuation

Category 8

A Private Registered Provider may, to enable the redevelopment of a Social Housing Dwelling, grant a Security Interest over that Social Housing Dwelling in favour of:

- (a) a local authority
- (b) an NHS body as defined by National Health Service Act 2006 section 28(6)
- (c) a government department or agency
- (d) the Homes and Communities Agency
- (e) a public regional or local agency for development or regeneration
- (f) the Big Lottery Fund

(g) Communities Scotland when financing schemes in England

Or any public body succeeding to the function of a body set out in (a) - (g) above.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- General condition 3 of part II below does not apply, so there is no requirement to obtain Best Consideration or a Valuation

Category 9

A Private Registered Provider may grant a rentcharge over a Social Housing Dwelling in order to secure payment of a service charge to the body providing services.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- General condition 3 of part II below does not apply, so there is no requirement to obtain Best Consideration or a Valuation

Disposals incidental to home ownership initiatives

Category 10

A Private Registered Provider may dispose of a Social Housing Dwelling to an individual where the Private Registered Provider simultaneously enters into an Equity Percentage Arrangement with the individual which is charged against the Social Housing Dwelling so disposed of.

Specific conditions

- The Dwelling was not occupied or made available for rent under a residential tenancy within two years prior to the disposal
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 11

A Private Registered Provider may transfer to another Private Registered Provider its interest as mortgagee or chargee in a Dwelling subject to Equity Percentage Arrangements.

Specific conditions

- A transfer under this category of the General Consent may be at any consideration agreed between the transferor and transferee Private Registered Providers so long as it does not exceed Best Consideration. General condition 3A is varied to that extent. The Dwelling shall continue to be Social Housing and remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 12

A Private Registered Provider may transfer to another Private Registered Provider its residual freehold interest in a Dwelling subject to Equity Percentage Arrangements.

Specific condition

- A transfer under this category of consent may be at any consideration agreed between the transferor and transferee Private Registered Providers so long as it does not exceed Best Consideration. General condition 3A is varied to that extent

Category 13

A Private Registered Provider may

- (a) dispose of a Social Housing Dwelling by grant of a shared ownership lease that is not an assured tenancy, including any such grant of a shared ownership lease under the Social HomeBuy Scheme; or
- (b) extend the term of a shared ownership lease that falls within paragraph (a) or grant a new shared ownership lease in place of such shared ownership lease.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- General Condition 3 applies except where the disposal is under the Social HomeBuy Scheme in which case a discount from Best Consideration may be given in accordance with the rules of that scheme and general condition 3A is varied to that extent

Category 14

A Private Registered Provider may extend the term of a lease, grant a new long lease or transfer its freehold or superior leasehold interest in a Dwelling to a person who had exercised their right under a Shared Ownership Lease to staircase to full ownership of that Dwelling and thereby end the shared ownership arrangements.

Where the value of the extension of a lease, grant of a new lease or transfer of the freehold is included in the Valuation provided for the staircasing to full ownership, no further valuation is required. General Condition 3B is varied to that extent.

Category 15

A Private Registered Provider may grant or extend a lease of a Social Housing Dwelling to a person aged 55 or over in a scheme designed for people in that age range.

Specific condition

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 16

A Private Registered Provider may dispose of its remaining interest in a Social Housing Dwelling let on a Shared Ownership Lease after the shared ownership leaseholder has failed to repay a loan as agreed and the lender has exercised its enforcement rights under its mortgage over the Dwelling.

Category 17

A Private Registered Provider may dispose of a Social Housing Dwelling to a tenant by outright sale under the Social HomeBuy Scheme.

Category 18

A Private Registered Provider may dispose of a Social Housing Dwelling by transfer or lease to its tenant who is in occupation of the Social Housing Dwelling in accordance with a policy for disposals to tenants submitted by the Private Registered Provider to the Tenant Services Authority and approved by the Tenant Services Authority.

This category includes disposals to tenants under policies for disposals to tenants submitted to and approved by the Tenant Services Authority or the Housing Corporation before 1 April 2010.

Grant of easements; surrender of rights and covenants over Social Housing Dwellings

Category 19

A Private Registered Provider may grant an easement over a Social Housing Dwelling.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- General condition 3 in part II shall apply to the consideration for an easement under this category with the following modifications:
 - (a) Where the value is less than £10,000, general condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.
 - (b) an easement may be granted at nil or nominal consideration when it is in favour of a body corporate or person responsible for supplying gas, water electricity, drainage, telephone and other communication services to the Private Registered Provider's own land or to adjacent land owned by another Private Registered Provider and general condition 3A of part II below is varied to that extent.
 - (c) an easement may be granted at nil or nominal consideration when it is in favour of another Private Registered Provider or a local authority either of which owns land adjacent to the Social Housing Dwelling or when it is in favour of a person with whom another Private Registered Provider or local authority has an agreement jointly to develop for Social Housing land adjacent to the Social Housing Dwelling **and** the sole purpose of the grant of the easement is the provision of the Social Housing. General condition 3A of part II below is varied to that extent.

Category 20

A Private Registered Provider may dispose of land that forms part of a Social Housing Dwelling by transfer or lease to a body corporate or person responsible for the supply of gas, water electricity, drainage, telephone or other communication services where the primary purpose is to supply such services to Social Housing Dwellings owned by a Private Registered Provider.

