

# A new regulatory framework for social housing in England

A statutory consultation

**TSA**

**TENANT  
SERVICES  
AUTHORITY**



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## A statutory consultation

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# Foreword

Since our launch on 1 December 2008, we have worked with tenants and providers from housing associations, co-ops, ALMOs and local authorities to explain our purpose, identify what matters most to tenants and decide how best to use our new powers to make a difference to the four million households who live in social rented homes in England. This approach is at the heart of what we mean by co-regulation. This document sets out our proposals for a new regulatory framework that will benefit the lives of over eight million tenants. We want to:

**Improve standards of service delivery for tenants.**

We will set standards for those landlord services that tenants care about the most such as repairs and maintenance. Our framework protects tenants if their landlord performs poorly. Providers that involve their tenants to deliver good services and have sound governance and finances will experience much less regulation, leaving them freer to innovate and benefit from our de-regulatory approach. We will encourage those in the middle to improve by requiring open and transparent reporting of their performance and by enabling them over time to compare themselves against other landlords.

**Support decent homes and neighbourhoods.** We will ensure all homes meet the Decent Homes Standard (subject to funding being available for local authority

stock). We are proposing standards on anti-social behaviour (ASB) and management of the neighbourhood because we know that the safety and security of places matters to tenants.

**Promote effective tenant involvement and empowerment.**

Our latest survey of existing tenants showed that only one in two tenants is satisfied with opportunities for involvement and only one in six tenants feels their landlord takes a lot of notice of their views. We want to work with landlords and tenants – we call this co-regulation. To make it really work for tenants, our standards place involvement and empowerment at their core with local standards, improved accountability, public reporting and tenant scrutiny.

**Ensure providers are well run and deliver value for money.**

We know great service delivery starts with effective governance and sound financial viability. Our standard on value for money requires providers to be open about how they prioritise spend (on new supply, existing stock, community work) and how they constantly strive to improve.

**Promote and protect public and private investment.**

We want to maintain the confidence of private sector lenders and investors to finance improvements in neighbourhoods and the building of more homes. Private sector investors look to the TSA, as an independent

regulator, to safeguard their interests through our regulation of the governance and financial viability of housing associations. A modern risk-based regulatory framework makes access to private finance cheaper than it would otherwise be. We estimate that this benefit is worth about £250 per year per home – a benefit that helps reduce the cost of affordable housing to the taxpayer and to tenants.

**Encourage and support a supply of well-managed social housing.** We know how important it is for potential tenants and those living in overcrowded homes that providers play a key role in increasing the supply of affordable homes. Our value for money standard will help promote a more efficient sector and our allocations standard will help to ensure that the process will be fair and flexible.

The six new standards set out in this document for social housing providers are the centrepiece of our new regulatory framework. They describe the outcomes we want to see delivered and the specific requirements we expect all providers to comply with in meeting these outcomes. We believe the best place for the quality of services to be discussed, agreed and scrutinised is locally between providers and their tenants. So our standards require providers to set out what they offer to tenants and set local standards that reflect the priorities of local communities.

We know that the majority of tenants are satisfied with their landlord and there are many excellent providers who already meet much of what we are requiring in these standards. We also know that where performance is poor or involvement is weak this can have a significant effect on tenants' lives. Registered providers must meet our standards. Where they don't, we will expect speedy self-improvement and where this is insufficient we have a new graduated range of enforcement powers to ensure that tenants get the service they deserve.

These proposals balance new demands on providers to be transparent and report on performance to their tenants, and hold themselves to account – with a significant reduction in red tape, with no TSA Codes of Practice, the removal of thousands of individual regulatory consents, and the demise of over 50 detailed Housing Corporation circulars and guidance notes.

Registered providers must meet our standards. Where they don't, we will expect speedy self-improvement and where this is insufficient we have a new graduated range of enforcement powers to ensure that tenants get the service they deserve.

**Peter Marsh**  
Chief Executive

# Consultation statement

## TSA consultation statement

This sets out key information about the issues we are consulting on, what effects we think any proposals or changes could have, who we are asking for views, and when and how to respond.

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**Please respond by** 5 February 2010

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**Please respond to** Amanda Newton  
Statutory Consultation Project Manager  
Tenant Services Authority  
4th Floor, One Piccadilly Gardens  
Manchester M1 1RG  
Email: [statutoryconsultation@tsa.gsx.gov.uk](mailto:statutoryconsultation@tsa.gsx.gov.uk)

If you would like to discuss any issue raised in this document before sending your response please contact our Customer Service team on 0845 230 7000, who can refer you to the relevant TSA lead.

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**Why we are asking for views** We are introducing a new system of regulation for social housing providers (such as housing associations and local authorities) in England from 1 April 2010. This will implement the powers given to us in the Housing and Regeneration Act 2008. We are consulting on whether our proposals best meet the objectives Parliament set for us.

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**What it means for you** For tenants, landlords, lenders and other stakeholders who have an interest in the social housing sector, this consultation is an opportunity to influence how we implement our new powers.

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**Context for this consultation**

The Housing and Regeneration Act 2008 followed the 2007 Cave Review of social housing. The Cave Review made a clear case for reform, to introduce greater protection, choice and involvement for tenants of social housing in England. This consultation is about the implementation stage of a process of reform which began with that Review.

The proposals in this consultation have been developed following two earlier rounds of consultation which we called the National Conversation. The first round ran from January to May 2009. This led to the publication of a discussion document in June 2009, which described ideas and some proposals for the new regulatory framework. A summary of responses to this document was published in October 2009. A statement on how we have taken into account stakeholder feedback is available from our website: [www.tenantservicesauthority.org](http://www.tenantservicesauthority.org)

This document is the formal, statutory consultation on the new framework. After considering responses to this document we will make decisions on the new regulatory framework before 1 April 2010.

The Government has issued two documents that are relevant to this consultation. The first contained its Directions to us on three particular standards (Directions to the Tenant Services Authority – summary of responses and Government response, November 2009, CLG). These relate to rents, quality of accommodation and tenant involvement. Our standards must comply with these directions. Where our standards reflect the Government's directions this consultation document cannot reopen consultation on the Government's policy.



The second contained Government's statement of intent in terms of our powers in relation to local authorities (The Housing and Regeneration Act (Registration of Local Authorities) Order 2009: a summary of responses, November 2009, CLG)).

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**Who is being consulted**

We welcome views from everyone who has an interest in the future of social housing in England.

The 2008 Act requires us to consult with certain statutory organisations; these are listed in Annex 2.

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**How we are consulting**

We want to consult as widely as possible. In addition to printed and electronic versions of this document, we are also holding a number of events for both tenants and registered providers to explain our proposals and encourage responses. We can provide this document on request in large print and translated into the five languages that, apart from English, are most commonly spoken by social housing tenants in England. These are Arabic, Urdu, Bengali, Somali and Turkish. These are available on request from our Customer Service team on 0845 230 7000.

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**Taking account of  
your views and what  
happens next**

This consultation document is about:

- Our approach to co-regulation and setting standards for providers
- The standards we will be setting to give effect to our powers
- How we will monitor compliance against our standards
- The ways that we might intervene when compliance issues arise
- The criteria for registration, and deregistration criteria

Ten key consultation questions are set out in Annex 1 to this document, though views would be welcome on any aspect of the document.

There are two supplementary consultation papers associated with this document that are available from our website. These are:

- Guidance on Use of Powers Under the 2008 Act – this consults on the detail of how we intend to use certain powers to complement the general principles contained in this document
- Consent to Disposals – this contains our detailed proposals for how we shall grant certain consents in relation to disposals of stock

Social housing matters to people for a great many reasons and we expect to receive many different views about our new approach. This means that we will not be able to do everything that everyone wants. The TSA will have to decide, taking account of the views we receive, and of our legal objectives, duties and powers, what is the best way to proceed.

We will publish a decision statement in March 2010 before the new powers are activated on 1 April 2010.

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**Publication of responses**

All formal written responses will be published shortly after 5 February 2010, the closing date of this consultation (unless you specifically ask us not to).

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**Freedom of Information**

The information provided in response to this consultation (including personal information) may be published or disclosed under the access to information regimes, primarily those set out in the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you want information that you provide in response to this consultation to be treated as confidential, please be aware that we can only do so if it would be consistent with our legal obligations under the Freedom of Information Act. There is a statutory Code of Practice that public authorities must follow and this sets out how confidential information must be dealt with.

Although we cannot guarantee that all information will be kept confidential we will take into account any representations you make. In view of this it would be helpful if you could explain to us why you think any or all of the information you provide is confidential. This will help us establish whether or not there are grounds for not publishing the information you submit to us. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be binding on the TSA.

The TSA will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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# 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 establishes the Tenant Services Authority (formally titled under the Act as the Office for Tenants and Social Landlords) and the Homes and Communities Agency (HCA) responsible for public investment in housing and regeneration
- TSA – the Tenant Services Authority. The new Regulator for Social Housing in England. Regulation was previously undertaken by the Housing Corporation in relation to housing associations. The TSA has been given new powers, duties, and objectives under the 2008 Act
- 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)
- Tenant – a resident in social housing, whose provider could be a local authority, housing association or any other registered provider. In this consultation paper, this term does not include leaseholders<sup>1</sup>
- Provider – this means a registered provider within the definition in the 2008 Act. All providers registered with the TSA as of 31 March 2010 will automatically be registered as providers on 1 April 2010. Subject to Parliamentary approval, all local authority providers will be automatically registered too (both those that directly manage homes or where these services are provided by an Arm's-Length Management Organisation or Tenant Management Organisation). New applicants to be a registered provider after 1 April 2010 must meet the eligibility in the 2008 Act and registration criteria set by the TSA
- ALMO – an Arm's-Length Management Organisation established by local authorities as management agents of their stock. ALMOs that do not own stock will not be registered under the 2008 Act and hence will not be the legal entity responsible for meeting the standards (it will apply to the sponsoring local authority). The same principle applies to Tenant Management Organisations (TMOs)

<sup>1</sup> The relevant powers in the Housing and Regeneration Act 2008 focus on the tenants of low-cost rented accommodation and low-cost home ownership, not leaseholders. This reflected Government's view that leaseholders had a degree of choice to move out of social housing (unlike most tenants in the sector) and are protected by other regulations and legislation. Since many areas of social housing have a mixture of tenures, our regulation designed to improve outcomes for tenants are likely to have positive 'spill over' effects for leaseholders.

Part I

# Overview of the new regulatory framework

# 1 Introduction to the new regulatory framework

**1.1** The new regulatory framework under the 2008 Act, which comes into effect in full from 1 April 2010, will herald a significant change in the way that providers are regulated<sup>2</sup>. A brief description of the main components of the new statutory framework is set out below. The rest of this document explains how we propose to implement this statutory framework.

## The TSA's objectives in law

**1.2** The proposed new regulatory framework is designed to ensure we further our fundamental objectives set out in the 2008 Act. These are:

- To encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands
- To ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection
- To ensure that tenants of social housing have the opportunity to be involved in its management

- To ensure that registered providers of social housing perform their functions efficiently, effectively and economically
- To ensure that registered providers of social housing are financially viable and properly managed
- To encourage registered providers of social housing to contribute to the environmental, social and economic well being of the areas in which the housing is situated
- To encourage investment in social housing (including by promoting the availability of financial services to registered providers of social housing)
- To avoid the imposition of an unreasonable burden (directly or indirectly) on public funds
- To guard against the misuse of public funds
- To regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable

**1.3** These objectives are not in priority order and the 2008 Act explicitly recognises it is the role of the TSA to balance them and prioritise them as it considers appropriate. A number of tensions need to be reconciled in seeking to further these

<sup>2</sup> At present non-profit-making providers are regulated by the TSA under the former Housing Corporation's powers under the 1996 Housing Act.

objectives. Building new homes, for example, is important to meeting the needs of prospective tenants. But investment in new homes should not jeopardise the financial viability of providers nor result in poor services to existing tenants. Similarly, our duty to minimise interference and allow providers freedom to decide the best way to deliver services must be balanced against proportionate use of our regulatory and enforcement responsibilities on behalf of tenants and private sector lenders, and the taxpayer.

**1.4** One of the obligations on the TSA arising from the Regulators' Compliance Code is to ensure that our activity allows, and where appropriate encourages, economic progress. Among other things, we believe that this requires us to ensure that the way in which we regulate achieves one of our fundamental objectives which is to encourage investment in social housing, and, in particular, new supply of social housing. We shall work closely with the HCA to achieve this shared objective.

## **Clear standards that registered providers will be expected to meet**

**1.5** The 2008 Act gives us powers to establish standards that apply to registered providers. These standards can be related to the nature, extent and quality of accommodation, facilities or services by the provider in connection with social housing. Apart from for local authorities, we can also set standards relating to registered providers' governance and management of their financial and other affairs. Standards may be expressed by reference to documents prepared by others.

**1.6** One of the clear expectations from the 2007 Cave Review and Parliament in passing the 2008 Act was that the standards should reflect outcomes that are important to tenants and that they are set so as to ensure tenants receive an appropriate degree of protection, choice and involvement in the management of their housing.

**1.7** In setting standards, we must have regard to the desirability of providers being free to choose how to provide services and conduct business.

**1.8** We can issue a Code of Practice which relates to any matter addressed by a standard or

amplifies a standard. These Codes of Practice can be taken into account by the TSA in considering whether standards have been met.

**1.9** The Government under the 2008 Act may direct the TSA to set a standard in relation to rents, quality of accommodation and involvement by tenants in the management of their accommodation or may direct us in relation to specified objectives. The Government has recently confirmed its intentions to direct on the three specified areas and our standards set out in Part II comply with these directions<sup>3</sup>.

**1.10** Section 4 discusses our approach to setting both national and local standards. Part II, sections 6-11, set out detailed proposals for these standards.

## **A framework covering all providers for the first time**

**1.11** One of the principal conclusions of the 2007 Cave Review was that 'every tenant matters'

and the nature of provider should not determine the quality of service tenants experience. During passage of the 2008 Act, all the main sector organisations – Local Government Association (LGA), National Federation of ALMOs (NFA), National Housing Federation (NHF), the Chartered Institute of Housing (CIH) and tenant bodies – supported the inclusion of council landlords in the new system.

