

# **SOCIAL HOUSING (REGULATION) ACT 2023**

Essential guide



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# Introduction

The past few years have seen some of the most significant events in social housing, with the Grenfell fire tragedy in 2017 bringing conversations around the adequacy of social housing and especially the lack of tenant involvement and empowerment to the fore. Government published the Social Housing Green Paper: A New Deal for Social Housing in 2018 and subsequently the Social Housing White Paper/Tenants Charter in 2020 all with the aim of improving how social housing is regulated. More recent issues such as Awaab Ishak's death and the Housing ombudsman's regular findings of severe maladministration have kept this conversation at the fore.

The tone of comments, particularly from Michael Gove as the Secretary of State for Levelling Up, Housing and Communities, is very much now that those living in social housing deserve better and that the sector and public will not tolerate RPs who are failing to meet the expected standards.

All of this sets the context for The Social Housing (Regulation) Act 2023, which received Royal Assent on 20th July 2023.

It is intended to be the catalyst for a new proactive approach to regulating social housing, ensuring standards are met and taking action against failing landlords. The Act itself describes its purpose as being to "reform the regulatory regime to drive significant change in landlord behaviour".

Simply, this is the most important piece of legislation for RPs for many years. Those responsible for managing and operating RPs must be aware of its significance and understand not just what the detail requires, but also the way this fundamentally alters the landscape for social housing, the expectations on social landlords and the rights of tenants going forward.



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# Overview of the Act

The Social Housing (Regulation) Act 2023 (**Act**) has three core objectives which are:

- to facilitate a new, proactive consumer regulation regime;
- to refine the existing economic regulatory regime; and
- to strengthen the Regulator of Social Housing's (**Regulator**) powers to enforce the consumer and economic regimes.

## Reform the consumer regulatory regime

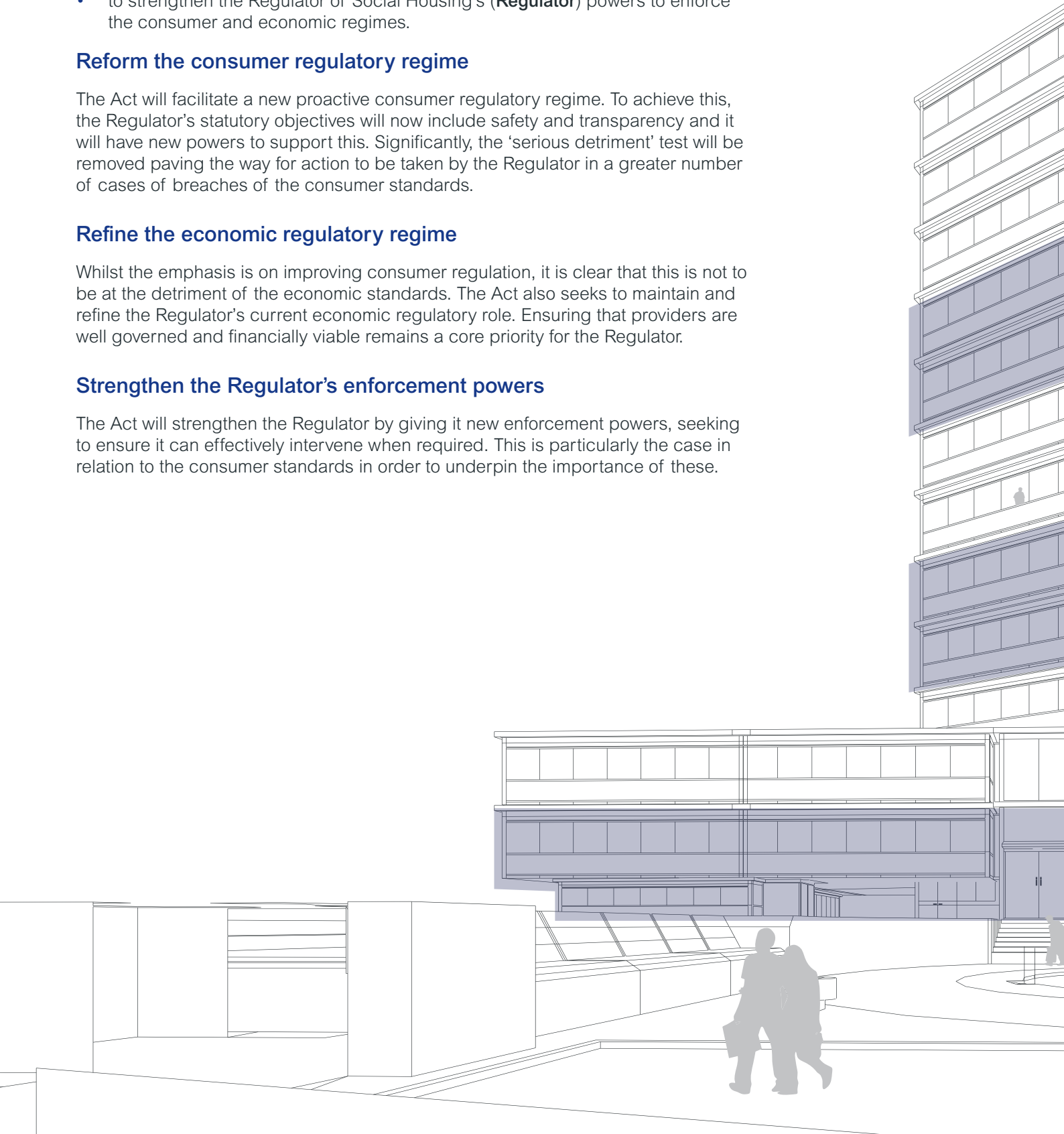
The Act will facilitate a new proactive consumer regulatory regime. To achieve this, the Regulator's statutory objectives will now include safety and transparency and it will have new powers to support this. Significantly, the 'serious detriment' test will be removed paving the way for action to be taken by the Regulator in a greater number of cases of breaches of the consumer standards.