Specific conditions

- General condition 3 in part II shall apply to the consideration for a disposal under this category with the following modifications:

- (a) General condition 3A does not apply, so the disposal may be at nil or nominal consideration.
- (b) where the Private Registered Provider disposes of the land at greater than nil or nominal consideration, and the value is less than £10,000, general condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000.

Category 21

A Private Registered Provider may surrender a right to light in respect of a Social Housing Dwelling.

Specific conditions

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- Where the value is less than £10,000, general condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000

Category 22

A Private Registered Provider may surrender a right or easement over a Social Housing Dwelling owned by another Private Registered Provider and may release another Private Registered Provider from a covenant in respect of a Social Housing Dwelling owned by that other Private Registered Provider.

Specific condition

- Where the value is less than £10,000, general condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the value is less than £10,000

Options

Category 23

A Private Registered Provider may grant an option to allow a local authority which is a Registered Provider or another Private Registered Provider to buy back a Social Housing Dwelling originally given or sold by those bodies to the Private Registered Provider if a development of the Social Housing Dwelling does not keep to the terms of any

agreement with those bodies and the Private Registered Provider may subsequently dispose upon exercise of that option.

Specific condition

- General condition 3 of part II below does not apply, so there is no requirement to obtain Best Consideration or a Valuation

Category 24

A Private Registered Provider may grant an option in relation to the grant of an assured shorthold tenancy of a Social Housing Dwelling to a person under the Homes and Communities Agency's Rent to HomeBuy scheme to allow that tenant to take a Shared Ownership Lease of the Dwelling.

Specific conditions

- The dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act
- General condition 3 of part II below does not apply, so there is no requirement to obtain Best Consideration or a Valuation

Leases

Category 25

A Private Registered Provider may surrender its remaining interest in a Social Housing Dwelling to the freeholder or head leaseholder if this is necessary to either take the freehold or enter into a new longer lease of the same Social Housing Dwelling.

Specific condition

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 26

A Private Registered Provider may surrender a lease of a single Social Housing Dwelling (originally leased for use a Social Housing) to the freeholder provided there is no cost to the Provider, the lease has less than six months left to run and the Social Housing Dwelling is vacant.

Category 27

A Private Registered Provider may grant or extend a lease of a Social Housing Dwelling to a National Health Service body as defined in section 28(6) of the National Health Service Act 2006 if that body provided 100% of the funding for development or improvement of the Social Housing Dwelling.

Specific conditions

- General condition 3A in part II below does not apply, so the disposal may be at nil or nominal consideration
- General condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 28

Where a number of leaseholders of properties jointly own the freehold (or superior leasehold) interest in those properties and a Social Housing Dwelling owned by a Private Registered Provider is one of those properties, the Private Registered Provider may enter into a deed of transfer of the joint freehold (or superior leasehold) title when one of the other leaseholders has changed.

Specific conditions

- General condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 29

A Private Registered Provider may dispose of the freehold or superior leasehold reversionary interest in a Social Housing Dwelling which, since before 1 April 2010, has been let on a long private lease that is not a Shared Ownership Lease. For purposes of this category, (i) a Shared Ownership Lease is no longer a Shared Ownership Lease when the shared owner ended the shared ownership arrangements in the lease by staircasing to full ownership before 1 April 2010, and (ii) a long private lease may also include a long private lease granted on the exercise by a tenant of any statutory right to buy or right to acquire or any equivalent right granted under a policy operated by the Private Registered Provider or granted under the Social HomeBuy scheme, in each case before 1 April 2010; and (iii) such disposal may be either to the lessee or to a third party.

Specific condition

- This category of the General Consent is not available for leases in schemes designed for people aged 55 or over

Category 30

A Private Registered Provider may, where it owns both leasehold and freehold (or superior leasehold) titles to a Social Housing Dwelling, surrender or transfer the leasehold title if this is necessary to merge the titles.

Specific conditions

- General condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Category 31

A Private Registered Provider may extend the term of the lease or grant a new long lease of a Social Housing Dwelling let on a long lease that

- was in place on 1 April 2010 and/or
- is not an assured tenancy

Specific condition

- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Miscellaneous disposals

Category 32

A Private Registered Provider may dispose by lease of 25 years or less of an appurtenance belonging to, or usually enjoyed with, a Social Housing Dwelling where that appurtenance is a garage and where that lease is for continuing use as a garage.

Specific condition

- This category does not apply to land or buildings on the site of a former garage
- General condition 3 in part II shall not apply to the consideration under this category and the Private Registered Provider may charge whatever premium and rental it considers appropriate

Category 33

A Private Registered Provider may dispose by transfer or lease of land that forms part of a Social Housing Dwelling a highways authority or local authority for the provision of estate roads, road widening, visibility splays or for the provision of a recycling collection point serving the Private Registered Provider's Social Housing Dwellings either exclusively or jointly with adjacent land.

Specific condition

- General condition 3A of part II below does not apply, so the disposal may be at nil or nominal consideration
- General condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation

Category 34

A Private Registered Provider may dispose by transfer or lease of land that forms part of a garden, yard, outhouse or other appurtenance of a Social Housing Dwelling and that it considers surplus to requirements and does not have a residential tenant when the Best Consideration is less than £10,000. The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether the Best Consideration is less than £10,000.

Specific conditions

- The disposal should be for a single transaction only, and not be linked with any other disposal made under this General Consent
- General condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation

Category 35

A Private Registered Provider may dispose by transfer or lease of subsoil beneath a Social Housing Dwelling, with all costs paid by the transferee or lessee, to railway companies or their development companies who are digging tunnels.