**1.12** The Government's intention is that the regulatory framework should as far as possible apply consistently to all providers from 1 April 2010. There are important differences reflecting the governance and financial structures of local authorities. For example, depending on Parliamentary approval of the Government's proposals<sup>4</sup> for our regulation of local authorities, the TSA will not have powers to set standards in relation to local authorities' governance and financial viability. And some of our intervention and enforcement powers will not apply to local authorities.

<sup>3</sup> Directions to the Tenant Services Authority – summary of responses and Government response, November 2009, CLG.

<sup>4</sup> The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009: a summary of responses, November 2009, CLG.



**1.13** Section 5 discusses our approach to regulating local authority providers and, in particular, how our regulation will support the principles of the Local Performance Framework. This is the principal way in which central Government manages its performance relationship with councils.

## **The TSA's formal monitoring and enforcement powers**

**1.14** We have a number of general and regulatory powers under the 2008 Act which enable us to monitor providers' compliance with regulatory requirements. These include powers to request information. We also have powers requiring providers to submit performance information, to arrange a survey of a provider's premises, to commission an inspection, and hold an inquiry in the event that we suspect a provider is failing to meet a standard or is in breach of other regulatory requirements. Section 12 sets out our approach to monitoring providers' compliance with our standards.

**1.15** The TSA has a range of enforcement powers which can require the provider to take specified action to resolve an identified failure or other problem. These powers include issuing an enforcement notice, requiring an appointment

of a new officer, or a management tender or transfer. The TSA can also direct the HCA not to provide funds to a provider. These powers do not apply equally across all providers. For example, we do not have powers to issue fines and require compensation from local authorities (explained in more detail in section 5).

**1.16** A provider may give the TSA a voluntary undertaking in respect to any matter concerning social housing. We must have regard to a voluntary undertaking given or offered in exercising our regulatory and enforcement powers. We can also take into account whether such an undertaking has been honoured in deciding whether to exercise these powers.

**1.17** Section 13 discusses our approach to dealing with poor performance by providers and sets out principles for our guidance on the use of these powers to help stakeholders understand our proposals in the round. Not all of the guidance we intend to produce for consultation is included in this document. A supplementary consultation document published alongside this document contains detailed guidance on the use of some of our powers. Annex 4 sets out a summary of where guidance on particular powers is contained either within this document or in our supplementary document.

## A new register for providers to encourage new entry

**1.18** Only providers who are registered with the TSA will be regulated. All existing providers on our register as of 31 March 2010 will automatically transfer to the new register on 1 April 2010. All local authority providers will also automatically be placed on the register.

**1.19** The new register will be different from the present register in a number of important respects, with a new relationship to the way that social housing is funded. The HCA has wide powers to invest public grant and to enable the development of new social housing (for example by providing infrastructure). The HCA can give public grant to any organisation to build low-cost social rented housing. But at the point of letting these homes to tenants, the landlord must be a registered provider with the TSA<sup>5</sup>. Second, the new register is designed to encourage new entrants to the market and for the first time does not place any restriction on the type of provider who can apply. This includes for

profit providers in addition to not for profit providers. Third, we must register any applicant that meets the eligibility criteria and our registration criteria.

**1.20** The Government's proposals for how we will regulate local authorities make it clear that the body that shall be registered, and hence legally responsible for meeting any applicable regulatory standards, will be the sponsor local authority. This means that ALMOs will not be registered as providers in their own right, unless they own stock, and hence are providers in their own right. The new register will, however, differentiate those local authorities that have ALMOs and those that manage their retained stock directly.

**1.21** Section 14 discusses our proposals for the new registration and deregistration criteria to apply from 1 April 2010.

<sup>5</sup> For low-cost home ownership (LCHO), the HCA can give development funding to any organisation which meets its investment criteria. Under the 2008 Act, where the LCHO homes provided are shared ownership, at the point of sale of shared ownership leases the landlord does not need to be registered with the TSA. If LCHO homes are sold outright on equity loan terms, there is no landlord/tenant relationship and no requirement that the seller should be registered with the TSA. If the HCA were to require LCHO provision that it funds to be undertaken by registered providers, we would review whether and how our registration process and the application of our regulatory framework and standards needed to be modified.

## 2 Our vision for co-regulation

### Rationale for regulation

**2.1** In developing the new regulatory framework we want to be consistent with the policy basis accepted by Government for the regulation of social housing in England. These reasons were set out by the 2007 Cave Review and endorsed by the Government and then Parliament with the passing of the 2008 Act. These reasons include:

**A consumer regulator** – tenants have limited ‘market’ power. Due to the shortage of supply of affordable homes they cannot hand back their keys, walk away and move into another home at the same rent and size. We ensure tenants are able to be involved in decisions that affect them, their homes and neighbourhoods and to protect tenants if their landlord performs poorly

**Security and protection for private investors** – Our powers to intervene and protect private investment are critical to the continued flow of funding at competitive rates, so providers can build new homes and improve their services. For housing association tenants this protection is worth about £250 a year per home

**Safeguarding public investment** – there has been £120 billion past public investment in social housing – £90 billion from local authorities and £30 billion into housing associations. We ensure the taxpayer continues to enjoy returns in the public interest, eg by ensuring homes and services are of a good quality and through the promotion of value for money

**The provision of social housing affects the wider quality of life in communities** – housing providers are well placed to help other agencies to deliver effective neighbourhood services. We help ensure providers play their part in supporting local authorities in the areas they operate

### The TSA’s regulatory philosophy

**2.2** Co-regulation is our preferred operating approach for ‘how’ the TSA intends to regulate. This approach has received near universal support among stakeholders.

**2.3** Co-regulation was first proposed by the 2007 Cave Report which described it as self-regulation by providers involving their tenants, subject to a ‘backbone’ of intervention by the regulator on a ‘by exception’ basis. This was

contrasted with other regulatory approaches such as de-regulation, self-regulation and re-regulation. Co-regulation reflects a balance between direct regulation by the TSA and self-regulation by providers.

**2.4** The key ingredients of our co-regulatory approach are:

- the TSA will establish clear expectations through national standards that, as far as possible, focus on outcomes, are meaningful for tenants and providers, and avoid being prescriptive about how those outcomes should be achieved. Local agreements on standards between tenants and providers will shape local services and priorities and drive improvement. The primary focus for discussions on service delivery and improvement should be between providers and their tenants rather than between the regulator and the provider;
- responsibility for meeting these standards lies with the governing bodies of providers. Essential elements of co-regulation must include honest and robust self-assessment that is evidence based, and subject to tenant scrutiny of performance. Providers should also use external validation, independent audit and peer review where appropriate. Providing transparent

performance information to tenants to help strengthen their accountability is key;

- where problems are identified, providers should as far as possible be given the opportunity to correct issues speedily themselves and take responsibility for their self-improvement, with the prospect of intervention or enforcement from TSA where they fail to do so.

**2.5** This approach to co-regulation reflects our objective to ensure that we reconcile as far as possible the achievement of our fundamental objectives with the need to ensure that providers and tenants can operate in a flexible way that is not constrained by central direction from the TSA.

## Reducing burdens

**2.6** Consistent with the principles in the 2007 Cave Review and our obligations under the Regulators' Compliance Code, our new framework includes a clear focus on de-regulation and reducing burdens where appropriate. For example, by:

- making co-regulation central to the way the new standards framework will operate in practice,

which will by its nature incorporate a role for self-regulation by providers with their tenants

- basing our new national standards largely on outcomes and seeking to avoid prescriptive process requirements where possible
- keeping Codes of Practice that relate to new standards to a minimum and if they to be developed after 1 April 2010, ensuring this is done in a co-regulatory manner
- removing the requirements from all previous guidance and Circulars issued by the TSA's predecessor body, the Housing Corporation, where possible. This amounts to:
  - the Regulatory Code and Guidance
  - 54 Circulars (of a total of 58)<sup>6</sup>
  - all Good Practice Notes
- moving to using general consents for some of our work on providers' disposals of their stock rather than as now relying on individual consents. For example, greater use of the general consent will remove the obligation on providers to seek from the TSA a minimum of 1,000 individual consents annually.

**2.7** Annex 5 sets out our Regulatory Impact Assessment in relation to our proposals.

## How we have developed our proposals in this document

**2.8** As part of our collaborative approach it is important that we work openly with tenants, providers and other stakeholders to develop and implement the framework in a way which takes account of their needs and views. We have done this through an extensive and open discussion and development process throughout 2009, particularly through our National Conversation.

**2.9** The National Conversation was arguably the largest ever discussion with tenants in England. For example, we received 27,000 responses to our questionnaire (in the first phase from January to March). Aimed at understanding the views and priorities of tenants across the country, it included national and local events and detailed research and surveys. We published the main conclusions in June 2009<sup>7</sup> alongside our discussion document Building a New Regulatory Framework.

<sup>6</sup> Four Circulars are retained in reference to the definition, in the Government's direction to the TSA on rents, of rent policy and its operation.

<sup>7</sup> National Conversation, Key findings, June 2009, TSA. Available from our website.

**2.10** We have received 325 written responses to our June discussion document on the regulatory framework. Non-confidential responses are published on our website along with our Summary of Responses document.

**2.11** To support our engagement around the discussion document, we established a Sounding Board of stakeholders and three advisory panels representing providers, tenants and advisors. A list of the organisations on our Sounding Board is contained in Annex 2.

**2.12** This formal consultation document represents the next stage of this engagement. It is important to stress that our commitment is to a long-term collaborative relationship that will continue beyond 1 April 2010.

## Local Standards Pilots

**2.13** As part of our co-regulatory approach, we have established a programme of Local Standards Pilots. The purpose of this is to enable providers and tenants to develop, test and refine a range of different approaches to setting local standards across a number of service areas.

**2.14** There are 37 Local Standards Pilots. These will bring benefits to tenants living in 380,000 homes across England and provide opportunities for tenants living in housing associations, local authorities, ALMOs, TMOs, and co-operatives across the country.

## 3 Ten principles to shape regulation

**3.1** In light of responses to our June discussion document and our vision for co-regulation, we propose that our regulation should be shaped by the following ten key principles.

### I. National standards will be established based on clear criteria.

**3.2** We have developed three criteria to determine whether the TSA should set a standard:

- First, where it is a priority for tenants and a standard is necessary to ensure they are protected from poor service. We consider that the needs, views, and experience of tenants must be central, and that common expectations should be set across all providers
- Second, where the Government has issued a Direction to require the TSA to set standards
- Third, where it is necessary in order for the TSA to be able to carry out its functions and achieve its fundamental objectives

### II. Our national standards will be clear, succinct, based on outcomes and avoid prescribing detailed processes.

**3.3** Our expectations of providers in meeting these outcomes should be clear. The standards should be capable of being used to identify non-compliance and especially the poorest performing providers and enable us to take necessary action to improve outcomes for tenants. The standards set out in this document have required outcomes and specific requirements. The required outcomes must be met by all providers. We would normally expect that the steps set out under the paragraphs headed 'specific requirements' would need to be followed to achieve the 'required outcomes' of the standard. However, there may be some limited circumstances in which the required outcome of some standards could be achieved through other steps, in which event we would expect providers to be able to justify this.

**3.4** National standards should have regard to the desirability of providers being free to choose how they conduct business and deliver services. We are using this consultation document to ask stakeholders about the text of the standards and whether we have the balance right in terms of the level of detail we are requiring.

**3.5** They should also be designed to support the Local Performance Framework and the independent role of the Audit Commission in respect of local

authorities' governance, financial management and approach to value for money.

**3.6** Codes of Practice should be kept to a minimum. We have no plans to introduce any Codes of Practice from 1 April 2010. If Codes of Practice do prove necessary on certain issues after that date, we will develop them with stakeholders in a co-regulatory manner.

**III. Our national standards framework will require providers to agree local standards with their tenants for the areas of service that are relevant to them locally.**

**3.7** The national standards should encourage providers and tenants to agree, at a local level, on the levels of performance they should expect, ie local standards.

**3.8** The priorities of tenants will vary considerably across the country and within regions and neighbourhoods. Where supported by their tenants and agreed between them and their provider, local standards should complement the national standards to strengthen them and tailor them to local priorities. It is not, however, the TSA's

role to prescribe what the performance targets ought to be – this is a matter between providers and their tenants.

**3.9** All providers should as part of their annual report on standards set out their plans for consulting tenants on the need for, and developing and establishing, local standards to apply by 1 April 2011 at the latest. In their subsequent annual reports, providers should explain to their tenants their performance against the local standards they have adopted.

**IV. Every tenant matters. We expect providers to understand and respond to the particular needs of their tenants and to demonstrate how they have taken into account the needs of tenants across the six diversity groups.**

**3.10** Our regulatory philosophy is also influenced by wider principles of public service which focus on equity, universality and accountability. In order to meet these values, the TSA is committed to equality and diversity. Communities are made up of people from different backgrounds, races, beliefs and experiences. Many people have care



or support needs. Ensuring that this diversity is reflected in the work we do is central to our mission. We support effective and inclusive approaches to both equality and diversity, and tenants with care or support needs.

**3.11** Understanding the needs of all tenants is essential for providers. This would include the needs of people drawn from the six equality groupings: ethnicity, disability, sexuality, age, gender and religion/belief. The Tenant Involvement and Empowerment standard includes our regulatory requirements on diversity and support for tenants with care or support needs. We expect providers to apply these principles across the standards framework for the benefit of all tenants.

**V. We will promote transparency in reporting of performance by providers for tenants and local authorities (in their strategic role) in the areas they operate.**

**3.12** All providers with more than 1,000 properties should as soon as possible after 1 April 2010 publish for the benefit of their tenants a report that sets out how they already meet, or their plans for meeting, each of the national standards

(their 'baseline' position) noting any gaps and setting out their improvement plans, and how they will assure or measure their compliance against these standards in future. This report should include their plans for developing local standards. We do not want to be overly prescriptive as to the format of this report. As far as possible we expect providers to use information that is already collected and is therefore "used and useful". We require this first report to be published by no later than 1 October 2010 and for it to be shared with the TSA as evidence of how providers intend to comply with our standards framework.

**3.13** We are minded to require this for providers with less than 1,000 properties. We want to hear the views of these organisations and their representatives to ensure our requirements are proportionate.