## Refine the economic regulatory regime

Whilst the emphasis is on improving consumer regulation, it is clear that this is not to be at the detriment of the economic standards. The Act also seeks to maintain and refine the Regulator's current economic regulatory role. Ensuring that providers are well governed and financially viable remains a core priority for the Regulator.

## Strengthen the Regulator's enforcement powers

The Act will strengthen the Regulator by giving it new enforcement powers, seeking to ensure it can effectively intervene when required. This is particularly the case in relation to the consumer standards in order to underpin the importance of these.



# The Regulator of Social Housing

## Fundamental objectives

The Housing and Regeneration Act 2008 (**HRA2008**) sets out the fundamental objectives for the Regulator, requiring that the Regulator must perform its functions with a view to achieving (1) the economic regulation objective; and (2) the consumer regulation objective.

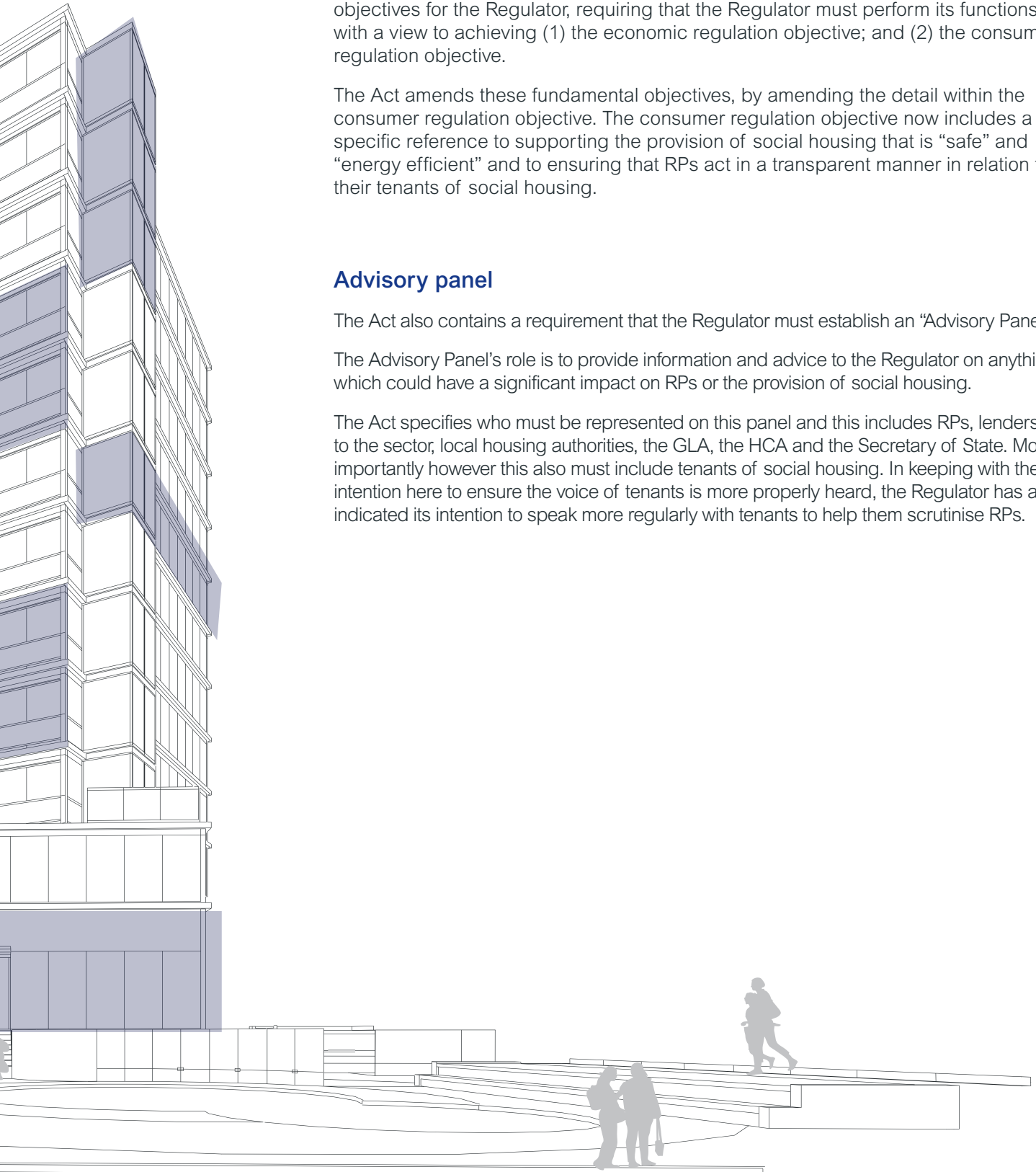
The Act amends these fundamental objectives, by amending the detail within the consumer regulation objective. The consumer regulation objective now includes a specific reference to supporting the provision of social housing that is “safe” and “energy efficient” and to ensuring that RPs act in a transparent manner in relation to their tenants of social housing.

## Advisory panel

The Act also contains a requirement that the Regulator must establish an “Advisory Panel”.

The Advisory Panel’s role is to provide information and advice to the Regulator on anything which could have a significant impact on RPs or the provision of social housing.

The Act specifies who must be represented on this panel and this includes RPs, lenders to the sector, local housing authorities, the GLA, the HCA and the Secretary of State. Most importantly however this also must include tenants of social housing. In keeping with the intention here to ensure the voice of tenants is more properly heard, the Regulator has also indicated its intention to speak more regularly with tenants to help them scrutinise RPs.





## Collection of information

The Act also broadens the power of the Regulator in relation to the collection of information, allowing a wider range of circumstances in which the Regulator can require persons to provide documents or information to it. The existing rules contain various limitations on the Regulator's ability to request information, particularly from third parties, which are now removed. Further amendments are also made to make it an offence to knowingly or recklessly provide the Regulator with false or misleading information underlining the importance of RPs ensuring that they are transparent with the Regulator and the intention to continue to improve economic regulation as well as consumer regulation.

