

# How We Regulate

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## Notifiable Events

**August 2020**



# Contents

1. Introduction and purpose .....	3
2. What are notifiable events .....	4
3. Who should notify us.....	5
4. What information do we need and how is it submitted .....	6
5. When should you notify us .....	6
6. What will we do with the information provided .....	7
7. RHAs internal policies and procedures .....	8
8. Links to other guidance.....	8
Appendix A: Examples of Notifiable Events .....	10
Appendix B: Notifications of disposals and mortgages of land and property .....	14
Appendix C: Notifications of Constitutional/Organisational Changes.....	18

# 1. Introduction and purpose

1. The Department for Communities (DfC) is the Regulatory Authority for Registered Housing Associations (RHAs) in Northern Ireland. The Housing Regulation Branch within DfC undertakes this Regulation activity on behalf of the Department and we seek to protect the interests of tenants, homeless people and others who use the services provided by RHAs.
  
- 1.2. This guidance sets out the events that RHAs must tell us about. We explain why we have a regulatory interest in them, what we expect an RHA to notify us about, and what we will do with the information RHAs provide. We are interested in events which may put at risk:
  - the interests or safety of tenants and other service users;
  - the financial health of the RHA, public investment, or the confidence of lenders;
  - the good governance and reputation of an individual RHA or the RHA sector;
  
- 1.3. In addition, The Housing (Northern Ireland) Order 1992, as amended by The Housing (Amendment) Act (Northern Ireland) 2020, requires that RHAs notify the Department about disposals of land and assets, any mortgages of land and property, and constitutional and organisational changes. We make reference to these obligations at **Appendix B** to this document.
  
- 1.4. Our approach to regulation is risk-based, and proportionate, as outlined in our [Regulatory Standards](#), which requires RHAs to inform us about any significant events. This guidance sets out what type of events RHAs must tell us about.

## 2. What are notifiable events?

2.1. An RHA must tell us about **any** significant or exceptional issue, event, or change within its organisation and how it intends to deal with it.

2.2. As a general guideline, notifiable events are events that may:

- seriously affect tenant safety or service delivery arrangements;
- significantly threaten the stability, efficient running or viability of the organisation;
- bring the RHA into disrepute or raise public or stakeholder concern about the RHA or the social rented sector.

2.3. The term 'serious' or 'significant' is difficult to define in a way which applies to all RHAs. We appreciate that whether an event is 'serious' or 'significant' may depend on factors such as the size or complexity of the RHA. Each RHA should consider the risk, and potential impact on their organisation, when deciding whether an issue is a notifiable event. If an RHA is unsure whether an issue is a notifiable event, please [contact us](#) and we will be happy to give further guidance.

2.4. **Examples of Notifiable Events include:**

- Governance and organisational issues;
- Performance and service delivery issues;
- Financial and funding issues; and
- Additional events of systemic importance.

Please note this list is not exhaustive with further examples provided in

## Appendix A.

- 2.5. **Appendix B** explains how and when an RHA must notify us about certain disposals, any mortgages of land and property, and constitutional and organisational changes.

## 3. Who should notify us?

- 3.1. The Chief Executive of an RHA is responsible for informing us about a notifiable event which relates to:

- performance and service delivery issues
- financial and funding issues
- Constitutional and organisational changes

- 3.2. The Chair of an RHA is responsible for telling us about a notifiable event relating to a governance or organisational issue, for instance if the Chief Executive has left or if there is an issue relating to the Chief Executive or the Board.

- 3.3. The Board must be aware of all notifiable events that happen in the RHA. The RHA should also refer to the [Group Structure and Partnerships](#) advice note, in relation to notifiable events which affect a subsidiary. There may be instances where an RHA needs to notify other organisations of the event, for example, if it has potential financial implications. The RHA must ensure all necessary parties have been informed.

## 4. What information do we need and how should it be submitted?

4.1. When an RHA is informing us of a notifiable event, the following information/evidence must be provided:

- Details of the significant event;
- when it occurred or is expected to occur;
- who is involved and/or affected;
- what the RHA is planning to do or what action it has already taken; and
- of when the Board was informed/will be informed.

4.2. RHAs should submit a notifiable event to us through the e-mail address [DfC HA Governance@communities-ni.gov.uk](mailto:DfC_HA_Governance@communities-ni.gov.uk).

4.3. When we receive details of the notifiable event through our email account we will aim to respond within **eight working days**.

4.4. **Appendix B** provides more details about our information requirements in relation to disposals, mortgages of land and property, and constitutional and organisational changes.