**3.14** By 1 July 2011, and by that date in all subsequent years, providers should publish for the benefit of their tenants, and submit to the TSA, an annual report containing their view on their performance against the national standards in the preceding twelve months leading up to 1 April. This should include reference to tenant scrutiny of performance and, where appropriate, use of external validation, peer review and benchmarking.

**VI. Good governance is a universal principle and is essential to the quality of service delivery, financial robustness and value for money.**

**3.15** The 2007 Cave Report and 2008 Act recognise that the bedrock of great service delivery relies on good governance, financial strength and value for money. For the housing association sector, we will continue to have a strong focus on governance and viability matters. Although we do not have specific powers to set standards for governance and viability for local authority providers and ALMOs, the principles of good governance and financial strength are universal. Given the strong link between service delivery and good governance, we will work closely with the Audit Commission in their role overseeing local authorities' leadership and financial matters, with a shared aspiration of helping to ensure all tenants receive the quality of service they deserve.

**VII. We want to promote effective forms of independent validation, audit and benchmarking of performance to encourage providers to continually improve and free the best from unnecessary red tape.**

**3.16** The TSA will work with tenants, providers and other stakeholders in the lead up to April 2010 and beyond to promote effective forms of validation and peer review that best support the standards framework. Continuous improvement is important to ensure that the quality of service tenants receive improves. We recognise that there are many routes to improvement and it is important that providers are able to choose approaches that match their culture and values. The TSA's excellence programme will help identify and share best practice to support tenants and providers.

**VIII. For the national service delivery standards, we will focus our resources in 2010-11 on identifying and addressing the worst performing providers, where tenants are being let down by their provider's performance.**

**3.17** Providers are expected to meet all the requirements of all the applicable national standards. All tenants deserve a good quality service and many already receive this from their provider. We wish to prioritise our focus on raising the standard of service for those tenants that are currently not getting a good deal from their provider. We know that performance can vary across the

range of activities of a provider and from place to place. By concentrating on poor performance we will be acting proportionately ensuring we focus our energies where they are most likely to promote better outcomes for tenants.

**3.18** Starting with this document, but evolving in the lead up to April 2010 and beyond, we will develop our approach to judging compliance with national standards, including the types of evidence and information we will look at to assess whether there are compliance concerns.

**IX. The standards framework must support the principle of sector-led improvement. Where problems are identified the provider will usually be offered an opportunity for speedy self-improvement.**

**3.19** Where this is either inappropriate (eg an urgent health and safety issue) or where the provider does not command confidence to deliver, we may consider the use of our more formal regulatory and enforcement powers. In considering any intervention, the TSA will act in a proportionate way. We will also consider other statutory objectives such as whether any action we might take would conflict with the objective to ensure that providers remain financially viable.

**IX. Registration criteria should encourage new entry into the social housing sector, consistent with our objectives in the 2008 Act.**

**3.20** The discretionary registration criteria that we can set should be related to a provider's ability to meet the national standards, given that this will be what is expected from them once they are on our register.

## Reviewing the framework

**3.21** We believe that the regulatory framework should be reviewed after a fixed period of time, say three years, to give stakeholders a period of certainty. As we develop our co-regulatory process, some changes may be required within a shorter period. If so, we will consult openly on the reason for the change.

## Consultation question

- 1. Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?**

# 4 Our approach to setting national and local standards

**4.1** This section sets out our guidance for how we intend to use our power to set standards and codes of practice.

## Scope of national standards

**4.2** Figure 1 sets out a summary of our proposed national standards. Broadly speaking the 14 areas for standards set out in June discussion document, plus the cross-cutting themes of Equality and diversity and Tenants with additional support needs have been reaffirmed by stakeholders. In this document we have rationalised these issues into six standards by combining related issues.

**4.3** There are a number of areas where we have not been persuaded to set a national standard. For example, we have not set a standard in relation to specific wider social, economic and environmental issues (eg specific requirements on worklessness). The basis of the proposed Local Area Co-operation standard is to encourage providers to co-operate with local authorities in their strategic place-shaping role, rather than us as a regulator to prescribe specific activities or objectives.

## Scope of local standards

**4.4** Local standards are central to our co-regulatory philosophy. Providers' offers that are 'one size fits all' and do not respond to tenants' views are unlikely to be sufficiently subtle to meet the local needs of tenants. Our National Conversation demonstrated that tenants' views and priorities varied from area to area. There was near universal support from stakeholders for local standards.

**4.5** Many providers already differentiate their service offer based on the needs of neighbourhoods or the specific requirements of tenant groups (such as older or vulnerable tenants). We want to encourage all providers to adopt this approach. Based on feedback from the June discussion document, we propose the following approach for how local standards should be incorporated within the regulatory framework:

- Following consultation with their tenants providers should tailor their 'offer' in some of the areas covered by national standards with local standards. The standards that we would expect providers to consult tenants on developing local standards include<sup>8</sup>:

<sup>8</sup> Providers and their tenants can also agree on other areas for local standards provided that this does not undermine any of the requirements of the national standards.

**Figure 1 – Proposals for national standards<sup>9</sup>**

Proposed standard	Containing requirements relating to the following areas identified in the June discussion document
1. Tenant Involvement and Empowerment	<ul style="list-style-type: none"> <li>▪ Involvement and empowerment</li> <li>▪ Customer service and choice</li> <li>▪ Equalities and diversity</li> <li>▪ Tenants with additional support needs</li> <li>▪ Complaints</li> </ul>
2. Home	<ul style="list-style-type: none"> <li>▪ Repairs and maintenance</li> <li>▪ Quality of accommodation</li> </ul>
3. Tenancy	<ul style="list-style-type: none"> <li>▪ Allocations</li> <li>▪ Rent</li> <li>▪ Tenure</li> </ul>
4. Neighbourhood and Community	<ul style="list-style-type: none"> <li>▪ Neighbourhood management*</li> <li>▪ Local area co-operation</li> <li>▪ Anti-social behaviour</li> </ul>
5. Value for Money	<ul style="list-style-type: none"> <li>▪ Value for money</li> </ul>
6. Governance and Financial Viability**	<ul style="list-style-type: none"> <li>▪ Governance</li> <li>▪ Financial viability</li> </ul>

\* Called Neighbourhood and Estate Management in the June discussion document.

\*\* This standard does not apply to local authorities.

<sup>9</sup> We propose to set standards 1-5 using our powers under section 193 of the 2008 Act. We propose to set standard 6 under our powers under section 194 of the 2008 Act.

- The Home standard in relation to quality of accommodation and repairs and maintenance
  - The Neighbourhood and Community standard in relation to neighbourhood management and anti-social behaviour
  - The Value for Money standard
- The Tenant Involvement and Empowerment national standard should set clear expectations for what providers should do in developing local standards with their tenants. Rather than the regulator prescribing 'content' and performance targets, the Tenant Involvement and Empowerment national standard establishes a framework that requires these issues to be discussed and agreed locally between providers and their tenants. Hence, we expect providers in developing local standards to consult with their tenants with a view to agreeing:
    - local performance targets
    - how performance will be monitored and communicated to, and scrutinised by, tenants
    - how performance will be compared with other registered providers
    - what happens if local standards are not met
- arrangements for periodically reviewing the local standards
  - Providers should publish their plans for how they will develop local standards as soon as possible after 1 April 2010 and by no later than 1 October 2010 and have local standards in place by no later than 1 April 2011

**4.6** We do not propose prescribing the definition of the term 'local' that applies to the scope of providers' local offer. For local authority landlords, local may mean within their defined authority boundaries but it could also mean subsets of this as their areas could contain neighbourhoods with significantly different priorities and needs. For housing associations that are geographically spread, there is an expectation that they will engage their tenants meaningfully on whether differences of priorities and needs exist in different areas, rather than simply adopting a 'one size fits all' approach.

**4.7** In some cases a uniform approach might be appropriate: for example, we recognise that for some providers and groups of tenants, their view of 'local' may best be defined as the community of tenants that they provide services to. If, ultimately, tenants and providers fail to agree local standards,

our view is that they should seek independent mediation rather than recourse to the regulator.

**4.8** We recognise that local standards may lead to different outcomes in different locations. We do not believe this should be a cause for concern if the balance of a provider's offer genuinely reflects the difference in local priorities. Designing services to meet the different needs of tenants in different places is at the heart of localism. Developing capacity for tenant involvement and performance scrutiny along with measures to provide greater access to information will help empower tenants to avoid inequitable outcomes. Our approach to monitoring compliance against the national standards will protect tenants if their landlords perform poorly.

## Codes of Practice

**4.9** Although it is open to us to develop Codes of Practice to relate to, or amplify any issue in the national standards, we consider these should only be developed where necessary and not simply be a default presumption for all standards. We do not propose any Codes of Practice to support the

national standards from 1 April 2010. Any Codes of Practice that are necessary in the future should, where possible, be developed in a co-regulatory way with stakeholders.

**4.10** The TSA's predecessor organisation, the Housing Corporation, issued over time a number of documents that set out regulatory requirements, including Circulars or guidance and good practice for housing associations, on issues such as rents, payments and benefits (related to paragraph 2, Schedule 1 of the Housing Act 1996), treasury management, and tenant involvement and accountability. These documents do not have any status within our new powers under the 2008 Act unless referenced in a particular standard or Code of Practice. In some cases the requirements of the standards deal with the issues. In others, particular Circulars relevant to the operation of the new regulatory framework have been referenced, for example in relation to rents. We intend to work with stakeholders over the consultation period to assess whether there are any critical issues contained in any of the other Circulars or other documents that ought to be incorporated in the new regulatory framework. We start from the presumption that they will not<sup>10</sup>.

<sup>10</sup> Except in relation to Circulars issued by the Housing Corporation that set out regulatory requirements for the small number of co-ownership societies it funded in the 1970s and 1980s. These societies were not regulated under the Housing Corporation's Regulatory Code but were required to meet the requirements in the appropriate Circulars. The 2008 Act makes separate provision for co-ownership societies so the standards will not apply but we intend to maintain the integrity and continuity of the Housing Corporation's previous approach.



## Proportionality and application to smaller housing providers

**4.11** Our duty to the principle of proportionality across the regulatory framework means we must consider the extent to which national standards should apply to smaller housing providers, which we define as those with fewer than 1,000 properties.

**4.12** Often small providers are well placed to understand and respond to their tenants' needs. Our current intention is that all the standards should apply to providers whatever their size. However, the principle of proportionality must be taken into account in assessing the adequacy of smaller providers' arrangements.

**4.13** During this consultation period and beyond, we will work with representative bodies including the Confederation of Co-operative Housing and specialists such as The Abbeyfield Society and National Association of Almshouses, to design an appropriate approach. We will also work closely with the National Housing Federation and its mechanisms for engaging with providers owning fewer than 1,000 properties.

## Exempt charities

**4.14** We intend to take up the opportunity presented by the Charities Act 2006 to become principal regulator of charitable Industrial and Provident Societies which are also registered social landlords. They are currently 'exempt charities'. While that group currently does not have to register with the Charity Commission, it will have to do so in the future if the TSA does not take up the role of principal regulator. The aim of the exempt charity provisions in the Charities Act 2006 is to bring exempt charities into charity regulation whilst imposing the minimum administrative burden on them. The most effective way of reducing the regulatory burden is seen by the Government's Office of the Third Sector and the Charity Commission as through the TSA becoming the principal regulator for this group. We support this intention and we will work with relevant stakeholders to understand the issues and consult on our position in due course.

## **Consultation questions**

- 2. Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?**
  
- 3. Does it seem reasonable to extend the same approach to those providers owning fewer than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?**

# 5 Regulation of local authority providers

## Our general approach to regulation of local authorities

**5.1** All tenants deserve a good quality home and a provider who listens to them and responds to what they say. Tenants, regardless of who their provider is, should expect to receive similar outcomes. This view that 'every tenant matters' was a key element of the 2007 Cave Review and has received widespread support from stakeholders.

**5.2** From 1 April 2010, we have a responsibility to help make sure that is the case for people who rent their homes whether from a council or a housing association<sup>11</sup>. Many tenants already enjoy good services and a good relationship with their provider. But we want to make sure that all landlords who provide social housing, whether housing associations or councils, provide good services to their tenants.

**5.3** It is important that the new regulatory framework reinforces the steps Government has taken to strengthen local delivery and accountability. This means our regulation should support the Local Performance Framework. We want to avoid

unnecessary burdens. Good regulation should let the best providers get on with the job, while responding appropriately should problems arise.

**5.4** Our approach to co-regulation is designed to require greater accountability of providers to their tenants for the quality of the services they provide – this includes a requirement to have processes to establish and scrutinise the delivery of local standards. Where providers are failing either to meet national standards or to have robust processes to set and account for local standards, we will expect them to take responsibility for speedy self-improvement. In general, we will evaluate providers' ability and commitment to do this before we determine whether we should use our enforcement powers. This will apply regardless of the type of provider involved. The local authority sector already has well established mechanisms for providing this improvement and peer support (see section 12).

<sup>11</sup> This follows the Government's announcement in November 2009 that it will put to Parliament the necessary legislation to include local authorities within the scope of our regulation.

## Differences in our powers

**5.5** The Government's recent statement on its intentions regarding our powers for local authorities make it clear that in general our powers and regulation should be consistent across providers. There are, however, some differences that our regulatory framework must respect.

**5.6** We can set standards for non-profit and for-profit registered providers relating to the management of their financial and other affairs (commonly known as governance and financial viability). The principal reason for this is to ensure that providers remain financially viable. Government has decided that this provision should not apply to local authorities given their different financing and governance structures, including the Audit Commission's responsibility for overseeing financial and governance issues.

**5.7** As there are other arrangements covering the financial affairs of local authorities, the Government wishes to avoid setting up a regulatory framework that might conflict with, or duplicate, these. Under the Local Performance Framework, the Audit Commission as part of the Comprehensive Area Assessment will publish scored judgements

on the use of resources in respect of local authorities (and some other local public bodies). This Use of Resources assessment considers how well organisations are managing their resources to deliver value for money and better and more sustainable outcomes for local people.

**5.8** The TSA will, however, have an interest in the assessment of the funding of social housing and the governance of those processes as part of our primary role in focusing on the nature and quality of services a local authority provider provides to its tenants. Where we believe, on the basis of clear evidence, that financial management is not satisfactory we shall refer the issue to the Audit Commission and work with them to help resolve the problem.