A Private Registered Provider may dispose by transfer or lease of subsoil beneath a Social Housing Dwelling to the Secretary of State for Transport where the best compensation available is obtained in respect of the Private Registered Provider's expenses.

The minuted opinion of the board of the Private Registered Provider shall be conclusive as to whether all costs are paid by the transferee or lessee or whether the best compensation has been obtained.

Specific conditions

- General condition 3A of part II below does not apply
- General condition 3B of part II below does not apply, so there is no requirement to obtain a Valuation
- The Dwelling shall continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation and will remain so unless and until it ceases to be Social Housing under the provisions of sections 72 to 76 of the Act

Amendments after the Tenant Services Authority has given an individual consent

Category 36

A Private Registered Provider may self-certify an amendment to an individual consent to a disposal by transfer or lease because of:

- (a) an error or omission in a purchaser's name (not a change of purchaser) given on the consent.
- (b) an error or omission in the Private Registered Provider's name (not a change of identity) or registered address given on the consent. This does not permit the substitution of another Private Registered Provider, even within the same group structure.
- (c) inclusion or deletion of the name of a spouse, partner or another family member purchasing with the original purchaser named on the consent.

Except when category 38 below also applies, the payment or other legal consideration must not have altered.

Category 37

A Private Registered Provider may self-certify an amendment to an individual consent to a disposal by transfer, lease or charge made to correct an error in the postcode of one or more of the properties disposed of (not a change of property).

Disposals when an original consent has already been granted

Category 38

A Private Registered Provider may dispose of an individual vacant Social Housing Dwelling to a private individual in reliance upon the original consent referred to in subparagraph (a) below provided:

- (a) there is already an original consent under section 172 of the Act or under section 9 of the Housing Act 1996 in place for the disposal of the Social Housing Dwelling to a private individual.

- (b) no more than six months have elapsed between the date of the original consent and exchange of contracts.
- (c) the valuation made at the time of the original consent remains valid as at the date of exchange of contracts, or the original valuer has stated that the original valuation remains valid for a further period extending beyond the date of exchange of contracts, or the original valuer has given a Valuation that remains valid as at the date of exchange of contracts; and to that extent, General condition 3B of part II is varied.
- (d) the conditions attached to the original consent would not be breached by the proposed disposal.
- (e) the Social Housing Dwelling is not transferred together with any other properties.

Notwithstanding that the original consent may be in favour of another individual or at a different price no less than the amount of the valid valuation.

Category 39

A Private Registered Provider may dispose of an individual vacant Social Housing Dwelling at public auction in reliance upon the original consent referred to in subparagraph (a) below provided:

- (a) there is already an original consent under section 172 of the Act or under section 9 of the Housing Act 1996 in place for the disposal of the Social Housing Dwelling by way of sale at public auction.
- (b) no more than six months have elapsed between the date of the original consent and exchange of contracts.
- (c) the reserve price recommended at the time of the original consent in accordance with the requirements applicable to a disposal under section 9 of the Housing Act 1996 or in accordance with general condition 3B of part II below remains valid as at the date of exchange of contracts, or the original valuer has stated that the original reserve price remains valid for a further period extending beyond the date of exchange of contracts, or the original valuer has given a revised Valuation for the reserve price that remains valid as at the date of exchange of contracts and to that extent, general condition 3B of part II is varied.
- (d) the conditions attached to the original consent would not be breached by the proposed disposal.
- (e) the Social Housing Dwelling is not transferred together with any other properties.

Notwithstanding that the reserve price at auction may be less than that stated in the original consent.

Part II

General conditions applying to disposals

A Private Registered Provider may make a disposal under part I of this General Consent (for this purpose disregarding category 6) if all the relevant conditions below (and, where applicable, those specified in the relevant category, but subject to any changes to the following conditions specified in the relevant category) are met.

Conditions

1. The disposal shall be within the Private Registered Provider's governing instrument (and charity law where applicable).
2. If the disposal is of a Social Housing Dwelling subject to a legal charge or mortgage, the consent of the mortgagee to the disposal should be obtained before exchanging contracts, unless the charge or mortgage will be discharged from the disposal proceeds.
3.
 - A. Every disposal under this General Consent shall be at Best Consideration or in the case of an auction, the reserve price shall be the Best Consideration.
 - B. Every decision to dispose shall be supported by a Valuation carried out by a Valuer.
4. Each disposal shall have governing body authority and decisions shall be properly minuted. Subject to the Private Registered Provider's constitution, governing bodies may delegate authority to a sub-committee or two or more Officers for any of the categories in part I of this General Consent, according to an appropriate scheme of delegation.
5. Before any disposal takes place the Secretary (or equivalent) and one other authorised Officer of the Private Registered Provider shall certify to the disponent in a form specified by the Tenant Services Authority:
 - that the provisions of section 172 of the Housing and Regeneration Act 2008 have been complied with, that the disposal accords with the General Consent and that the conditions of the General Consent have been complied with
 - specifying the category of the General Consent that applies
 - identifying the interest or title being disposed of
 - identifying the Social Housing Dwelling(s) which are the subject of the disposal
6. A Private Registered Provider shall maintain a register of disposals made under the authority of the General Consent which contains:
 - a copy of the certification to the disponent with the same information as required in the certification to the disponent

- the identity of the disponent
- the date of the disposal
- if one was required, the valuation obtained in accordance with general condition 3B

and supply or make this available to the Tenant Services Authority if requested.