## 5. When should you notify us?

5.1. RHAs should alert us to a notifiable event as soon as is reasonably practical, but within 28 days. This may mean alerting us before an event happens so that we have an early warning. There should be no delay, for instance, until after a scheduled Board meeting has taken place. It should also be noted that where a

major incident occurs, we would expect to be alerted as soon as possible. RHAs should not wait for an event to be completely concluded before notifying the Regulator.

- 5.2. Further information on timescales for notifications of disposals, mortgages of land and property, and constitutional and organisational changes is provided at **Appendix B**.
- 5.3. Failure to promptly inform us of a notifiable event could potentially result in a minimum level 2 engagement, depending on the seriousness of the event.

## **6. What will we do with the information provided?**

- 6.1. RHAs and their Boards are responsible for managing their own organisation and dealing with the events that occur. We expect RHAs to take appropriate action in response to events, as notification to the Regulator does not absolve RHAs of responsibility for management of the event. We need to be satisfied that the action taken by the RHA will protect the interests of its tenants and other service users. If we have concerns about the RHA's proposed course of action, to deal with the event, we will make clear what we expect the RHA to do to allay our concerns.
- 6.2. We may inform, or ask the RHA to inform, another regulator or authority if that is appropriate. We may also ask the RHA to get specialist or impartial advice, for instance, legal, financial, or employment advice.
- 6.3. If an RHA gives us information in confidence we will respect that confidentiality, provided it does not compromise our ability to safeguard the overall interests of

the RHA or the sector, or breach our legal obligations, for example, under the Data Protection Act.

## 7. RHAs' internal policies and procedures

- 7.1. Internal policies and procedures should reflect the requirement to alert the Regulator to notifiable events. It is essential that senior staff and Board members understand the notifiable events process.

## 8. Links to other guidance

- 8.1 When a member of staff or a Board member of an RHA believes there has been improper conduct within the RHA, they should be able to report this to someone who is in a position to deal with it within their organisation. It should be possible to raise concerns of improper conduct in confidence with an appropriate person within the RHA. It is also possible to raise concerns directly with us, guidance is available at [DfC Whistleblowing policy](#).
- 8.2. Article 19 of the Housing (Northern Ireland) Order 1992 places a duty on external auditors and reporting accountants to disclose events of material significance to us. If an RHA is aware that an auditor has reported an issue to us under Article 19, it does not need to report this issue as a notifiable event. This is because we will ask for any additional information directly from the RHA should we need to do so. However, if an RHA reports an issue, as a notifiable event, this does not preclude an auditor from reporting the same issue under Article 19.
- 8.3. Group Structures and Partnerships Advice Note: We have produced separate regulatory guidance on [Group Structure and Partnerships](#). If an RHA is considering either a change to its group structure or joining a group structure, it should refer to the guidance, inform us as soon as possible, and where

appropriate ask for our advice. An RHA should also refer to this advice note, if it is considering establishing a non-registered subsidiary. In this situation we would expect to receive a notifiable events notification.

- 8.4. Business Planning: An RHA should inform us as soon as it becomes aware that the Chief Executive/Senior Officer intends to leave the organisation. We expect appropriate management arrangements to be put in place while the Board reviews its options.

# Appendix A



## Examples of Notifiable Events

### Examples of Notifiable Events

#### Governance and organisational issues:

- The Board calls a special general meeting
- Removal of any Board Member by the RHA
- Resignation of Board members for non-personal reasons
- The membership of the Board falls, or is going to fall, to below the minimum level of five or increases to a maximum of 12 (Section B4 page 2 NATFED Code of Governance 2015)
- Serious complaint, allegation, investigation, or disciplinary action about a Board Member
- A breach of the RHA's code of conduct by Board Members
- Resignation or dismissal of the RHA's Chief Executive
- Serious complaint, allegation, investigation, or disciplinary action about the Chief Executive
- The Chief Executive is absent (or partially absent) for an extended period of time
- First formal notification of an employment tribunal
- Breach of the Regulatory Standards
- Major organisational change or restructuring within the current RHA or group
- The RHA changes its auditors
- Plans to set up a non-registered subsidiary
- Potentially serious breach of legislation by the RHA or serious legal action taken against/by the RHA
- Serious failure of governance within an RHA's subsidiary
- Serious issue regarding a parent, subsidiary or connected organisation
- A serious dispute with another member of an alliance, consortium or non-constitutional partnership
- Breach of charitable obligations or no longer meeting the charity test

