DTP VIEWS

Spring 2017

Deregulation is an eye-catching headline but will it bring change?

– Sam McGrady, Director, DTP

Spring is in the air and life is stirring across the land. It's traditionally the season associated with new beginnings, change and promise. In the social housing sector we're certainly facing a fresh start from April – when the government's much touted shake-up of the regulatory system takes effect. In effect, a series of deregulatory measures, as embodied in the Housing and Planning Act 2016 – whether they will put a spring in our step remains to be seen.

There are certainly potential benefits arising from the changes, and on balance I think it's a positive for the sector. But I can also see a number of disadvantages in what will take effect on 6 April.

We all know the headlines by now: from next month, the social housing regulator will no longer need to grant consent to registered providers (RPs) for the disposal of assets or for 'constitutional changes' (for which read mergers). Instead, it will require 'notification'. How quickly it would like to know about your plans depends on a number of factors – and ranges from as early as three weeks in some cases, to three months in others. But in all cases, notification will now be required after the event.

Let's not kid ourselves here: the government hasn't just discovered a new found enthusiasm for social housing deregulation. This isn't really about freeing up the sector and ushering in a new era of deregulated, unfettered social housing provision. It's about trying to persuade the Office for National Statistics to reverse its decision in 2015 to reclassify RPs as public bodies – thus landing the Treasury with a huge sum of new and unwanted debt on its books. By convincing the ONS that the government is employing a light touch approach to regulating RPs, and that they truly are 'independent bodies', it's hoped it can convince the ONS that they should not be in the public sector at all.

So what will the impact be of the deregulatory measures? The short answer is, in my view, not much. For almost all of what RPs do in relation to the regulator, it will be business as usual. While regulatory consent will no longer be required for a number of important changes, I'm not convinced the regulator will take its eye completely off the ball.

Take asset disposal, for example. While the HCA may now want to be told of a disposal after its taken place, it can still take action if it feels a poor decision has been taken by the board, especially if it is one which has failed to protect social housing assets. It will simply come in and challenge the RP from a governance failure perspective.

We can also expect few RPs to take the deregulatory changes to their logical conclusion. Again, in theory, deregulation could mean providers choosing to deregister; to take themselves out of regulation altogether. Moving all your social housing properties into an unregistered subsidiary may seem attractive on the surface, not least because it could shield you from unwanted rent cuts and other controls. But my instinct is lenders would take a dim view of such a proposal. An unregistered, unregulated social housing provider would almost certainly be seen as a greater lending risk. And greater risk only means one thing: higher borrowing costs.

At present, lenders are willing to splash their cash on a sector they see as well regulated. An RP taking itself out into the unknown will most likely be viewed as a poor investment option. A demand for early loan repayment could follow and a hefty early repayment charge levied. Who would take that risk?

What is probably more likely is we will see a trickling of social housing properties out of the sector as and when they become void. Moving these into a non-registered entity starts to take some properties outside of rent controls but wouldn't be enough to raise alarm bells with lenders. And if it could be framed as part of a robust and sensible approach to asset management or regeneration, it may even earn you a few brownie points with those same lenders.

In the case of mergers; while RPs may no longer need advance sign off from the HCA, it will still be essential to carry out all necessary due diligence and ensure a robust business case is made. Not least, this will remain the requirement of lenders – who may now take an even closer interest in your plans in the absence of the HCA 'safety net'. The regulator has already said it intends to carry out an In-Depth Assessment post merger in almost all cases. To conclude: while you may have less to do in terms of form filling for the regulator, the task of seeing through a merger will remain similarly complex and time consuming as it is now – as it should be if it is to be done properly.

For boards, these changes will mean increased onus on them to take full responsibility for their strategic decisions, and a stepping up of focus on good governance. There will undoubtedly be less wriggle room for poor boards. For some boards, they will see this as a positive, enabling them to be fleeter of foot and to engage in more active, assertive asset management (for example). For others, it could also make them more risk averse, resulting in missed opportunities and a less dynamic sector.

The measures aimed at reducing local authority control of LSVT providers could have a similar cost-benefit impact. For existing LSVTs it could remove some of the restrictions which have been holding them back. For other councils where transfer hasn't taken place, it could act as a barrier to change. Local authorities keen to retain control of their housing assets may be unwilling to give up ownership without the retention of their coveted 'golden share'.

So as the French would say: "plus ça change, plus c'est la même" or "the more it changes, the more it stays the same". Deregulation will happen, but the reality on the ground may not look so radically different from the status quo as we might imagine.