7. If the disposal is of a Social Housing Dwelling funded by Capital Grant or by Financial Assistance from the Homes and Communities Agency, the Private Registered Provider should consult the Homes and Communities Agency's Affordable Housing Capital Funding Guide to see whether the disposal is one that calls for the repayment or recycling of the grant or Financial Assistance. If so, the Private Registered Provider shall follow the timetables for reporting and recording published in the guide or any other relevant requirements.
8. The disposal shall not, in the opinion of the Private Registered Provider's governing body, materially affect the Private Registered Provider's assets that are available as security for its existing financial commitments.
9. Disposals shall not be made to or for the benefit of the Private Registered Provider's officers, employees, and their relatives, or businesses trading for profit in which those parties have an interest.

Part III

Withholding access to the General Consent

The Tenant Services Authority may withdraw its consent to a Private Registered Provider using all categories or one or more specific category of disposal permitted under the General Consent or restrict the use of one or more categories.

If the Tenant Services Authority withdraws or restricts the use of the General Consent, it will inform the Private Registered Provider in writing. For every further disposal for which but for the withdrawal or restriction this General Consent could have been used, until told otherwise, the Private Registered Provider will have to obtain specific prior consent.

The Tenant Services Authority may revoke or vary any or all categories of this General Consent where to do so would assist it in its statutory objectives.

Part IV

Validity of General Consent

This General Consent is effective in favour of any person lawfully claiming on behalf of the Private Registered Provider or dealing with the Private Registered Provider.

Part I of this General Consent states that disposals of Social Housing Dwellings described in the categories above may be made subject to compliance with the specific and general conditions relevant for that category. If the Private Registered Provider disposing of a Social Housing Dwelling makes a certification in accordance with condition five of part II of the General Consent and that certification is incorrect (including, without limitation, by reason of non fulfilment of a condition applicable to the consent), the consent given to that particular disposal will remain effective and a transferee will be able to rely on the certification; **but** if the Tenant Services Authority publishes a notice of withdrawal of the ability of the Private Registered Provider to use all or any categories (or part of categories) then (and until such time as the Tenant Services Authority issues a further notice to the Private Registered Provider reinstating its consent), the transferee will not, after the date of publication, be able to rely on the certification for such category or categories where the Private Registered Provider Registered Provider's ability to use that category has been withdrawn and any disposal after the date of that publication and prior to the issue of such further notice will be void under section 175 of the Act. Such notice may be published on the Tenant Services Authority's web site or, if the web site is not available, by such other method as the Tenant Services Authority puts in place.

Anthony McCann

A signatory duly authorised by the board of the Tenant Services Authority

Schedule 1

The meaning of terms used in the General Consent

Definitions of capitalised words and terms used within this General Consent unless otherwise stated are as set out below. In this General Consent, references to a particular statute or statutory instrument or part of either of them are to that statutory reference as it may have been extended modified amended re-enacted or replaced at the date upon which its construction is relevant for the purposes of this General Consent and not as originally enacted or as at the date of this General Consent and any statute or statutory instrument which it replaces. References to publications, such as to the Affordable Housing Capital Funding Guide, are to the edition or version at the date upon which its construction is relevant for the purposes of this General Consent.

'The Act' means the Housing and Regeneration Act 2008.

An 'Arm's Length Management Organisation' or 'ALMO' is a body corporate which is owned or controlled by a local authority and was established in order to manage and improve all or part of the local authority's housing stock; and which operates under the terms of a management agreement between the local authority and the ALMO approved under section 27 of the Housing Act 1985 by the Secretary of State for Communities and Local Government. It may not trade for profit.

'Assured Tenancy' has the meaning given by Section 1 of the Housing Act 1988.

'Best Consideration' means the best consideration that can reasonably be obtained.

"Business Day" means a day which is not a public holiday in England is not a Saturday or a Sunday.

'Capital Grant' means the grants listed in section 77(3) of the Act and grants under section 27A of the Housing Act 1996.

'Dwelling' has the meaning given in section 275 of the Act and includes shared housing and hostels.

Equity Percentage Arrangements have the meaning given in section 70(5) of the Act.

'Financial Assistance' means that provided by the Homes and Communities Agency under section 19 of the Act.

'Group Member' in relation to a Private Registered Provider means that body and its subsidiaries and associates (each as defined in section 271 of the Act) and includes those subsidiaries and associates whether or not they are Private Registered Providers.

'Low Cost Rental Accommodation' has the meaning given in section 69 of the Act

'Low Cost Home Ownership Accommodation' has the meaning given in section 70 of the Act

'Officer' has the meaning given in section 270 of the Act and therefore means:

- for a registered charity which is not a registered company – a trustee, secretary or treasurer
- for an Industrial or Provident Society - includes any treasurer, secretary, member of the committee, manager or servant of the society, including a person co-opted to serve on the society's committee, other than a servant appointed by the society's committee and does not include an auditor
- for a registered company - includes a director, manager or a secretary

'Prior Dwelling' is land to which sections 172 to 175 of the Act have applied but which has ceased to be a Dwelling or where the use of the land has changed, in either case in the manner set out in section 187 of the Act.

'Private Finance Facilities' means arrangements for any of (i) lending money, including term loan, standby loan, revolving loan or any other lending facilities and including overdraft facilities and unsecured facilities; and (ii) interest rate hedging including arrangements embedded within loan agreements or those documented separately; and (iii) the provision of other facilities, including loan notes, loan stock, performance bonds, guarantees, indemnities and letters of credit to the extent the same relate to arrangements within (i) (ii) or (iv) and (iv) issuance of loan notes, loan stock and bonds.