## Fees

The Act includes clarifications regarding the Regulator's ability to charge fees on initial registration of an RP and on a continuing basis. Specifically, it clarifies that the Regulator may charge fees for dealing with applications which are not successful and may require payment in advance. It also makes clear that the fees may be set at a level to cover all of the costs of the Regulator (including costs unrelated to the registration process).

## Housing Ombudsman

New provisions are introduced to improve the relationship between the Regulator and the Housing Ombudsman, with the intention that they should be able to exchange information more quickly to better protect tenants. Specifically, both the Regulator and Housing Ombudsman are now required to publish and review a memorandum of understanding outlining how they will cooperate together. An initial memorandum of understanding was published by the Housing Ombudsman and Regulator on 1st September 2020, setting out how they will communicate, cooperate and share information with one another.

Other amendments now mean that the Housing Ombudsman will now be consulted by the Secretary of State when setting standards and giving directions to the Regulator, and that the Housing Ombudsman is required to consult with the Regulator when making amendments to its scheme. Clearly all of this is with the specific intention of ensuring a more joined up approach to regulation and the handling of complaints between Regulator and Housing Ombudsman for the benefit of tenants.



# Registered providers of Social Housing

## Registration and deregistration

The Act enables the Regulator to make the registration of an RP conditional upon the ability to meet regulatory standards on registration. This is a change from the current position, which only allows the Regulator to set criteria relating to the financial, constitutional and management arrangements that must be satisfied by a new RP. The change means that the Regulator can, for example, require evidence of compliance with the consumer standards before a body can be registered as an RP.

Significantly, the Act contains clarification of the law in relation to the compulsory deregistration of an RP for failure to meet a regulatory standard. This will provide a simple legal basis for removing an RP from the register where it is in breach of a standard. It is expected that this would only be used where the breach is significant and the RP is unwilling or unable to rectify the position, but the Act does not require this to be the case. This could have a significant impact on affected RPs' wider operations. For example, maintenance of RP status is a common requirement of funding agreements. It also has important implications for individual residents in respect of their rights and may affect their benefit entitlements. Given the wider sector importance of this to both RPs and to other stakeholders we would expect that the Regulator would issue clear guidance as to when it would expect to use this power.

The Act contains certain clarifications around the designation of RPs. In particular this includes an ability for the Regulator to look beyond simple constitutional form, and instead into actual operation, when determining whether an RP is non-profit or profit making.

## Health and safety

The Act requires RPs to designate a person to act as lead on certain functions relating to the RP's compliance with its health and safety obligations towards tenants. This is in response to one of the Hackitt report recommendations.

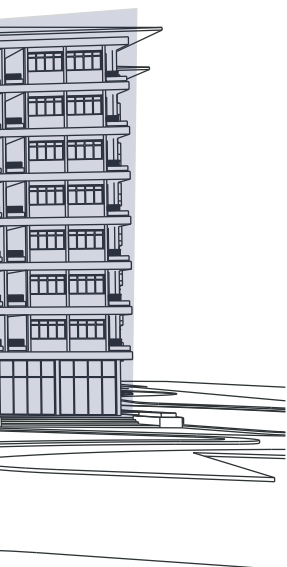
The Act requires that this must be an employee or officer of the RP so the role cannot be outsourced although there are slightly different arrangements for local authorities in relation to elected members.

The health and safety lead's functions are to monitor the RP's compliance with health and safety requirements, to assess risks of failure to comply, to notify the provider's responsible body of any material risks to or failures of this compliance, and to advise on steps to ensure the RP addresses these.

The RP has duties to ensure that the health and safety lead has the authority, capacity and resources needed to carry out their role. The RP is also required to notify the Regulator of the contact details of the health and safety lead and publish this information so that tenants know who it is and can contact them.

Importantly for those taking on the role, the Act clarifies that the health and safety lead is not liable for breaches and legal responsibility for ensuring compliance with health and safety requirements remains with the RP.

Amendments are also made to other parts of the HRA2008 to effectively provide that the Regulator may utilise its enforcement powers (such as to serve an enforcement notice, impose a penalty or appoint a manager) for failure to comply with the requirements in relation to the health and safety lead.



The Act extends the power for the Secretary of State (under the Housing and Planning Act 2016) to impose duties on landlords for the purpose of ensuring that electrical standards are met during any period whilst a premises is occupied under tenancy to cover all RPs, rather than just private landlords.

The Secretary of State may issue regulations relating to this. Government ran a consultation exercise on electrical safety in the social rented sector last year. This included specific proposals around mandatory checks on electrical installations for social housing at least every 5 years and mandatory PAT testing on all electrical appliances provided by social landlords as part of a tenancy. We await the outcome of that consultation.

## Insolvency and restructuring

The Act also makes new provisions in relation to the process to be followed in the event of an insolvency of an RP. Amendments are made to the relevant provisions in the Housing and Planning Act 2016 to make clear the notification requirements that an RP must comply with in certain specified situations. Detail is included as to how the notice must be given, who it must be given by and what must be included in the notice.

There are some detailed amendments within the Act relating to the housing moratorium process, with new provisions relating to how and when a moratorium period commences and ends. In short, in most cases the moratorium period will now begin on the relevant event taking place (such as on an application for an administration order) rather than on notice then being given to the Regulator).

The Act makes a number of amendments to extend the application of the housing moratorium and housing administration regimes to RPs which are LLPs.

The HRA2008 contains requirements on not-for-profit RPs to make notifications to the Regulator in certain situations relating to restructuring and dissolution. The Act now expands these requirements to apply to for-profit RPs.