**5.9** Under the 2008 Act we do, however, have responsibility for setting standards relating to the delivery of social housing services within local authorities. In doing so we want to ensure we meet our statutory objective to ensure that providers that are registered providers perform their functions efficiently. To this end the TSA's Value for Money standard will apply to all providers. In setting and monitoring this standard, we will work closely with the Audit Commission to ensure that we work in a

complementary manner, minimising the burden on providers.

**5.10** In addition to our ability to set certain standards, the other main statutory difference for our remit concerns our enforcement powers. Although broadly speaking the range of enforcement powers is similar as for non-local authority providers, some powers will not apply (such as fines and compensation) and some will apply only to local authorities (such as the appointment of an adviser).

## The Local Performance Framework

**5.11** In regulating local authority providers, the TSA will support the principles of the Local Performance Framework. This will be set out in a Memorandum of Understanding agreed between the TSA and the LGA and to be published shortly.

**5.12** The TSA will need to collect and hold reliable information from local authorities and other sources so it can undertake its functions as an effective regulator. We will routinely assess compliance with the standards framework using this information, which should include, among

other contextual information, any relevant national performance measures contained in the National Indicator Set.

**5.13** The appropriate type and source of information may vary between standards, but we expect it to include:

- the annual report for their tenants (and submitted to the TSA) containing their self-assessment against the national and local standards
- accreditation schemes and external validation where appropriate
- relevant National Indicator Set data
- tenant feedback and resident petitions
- cases reported to the Local Government Ombudsman where a determination is made
- outcomes reported by the Audit Commission's CAA process

**5.14** Government and the TSA are clear that information burdens arising from the new regulatory framework should be minimised through making best use of information already in the system (information already produced by local authorities for public reporting and internal management purposes).

**5.15** We are able to access this information but would not routinely prescribe its format. There are no new national performance indicators – this applies to all types of providers not just local authorities.

**5.16** We can request that local authorities provide additional specific information where we need to undertake further regulatory scrutiny (commonly where we have grounds to believe there may be a problem with a provider's performance).

**5.17** Section 12 discusses our wider approach to monitoring compliance.

## ALMOs

**5.18** The Government's statement in relation to our powers for local authorities<sup>12</sup> mean that ALMOs that do not own stock will not be registered under the 2008 Act and hence will not be the legal entity responsible for meeting the standards. That responsibility will lie with the sponsoring local authority. That said, we believe that ALMOs are crucial in ensuring that over one million tenants get

a good service. This means that we shall have to develop good working relationships with ALMOs given their role in front line service delivery. We intend to develop a clear understanding as to how in practice our regulatory relationship should work, through discussions with key stakeholders such as the National Federation of ALMOs and Councils With ALMOs Group.

## Audit Commission and Comprehensive Area Assessment

**5.19** Our regulation of social housing will help support local authorities in their strategic place-shaping role. For example, the TSA will be able to collect and share information on housing providers operating within a local authority's area. We also propose to set a standard on local area co-operation that will apply to all providers.

**5.20** As set out in the Memorandum of Understanding agreed between the TSA and the Audit Commission<sup>13</sup>, our regulation of social housing management services will support the Audit

<sup>12</sup> The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009: a summary of responses, November 2009, CLG.

<sup>13</sup> Memorandum of Understanding between the TSA and the Audit Commission, July 2009, published on the TSA's website.

Commission's Comprehensive Area Assessment (CAA). The way in which this is done will be developed with the Audit Commission during 2010, but it is our intention that area-based judgements of this kind will encompass all types of provider and the quality of services provided to tenants in that area.

**5.21** The Audit Commission has a 'gate-keeping' role in relation to inspections of local authorities (ie it co-ordinates inspections of local authorities undertaken by a number of regulatory and inspection bodies). We will be subject to this in the same way as other regulators.

## Consultation question

**4. Do our proposals on how we will approach the regulation of local authorities appear reasonable?**

Part II

# Standards for social housing providers



# 6 Proposals for a Tenant Involvement and Empowerment standard

## The scope of the proposed standard

**6.1** This standard covers customer service and choice, tenant involvement and empowerment, and complaints. It also includes direct requirements in relation to the two areas that were identified as possible cross-cutting themes in our June document: equality and diversity, and tenants with additional support needs.

**6.2** This standard will apply to all providers from 1 April 2010. It will apply where all or part of the management of service delivery has been contracted to another organisation.

**6.3** This standard will apply to all registered providers of social housing.

**6.4** We are not proposing a Code of Practice to amplify this standard.

## Rationale for the standard

**6.5** The feedback from tenants through the National Conversation made clear their expectation is that providers should offer a quality customer service where they are treated with respect and

courtesy. The standards on customer service and on complaints relate directly to one of the TSA's fundamental objectives to ensure that actual and potential tenants have an appropriate degree of choice and protection.

**6.6** The specified outcomes and requirements for customer service apply to the approach which landlords adopt in meeting other national and local standards for housing services. This approach is intended to meet the objective of firmly establishing good customer service and the need for providers to embed their approach to meeting diverse needs of their tenants as cross-cutting requirements for services covered by other standards in these proposals.

**6.7** Our National Conversation also clearly indicated that many tenants want to be involved in decisions about their homes. This standard also relates directly to one of the TSA's fundamental statutory objectives to ensure that tenants of social housing have the opportunity to be involved in its management.

**6.8** The TSA has been directed by the Government to set a standard in relation to tenant involvement and empowerment. Government's rationale for the terms of the direction is to ensure

that not only do providers offer opportunities for involvement in the management of their homes, but that it is necessary to support tenants and build their capacity to make meaningful use of those opportunities.

**6.9** Involvement and empowerment are not the same thing:

- Empowerment requires information, the ability to be heard, to hold providers to account, to influence service delivery and the decisions that providers take. Tenant empowerment needs to be both individual and collective and requires a proactive approach by providers
- Tenant involvement is a technique by which tenant empowerment is enabled. Tenants have a right to have their voice heard and to be consulted on issues that affect them and to know how their landlord will have regard to their views. Effective involvement must take into account equality and diversity issues and avoid discriminatory processes to ensure all tenants have an opportunity to contribute and to be heard

**6.10** There are many different ways in which providers can meet these objectives and we would not want to be overly prescriptive about how each provider should achieve them. However, there are certain requirements we would expect providers to demonstrate in achieving the desired outcomes. This is especially the case for our requirements on how providers should engage locally with tenants about their priorities.

**6.11** Complaints and customer feedback are an essential part of the relationship between providers and their tenants and should be valued and acted upon to improve services.

**6.12** We propose that the standard should apply to all registered providers of social housing and that occupants of LCHO and intermediate rent as well as other types of low-cost rented housing should have the same opportunities to be involved in developing, and to benefit from, their provider's local standards, especially where their homes are part of mixed tenure estates. We also encourage providers to include leaseholders and other residents in their involvement strategies.

## Proposed text for the standard

**6.13** The text of the standard comprises the required outcomes and specific requirements in the box below.

### Tenant Involvement and Empowerment standard

#### The required outcomes

##### 1 Customer service and choice

Registered providers must design and deliver housing services that tenants can access easily. Tenants must be offered choices over the services they receive, and be treated with fairness and respect. In relation to all the standards, registered providers must consider equality issues and the diversity of their tenants, including tenants with additional support needs.

Registered providers must understand their tenants' needs and use this information to:

- design and deliver housing services
- communicate with tenants

##### 2 Involvement and empowerment

Registered providers will offer all tenants opportunities to be involved in the management of their housing. This must include opportunities to:

- influence housing related policies and how housing related services are delivered
- be involved in scrutinising performance in delivering housing-related services

Registered providers must offer tenants support so they are more able to be effectively engaged, involved and empowered.

### **3 Responding to complaints**

Registered providers must have a clear and accessible policy. They must deal with tenants' complaints and any other feedback promptly, politely and fairly. The policy must include how they use complaints and other feedback to:

- change how they do things
- improve services

### **Specific requirements**

#### **1 Customer service and choice**

1.1 Registered providers will be able to show they have arrangements for understanding their tenants, their views and needs so that in all the standards, they can use this information to:

- improve services
- offer choices in the services provided

1.2 For all the standards, registered providers must consider equality issues and the diversity of their tenants, including tenants with additional support needs and incorporate choices that are designed to meet the diverse needs of their tenants.

1.3 Registered providers will provide tenants with accessible, comprehensive and timely information about:

- how tenants can access services
- the standards of housing services their tenants can expect
- how they are performing against those standards
- the service choices available to tenants
- any additional costs that are relevant to specific choices
- how tenants can communicate with them

## **2 Involvement and empowerment**

2.1 Registered providers, having consulted their tenants, must have arrangements in place that support and enable tenants to be involved and empowered. Tenants must have the opportunity to:

- be involved in the management of their homes (including, for example, in relation to the repairs programme and choice of main contractors)
- influence their registered provider's strategic priorities
- measure and scrutinise how effective their registered provider's involvement and empowerment policy is

2.2 Registered providers must say how they will provide support to build tenants' capacity to be effectively engaged, involved and empowered.

2.3 Arrangements for involvement and empowerment must be clearly published and accessible for tenants.

2.4 Following consultation with their tenants, registered providers will establish by no later than 1 April 2011 local standards in those service areas where the TSA has indicated that its national standards should be tailored with local standards where tenants want them. Local standards should include commitments on:

- local standards for performance
- how performance will be monitored and reported to tenants
- how tenants can be involved in scrutinising performance
- what happens if local standards are not met
- arrangements for reviewing the local standards on an annual basis

2.5 Registered providers will consult their tenants about how many tenant members there should be on their governing bodies or service delivery committees. Registered providers will do this at least once every three years.

2.6 Registered providers will offer tenants a range of opportunities to scrutinise their performance. This applies to all standards.

2.7 When registered providers are required by law to consult tenants about changes to their constitution (for example, where there will be a change of registered provider), they should clearly and objectively set out the options, and the costs and benefits of the options.

2.8 Where registered providers intend to make a significant change in the arrangements for the management of their stock, they must consult their tenants.

2.9 Where registered providers have consulted tenants about the standards, they should feed back to tenants about how they have taken their views into account.

### **3 Responding to complaints**

3.1 Registered providers will have an approach to complaints that is clear, simple and accessible to tenants and potential tenants. The approach should include:

- a range of ways for tenants to express a complaint
- details of what to do if they are unhappy with the outcome of a complaint

3.2 Registered providers will develop, agree and monitor service standards for complaints with tenants. Registered providers will make sure that complaints and any other feedback are managed and resolved promptly, politely and fairly.

3.3 Each year registered providers will publish information about:

- the number of complaints received
- the nature of the complaints
- the business area the complaints relate to
- the outcome of the complaints
- how they have changed the way they do things to improve services as a result of feedback

## Consultation question

**5A Does the proposed text for the Tenant Involvement and Empowerment standard:**

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct, and as outcome focused as possible?**

# 7 Proposals for a Home standard

## The scope of the proposed standard

**7.1** This standard covers a number of areas proposed in the June discussion document. These include standards related to the quality of accommodation, and repairs and maintenance.

**7.2** This standard will apply to all providers from 1 April 2010.

**7.3** We are not proposing any Codes of Practice to amplify this standard.

## Rationale for the standard

**7.4** The TSA has been directed by the Government to set a standard in relation to quality of accommodation.

**7.5** The consultation on the direction made clear that it does not constitute a guarantee that funding will be made available to deliver decent homes. This is particularly relevant for local authority providers. In assessing compliance with the quality of accommodation standard, the TSA will take account of the extent to which providers require

capital funding from Government and when it is likely that such funding will be available.

**7.6** The direction only applies to low-cost rented accommodation that is subject to rent restructuring. In reviewing the scope of this standard, we propose that, for low-cost home ownership, quality of accommodation applies where there are common or communal areas for which there is a requirement for local standards. This is of particular importance within mixed tenure settings, and where the views of those occupants and the costs to them of delivering local standards require that they should be involved in the development of local standards.

**7.7** We also propose that this standard should apply to other types of low-cost rented housing, particularly intermediate rent. This is for the most part recently developed. For quality of accommodation, it is our assessment that the standard should apply to support our objective to safeguard the public subsidy that has been used to provide homes of this kind.

**7.8** The feedback from tenants through the National Conversation is clear that these aspects of service, particularly repairs and maintenance and the maintenance of the local environment, are high priorities for tenants.



**7.9** The standard on repairs and maintenance is therefore included in relation to a number of TSA fundamental objectives which provide for a supply of well-managed social housing of appropriate quality, an appropriate degree of choice and protection for actual and potential tenants, and ensuring that registered providers perform their functions efficiently, effectively and economically.

**7.10** Repairs and maintenance does not apply to low-cost home ownership. This reflects the provisions of lease agreements.

**7.11** The scope of the repairs and maintenance standard includes intermediate rent. The application of the standard reflects the fact that intermediate rent is a form of low-cost rent that has received public subsidy and standards should be applied that reflect that public investment and to provide an appropriate degree of choice and protection for those tenants.

**7.12** We have included a requirement (2.1) that providers should adopt an approach that ensures repairs services are based on a 'right first time' approach. This is an outcome that both tenants and providers have generally supported in principle. We have therefore judged that it is right to include this requirement but also consider that it will be necessary to keep under review the approaches and performance of providers in delivering this. We will work with them and with tenants in identifying any revision that is required to the definition of the standard or requirement for a Code of Practice or other guidance to support the effective delivery of this outcome.

## Proposed text for the standard

**7.13** The text of the standard comprises the required outcomes and specific requirements in the box below.

### The Home standard

#### The required outcomes

##### 1 Quality of accommodation

Registered providers must ensure that all homes are warm, weatherproof and have modern facilities.

##### 2 Repairs and maintenance

Registered providers must provide a cost-effective repairs and maintenance service that responds to the needs of, and offers choices to, tenants. They must meet all applicable statutory requirements that provide for the health and safety of tenants in their homes.

#### Specific requirements

##### 1 Quality of accommodation

**1.1** Registered providers must ensure tenants' homes either:

- meet the Decent Homes Standard set out in Section 5 of the Government's Decent Homes guidance\*, or
- meet the standards of design and quality that applied when the home was first built, and were required as a condition of publicly funded financial assistance\*\*, if these standards are higher than the Decent Homes Standard

**1.2** Registered providers must meet the standard in 1.1 by 31 December 2010. They must continue to maintain their homes to this standard. The TSA may agree an extension to this date with the registered provider where it is reasonable.