'Private Finance Provider' means each person or persons (and any transferee or assignee of any such person) providing Private Finance Facilities including each original and new lender under a loan facility and any arranger, agent, trustee, security agent or security trustee acting on behalf of such person or persons (and any replacement or successor arranger, agent, trustee, security agent or security trustee) together with each beneficiary at any time under any such agency or trustee arrangements.

'Private Registered Provider' has the meaning given in section 80(3) of the Act which means (for ease of reference) that none of the following are Private Registered Providers:

- a local authority
- a former Private Registered Provider which has been de-registered under the provisions of sections 118 or 119 of the Act
- a registered social landlord removed from the registers of the Housing Corporation and the Tenant Services Authority before 1 April 2010
- a housing association removed from the register of the Housing Corporation before 1 April 2010

Profit-making and non-profit Private Registered Providers are those organisations so designated under section 115 of the Act on the register of the Tenant Services Authority.

'Rent to HomeBuy' means the scheme operated by the Homes and Communities Agency under which a dwelling is granted to a person on an assured shorthold tenancy in the expectation that the person, if they continue to satisfy qualifying criteria, will subsequently take a Shared Ownership Lease of the Dwelling. The scheme is further described in the Homes and Communities Agency's Affordable Housing Capital Funding Guide.

'Security Interest' means any mortgage, pledge, lien, charge, security assignment, hypothecation or other legal or equitable security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect and includes a Security Interest created over the benefit of another Security Interest.

'Shared Ownership Lease' means a lease of the type described in section 70(4) of the Act and includes such a lease whether granted before, on or after 1 April 2010.

'Social HomeBuy Scheme' is a scheme approved by the Homes and Communities Agency (HCA) and described in the HCA's Affordable Housing Capital Funding Guide under which Private Registered Providers approved by the HCA may dispose of Dwellings to their tenants at a discount funded by grant or other financial assistance from the HCA.

'Social Housing' has the meaning given in sections 68 and 77 of the Act.

"Social Housing Dwelling" means a Dwelling which is Social Housing and includes a Prior Dwelling.

'Valuation' means a valuation carried out by a Valuer exercising their independent judgement on the basis of the Royal Institution of Chartered Surveyors Valuation Standards (the Red Book) using the version current at the date of the Valuation. This valuation needs to be dated three months or less before the contract is exchanged, or completion if earlier, or any such other period as the Tenant Services Authority may specify.

'Valuer' means:

1. a professionally qualified valuer who is a member or fellow of the Royal Institution of Chartered Surveyors or any successor body or bodies thereof and (following commencement of RICS proposals for a regulatory monitoring framework for valuations) means such a Valuer who operates/and/is regulated under that framework; and
2. who is not employed by, or acting on behalf of and is not a member of the family of, the person or organisation selling or transferring or purchasing the Social Housing Dwelling being valued; save that where the transferee is a local authority, that authority's District or Borough Valuer may provide the Valuation and the requirement of this section 2 will not apply.

The Tenant Services Authority (TSA), the regulator of Social Housing

The General Direction 2010 under section 176 of the Housing and Regeneration Act 2008 in respect of notification of disposals of land by non-profit Private Registered Providers

Preamble

Section 176(1) of the Housing and Regeneration Act 2008 (the Act) requires a non-profit Private Registered Provider to notify, as soon as reasonably practicable, the TSA of a disposal of Land other than a Social Housing Dwelling.

Section 176(2) of the Act enables the TSA to give a direction dispensing with the notification requirement.

Section 176(3) provides that such a direction may be general or specific.

General Direction

The Office for Tenants and Social Landlords, referred to in the Housing and Regeneration Act 2008 (the Act) as the Regulator of Social Housing (the Regulator) and referred to in this General Direction as the Tenant Services Authority (TSA), in exercise of its powers under section 176(2) of the Act gives this General Direction that non-profit Private Registered Providers are not required to notify the TSA under section 176(1) of the Act of a disposal of Land other than a Dwelling that is Social Housing.

Effective date

This General Direction has effect from 1 April 2010 and shall last until it is cancelled or superseded by a new direction or directions. The TSA reserves the right to cancel or replace this direction, and require notification in accordance with section 176(1) of the Act, at any time and on such terms as it sees fit.

Anthony McCann

A signatory duly authorised by the board of the Regulator of Social Housing

Schedule 1

The meaning of terms used in the Direction

Definitions of capitalised words and terms used within this Direction unless otherwise stated are as set out below. In this general Direction references to a particular statute or statutory instrument or part of either of them are to that statutory reference as it may have been extended modified amended re-enacted or replaced at the date upon which its construction is relevant for the purposes of this consent and not as originally enacted or as at the date of this consent.

'Disposal' has the meaning given in section 273 of the Act.

'Dwelling' has the meaning given in section 275 of the Act and includes shared housing and hostels.

'Land' includes all land, buildings, individual flats, blocks of flats and interests in land.

'Prior Dwelling' is land to which sections 172 to 175 of the Act have applied but which has ceased to be a Dwelling or where the use of the land has changed, in either case in the manner set out in section 187 of the Act.

'Private Registered Provider' is a body registered with TSA under section 111 of the Act that is not a local authority. A non-profit Private Registered Provider is one so designated in the register of the TSA under section 115 of the Act.