The Act also makes some further amendments to the provisions relating to notifications which must be made to the Regulator by an RP including:

- requiring all RPs to notify the Regulator of any change to its name or registered office;
- requiring an RP to notify the Regulator if a non-RP passes a resolution to transfer its engagements to the RP;
- requiring an RP to make a notification where it undergoes a “change of control” in a relevant period, which includes situations where (a) the board increases in size by more than 50%; (b) the board decreases in size by more than 50%; or (c) more than 50% of the board are persons who were not previously board members;
- requiring an RP to make a notification where it becomes or ceases to be a subsidiary (also note that the definition of “subsidiary” in the HRA2008 is now updated to cross-reference the Companies Act 2006 definition for consistency); and
- requiring any RP which is a registered charity to notify the Regulator of any change to its trusts, purposes, name, registered charity number or address.

The Act also removes the obligation on the Regulator to make a re-registration decision in some scenarios. For example, where one RP transfers its engagements to another RP, the Regulator will no longer be required to make a re-registration decision on the recipient.



# Standards

The Act allows the Regulator to set new regulatory standards and the Secretary of State to direct the Regulator to set these standards.

The Regulator can also issue a code of practice in relation to the consumer standards which, although not strictly binding, will provide more detail around the expectations on RPs. RPs will already be familiar with the Governance and Financial Viability Standard Code of Practice and the Value for Money Code of Practice in relation to the economic standards.

## Professionalism

The Act amends the HRA2008 to allow the Regulator to set an additional regulatory standard for RPs in relation to the competence and conduct of individuals involved in the provision of services in connection with the management of social housing;

Requiring individuals involved in the management of social housing to obtain specific qualifications has been a key issue for Grenfell United, and this amendment is a direct response to that. The requirement is that “senior housing executives” will require a foundation degree or level 5 qualification, whilst “senior housing managers” will require a level 4 qualification in housing management.

A “senior housing executive” is defined as an employee or officer of an RP who has responsibility for the day-to-day management of the provision of services and is part of the RP’s senior management.

“Senior housing managers” are defined by reference to the Institute for Apprenticeships and Technical Education’s definition of “senior housing and property managers” which lists the following as examples:

- Neighbourhood housing manager
- Neighbourhood investment manager
- Property manager
- Voids and lettings manager
- Assets manager
- Incomes manager
- Resident involvement manager
- Supported housing manager
- Leasehold manager

The move to increase professionalism is further supported by the introduction of implied terms into management agreements, where one organisation manages social housing on behalf of an RP. The Act states that terms shall be implied into those management agreements which provide that the manager shall ensure that its relevant managers meet the qualification criteria at all times. This is supplemented by rights of the RP receiving the service to request evidence of compliance and to require action to rectify non-compliance. This would potentially therefore allow RPs to pursue a claim for breach of contract where its contracted manager does not ensure its relevant staff are appropriately qualified.

## Information and transparency

The Act also includes an amendment to allow the Regulator to set an additional regulatory standard for RPs in relation to the provision of information to an RP's tenants and to the Regulator.

The amendment also states that such a standard may contain specific rules about:

- the provision of information to tenants concerning the accommodation, facilities or services;
- monitoring compliance with the standards and informing the Regulator about non-compliance;
- publishing information about the remuneration of executives; and
- publishing information about income, management cost and other expenditure.

It was originally suggested that this would operate similar to how the Freedom of Information Act works for council housing. However, the scope within the Act is limited to information about accommodation, facilities or services provided in connection with social housing.

Consequential amendments are made to ensure that the Regulator is able to exercise its enforcement powers for failure to meet this standard.

This is an area where the Secretary of State is able to issue a direction to the Regulator in terms of what the standard should cover. We have not yet seen details of a proposed direction on this.

## Intervention

One of the most talked about amendments in the Act is the removal of the "serious detriment" test.

Until now, the Regulator has been required to have reasonable grounds to suspect that a breach of the consumer standards has caused, or could cause, serious detriment to an RP's tenants before it could exercise its intervention powers.

By removing the serious detriment test, the Act places the consumer standards on an equal footing with the economic standards by allowing the Regulator to exercise its enforcement powers for any breach, or potential breach, of the consumer standards. This will also allow the Regulator to be more proactive in its regulation of the consumer standards.

## Tenant satisfaction measures

The Act provides the Regulator with a power to give directions to RPs to collect, process and publish information about their performance in relation to the regulatory standards. In other words, the Act gives the Regulator a power to introduce Tenant Satisfaction Measures which were a commitment in the Social Housing White Paper.

The Regulator has already consulted on and published the Tenant Satisfaction Measures and the requirement on RPs to start collecting data start from 1st April 2023 and it is anticipated that the first year of data will be published in Autumn 2024.

# Monitoring and enforcement

## Surveys

The Act makes changes to provide the Regulator with the power to arrange for surveys of the condition of properties more quickly.

This is achieved by reducing the notice period which the Regulator is required to give to an RP and to the occupier before an authorised person can enter to conduct a survey of the condition to 48 hours. There is detail included as to the RP or occupier waiving notice, how the notice may be served on the occupier, who may attend with the authorised person and leaving materials or equipment at the property during the survey.

A new provision is included which allows the Regulator's authorised person to obtain a warrant to gain entry in cases where this is reasonably required. This would include situations where the property is unoccupied, whether permanently or temporarily, or where the authorised person has been refused access. Such a warrant would allow the authorised person to enter the property at any reasonable time and using reasonable force if necessary. Again, detail is included as to who may attend with the authorised person and leaving materials or equipment at the property during the survey. Where the property is unoccupied, the authorised person is required to leave the property as effectively secured against trespassers as it was when they entered themselves.

Linked to this, failure of an RP to give an occupier notice of a survey is no longer a criminal offence. This is because the notice requirement falls on the authorised person instead. However, an RP or an officer will commit an offence if they obstruct an authorised person from conducting a survey.

## Performance improvement plans

New provisions are introduced which enable the Regulator to give notice to require an RP to prepare and implement a performance improvement plan where that RP is failing to meet regulatory standards. This is intended to be used proactively by the Regulator, to allow issues to be addressed before the Regulator exercises other enforcement powers. This is in contrast to the previous regime where the Regulator was reliant on an RP offering voluntary undertakings which, as the name indicates, were entirely voluntary or the use of enforcement notices to require specific actions to be taken.