**1.3** Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard. The local standard should be higher than the standard set out in 1.1. In developing local standards, registered providers must:

- have regard to Section 6 of the Government's Decent Homes guidance
- demonstrate how they have ensured that tenants' views have been taken into account

\* 'Decent Homes guidance' means A Decent Home: Definition and Guidance for Implementation, published by the Department for Communities and Local Government in June 2006, and any guidance issued by the Department or its successors, in relation to that document<sup>14</sup>.

\*\* 'Financial assistance' is defined in Section 19 (3) of the Housing and Regeneration Act, 2008. For the purpose of this standard it includes financial assistance provided by the Homes and Communities Agency's predecessor bodies.

<sup>14</sup> Available at: [www.communities.gov.uk/publications/housing/decenthome](http://www.communities.gov.uk/publications/housing/decenthome)

## **2 Repairs and maintenance**

**2.1** Registered providers must have a repairs and maintenance service that:

- is cost effective
- has the objective of completing repairs and improvements 'right first time'
- has published standards that have been agreed with tenants for completing repairs and improvements
- offers tenants choice (for example about appointment times for carrying out repairs)

**2.2** Registered providers must ensure a prudent, planned approach to repairs and maintenance. It should demonstrate an appropriate balance of planned and responsive repairs, and value for money. The approach should include:

- responsive repairs
- planned and capital work
- work to empty properties
- adaptations
- cyclical works
- communal areas as well as individual homes

**2.3** Registered providers must comply with all applicable legislation and regulation that provide for the health and safety of the occupants of their homes.

**2.4** Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard.

**2.5** Registered providers must provide tenants with clear information about:

- each other's responsibilities
- the progress of works

**2.6** Registered providers must co-operate with relevant organisations to provide an adaptations service that meets tenants' needs.

## Consultation question

**5B** Does the proposed text for the Home standard:

- address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?
- express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

## 8 Proposals for a Tenancy standard

### The scope of the proposed standard

**8.1** This standard covers a number of areas proposed in the June discussion document. These include allocations, rents and tenure.

**8.2** This standard will apply to all registered providers from 1 April 2010 with the exception of the requirements on rent which will not apply to local authorities.

**8.3** The standards will not apply to LCHO except the specific requirement in 1.8 of the Allocations standard will apply to recording of sales activity.

**8.4** We do not currently propose that this standard will apply to low-cost rented accommodation that is not subject to rent restructuring.

**8.5** We are not proposing any Codes of Practice to amplify this standard.

### Rationale for the standard

**8.6** The TSA has been directed by Government to set a standard in relation to rents for all registered providers **except** for local authorities.

**8.7** Government has indicated that it intends to direct TSA in relation to a rent standard that applies to local authority providers at a later time.

**8.8** Standards on tenure and allocations are included in relation to one of the TSA's fundamental objectives which is to ensure that actual and potential tenants have an appropriate degree of choice and protection. The intention of the standard in relation to security of tenure is to maintain the current requirements for housing associations (and recognise that local authorities are subject to different legislation on security of tenure). Security of tenure is a matter for Government policy and the TSA's intention is not to introduce any change in setting our new standards.

**8.9** The Homes and Communities Agency (HCA) is undertaking a review of the homes that it funds other than social rented homes (referred to as 'intermediate products') – this includes LCHO and intermediate rent. Each of these types is potentially subject to the matters covered by this standard.

However, we will assess with the HCA and the Communities and Local Government department whether the outcome of that review indicates that these types of accommodation should be subject to TSA standards in this area, tailored to the specific purposes of intermediate products and the needs of the groups at which they are targeted.

## Proposed text for the standard

**8.10** The text of the standard comprises the required outcomes and specific requirements in the box below.

### The Tenancy standard

#### The required outcomes

##### 1 Allocations

Registered providers must let their homes in a fair, transparent and efficient way. They must take into account the housing needs and aspirations of tenants and potential tenants. They should demonstrate how their allocations processes:

- make the best use of available housing
- contribute to local authorities' strategic housing function and sustainable communities

There should be clear decision making and appeals processes.

##### 2 Rents

Registered providers will charge rents in accordance with the objectives and framework set out in the Government's direction to the TSA of November 2009.

### **3 Tenure**

Registered providers must offer and issue the most secure form of tenure compatible with:

- the purpose of the housing
- the sustainability of the community

They must meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements.

### **Specific requirements**

#### **1 Allocations**

1.1 Registered providers will co-operate with local authorities' strategic housing function, and their duties to meet identified local housing needs. This includes assistance with local authorities' homelessness duties, and through meeting obligations in nominations agreements. Where in exceptional circumstances registered providers choose not to participate in choice-based lettings schemes in areas where they own homes, they justify their reasons for doing so publicly.

1.2 Registered providers will develop and deliver services to address under occupation and overcrowding in their homes, within the resources available to them. These services will meet the needs of their tenants, and will offer choices to them.

1.3 Registered providers will provide tenants wishing to move with access to clear and relevant advice about their housing options. They will participate in mobility schemes and mutual exchange schemes where these are available.



1.4 Registered providers will publish their allocations policies and outcomes, how this has made best use of available housing and contributed to sustainable communities. The published policies should include (where it applies) their participation in:

- common housing registers
- common allocations policies
- local lettings policies

Registered providers will clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for allocations, mobility or mutual exchange schemes.

1.5 Registered providers will develop and deliver allocations processes in a way which supports their effective use by the full range of actual and potential tenants, including those with support needs, those who do not speak English as a first language and others who have difficulties with written English.

1.6 Registered providers will work to make sure that the specific needs and aspirations of tenants and potential tenants with diverse needs are reflected in the choices available to them. This applies particularly to the development of local lettings policies.

1.7 Registered providers must minimise the time that properties are empty between each letting. When doing this, they must take into account the circumstances of the tenants who have been offered the properties.

1.8 Registered providers must record all lettings and sales in the Continuous Recording of Lettings system.

## 2 Rents

2.1 Registered providers will ensure they meet the following requirements which derive from the Government's direction to the TSA of November 2009 and published within Directions to the Tenant Services Authority – summary of responses and Government response, November 2009, CLG.

2.2 Subject to paragraph 2.3, registered providers will set rents with a view to achieving the following as far as possible:

2.2.1 Rents conform with the pattern produced by the rent formula set out in Rent Influencing Regime guidance\* ('target rents') with a five per cent tolerance in individual rents (ten per cent for supported and sheltered housing) ('rent flexibility level') but subject to the maximum rent levels specified in that guidance ('rent caps').

2.2.2 Weekly rent for accommodation increases each year by an amount which is no more than  $RPI^{**} + 0.5\% + \pounds 2$  until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower.

2.2.3 Weekly rent for accommodation which has reached or is above the upper limit of the rent flexibility increases each year by an amount which is no more than the increase to the target rents.

2.2.4 Rent caps increase annually by  $RPI + \text{one per cent}$ .

2.2.5 Target rents increase annually by  $RPI + 0.5\%$ .

2.3 Where the application of the rents standard would cause registered providers to be unable to meet other standards, particularly in respect of financial viability including the risk that a reduction in overall rental income causes them to risk failing to meet existing commitments such as banking or other lending covenants, then the TSA may allow extensions to the period over which the requirements of the rent standard are met.

2.4 Registered providers must provide clear information to tenants that explains how their rent and any service charge is set, and how it is changed, including reference to the RPI benchmark to which annual changes to rents should be linked (except where rents are controlled under different legislation).

\* 'Rent Influencing Regime guidance' means the Rent Influencing Regime Guidance published by the Housing Corporation<sup>15</sup> in October 2001, and any guidance issued by the Housing Corporation or TSA, or its successors, in relation to that document.

\*\* 'RPI' means the general index of retail prices (for all items) published by the Office of National Statistics or, if that index is not published for any month, any substituted index or index figures published by that Office.

### **3 Tenure**

3.1 Registered providers must publish clear and accessible policies which outline their approach to tenancy management. They must develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions. The approach must set out how registered providers will make sure that the home continues to be occupied by the tenant they let the home to.

3.2 Registered providers must provide tenants with accessible, comprehensive and timely information about their responsibilities and tenants' responsibilities.

<sup>15</sup> Available at: <http://www.housingcorp.gov.uk/upload/pdf/rentir.pdf>

## Consultation question

**5C** Does the proposed text for the Tenancy standard:

- address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?
- express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

# 9 Proposals for Neighbourhood and Community standard

## The scope of the proposed standard

**9.1** This standard covers a number of areas proposed in the June discussion document. These include standards related to neighbourhood management, local area co-operation and anti-social behaviour.

**9.2** This standard will apply to all registered providers' social housing from 1 April 2010.

**9.3** We are not proposing any Codes of Practice to amplify this standard.

## Rationale for the standard

**9.4** Our fundamental objectives require us to ensure that actual and potential tenants have an adequate degree of choice and protection, and to encourage registered providers to contribute to the environmental, social and economic well being of the areas in which their housing is situated. This recognises the importance of 'place' and community cohesion.

**9.5** The feedback from tenants through the National Conversation is that the matters covered by this standard are a high priority for them. They are grouped into a Neighbourhood and Community standard because the outcomes for these standards are dependent for their delivery on the operation of collaborative partnership approaches with tenants and other agencies. The outcomes are worded to reflect this.

**9.6** The standard in relation to anti-social behaviour recognises that providers will need to work in partnership with others in order to identify and tackle any problems. It sets an overarching framework that requires providers to work proactively with others to ensure their tenants live in safe neighbourhoods. Consistent with our approach to co-regulation, it does not specify particular policies given that the effectiveness of various measures will be different depending on the nature of the area and community. Nevertheless there is an expectation that providers will consider the full range of measures including, following our recent announcement, accessing funding for Family Intervention Projects<sup>16</sup>.

<sup>16</sup> On 30 September 2009, we announced that we would help Government set up a voluntary match challenge fund to support the increased participation in FIPs.

**9.7** This standard will apply to registered providers' low-cost home ownership and to intermediate rent housing. The occupants of this type of housing have the same interests as other types of tenant in the safety and security of their neighbourhoods.

## Proposed text for the standard

**9.8** The text of the standard comprises the required outcomes and specific requirements in the box below.

## Neighbourhood and Community standard

### The required outcomes

#### 1 Neighbourhood management

Registered providers will keep the common areas associated with the homes that they own clean and safe. To achieve this, they will work in partnership with:

- their tenants
- other providers and public bodies, where this is the most effective way of achieving this standard

#### 2 Local area co-operation

Registered providers will co-operate with relevant partners to help promote social, environmental and economic well being in the areas where their properties are.

#### 3 Anti-social behaviour

Registered providers must work in partnership with other public agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

## Specific requirements

### 1 Neighbourhood management

1.1 Registered providers will consult with tenants in developing their policy for maintaining and improving the neighbourhoods associated with their homes. This applies where the registered provider has a responsibility for the condition of that neighbourhood. The policy must include any communal areas associated with the registered provider's homes. The registered provider must publish this policy.

1.2 Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard.

### 2 Local area co-operation

2.1 Registered providers, having taken account of their presence and impact within the areas where they have properties, will:

- identify and publish the roles they are able to play within the areas where they have properties
- co-operate with local strategic partnerships and local strategic housing authorities where they are able to assist them in achieving their objectives

### **3 Anti-social behaviour**

3.1 Registered providers will develop and deliver services which are effective in achieving the core commitments of the Respect Standard for Housing Management<sup>17</sup>.

3.2 Registered providers will publish a policy on how they work with relevant partners to tackle anti-social behaviour in areas where they own properties.

3.3 Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard.

## **Consultation question**

### **5D Does the proposed text for the Neighbourhood and Community standard:**

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

<sup>17</sup> Available from: [www.communities.gov.uk/publications/housing/landlordtoolkit](http://www.communities.gov.uk/publications/housing/landlordtoolkit)



# 10 Proposals for a Value for Money standard

## The scope of the proposed standard

**10.1** This standard covers the standard relating to value for money proposed in the June discussion document.

**10.2** This standard will apply to all registered providers from 1 April 2010.

**10.3** We do not propose a Code of Practice to amplify this standard.

## Rationale for the standard

**10.4** The Housing and Regeneration Act requires the TSA to “ensure that registered providers of social housing perform their functions efficiently, effectively and economically”. We believe that it is important that the TSA sets out its expectations on providers in this area in the form of a standard to ensure that providers take an active approach to delivering the best possible value for the communities they serve. We are therefore setting a standard on value for money under section 193 of the 2008 Act.

**10.5** We do not consider that value for money can be considered in isolation. We expect providers to adopt the principles of value for money set out in this standard across the full range of their activities.

## Proposed text for the standard

**10.6** The text of the standard comprises the required outcomes and specific requirements in the box below.

### Value for Money standard

#### The required outcomes

##### 1 Value for money

In meeting all national standards and their local standards, registered providers have a comprehensive approach to managing their resources to provide cost-effective, efficient, quality services and homes to meet tenants' and potential tenants' needs.

#### Specific requirements

##### 1 Value for money

1.1 Registered providers, publish as part of their communications with their tenants, information on at least an annual basis that demonstrates:

- how they have allocated and prioritised expenditure on different areas of housing services covered by the national standards and their local standards and other priorities such as investment in the supply of new social housing
- how they have ensured that it has secured value for money in that expenditure, how they have tested this, and the benefits that tenants can expect

- their expectations for future value for money improvements and how they have taken into account in these expectations improvements arising from asset management, income management, and procurement policies

1.2 Registered providers have arrangements for tenants to influence the services delivered and the cost of those services that result in service charges to tenants. Registered providers must ensure their tenants have the opportunity to agree a local standard (in line with the requirements of 2.4 of the Tenant Involvement and Empowerment standard).

1.3 Registered providers' governing bodies scrutinise the performance of the registered provider at least annually against this standard.

## Consultation question

### 5E Does the proposed text for the Value for Money standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

# 11 Proposals for a Governance and Financial Viability standard

## The scope of the proposed standard

**11.1** This standard covers the standards relating to governance and financial viability proposed in the June discussion document.

**11.2** For the not-for-profit and profit-making sectors, we will continue to have a strong focus on governance and financial viability. Although we do not have specific powers to set standards for governance and financial viability for local authority providers and ALMOs, in our work on service delivery regulation, should any issues arise related to these areas, we will work closely with the Audit Commission.