'Social Housing' has the meaning given in sections 68 and 77 of the Act.

"Social Housing Dwelling" means a Dwelling which is Social Housing and includes a Prior Dwelling.

Explanatory note

Under previous legislation, registered social landlords had required the consent of the Tenant Services Authority for disposal of any land. The Housing and Regeneration Act 2008:

- (a) Classified all registered social landlords as non-profit Private Registered Providers.
- (b) Restricted the consent requirement to disposals of Social Housing Dwellings only.
- (c) Gave the TSA a discretionary power to ask to be notified of disposals of other land by non-profit Private Registered Providers.

This requirement for notification was introduced as a potential measure that might assist financial regulation, one of the TSA's statutory objectives. However, the TSA has an additional statutory objective of minimising regulatory interference. In balancing these objectives, the TSA has decided not to call for these notifications in any circumstances, for the time being. However, the TSA will keep this under review and may call for some notifications if circumstances change.

The Tenant Services Authority (TSA), the Regulator of Social Housing

The Unregistered Housing Associations General Consent 2010 made under section 9 of the Housing Associations Act 1985

Order

The Office for Tenants and Social Landlords, referred to in the Housing and Regeneration Act 2008 (the Act) as the Regulator of Social Housing (the Regulator) and referred to in this General Direction as the Tenant Services Authority (TSA), exercising its powers under section 9 of the Housing Associations Act 1985, as amended by paragraph 9 of schedule 9 to the Housing and Regeneration Act 2008, consents to the disposal of Grant-Aided Land (hereafter 'Land') or the disposal of any interest in Land by an unregistered housing association ('an Association') under the categories of disposal listed at Part I below on the Specific and General conditions and other terms set out in this General Consent.

Exclusion

This consent does not apply to Associations that are Co-ownership Societies or Co-ownership Associations.

Interpretation

Certain terms have the meaning given in schedule 1.

Commencement

This consent will come into effect on 1 April 2010.

Part I

The categories of disposal

Category 1

An Association may grant an easement on any Land.

Category 2

An Association may dispose by transfer, lease or charge of any Land that is not, nor ever has been, the site of Housing Accommodation.

Specific condition

- Where there remains at the time of disposal an outstanding balance of any loan given in respect of the Land under the powers referred to in paragraph 3 of schedule 1 to the Housing Associations Act 1985, the Association repays that balance immediately upon disposal, irrespective of the amount of proceeds of disposal

Category 3

An Association may dispose by transfer, lease or charge of Land that is Housing Accommodation, or on which once stood Housing Accommodation.

Specific conditions

- Where the Land currently forms Housing Accommodation, except when the disposal is a charge made to secure finance, the Housing Accommodation is vacant
- Where there remains at the time of disposal an outstanding balance of any loan given in respect of the Land under the powers referred to in paragraph 3 of schedule 1 to the Housing Associations Act 1985, the Association repays that balance immediately upon disposal, irrespective of the amount of proceeds of disposal

Category 4

An Association may dispose of the freehold or superior leasehold reversionary interest in Land that is Housing Accommodation, except where that Housing Accommodation comprises a scheme designed for people aged 55 or over.

Category 5

An Association may transfer or lease Land that is a Dwelling to a sitting tenant.

Specific conditions

- Where disposal is at a discount, the amount of the discount and the terms on which the discount is given are no more favourable than those available under the statutory Right to Buy
- Where there remains at the time of disposal an outstanding balance of any loan given in respect of the Land under the powers referred to in paragraph 3 of schedule 1 to the Housing Associations Act 1985, the Association repays that balance immediately upon disposal, irrespective of the amount of proceeds of disposal

Category 6

An Association may extend a long lease or grant a new long lease by agreement with the leaseholder.

Part II

General condition applying to all disposals

Associations disposing of Land under the terms of this consent shall supply the disponent with a certificate signed on behalf of the proprietor by its secretary (or by two trustees, if a charitable trust) or its solicitor or licensed conveyancer that the provisions of section 9 of the Housing Associations Act 1985 have been complied with.

Anthony McCann

A signatory duly authorised by the board of the Regulator of Social Housing

Schedule 1

Definition of capitalised words and terms used within this consent unless otherwise stated are as set out below. In this consent references to a particular statute or statutory instrument or part of either of them are to that statutory reference as it may have been extended modified amended re-enacted or replaced at the date upon which its construction is relevant for the purposes of this consent and not as originally enacted or as at the date of this consent.

'Co-ownership Society' or 'Co-ownership Association' is a fully mutual housing co-operative where there is exclusive identity between tenants and members and where those members are eligible for equity participation (in the form of a cash payment) when they terminate their tenancy after the minimum qualifying period and leave the society or association.

'Dwelling' has the meaning given in section 275 of the Housing and Regeneration Act 2008 – (a) a house, flat or other building or part of a building occupied or intended to be occupied as a separate dwelling; and (b) including any garden, yard, outhouse, or other appurtenance belonging to, or usually enjoyed with, the dwelling.

'Grant-Aided Land' has the meaning given in schedule 1 of the Housing Associations Act 1985. It will include all land, buildings, individual flats, blocks of flats and interests in land.

'Housing Accommodation' includes Dwellings and buildings occupied as shared housing, such as hostels and lodging houses.

'Right to Buy' is that right given to tenants in part V of the Housing Act 1985 as subsequently amended.