This will enable the Regulator to hold the RP to account in relation to how and when it addresses an issue. It also further increases transparency and scrutiny by allowing tenants to be aware of the detail of the performance improvement plan.

The grounds on which the Regulator can issue a performance improvement plan to an RP are:

- where an RP has failed to meet a regulatory standard;
- there is a risk that, if no action is taken, an RP will fail to meet a regulatory standard;
- an RP has failed to comply with directions about the Tenant Satisfaction Measures;
- the interests of the tenants of social housing of an RP require protection; or
- an RP has given a voluntary undertaking and failed to comply with it.

Further detail is included as to the notice that the Regulator must give to an RP when requiring a performance improvement plan be put in place. It is for the RP to produce a performance improvement plan and the Regulator to then approve or reject it.

An RP is required to provide a tenant of social housing with a copy of an approved performance improvement plan as soon as reasonably practicable where they make a written request to the RP.

Further detail is included regarding the ability for an RP to appeal the Regulator's decision to give notice of the requirement to implement a performance improvement plan.

Further consequential amendments provide that:

- failure to comply with a performance improvement plan notice or implement a performance improvement plan approved by the Regulator are grounds for the Regulator to issue an enforcement notice;
- failure to comply with a performance improvement plan notice and failure to provide a copy of a performance improvement plan to a tenant who requests one are grounds for the Regulator to impose a financial penalty on the RP and to award compensation to the tenant; and
- failure to comply with a performance improvement plan notice is grounds for the Regulator to appoint a manager to an RP, or to appoint an adviser to a local authority.



## Emergency remedial action

The Act introduces new powers for the Regulator to authorise persons to enter premises to take emergency remedial action to remedy failures by an RP.

his power applies where the following conditions have been met:

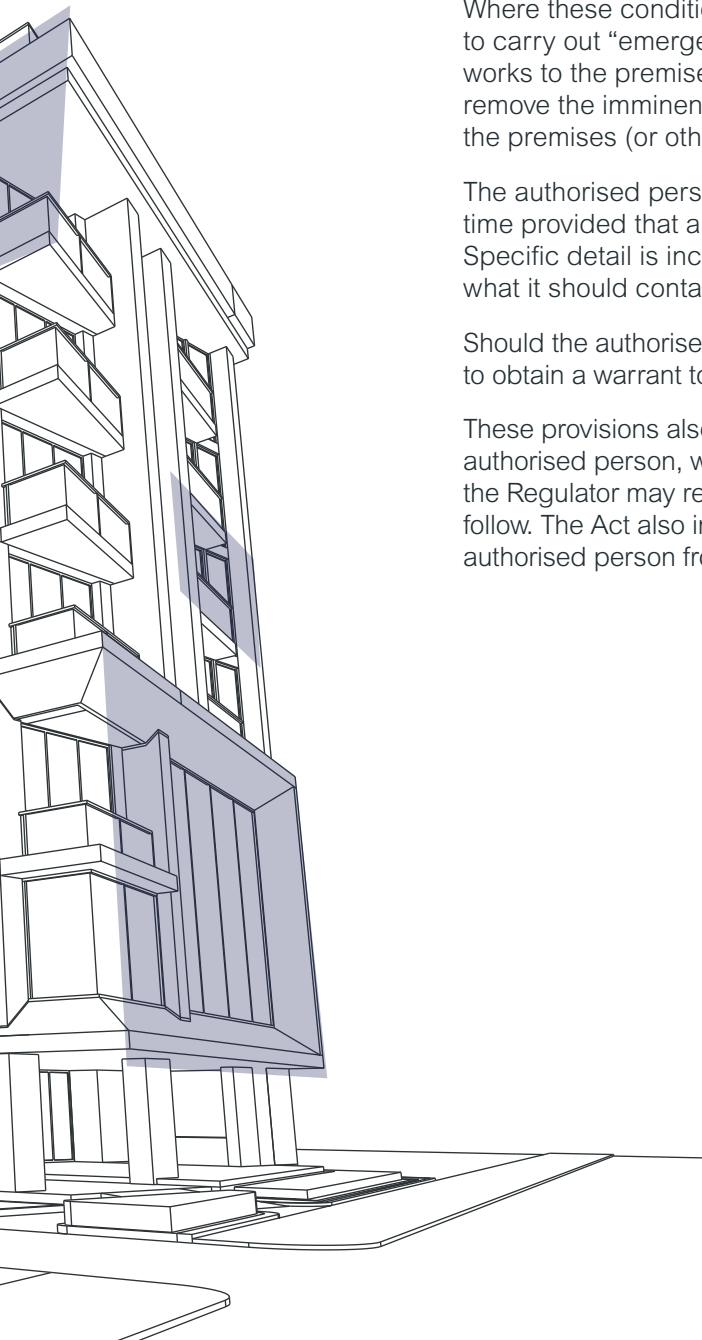
- a survey of the condition of the premises has been carried out by an authorised person;
- the Regulator is satisfied that (i) the RP has failed to maintain the premises in accordance with the consumer standards; and (ii) that failure has caused an imminent risk of serious harm to the health or safety of the occupiers of the premises (or other premises); and
- the RP has failed to comply with an enforcement notice requiring it to take action to remedy the failure.

Where these conditions have been met, an authorised person may enter premises to carry out “emergency remedial action” which is defined as carrying out such works to the premises as the authorised person considers immediately necessary to remove the imminent risk of serious harm to the health or safety of the occupiers of the premises (or other premises) identified.

The authorised person may enter the premises without a warrant at a reasonable time provided that a pre-entry notice has been given on at least 24 hours’ notice. Specific detail is included as to who the pre-entry notice should be served on and what it should contain.

Should the authorised person not be able to access the premises then they may seek to obtain a warrant to allow them entry to carry out the emergency remedial action.