**11.3** In assessing compliance for membership run registered providers such as co-operatives, we shall have regard to their particular circumstances.

**11.4** We do not propose a TSA Code of Practice to amplify this standard, but note we are as part of the governance standard requiring providers to adopt an appropriate code of governance.

## Rationale for the standard

**11.5** Effective arrangements for governance and financial viability of non-profit and profit-making registered providers are essential to underpin their ability to operate as organisations delivering good quality services on a sustainable and well-organised basis.

**11.6** A number of our fundamental objectives are therefore reliant on these arrangements. However our fundamental objectives to ensure that registered providers of social housing are financially viable and properly managed and to avoid the imposition of an unreasonable burden on public funds in particular require the establishment of a standard for governance and viability.

## Proposed text for the standard

**11.7** The text of the standard comprises the required outcomes and specific requirements in the box below.

### Governance and Financial Viability standard

#### The required outcomes

##### 1 Governance

Registered providers have effective governance arrangements that ensure that they have structures, systems and processes to deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. Governance arrangements ensure they:

- adhere to all relevant legislation
- comply with their governing documents and all regulatory requirements
- are accountable to tenants, the TSA and relevant stakeholders
- safeguard tax payers' interests and the reputation of the sector

##### 2 Financial viability

Registered providers must manage their resources effectively to ensure their viability is maintained.

#### Specific requirements

##### 1 Governance

1.1 Registered providers adopt and comply with an appropriate code of governance. They will give the reasons for their choice and explain areas of non-compliance with their chosen code.

1.2 Registered providers must establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive. At least once a year, they must assess how effective these arrangements are in meeting the required outcomes above.

1.3 Registered providers submit an annual return, on an accurate and timely basis in a form determined by the TSA. This is currently the Regulatory and Statistical Return (and its successor the National Register of Social Housing).

1.4 Where a registered provider is within a wider group structure that is not regulated by the TSA, it will ensure with its parent that nothing in their relationship shall hinder the subsidiary's ability to meet all the national standards, and the TSA's effective regulation of performance against these standards.

## **2 Financial viability**

**2.1** Registered providers ensure that:

- effective controls and procedures are in place to ensure security of assets and the proper use of public funds
- effective systems are in place to monitor and accurately report delivery of their plans
- the risks to delivery of financial plans are identified and effectively managed

**2.2** Registered providers will ensure that they have a robust and prudent business planning and control framework. Through this framework they will ensure:

- there is access to sufficient liquidity at all times
- financial forecasts are based on appropriate and reasonable assumptions
- planning sufficiently considers the financial implications of risks to the delivery of plans
- they monitor, report on and comply with their funders' financial covenants

2.3 Registered providers will provide to the TSA:

- accurate and timely statutory and regulatory financial returns
- an annual report on any losses from fraudulent activity

## Consultation question

**5F. Does the proposed text for the Governance and Financial Viability standard:**

- **allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

Table 2: Summary of attributes for all proposed standards

Standard	Does the standard have cross-cutting elements across all standards?	Does the standard have a requirement in relation to equality and diversity?	Apply to local authorities?	Apply to not-for-profit registered providers (RPs)?
<b>Tenant Involvement and Empowerment</b>	Yes	Yes	Yes	Yes
<b>Home</b>	No	Yes	Yes	Yes
<b>Tenancy – allocations</b>	No	Yes	Yes	Yes
<b>Tenancy – rents</b>	No	Yes	No	Yes
<b>Tenancy – tenure</b>	No	Yes	Yes	Yes
<b>Neighbourhood and Community</b>	No	Yes	Yes	Yes
<b>Value for Money</b>	Yes	Yes	Yes	Yes
<b>Governance and Financial Viability</b>	Yes	Yes	No	Yes



Apply to for-profit RPs?	Apply to low-cost rental?	Apply to low-cost home ownership or intermediate rent?	Code of Practice?	Grading proposed?
Yes	Yes	Yes	No	No
Yes	Yes	Yes	No	No
Yes	Yes	No	No	No
Yes	Yes	No	No	No
Yes	Yes	No	No	No
Yes	Yes	Yes	No	No
Yes	Yes	Yes	No	No
Yes	Yes	Yes	No	Yes

Part III

## **Regulation in practice**

# 12 Supporting improvement and monitoring compliance with standards

**12.1** In this section we outline the way in which the TSA will seek to assess compliance against the standards and other matters based on co-regulatory commitments that support providers' self-improvement. This will help shape our engagement with providers. We set out below how providers can expect us to regulate against the standards.

## Promoting sector-led improvement and best practice

**12.2** It is providers' responsibility to determine how they develop a systematic approach to self-improvement and learning from each other through peer review and benchmarking. They must have effective scrutiny mechanisms, including for example self-assessment, board or councillor scrutiny, tenant scrutiny of performance and have considered the use of external validation and accreditation services. It is also providers' responsibility to set out how they will improve their services and develop their accountability for this to their tenants, particularly through their approach to establishing local standards.

**12.3** Local authorities have access to well-structured support for the improvement agenda from a number of agencies, such as the

Improvement and Development Agency (IDeA) and Regional Improvement and Efficiency Partnerships (RIEPs). Providers should make best use of these existing initiatives and determine how these approaches and resources can be used to improve performance, working in partnership with each other and with their representative organisations.

**12.4** The TSA's 'excellence' work will develop a source of valuable information on current best practice. The Tenant Excellence Fund and Tenant Empowerment Programme will support sector-wide improvement. We will promote others' work in developing excellence across the standards framework and communicate this to providers and tenants.

**12.5** We do not pretend to be the sole source of good practice in the sector and we will support the work of others such as the Chartered Institute of Housing (CIH) in promoting excellence for all.

**12.6** Voluntary undertakings are one mechanism which may be used by providers to inform TSA of how they propose to address their identified improvement needs. There is more about what this means and how it may operate, in Section 13.

## The TSA's approach to monitoring provider's performance

**12.7** There has been strong support for outcome-focused standards. However, in so far as the proposed text of the standards is aligned to outcomes or new requirements, there may not be easily identifiable performance measures that already exist across all providers.

**12.8** The TSA will therefore need to evolve over time its approach to monitoring and compliance but in the interests of transparency and managing expectations, we want to set out our broad approach for how we intend to do this, especially in the first year of operation of the new standards, 2010-11.

**12.9** There are a number of considerations that shape our approach:

- consistency with our co-regulatory philosophy
- the need for us to be able to identify and then be able to address instances where performance is not meeting the standards
- support for the Local Performance Framework
- the need to continue making public judgements on our assessment of governance and viability

for non-local authority landlords, helping to retain stakeholder confidence

- the desirability to limit burdens, especially given the costs and time lags involved in data systems changes
- the feedback from stakeholders that much information already exists and although in some respects it may not be perfect, it provides a satisfactory basis to consider a provider's performance.

## The role of co-regulation in monitoring providers' performance

**12.10** Our co-regulatory approach places importance on providers' governing bodies (boards or councillors) being primarily responsible for ensuring their organisation complies with the standards framework. Our requirements, set out in the standards, is that this should involve arrangements for tenants to be involved in this process, scrutinising performance and holding providers to account. To support this process, we place a premium on providers being transparent and where appropriate using independent validation, benchmarking and peer comparison.

**12.11** Against this background TSA will make use of information collected and used by providers to support their own assurance against the standards and their self-improvement. This meets the 2007 Cave Review's principle of information being "used and useful".

## The TSA's general approach to assessing compliance

**12.12** In broad terms, our approach will be based on:

- reliance on providers' annual report to their tenants that contains their self-assessment of their performance against the standards. The TSA's assurance of this self-assessment will be influenced by the degree to which providers are transparent, involve their tenants in scrutinising performance and adopt external validation such as benchmarking, peer review and third party accreditation
- taking into account a broad range of information that we currently collect, or have access to, to assess whether there are any indications of non-compliance that warrant further regulatory scrutiny

- reliance in some areas on the absence of indications of non-compliance, including complaints, whistleblowing etc, rather than explicitly collecting and assessing information
- reserving the right to ask for further information if there are indications of concern from direct or indirect sources
- prioritising our focus for compliance in the first year, 2010-11, on service delivery issues in the poorest performing providers rather than the generality of providers as a whole.

Registered providers (except for local authorities) will remain subject to a level of direct scrutiny of financial viability and governance performance, to enable the TSA to maintain an independent review and to continue publishing judgements that are supported and valued by lenders and housing associations themselves.

## An annual report to tenants by providers on their assessment against the standards

**12.13** The 2008 Act<sup>18</sup> gives us the power to require providers to prepare an annual report assessing their performance against the standards. We can also specify matters covered in this report and the period within which the report should be submitted to the TSA. This section consults stakeholders on our guidance<sup>19</sup> for how we shall use this power. We want the primary audience for the report to be a landlord's tenants and we want to avoid being too prescriptive on its format, since the content of the report will need to address locally relevant issues and standards arising from providers' engagement with their tenants.

**12.14** We propose to require all providers with more than 1,000 properties<sup>20</sup> to publish for their tenants' benefit (and submit to the TSA) as soon as possible after 1 April 2010 and by no later than 1 October 2010 a report that sets out how they are meeting, or their plans for meeting, all the national

standards. This should also include how providers will assure or measure their compliance against these standards, and any identified gaps and associated improvement plans. This includes their plans for developing local standards. Our current intention is that all the standards should apply to providers whatever their size. However, the principle of proportionality must be taken into account in assessing the adequacy of smaller providers' arrangements.

**12.15** By 1 July 2011 and by this date in all subsequent years, providers should publish for their tenants, and submit to the TSA, their annual report containing their view on their performance against the national standards in the preceding 12 months leading up to 1 April. This should include reference to tenant scrutiny of performance and, where appropriate, use of external validation, peer review and benchmarking.

**12.16** To limit burdens, we want the annual report on standards to rely, as far as possible, on information that providers collect for their own

<sup>18</sup> Section 204.

<sup>19</sup> Section 215(b).

<sup>20</sup> We shall discuss with representatives of providers with fewer than 1,000 properties how such an objective should apply in a proportionate way to these providers. In this context, we will take account of whether such providers are in receipt of funding to develop new social housing.

purpose and which is therefore “used and useful”. It should be based on self-assessments that providers should be routinely undertaking and in this way should not be a significant additional burden. The report will make transparent to tenants what providers are already doing to assure themselves that they are meeting the standards. Where relevant documentation is already published this should be noted and taken into account.

## TSA's performance information requirements

**12.17** The 2008 Act requires the TSA to publish, at least annually, information about the performance of providers. This will support co-regulation and tenants' empowerment through providing a source of useful information across all providers. We intend the information collected to be “used and useful” and in relation to local authorities support the principles of the Local Performance Framework.

**12.18** Our aim is to publish, at least once a year, information about the performance of providers against the standards and include information that

is useful to tenants, potential tenants, providers and local authorities<sup>21</sup>. It is our intention to publish and make readily available via the internet performance indicator information based on data that is already collected.

**12.19** We must take into account the context of this information in making any assessments of whether further regulatory scrutiny or information is required. The data may not be precisely comparable across all providers as it is collected on different bases across different providers. Some data sets also suffer time lags (eg satisfaction surveys for some providers are currently undertaken once every three years). Some indicators are insufficient on their own to make a judgement of compliance against particular standards. Nevertheless, used intelligently as a general guide, rather than a deterministic tool, such information in the public domain is of value and can help support the co-regulatory engagement between providers and tenants that is central to our regulatory approach.

<sup>21</sup> Supporting our obligation under s.205.

## Wider information requirements and submissions

**12.20** Our proposal for 2010-11 is that we rely on existing data requirements and returns from providers. Some of this information for housing associations is collected through our Regulatory and Statistical Return. Some of the information related to local authorities is collected through their HSSA and BPSA<sup>22</sup> returns. A list of existing available data sources is contained in Annex 3, which draws on helpful analysis prepared by London Councils. We will discuss this with stakeholders during the consultation period with the aim of agreeing the most appropriate data we can use from 1 April 2010.

**12.21** This information is used by the TSA and the Government for statistical purposes. This role will continue after 1 April 2010. However, this data is also used to provide contextual information to inform regulation. For example, information could be assessed to see whether there are any indications of compliance to support landlords' self-assessment of performance.

**12.22** To develop our co-regulatory approach with providers and tenants we want to develop a more sophisticated approach to using information to assess the market, inform wider policy and to inform us of any compliance issues. Our aspiration over time is to meet another of the 2007 Cave Review's objectives of "less information, but of a higher value".

**12.23** The supply of financial information, both annual accounts and forecast information, will remain a key part of our regulation of all non-local authority landlords' governance and viability. We will be working with interested parties to ensure this information complies with the general principle of "used and useful".

## Inspection and the Audit Commission

**12.24** The 2008 Act enables the TSA to arrange for an inspection of a provider in respect of their performance in relation to the provision of social housing or its financial or other affairs<sup>23</sup>. This

<sup>22</sup> The Housing Strategy Statistical Appendix (HSSA) and Business Plan Statistical Annex (BPSA) are completed by local authorities for the Communities and Local Government department.

<sup>23</sup> Sections 201-203.



section sets out our general approach. More detail is provided in our specific Guidance Note on Use of our Inspection Power.

**12.25** Information from inspection will be a significant source of information we use to judge the quality of providers' services, and compliance with the national standards. We will invite the Audit Commission to carry out inspections on our behalf in relation to service delivery standards. For inspections in relation to standards set for governance and financial viability, we may invite other bodies to carry out this function.

**12.26** The TSA and the Audit Commission are committed to achieving a strong and outcome focused partnership that results in improvements and efficiencies across the domain.

**12.27** The TSA and Audit Commission will work together not just on housing inspections but also the identification and dissemination of good practice and the sharing of intelligence to ensure collaborative regulation of the domain. Both organisations will share information on their respective regulatory activity to inform

Comprehensive Area Assessments. The purpose is to ensure efficient and effective regulation and to minimise regulatory burden and duplication on providers.

**12.28** The TSA and the Audit Commission have agreed and published a Memorandum of Understanding<sup>24</sup>. This sets out our shared objectives for:

- raising the standard of services to tenants
- ensuring the Audit Commission supports the TSA in its role as the new regulator of registered providers
- ensuring the TSA supports the Audit Commission in the delivery of CAA.