'Unregistered Housing Association' is a body satisfying the definition in section 1(1) of the Housing Associations Act 1985 which has never been registered with the Housing Corporation or the TSA.

Explanatory note

This general consent is for housing associations that have never been registered with either the Housing Corporation or the Tenant Services Authority (TSA, but referred to above by its formal name, the Office for Tenants and Social Landlords).

Its scope is further restricted to those unregistered housing associations who either repaid a public loan or received an annual subsidy to help with their loan repayments at any time after 24 January 1974. The loans or subsidies referred to are those given under miscellaneous legislation that applied, up to 1975, to assist the provision of low cost housing.

The TSA believes that, in England, all those annual subsidies have now ended but some long term loans may remain outstanding. There remains, nevertheless, an obligation on these unregistered associations to obtain the TSA's consent to any disposal of the publicly assisted land, together with the housing or communal facilities constructed on it.

The TSA has no power to regulate these housing associations, other than in giving consent to disposals. The TSA has simplified these requirements by issuing this general consent, leaving it to consider individually applications for consent to dispose of tenanted dwellings.

End

Annex 1

A summary of the responses to the statutory consultation

1. The TSA's interpretation of the terms "disposal", "Social Housing" and "Dwelling" for purposes of identifying which disposals will need consent.

Respondents made the following observations:

Under another interpretation of the term "made available", a Dwelling could be regarded as being Social Housing before it was first sold or let into Social Housing, in which case a disposal at that earlier point would need consent.

The TSA should consider whether its interpretation of a Dwelling could be extended to include, as well as completed Dwellings, Dwellings under construction or sites acquired for the construction of Social Housing.

As the site of a former Social Housing Dwelling needs consent, cautious purchasers would be tempted to seek individual consent if they cannot be certain that land has never been used for Social Housing in the past.

2. A provider should carry out adequate and appropriate consultation with tenants before seeking consent to transfer to another provider.

Respondents representing tenants preferred consultation to take place before any programmes of disposals, not just tenanted ones, and that disposals should be the last resort. Proposals to merge or transfer stock between landlords should be subject to a positive tenant ballot.

3. Providers should consult local authorities about disposals in the same way as at present.

The TSA should consult the local authority about disposals.

Providers should consult local authorities about transfers between providers.

Disposals should not proceed while there was an unresolved objection from a local authority, or when there were objections of a particular type which were important to local authorities. It is disappointing that the TSA does not offer to help find a solution in such cases. It is not clear what should happen when there is an unresolved objection.

Providers should not receive consent to dispose unless they have properly considered alternatives such as transfers within the sector or resolving the need for disposal by doing the necessary repairs or tackling the conditions that made the property difficult to let.

Local authorities expect their strategic housing role to be duly acknowledged in procedures. Registered providers have a duty to co-operate and, in some areas, local

authorities are almost completely reliant on registered providers to implement their housing strategy. Providers should be aware that uncontrolled disposals of poor quality stock could blight an area, possibly frustrating a local authority's strategies. Auctions are the worst way to arrange disposals.

For there to be meaningful consultation about disposals, registered providers need to allow local authorities time to consider proposals and to supply local authorities with adequate information about the disposal. However, local authorities should be prepared to reply by a deadline.

Tenants' representatives supported providers and local authorities working together on disposals.

Providers should be allowed to dispose of a small number of properties each year without reference to the local authority.

4. There should be a new category of general consent for charges given to raise private finance, access to which would be by letter of authorisation from TSA. A provider using this category would have to make certain certifications to the lender. The category would not be available to profit making providers.

RSLs welcomed this but lenders saw two difficulties. First, as TSA intends to be selective about which providers it authorises to use this category of consent, and could subsequently withdraw the letter of authorisation if circumstances changed, lenders could not be certain that a letter was valid. They suggested a public register of providers who held valid letters. The second concern was that if certifications made to the lender turned out to be false, that might invalidate the consent.

Related to this was the difficulty of identifying the point at which a provider becomes subject to intervention or enforcement, as the consultation draft bars such providers from using the general consent.

5. A new general consent should include virtually all the categories in the existing general consent except for any that do not apply to Social Housing Dwellings.

This means that sales by providers under equity percentage arrangements would need consent.

The consent to transfer vacant stock to ALMOs should be restricted to those ALMOs registered with TSA.

There should be a general consent to dispose of grant funded care homes. Although the Act requires consent, these homes are regulated by the Care Quality Commission.

6. Providers should begin to make use of the TSA's power to give consent by reference to a policy for disposals. We added an annex of factors that a provider and the TSA might consider in preparing and approving such policies.

This prompted several responses, all in favour, but often asking for more information about how obtaining agreement to such a policy might work in practice.

7. Discounts offered on voluntary sales to sitting tenants should not exceed those available under the Right to Buy.

There were few comments on this and no objections.

8. A proposal to give a general dispensation under section 176 of the Act. This would remove the requirement for non profit providers to notify the TSA, after the event, of disposals of land other than Social Housing dwellings.

This was welcomed by providers.

9. For housing associations and registered social landlords removed from the registers of the Housing Corporation and the TSA before 1 April 2010, to give a general consent to disposals of any land held at the date of removal that is not a Social Housing Dwelling (under section 9 of the Housing Act 1996).

No one commented but this consent is no longer necessary. The transitional arrangements for introducing the 2008 Act have deemed that these former registered bodies shall be treated as if they were former registered providers, ie as if the TSA had removed them from the register after 1 April 2010. This means that they still need consent to dispose of land held at the point of de-registration, but only when the land is a Social Housing Dwelling or the site of a former Social Housing Dwelling.