These provisions also detail how the notice should be given, who can accompany an authorised person, when equipment and materials may be left at the premises, how the Regulator may reclaim expenses from the RP and an appeal process for an RP to follow. The Act also introduces offences where an RP, or officer of an RP, obstructs an authorised person from entering the premises to take the emergency remedial action.



## Extension of powers to charities who have not received public assistance

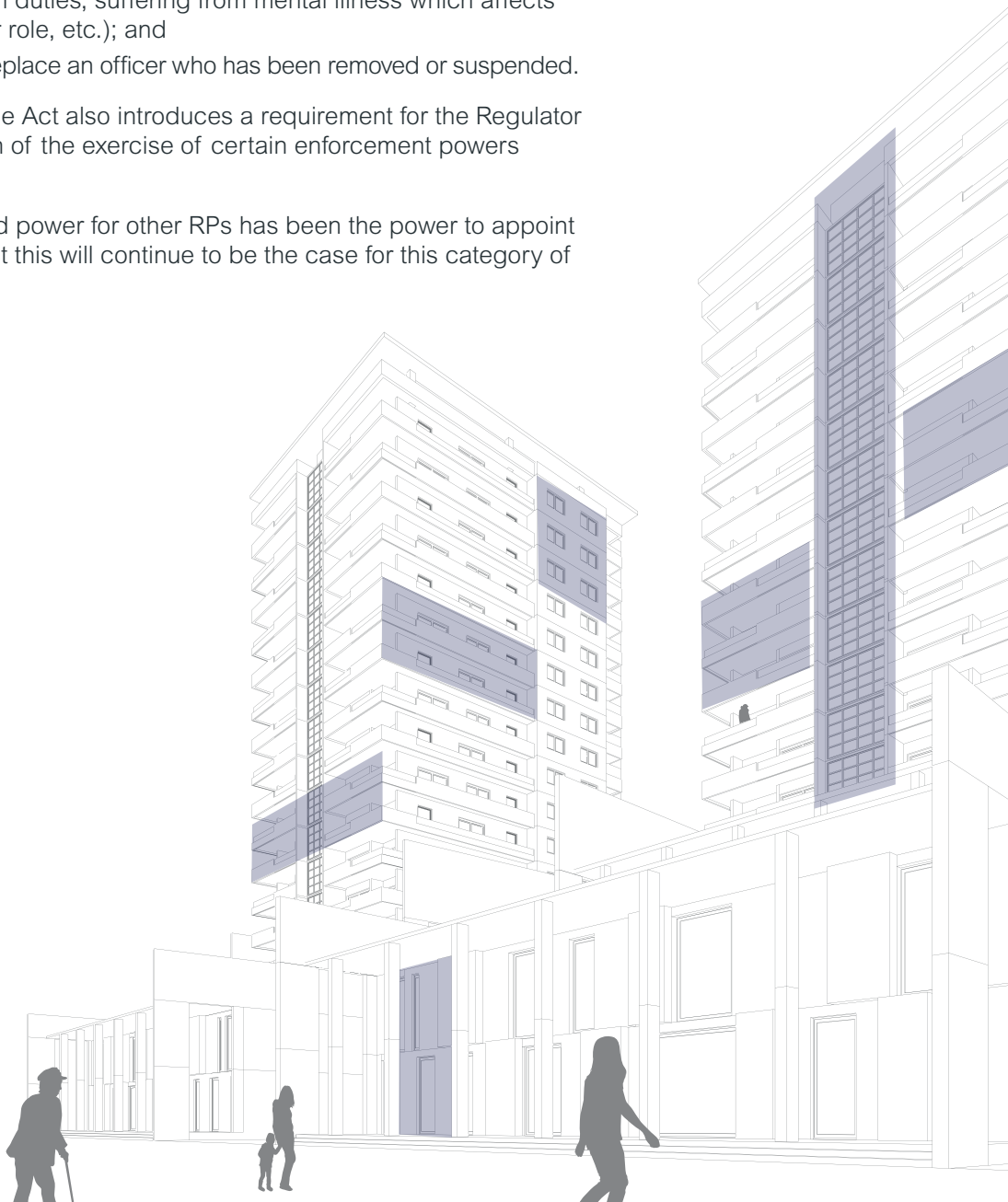
The Act repeals certain provisions in the HRA2008, so that the Regulator may now exercise enforcement powers against registered charities who have not received public assistance. This will enable the Regulator to take action to ensure these types of charity meet the consumer standards.

The enforcement powers the Regulator will be able to exercise are:

- holding an inquiry;
- placing a restriction on the charity's financial dealings during an inquiry or as a result of an inquiry where the Regulator has identified mismanagement of its affairs;
- suspending an officer, employee or agent of the charity during an inquiry;
- removing or suspending an officer, employee or agent of the charity as result of an inquiry where the Regulator has identified mismanagement;
- removing an officer where they are unfit to fulfil their position (e.g. being made bankrupt, being absent from duties, suffering from mental illness which affects their ability to carry out their role, etc.); and
- appointing a new officer to replace an officer who has been removed or suspended.

Linked to these amendments, the Act also introduces a requirement for the Regulator to notify the Charity Commission of the exercise of certain enforcement powers against registered charities.

Historically the most widely used power for other RPs has been the power to appoint new board members. We expect this will continue to be the case for this category of RPs too.





## Regulatory and enforcement powers

The Regulator may arrange for a person to inspect an RP's performance of its functions in relation to the provision of social housing, or the financial or other affairs of the RP. The Act amends these provisions so that the Regulator no longer requires the Secretary of State's approval to use its own staff for those inspections.

Similarly, in relation to inquiry appointments, the Act removes the previous provision which meant that consultants of the Regulator were ineligible for appointment to conduct an inquiry on the basis that they were not considered to be independent of the Regulator.

The Act also makes amendments such that the Regulator has the power to issue fines to all RPs, including local authority providers which was not previously the case. The cap on the level of penalty that the Regulator is able to impose has also been removed having previously been limited to £5,000. The Regulator could therefore potentially issue a penalty of an unlimited amount. It will be interesting to see how the Regulator's policy as regards fines evolves and whether, like some other regulators, it will regard the issuing of significant fines a useful compliance tool.