**12.29** The TSA will identify through our regulatory activity the providers who should be inspected. The TSA will identify the main focus for the inspection and the Audit Commission will, through an agreed methodology, undertake the inspection on our behalf.

**12.30** The TSA expects to commission inspections from the Audit Commission predominantly for the

<sup>24</sup> Memorandum of Understanding between the TSA and the Audit Commission, July 2009, published on the TSA's website.

purpose of investigating further where we have grounds to suspect a provider is failing to meet a standard or number of standards. However, inspection may be commissioned for other purposes. We expect that most inspections will be targeted short notice inspections rather than full inspections. In commissioning inspections we must be mindful that the inspection process does not in itself generate a detriment to the services provided to tenants, or providers' ability to deliver services, that is out of proportion to the benefits that will arise from the inspection.

**12.31** Both the TSA and Audit Commission recognise that under new standards and a new regulatory approach, the methodology for inspection will need to be reviewed to reflect these changes. We have agreed to work together closely on the development of the new regulatory framework

and also on the review of the Key Lines of Enquiry (KLoE) framework for April 2010.

**12.32** For 2010-11, ALMO inspections that are required to demonstrate performance in order to access Decent Homes funding will continue under existing arrangements.

## Complaints about a provider's performance

**12.33** We consider that complaints are a key source within the totality of information available on providers' performance.

**12.34** The 2008 Act requires us<sup>25</sup> to consult on and publish guidance on how we will deal with complaints made to us directly. This is contained in Figure 3.

<sup>25</sup> Section 215(1)(a).

### Figure 3: **Guidance on complaints to the TSA about registered providers' performance**

#### **Context**

In developing our guidance we have had regard to the desirability of the prime responsibility for delivering performance against the standards being with the provider and therefore it should be the first port of call for a tenant or group of tenants seeking to raise their issues and concerns. Our approach takes into account our fundamental objective to ensure that actual and potential tenants have an appropriate degree of protection and choice. Under the Tenant Involvement and Empowerment standard, there are clear expectations for how tenants should be involved in the delivery of their services and a co-regulatory process and providers must ensure they have a robust, fit for purpose complaints policy. Where these are not being met, tenants will be able to raise their concerns about their provider's compliance with the standards directly with the regulator. However, before we deal with individual complaints, we shall want to ensure that the relevant landlord and Ombudsman processes have been followed where they are appropriate.

#### **The procedure for making a complaint**

Complaints can be made to the TSA in a number of ways:

- Telephoning 0845 230 7000 and speaking to TSA's Customer Services team between the hours of 8.30am to 5.00pm (Mon – Fri)
- In writing to – Customer Service team, TSA, 1 Piccadilly Gardens, Manchester, M1 1RG
- By email to – [enquiries@tsa.gsx.gov.uk](mailto:enquiries@tsa.gsx.gov.uk)
- Via our website – [www.tenantservicesauthority.org](http://www.tenantservicesauthority.org)

Complaints can be made by any person or organisation – the TSA does not differentiate who can and cannot make a complaint. All complaints even where they are not investigated provide information to complement our regulatory intelligence.

### **Criteria used by the TSA in deciding whether to investigate a complaint**

All complaints are assessed on their individual merits and the determination as to whether the complaint will be investigated will be a judgement that will take into account a number of criteria, including:

- whether legitimate channels for resolution have been considered. Our guiding principle is that the primary focus for resolution of individual complaints should be between the provider and the tenant. Registered providers are responsible for service delivery complaints and feedback, and should have robust complaints processes in place to deal with individual and collective complaints about service specific issues. This will include references to the relevant Ombudsman
- where a complaint, either from an individual tenant or a group of tenants, is received with evidence that a registered provider is not complying with national or agreed local standards and its processes for dealing with tenant concerns either through its complaints process or involvement and empowerment standard are ineffective. Collective complaints will not, in themselves, be treated differently to individual complaints but they may help highlight potential evidence in relation to the number of tenants affected and the scale of concerns about the issues involved

There will be occasions where our statutory objectives in relation to tenant protection and choice require us to investigate the complaint ourselves directly with the provider, such as where there is:

- an immediate or potential risk to a tenant's, or a number of tenants', health and safety
- potential systemic failure of the provider against the standards
- an allegation of mismanagement or fraud
- a significant risk to the reputation of the sector

Intelligence on individual complaints will be used for our regulatory purposes. Our Memorandum of Understanding with the relevant Ombudsman enables data of all complaints submitted to and/or investigated by the Ombudsman to be shared with the TSA on a quarterly basis and complaints which the Ombudsman believes to be of a regulatory concern forwarded to us to consider<sup>26</sup>.

#### **Periods within which the TSA aims to inform complainants of the results of their complaints**

Complaints will be acknowledged within five working days of receipt with an indication of whether we will investigate it. We will inform the complainant of one of two options:

**Option 1:** the complaint is **not** to be investigated but will be logged within the TSA's complaints system and against the provider whom the complaint has been made about. The complainant will be signposted to the most appropriate place to have their complaint considered (eg the provider or the relevant Ombudsman service).

**Option 2:** the complaint **will** be investigated in which case we will set out what we plan to do and outline the timescales within which the complaint will be investigated.

Where complaints are investigated, we aim to inform the complainant within 20 working days as to the result or progress of the complaint. This may include the outcome of the complaint or what action the TSA intends to undertake as a result of receiving the complaint.

Where the TSA is unable to meet these timescales and /or requires further time to complete a detailed investigation; the complainant will be notified and given a revised target completion date.

<sup>26</sup> Note a Memorandum of Understanding is in place with the Independent Housing Ombudsman (available from our website) and we aim to develop one with the Local Government Ombudsman before 1 April 2010.

### Examples:

A A tenant group complains that their provider does not give them an opportunity to agree a local standard on an issue where they are required to do so.

We **are likely to** investigate this complaint. This might potentially indicate a failure to comply with the Tenant Involvement and Empowerment standard.

B A tenant is unhappy about the quality of a repair.

We **would be unlikely to** investigate this complaint. On its own this complaint is unlikely to indicate a failure to comply with the repairs and maintenance standard. However, we will consider this complaint during our analysis of all complaints received by about a provider. If a trend or pattern is emerging within this area of service delivery we will investigate further and consider regulatory action as appropriate.

C A tenant is concerned that their gas servicing has not been done in the last 12 months and their landlord has failed to respond.

Whilst this is a service complaint we **are likely to** investigate it if we think it presents a health and safety risk to the tenant.

D We receive a complaint from 100 tenants on an estate providing evidence that their landlord has persistently ignored their concerns about estate cleaning, repairs and anti-social behaviour in relation to the national standards.

We **are likely to** investigate this complaint. It might potentially indicate a failure to comply with the neighbourhood management, anti-social behaviour, tenant involvement and empowerment and complaints standards.

E The Chair of a scrutiny panel complains that the provider is not allowing them to scrutinise the complaints performance.

We **are likely** to investigate this complaint. This might potentially indicate a failure to comply with the Tenant Involvement and Empowerment standard.

F An applicant complains that a provider has not offered them accommodation.

We **are unlikely** to investigate this as on its own it does not demonstrate non-compliance with the allocations standard. The complainant would be signposted to the provider's complaints policy.

### **Analysis of complaints**

We will conduct analyses of all complaints information at a sector and provider level to inform our regulatory activity. This information will include complaints received by the TSA (including where they are signposted to the provider with no further action from the TSA), complaints received by the relevant Ombudsman (shared in accordance with our Memorandum of Understanding), and complaints received by providers (published in accordance with the complaints requirements of the Tenant Involvement and Empowerment standard).

### **Allegations and whistleblowing**

Allegations tend to have an 'organisational' focus and will normally point to a widespread problem at the organisation, such as fraud.

A whistleblower tends to describe someone who works in or for an organisation who raises an allegation about their employer. These 'employees' may have legal protection under the Public Interest Disclosures Act (PIDA).

The TSA will respond to allegations about registered providers in accordance with its procedures for responding to allegations and whistleblowing.

### Complaints about the TSA

We will retain our existing approach to dealing with complaints about our service<sup>27</sup>.

## The TSA's risk-based approach and regulatory activity

**12.35** We are developing our risk-based approach to regulatory activity that will help us:

- deploy resources most effectively to ensure we focus on those organisations most at risk of failing standards or whose performance against them is deteriorating significantly
- identify the key risks currently facing social housing and its providers (or risks that may arise in the future) using published thematic analyses to encourage debate and share best practice

**12.36** Our risk framework will help guide the TSA's engagement with tenants and providers across all the national standards, based on our analysis of

performance information in conjunction with other sources of market intelligence, to enable the TSA to deliver regulation effectively and proportionately.

**12.37** What this means in practice is:

- those organisations where we have no indications of risk of standards failure, and about whom there are no other contra-indications of compliance, can expect to be subject to only minimum levels of regulatory engagement
- those providers whose returns give cause for concern, or where we have other evidence of poor performance, can expect to have an increased level of regulatory engagement, based initially on investigating the issue and an initial presumption from us of supporting the provider's self-improvement.

<sup>27</sup> This policy is available from our website.



**12.38** We will also develop our approach to risk scanning and analysis of emerging risks and we will make regular statements to the sector and its key stakeholders regarding the main issues facing the sector from time to time. In this way we hope to encourage debate of the issues and promote sector-led solutions.

**12.39** For non-local authority providers compliance with the Financial Viability standard is so fundamental to the delivery of other standards that the TSA will need to ensure we regularly review and understand the financial position of providers, which may lead to more routine engagement on viability issues.

## **TSA staff roles and their routine engagement with providers**

**12.40** We are committed to working with providers and tenants to ensure that the new regulatory framework and national standards are understood, implemented and bring about improvements to tenants. Our approach is centred on supporting providers' self-improvement and using our intervention and enforcement powers proportionately.

**12.41** We have established two new directorates that have operational responsibility for our regulatory engagements: Risk and Assurance and Tenant Services. New Senior Risk and Assurance Managers take a lead role in establishing and managing effective relationships with the largest registered providers. They are supported by Risk and Assurance teams and Tenant Standards Advisors who manage the day-to-day relationship, supporting registered providers and their tenants in the delivery of excellent services.

**12.42** We continue to review the most effective use of our resources to ensure the new regulatory framework is a success and achieves value for money.

## **Risk and Assurance teams**

**12.43** Within our Risk and Assurance directorate, we operate through two regionally based teams, one in Manchester and the other in London. The teams comprise Senior Risk and Assurance Managers who lead on managing our relationship with all landlords with more than 10,000 homes. Landlords owning fewer than this are looked after by multi-disciplinary assurance teams.

**12.44** In addition to the two regionally based teams:

- we have a single national team offering streamlined support arrangements for providers with fewer than 1,000 homes, managed from our Manchester office
- our enforcement team leads on any cases which may require TSA's statutory intervention
- our Planning, Policy and Quality Assurance team supports the development of the new framework, oversees risk assessment of providers and planning of engagements and ensures consistency in our regulation of providers

## Tenant Standards teams

**12.45** In conjunction with our continued focus on governance and viability, the new Tenant Services team comprises four regionally based Standards teams to take responsibility for promoting the new tenant-facing standards. During the consultation period, their initial emphasis is on explaining and publicising the proposed framework. Their direct contacts with landlords and tenants are predominantly with those who give us immediate concerns about their performance, to work with landlords to identify ways of improving services. Where Tenant Standards Advisors are working with individual landlords, we ensure that their activity is

co-ordinated with programmed Risk and Assurance work.

**12.46** The Tenant Standards teams also lead on commissioning housing services inspections from the Audit Commission, working with Risk and Assurance colleagues to identify the need for and scope of inspections, monitoring the establishment and delivery of post-inspection action and improvement plans.

## Publishing regulatory assessments

**12.47** The TSA is committed to being transparent in our approach to assessing regulatory performance by publishing our assessments of providers. We believe that this can help inform tenants about their provider's performance, drive up performance of individual providers and provide assurance to other stakeholders regarding the position of the sector.

**12.48** For many of our standards 2010-11 will be the first time we have assessed providers in these areas, so it would not be appropriate for us to publish assessments in the initial months of the new standards framework, although providers will

publish their own assessments through the annual standards report within the first year. Our published judgements will use, as far as is possible, data already shared between providers and their tenants. We will add contextual commentary and comparable information from other providers to form a view of the success, or otherwise, of providers in meeting the TSA standards framework.

**12.49** We will continue to publish formal graded assessments in relation to viability and governance standards (these are not applicable to local authorities) as these are key areas where stakeholders, such as lenders and boards, place reliance on our assessments. We will, however, want to take into account other information providers have in relation to the other standards in forming these assessments.

## Consultation questions

- 6 Does our approach to monitoring and compliance against the standards and regulatory requirements seem a reasonable basis for 'how' we regulate in 2010-11?**
- 7 Does our approach to dealing with complaints seem reasonable?**

# 13 Using our formal regulatory and enforcement powers

**13.1** We want to ensure that there are mechanisms by which poor performance by providers is identified and put right in order that tenants receive the service they deserve and to ensure that lenders retain confidence in the sector (in the case of housing associations). As set out in section 12, we expect providers to take responsibility for their self-improvement. We would expect this to be effective in most cases. However, in cases where this approach is either inappropriate or has proved unsuccessful, we will need to consider how to address the issue using our formal powers.

## Guidance on the use of our statutory powers

**13.2** Where the TSA considers a provider's performance is of sufficient concern to warrant more intensive regulatory scrutiny and engagement is necessary, it may need to consider the use of its regulatory, enforcement and general powers.

**13.3** We are required by the 2008 Act to consult on how we intend to use some of our formal

powers. Reference to 'powers' in this chapter relates to those powers listed in the sections below. This chapter constitutes our consultation on the high level objectives and principles that might underpin our approach to dealing with poor performance and using our regulatory and enforcement powers.

**13.4** Published alongside this document is a supplementary consultation document, Guidance on Use of the TSA's Powers. This consults on the detail of how we intend to use many of these powers from 1 April 2010 although guidance in relation to some of our other powers, such as setting standards and how we will deal with complaints about providers' performance, is contained elsewhere in this document. Annex 4 sets out a summary where you can find the guidance on each power about which we are consulting. We have developed guidance on our powers in relation to local authorities based on the Government's intentions for these powers but note this is subject to Parliamentary approval<sup>28</sup>.