No one raised any objection to the following proposals:

10. To exclude profit making providers from certain categories of the general consent, with this to be kept under review.
11. To give a general consent to disposals by unregistered housing associations of any publicly funded land that is not a Social Housing Dwelling (section 9(1A) of the Housing Associations Act 1985).
12. To give a general consent to the grant of easements.
13. Suggestions received for additional categories of general consent.

The general consent should include shared ownership trusts.

Consider a general consent for grant funded care homes.

14. Other comments received

Where the disposal is of an Almshouse, the TSA should consult the Charity Commission and aim to keep the property within the Almshouse movement.

Has the Land Registry been contacted about placing restrictions on title, when the land is not a Social Housing Dwelling?

Annex 2

Our commentary on responses

1. Our interpretation of the terms “disposal”, “Social Housing” and “Dwelling” for purposes of identifying which disposals will need consent.

We agree that a Dwelling offered for sale or to let is being made available within the meaning of the Act. We have therefore extended the general consent to cover sales by providers of new equity percentage homes, such as under the HomeBuy Direct programme. Additionally, we have given general consent to transfer or “port” equity loans between providers and to transfer freehold reversions of equity percentage schemes between providers.

We reviewed our interpretation of whether a Dwelling could include Dwellings under construction, or at earlier stages if planning. However, we remain of the view that the requirement for consent applies only to Social Housing Dwellings that are complete and available for occupation. We will put this in guidance.

With regard to the former use of land, a lack of knowledge of the previous use of land may become a problem in the future. The TSA will use its general power to give guidance that a purchaser can rely on a certificate given by a provider about the land’s previous use.

2. Providers should carry out adequate and appropriate consultation with tenants before seeking consent to transfer to another provider.

We believe that tenants should be consulted about changes of landlord but not necessarily about disposals of vacant property. What is adequate and appropriate will depend on the size and the circumstances. The Involvement and Empowerment Standard requires tenants to be consulted about changes to the arrangements for management of their stock. If we are able to go into any more detail in guidance, we shall do so.

3. Providers should consult local authorities about disposals in the same way as at present.

Private registered providers are independent bodies who will sometimes need to dispose of stock for asset management or other reasons. We wish to turn round applications quickly. Therefore we believe that local authorities’ part in this process should be consultative, with the provider rather than with the TSA. The TSA will take note of unresolved objections from local authorities but is not equipped to act as a mediator. This consultation and the earlier discussion paper have shown that some providers need to arrange consultation better, and guidance will cover this. We expect that local authorities will be involved in preparing policies for disposals.

4. There should be a new category of general consent for charges given to raise private finance, access to which would be by letter of authorisation from the

TSA. A provider using this category would have to make certain certifications to the lender. The category would not be available to profit making providers.

We believe the problems of validity can be overcome by creating and maintaining a public list of those providers with letters of authority to use the private finance consent. Instead of defining intervention and enforcement, we would publish a similar list of providers whose access to all or part of the general consent we had withdrawn. The proposed certifications by a provider to a lender would instead become undertakings given to the TSA when applying for a letter of authority to use the general consent to raise private finance. A breach would be a regulatory matter for the TSA. Providers should be aware that, on 1 April, the TSA will not be able to issue letters of authorisation all at once. We shall be considering the most efficient way of doing this.

5. That a new general consent should include virtually all the categories in the existing general consent except for any that do not apply to Social Housing Dwellings.

We believe that an ALMO wishing to receive a transfer of Social Housing should be registered and will amend that category of consent. A provider wishing to transfer to an unregistered ALMO should apply for individual consent.

We mention above that a general consent would be added for disposals under equity percentage arrangements. This means that the existing category of consent for disposals of key worker living schemes can be removed.

6. Providers should begin to make use of the TSA's power to give consent by reference to a policy for disposals. We added an annex of factors that a provider and the TSA might consider in preparing and approving such policies.

With the broad support of those who responded, we shall, after first concentrating on producing the general consent, consider the processes for obtaining agreement to a policy for disposals. Providers should be aware that, on 1 April, the TSA will not be able to decide immediately on applications to agree policies for disposals. Even though these will save time spent on individual disposals in future, they will demand time for consideration up front.

7. Discounts offered on voluntary sales to sitting tenants should not exceed those available under the Right to Buy.

We will adopt this as the normal policy while keeping under review how discounts are granted in the local authority sector.

8. A proposal to give a general dispensation under section 176 of the Act. This would remove the requirement for non profit providers to notify the TSA, after the event, of disposals of Land other than Social Housing Dwellings.

We will proceed with this while reserving the right to start calling for notifications in future if we think it necessary.

9. We shall not therefore proceed with the draft consent for de-registered bodies that appeared in the consultation supplement.

10 – 12. We shall proceed with the proposals to exclude profit making providers from certain categories for the time being, to grant a general consent to easements and to grant a general consent for disposals of non-Social Housing by unregistered bodies.

13. Suggestions received for additional categories of general consent.

Shared ownership trusts are not common and we will review this if they become more widely used.

The TSA prefers to consider applications individually for disposal of existing grant-funded care homes, which may be occupied.

14. Other comments received.

For Almshouses, we take the view that the Almshouse should deal with the Charity Commission and we have no objection in principle to almshouse properties leaving the almshouse sector but remaining within the Social Housing sector.

We are in touch with the Land Registry and will produce guidance.