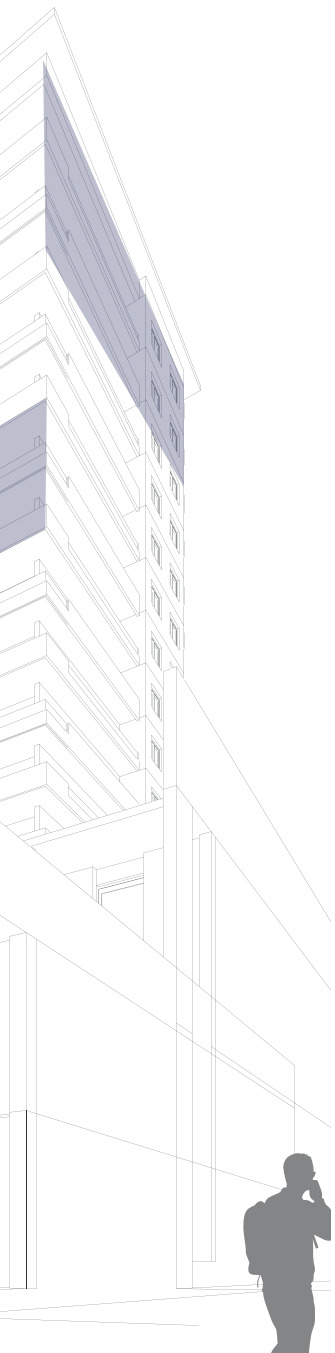
The Act also allows the Regulator to appoint an organisation to act as a manager of an RP, rather than just an individual, where the RP has failed to comply with the regulatory standards. The minimum representations period required for an RP prior to the appointment of a manager has also been reduced from 28 days to 5 days.

A number of enforcement powers have also been extended to cover not just not-for-profit RPs, but also for-profit RPs. This includes:

- restrictions on dealings during inquiry;
- restrictions on dealings following inquiry;
- suspension during inquiry;
- removal or suspension following inquiry;
- removal of officers; and
- appointment of new officers.

The Act includes new grounds where the Regulator can remove or suspend officers of an RP. Specifically:

- the Regulator may now remove or suspend an officer, employee or agent of an RP during an inquiry, allowing removal or suspension if the Regulator is satisfied that the person has either obstructed or failed to co-operate with the inquiry;
- the Regulator may now remove or suspend an officer, agent or employee of an RP following an inquiry in which mismanagement has been identified where that person obstructs or fails to co-operate with the inquiry; and
- the Regulator can remove an officer of an RP where the person is obstructing or failing to co-operate with the Regulator in the performance of its regulatory functions.



## Appeals

The Act makes amendments relating to appeals by RPs against deregistration decisions and enforcement action taken by the Regulator.

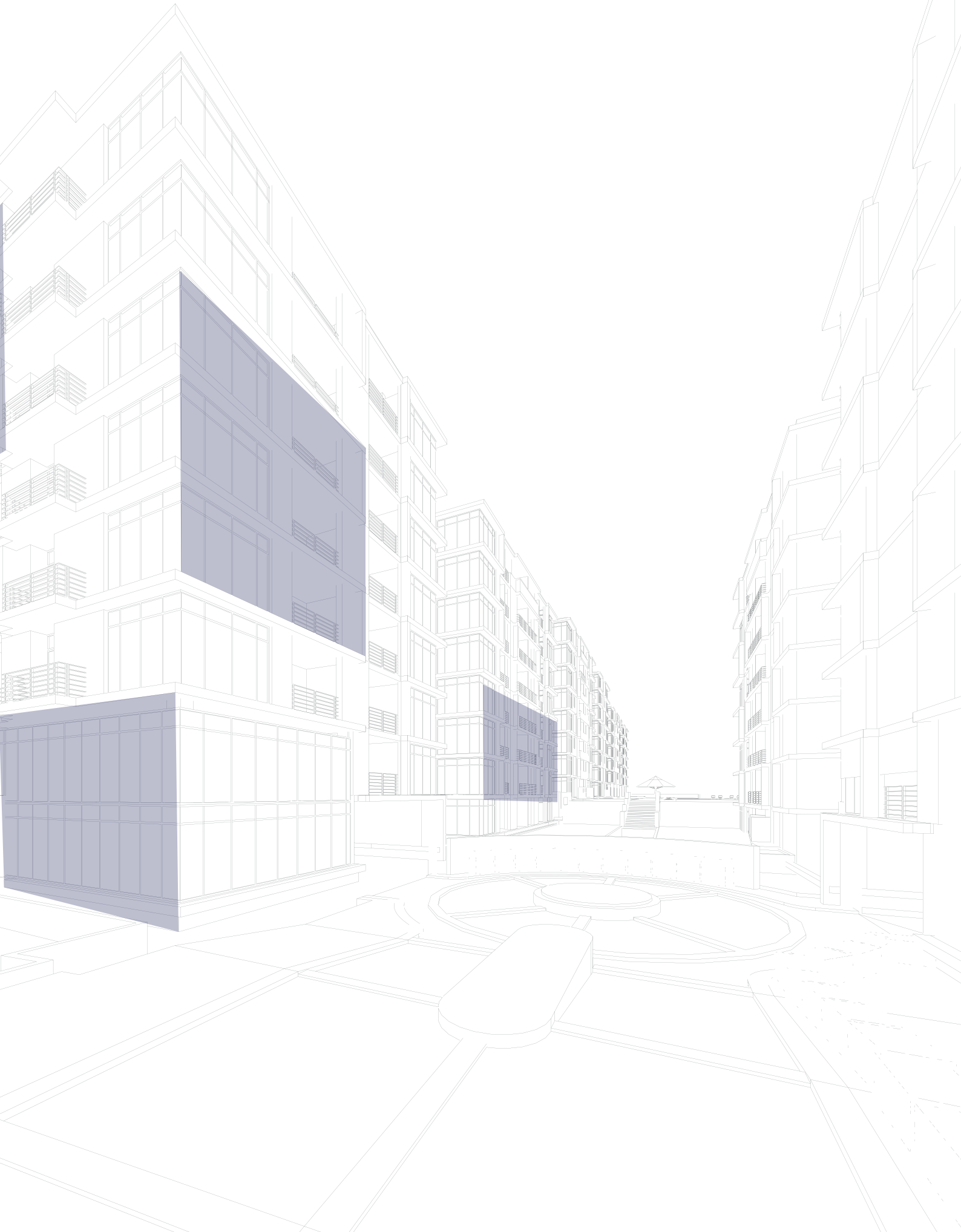
Amendments are made to require that notice is required to be given by the Regulator to an RP where the Regulator is changing an RP's designation from not-for-profit to profit or vice versa, and that the Regulator is required to notify a body of the outcome of its application to be registered as an RP.