- Any material variation to the business plan or strategic direction of the organisation
- Issues of concern raised (whistleblowing allegation)

## **Performance and service delivery issues:**

- Any incident involving the Health & Safety Executive or a potentially serious threat to tenant safety; or where a regulatory or statutory authority has notified its concerns, for example, the Northern Ireland Fire & Rescue Service
- Serious accidental injury or death of a tenant:
  - where there has been a service failure by the RHA; and
  - which could potentially affect other tenants' confidence in the landlord and the landlord's reputation
- Major failure of key service delivery arrangements (for example, repairs cannot be carried out because a contractor goes into liquidation);
- Breach of stock transfer contractual agreement;
- Adverse report by statutory agencies, regulators, inspectorates (or similar) about the RHA (for example an RQIA report with a 'weak' or 'unsatisfactory' grade or an upheld RQIA complaint);
- A significant natural disaster for example, fire or flood which affects the RHA's normal business;
- Serious or significant adverse media reports or social media interaction, which could potentially affect tenants' confidence in the organization.

## **Financial and funding issues:**

- Fraud, attempted fraud or the investigation of fraud;
- Breach or potential breach (including technical breaches) of any banking covenants;
- Serious financial loss; actual or potential;
- Default or financial difficulties of major suppliers or service providers;
- Any material reduction in stock or asset values; actual or potential;

- Serious concern raised by lenders or auditors;
- Serious and/or immediate potential cash flow issue;
- Proposed assignation or transfer of the existing lender's security to another lender;
- Any problems in relationships with key stakeholders for example Health Trust or funders;
- Serious or material reduction in the funding for care and support services, for example, for RHAs with significant care elements in their business, where the NIHE (Supporting People), Trusts withdraws funding.

**Please note:** This list is illustrative only and not exhaustive.

# Appendix B



Notifications of disposals, mortgages of land and property

# Appendix B

## Notification of disposals of land and assets and mortgages of land and property.

The Housing (Northern Ireland) Order 1992, as amended by The Housing (Amendment) Act (Northern Ireland) 2020, requires RHAs to notify the Department about disposals of land and assets, and any mortgages of land and property.

### 1. Disposal of Land by sales to Tenants

When a RHA has disposed of land by sales to tenants, it must notify the Department of the following:

- The name of the RHA that has disposed of the land;
- The address of the property that has been disposed of;
- The month and year in which the property was constructed or, if appropriate, was purchased by the RHA;
- The length of time the buyer has been a secure tenant;
- The market valuation of the property that has been disposed of;
- Confirmation whether historic costs apply or not, if they do apply further information must be supplied;
- The amount of discount that has been allowed as (i) a monetary figure and (ii) a percentage of the market value of the property;
- The actual price the property was sold for; and
- The date the disposal was completed.

RHAs must notify the Department **within 28 days of the disposal taking place** using the attached **FORM** which must be e-mailed to [hagovernance@communities-ni.gov.uk](mailto:hagovernance@communities-ni.gov.uk) and [dpg@nigov.net](mailto:dpg@nigov.net)

The Northern Ireland Co-ownership Housing Association (NICHA) are exempt from the notifications process in respect of their equity sharing schemes.

## 2. Disposal of Land other than sales to Tenants

When a RHA has disposed of land other than by sale to a tenant it must furnish the Department with the following information:

- The name of the RHA that has disposed of the land/property;
- The address of the land/property that has been disposed of;
- The month and year in which the land/property was constructed or, if appropriate, was purchased by the RHA;
- The market valuation of the land/property that has been disposed of;
- The actual price the land/property was sold for;
- An explanation if the actual price the land/property was sold for differs from the market valuation;
- The date the disposal was completed;
- The reason for the disposal.

RHAs must notify the Department **within 28 days of the disposal taking place** using the attached [FORM](#) which must be e-mailed to [hagovernance@communities-ni.gov.uk](mailto:hagovernance@communities-ni.gov.uk) and [dpg@nigov.net](mailto:dpg@nigov.net)

## 3. Information about historic costs

If appropriate, an RHA must confirm if historic costs apply to the land that has been disposed of. If these costs were incurred in the financial year in which the disposal occurred or, in the previous 10 financial years, it must supply the following information:

- The scheme reference number;

- The total cost of the scheme;
- The capital valuation of the scheme or acquisition;
- Details of improvements to the property costing £5,000 or more;
- The historic cost of the property.

RHAs must notify the Department with information in relation to historic costs when notifying the Department of the disposal of land (process and notification method detailed above).