Further amendments provide that the Regulator must give notice and consider representations from an RP during a minimum 14 day period where it is considering deregistering that RP.

Where an RP wishes to appeal against a decision of the Regulator to deregister an RP, that appeal must be brought within 28 days of when the body or RP is notified of the decision and the Regulator may not deregister an RP during the "appeal period".

Similarly, the Act provides detail around the time limit for appeals against other enforcement action taken by the Regulator and requirements for the Regulator to issue notices to an RP when taking that action.

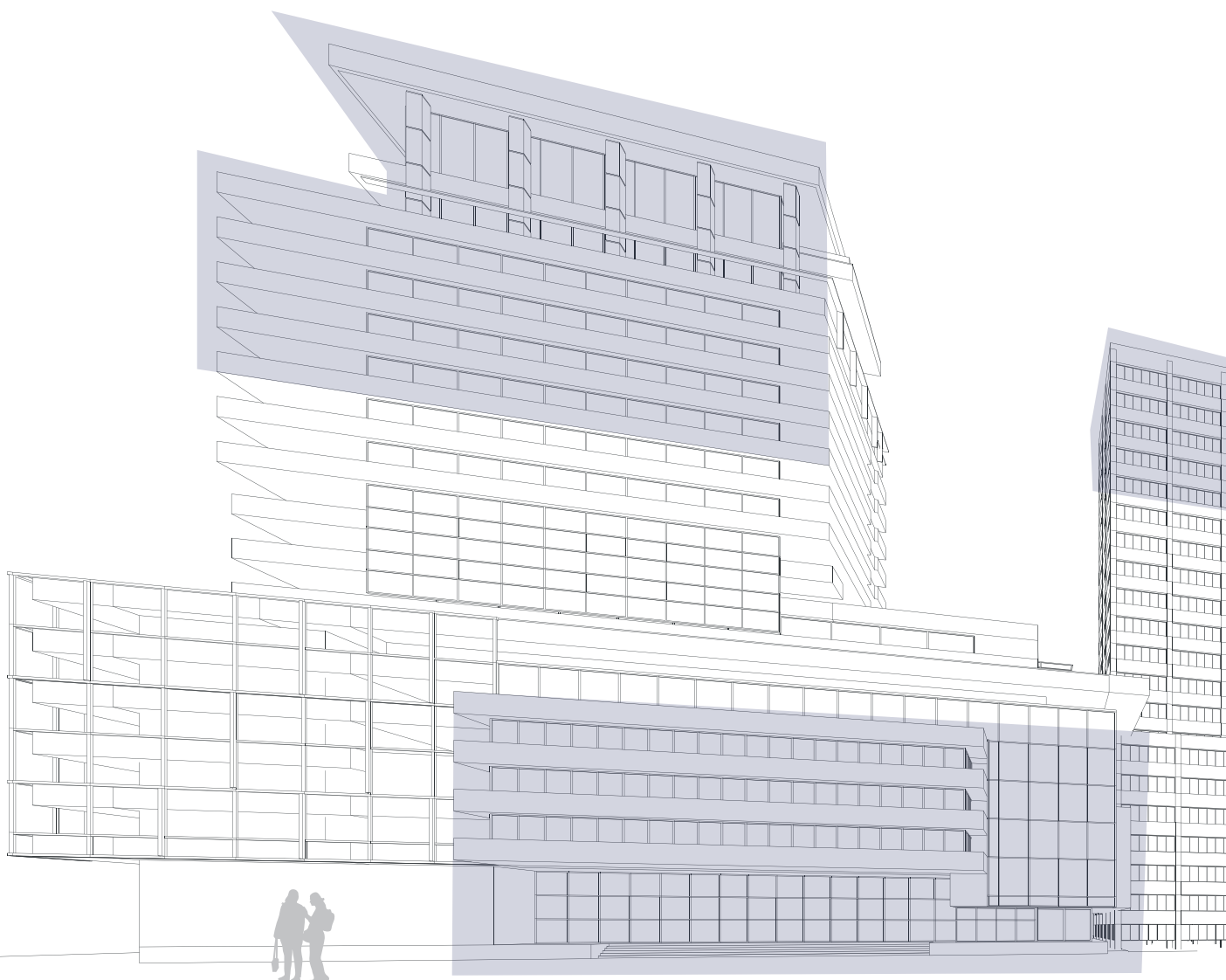




## Housing Ombudsman

A key part of the Act is ensuring that residents have the ability to properly scrutinise their landlord and hold it to account where standards are not met. To help achieve this, the Act provides the Housing Ombudsman of an approved scheme with a new power to issue a code of practice on complaint handling. The code of practice will inform members of the scheme, and importantly residents, of the standards that landlords are expected to meet in relation to complaint handling.

In setting the code of practice, the Housing Ombudsman is obliged to consult not just the Regulator and the members, but also individuals who may make complaints (i.e. the residents). Again, this is all with the aim of ensuring that residents are properly empowered and informed about how they can hold their landlord to account.



## Meet the team

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