#### **4. Requirement for RHAs to supply information about mortgages**

When a RHA has completed a mortgage, it must furnish the Department with the following information:

- The name of the RHA that has completed the mortgage;
- Confirmation that the property being secured is social housing, non-social housing or both;
- The signed mortgage document detailing the property being mortgaged;
- Details of non-social housing activity if social housing is being used to provide security to finance that activity;
- The name of the private finance provider;
- The name of the charge holder;
- The total finance facility made available by the private finance provider;
- The total of the loans already drawn down from the finance facility;
- The total amount available to be drawn down from the property; and
- The facility agreement.

RHAs must notify the Department **within 28 days of EVENT** using the attached [FORM](#) which must be e-mailed to [hagovernance@communities-ni.gov.uk](mailto:hagovernance@communities-ni.gov.uk)

# Appendix C



## Constitutional and Organisational Changes

### Notification of Constitutional and Organisation Changes

[The Housing \(Northern Ireland\) Order 1992](#), as amended by [The Housing \(Amendment\) Act \(Northern Ireland\) 2020](#), requires RHAs to notify the Department about rule changes, mergers, voluntary winding up and dissolution

The requirements for registration by the registrar for rule changes, mergers, voluntary winding up and dissolution are set out in the [Co-operative and Community Benefit Societies Act \(NI\) 1969](#)

#### 1. Rule changes

Any amendment of an RHA's rules, which were registered under the [Co-operative and Community Benefit Societies Act \(NI\) 1969](#), will not be validated until the amendment has been sent to the Department and registered under this act.

The RHA must provide the Department with the following information:

- A copy of the revised constitution (Model Rules);
- The date from which the revised constitution was or will be adopted;
- Supporting documentation provided to the Board; and
- A copy of the minutes in which the Board of Management agreed to adopt the revised constitution.

Following this, the Department will issue a certificate confirming that subsection 1(a) of the amended 1969 Act has been complied with.

The RHA is then required to issue a copy of this certificate, and two copies of the signed amendment, to the registrar.

Following adherence to all sections of [Act](#) the registrar will issue to the RHA, an acknowledgement of registration.

### Change of Name or change of RHA's registered office

Section 9 (2)(za) of the 1969 Act requires that notice of a change in name or a change in RHA's registered office is sent to the Department and to the registrar.

These changes, if made in accordance with section 5(3) of the 1969 Act, will be registered by the registrar as an amendment to the RHA's rules.

The registrar, once satisfied that any amendment of the RHA's rules is not contrary to the provisions of the Act, shall issue an acknowledgment of registration.

## **2. Amalgamations/Mergers**

In order for the registrar to register a special resolution to amalgamate an RHA, [Article 29\(2\) of the Housing \(NI\) Order 1992](#), now requires the RHA to provide the Department with a copy of the resolution.

The RHA must provide the Department with the following information:

- a copy of the business case, including risk assessment and financial projection;
- evidence that Due diligence has been undertaken;
- evidence of tenant consultation;
- minutes of both RHAs Special General Meetings in relation to the merger;
- a copy of the report and minute of the governing body meeting which agreed to the organisational change;
- the date the change was or will be made, and
- a copy of the submission made to the Financial Conduct Authority including a copy of the special resolution passed by members (if applicable).

Following the submission of the above information, the Department will issue a certificate confirming that Article 29 (2)(a) has been complied with.

The RHA is then required to issue this certificate together with a copy of the resolution to the registrar.

### 3. Voluntary Winding up

Under [Article 29\(4\) of the Housing \(NI\) Order 1992](#), an RHA must notify the Department of the intention to propose a special resolution that it will be wound up voluntarily under the Insolvency (Northern Ireland) Order 1989.

The RHA must notify the Department of their intention to propose the resolution **before** the resolution is passed. Following this notification, the Department will issue a certificate confirming that the RHA has complied.

The RHA should send this certificate together with a copy of the resolution as mentioned in section [64\(3\) of the 1969 Act](#) to the registrar.

### 4. Dissolution

If in pursuance of Section [64\(1\)\(b\) of the 1969 Act](#), an RHA is to be dissolved by an instrument of dissolution, the registrar will not register that instrument, or cause notice of the dissolution to be advertised unless a copy of the instrument of dissolution is sent to the Department. Following this, the Department will issue a certificate and a copy of this certificate must be sent to the registrar together with the instrument of dissolution as per section [67\(4\) of the 1969 Act](#).