**13.5** We are not at this stage consulting on guidance on the detail of all our powers. There are some powers that relate to local authorities (such as censure of an officer during or after an

<sup>28</sup> This is set out in the Government's response to its consultation on our powers in relation to local authorities (The Housing and Regeneration Act (Registration of Local Authorities) Order 2009: a summary of responses, November 2009, CLG).

inquiry and appointment of an adviser) where we are keen to work further with local authority stakeholders to better understand how these powers might be used. There are also some powers that are novel and complex and where more time is required for discussion with stakeholders before we can produce detailed guidance. These relate to powers to transfer and tender management. These powers will be subject to a further supplementary consultation on our use of powers in due course.

**13.6** In broad terms, the TSA can exercise the powers described below where it suspects or has evidence of a failure against a standard(s) or where a provider has mismanaged its affairs or, in some cases, for other reasons that are specified in the 2008 Act<sup>29</sup>.

## Our new graduated range of powers

### Monitoring and investigative powers for all providers

**13.7** We have a number of regulatory powers under the 2008 Act to monitor providers' compliance with regulatory requirements or in the event that we suspect a provider is failing to meet a standard or is in breach of other regulatory requirements.

**13.8** The following powers will apply from 1 April 2010 to all existing RSLs, local authority providers and any new not-for-profit and profit-making providers:

- Collect information and documents (S107 to 108)
- Arrange a survey (S199)
- Arrange an inspection (S201 to 203)
- Direct an inquiry (S206 to 209)
- Direct an extraordinary audit (S210)

<sup>29</sup> The term 'mismanaged' in relation to the affairs of a provider is defined in section 275 of the 2008 Act as: managed in contravention of a provision of the 2008 Act or of anything done under the Act; or otherwise conducted improperly or inappropriately.

## If a provider is a current RSL (or is not a local authority and intends to become a registered provider)

**13.9** We have a range of enforcement powers which can require the provider to take specified action to resolve an identified failure or other problem. The following enforcement powers can be used for providers who are not local authorities:

- Enforcement notice (S219 to 225)\*
- Penalty fine (S226 to 235)
- Award compensation (S235 to 245)
- Direct a tender of management (S247 and 248)\*
- Direct a transfer of management (S249 and S250)\*
- Appoint a manager (S251-252)
- Direct a transfer of land (S253 to 254)
- Make and execute an amalgamation of an industrial and provident society (S255)
- Direct restrictions during or following an inquiry (S256 to 265)
- Remove an officer in circumstances such as bankruptcy (S266 to 268)
- Appoint new officers (S269)

\* See para. 13.12 for equivalent powers for local authorities.

**13.10** The following relevant general powers will also apply to non-local authority providers:

- Give financial assistance (S95(3))
- Direct Homes and Communities Agency not to invest (S106)
- Direct how sums in a disposals proceeds fund are used, allocated or paid (S178)
- Settle the affairs of providers that become insolvent (S144 to 159)
- Petition to wind up a provider (S166)
- Transfer net assets on dissolution (S167)
- Place restrictions on disposals or transfers of property (S170 to 176)

**13.11** Some of these powers are similar (but not exactly the same) to those the TSA is currently using to regulate housing associations and other registered social landlords under the Housing Corporation's 1996 Act powers. Those that are substantially similar include the powers to conduct an inquiry, arrange an extraordinary audit, approve changes to non-profit providers' management and constitution, transfer of land, restriction of dealings during or following an inquiry and suspension, removal and appointment of an officer. Our new enforcement powers include an enforcement notice, a penalty fine, award compensation, direct a tender of management, direct a transfer of management,

appoint a manager and make and execute an amalgamation of an Industrial and Provident Society.

### If a provider is a local authority

**13.12** The Government intends to give us the following enforcement powers in relation to local authorities:

- Appoint advisors to a local authority (S252A)
- Enforcement notice (S219 to 225)
- Censure a local authority during or following an inquiry (S269A and B)
- Direct a tender of management (S247 and 248)
- Direct a transfer of management (S249 and S250)

**13.13** In addition, the following relevant general powers apply to local authorities:

- Direct the Homes and Communities Agency not to invest (S106)
- Collect information and documents (S107 to 108)
- Place restrictions on disposals or transfers of property (S170 to 176)

### How we will use our powers: general

**13.14** Our approach to using our powers is underpinned by three key components: our fundamental objectives; our standards (and any associated Codes of Practice); and any specific requirements in the 2008 Act in relation to using our powers.

**13.15** We may consider the use of our regulatory powers, including inspection, to investigate where we suspect that there may have been a failure to meet the standards or that the affairs of a provider have been mismanaged. The investigation may lead to no further action, an agreed self-improvement plan without recourse to our formal enforcement powers, or in some cases where it is warranted more formal use of our enforcement powers.

**13.16** Use of our enforcement powers does not rely on us using our formal investigation powers in advance of this (such as an inspection or inquiry). For example, an enforcement notice could be issued if the TSA is satisfied that a provider has failed to meet a standard<sup>30</sup>.

<sup>30</sup> Section 220(8): this section also contains other examples.

**13.17** We will keep the use of our powers under regular review, and may decide to exercise any of the powers if improvement by the provider is not sustained or if the circumstances of the case make it necessary to do so. The TSA may use its powers either singly or in combination depending on the circumstances and issues of the case.

## **Principles underpinning our approach to using our powers: what providers can expect from us**

**13.18** We will adopt the following principles:

- We will generally take into account the role of self-improvement before using any of our enforcement powers. In cases where this approach is either not appropriate or has proved unsuccessful, we will need to consider how to address the issue using our more formal powers
- Where we do use our enforcement powers we will usually adopt a graduated approach unless the merits of the case warrant a different approach at an early stage
- We will have regard to our fundamental objectives when considering any individual case and will seek to balance the interests of the provider, its tenants, its key stakeholders and the impact on public funds when responding to the circumstances of each individual case
- We will be proportionate in our approach, consistent in how we make judgements, accountable for our actions and transparent in our relationships with the provider, its tenants and other stakeholders. There may be occasions where the pursuit of our statutory objectives (eg financial viability) limits how transparent we can be with third parties whilst we are considering using our powers in relation to a provider
- We will always explain the grounds and give reasons for taking action. We will usually give notice of any action (in some cases we are required to do so by the 2008 Act)
- We will assess the most appropriate course of action taking account of the particular circumstances of the provider (including any structural differences arising from the type of provider or the financing arrangements that they must operate), the level of risk and the potential impact associated with the provider, tailor our regulatory engagement accordingly and always take action which is commensurate with the materiality of the breach or failure
- We will give careful consideration to any remedial strategies proposed by the provider, including any relevant voluntary undertakings,



and will seek to agree the way forward with the provider when it is prepared to resolve the presenting issues and we conclude that it has all the resources necessary to do so

- We will take account of any significant changes in circumstances and adapt our approach accordingly

**13.19** We may need to react and respond as a matter of urgency to unanticipated and exceptional events that happen from time to time. In circumstances where we consider it necessary and expedient to do so we may adjust the intensity of our engagement with a provider, or exercise one or more of our powers with little or no notice, particularly in circumstances where giving notice would defeat the purpose of taking the proposed action or where it is necessary to protect tenants from immediate harm or to protect public funds.

## How we will engage with providers

**13.20** We want to be transparent in our relationship with a provider when we are considering the use of any of our enforcement powers. Our approach will need to have regard to the circumstances of the case, particularly

where we think that urgent or immediate action is necessary and we have to apply the power with little or no notice. We will apply the following principles when we engage with a provider in circumstances where we are considering using our formal powers (whilst respecting the fact that the 2008 Act in some cases establishes a procedure to be followed and this is set out in the detailed Guidance Notes):

- We will have dialogue with the provider before, during and following this process in accordance with our usual approach to regulatory engagement with the provider to ensure we work together to protect tenants, social housing assets and public funding. This includes informing a provider when we are minded to use a power explaining the issues and concerns we have and giving the provider an opportunity to respond to this
- We will give notice to a provider when we propose to use a power. We will explain the power and the issues or concerns that have made us consider using it
- We will invite the provider to make representations in response to our notice and to give us any information or comments, including any relevant voluntary undertaking, it thinks might help us make our decision about whether or not to use the power

- We will carefully consider any representations, information and comments, including any relevant voluntary undertakings received from the provider in coming to a decision about the action we intend to take
- We will notify the provider of our decision and give our reasons for making it. We will tell providers about any appeal or challenge procedures related to our decision and any related timescales

## Factors that may lead to the use of our regulatory, enforcement and general powers

**13.21** In broad terms, any decision will be based on:

- the seriousness of the failure or problem identified
- the urgency with which the problem or failure needs to be addressed
- the level of risk associated with the provider and the potential impact of its failure
- the degree of assurance given by the provider to the TSA in relation to action it is taking or will take to resolve the issue. We may take into

account the provider's history in dealing with relevant issues

- the resources available to the provider to resolve the problems
- proportionate use of resources that need to be applied to our regulatory engagement with the provider

**13.22** We will notify the provider when we are minded to use any of our regulatory, enforcement and general powers.

**13.23** In order to bring about improvements, we may propose an action plan setting out the key corrective actions required and the milestones and timetable in which they should be achieved. We will usually work with the provider to agree how best to implement this plan. We will carefully consider any remedial plan submitted by a provider, including any voluntary undertaking it gives to the TSA.

**13.24** We will notify the provider when it has completed the key corrective actions to our satisfaction. This will be confirmed following a comprehensive risk assessment of the provider.

**13.25** Our aims will always be underpinned by our fundamental objectives and our standards. Our specific objectives may vary from case to case or

change during the course of a case, but broadly speaking we would want to:

- address and resolve the presenting problems and any related or contributory problems
- protect the interests of tenants including by improving standards of performance so that tenants receive a quality of service delivery required by our standards
- require the provider to meet acceptable standards of organisational effectiveness and service delivery
- act as a catalyst for change within the provider and ensure that any improvements in performance are sustained in the long term
- protect public expenditure and guard against the misuse of public funds
- reassure lenders
- protect the reputation of providers of social housing as a whole
- address and seek to resolve any additional relevant and material matters that come to light while a provider is subject to our regulatory, enforcement or general powers

- and, where necessary, co-ordinate our approach with other regulatory bodies, such as the Audit Commission

## Checks and balances on the use of our powers

**13.26** There are a number of checks and balances in the 2008 Act which must be applied to the TSA's use of its powers.

## Regulators' Compliance Code

**13.27** The TSA must regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable. The 2008 Act requires the TSA to comply with the provisions of the Regulators' Compliance Code<sup>31</sup>. The Code does not apply to the exercise by a regulator of any specific regulatory function in individual cases.

<sup>31</sup> Issued under section 22 of the Legislative and Regulatory Reform Act 2006.

## Consideration before exercising an enforcement power

**13.28** The 2008 Act states the TSA must consider four specific matters<sup>32</sup> before deciding whether to or how to exercise an enforcement power<sup>33</sup>. They are:

- the desirability of a provider being free to choose how to provide services and conduct business
- whether the failure or other problem is serious or trivial
- whether the failure or other problem is a recurrent or isolated incident
- the speed with which the failure or other problem needs to be addressed

## Voluntary undertakings

**13.29** A provider can give the TSA a voluntary undertaking ('an undertaking') in respect of any matter concerning social housing<sup>34</sup>. The circumstances in which such an undertaking can be given are widely drawn. For example, a provider

may offer such an undertaking whilst subject to regulatory, enforcement or general powers.

**13.30** In exercising some of our powers we must have regard to any undertaking offered or given by a provider. We will consider any undertaking offered in such circumstances in accordance with published procedures.

**13.31** We may take into account whether a sufficient undertaking has been offered and honoured. In considering an undertaking, the TSA will:

- assess whether or not we consider the terms of an undertaking are satisfactory, giving reasons for our decision
- monitor the provider's progress towards meeting its undertaking and assess whether the provider has honoured the undertaking, giving reasons for our decision

**13.32** Although an undertaking will always be a voluntary matter for the provider, we will respond in the event a provider asks whether an undertaking

<sup>32</sup> Section 218 of the 2008 Act.

<sup>33</sup> Sections 218 to 269 of the 2008 Act.

<sup>34</sup> Section 125 of the 2008 Act.

would address matters that have necessitated enhanced scrutiny by the TSA.

**13.33** While we must have regard to any undertaking offered or given by a provider, there may be circumstances where the existence of a voluntary undertaking may not prevent further enforcement activity. This might include circumstances in which we consider that the undertaking is unsatisfactory or insufficient to resolve the problems, or where urgent or immediate action is necessary.

**13.34** We will usually make a public statement in circumstances where we accept an undertaking.

## Consultation question

**8 Is our general approach to using our formal regulatory and enforcement powers reasonable?**

## 14 Registration and deregistration criteria

**14.1** This section outlines our main proposals relating to the new registration arrangements that must be in place for 1 April 2010 to support the standards framework.

**14.2** In the June discussion document we also consulted on how we ought to approach the use of our powers to consent to constitutional changes for some providers and the disposal of property. Given the detailed nature of these proposals, our proposals in this area are set out in supplementary consultation documents published alongside this document.

### The eligibility criteria and conditions for registration

**14.3** All providers on the TSA's existing register (known as registered providers, or RSLs) will transfer automatically to the new register on 1 April 2010, and all applicable local authority providers will be registered without the need to apply. However, new (non-local authority) entrants eligible for registration from 1 April 2010 will need to meet new registration conditions that we propose to put in place to reflect the changes in the 2008 Act. The TSA, consistent with its fundamental objectives, is keen to encourage new entry to support the

increased supply of social housing and to provide greater choice to tenants.

**14.4** The new registration system under the 2008 Act is different in many respects from the existing system:

- It is designed to encourage a wider range of entry, including from for-profit providers
- Only registered providers can be regulated by the TSA in terms of them being required to meet enforceable standards
- Organisations that obtain funding from the HCA in order to develop, own and manage low-cost rental housing must be registered with the TSA when the property is let

### Eligibility criteria

**14.5** From 1 April 2010, we will register applicants in accordance with the new registration provisions that require that applicants must:

- be, or intend to be, providers of social housing in England
- be English bodies
- satisfy the criteria established by the TSA

**14.6** There are now fewer restrictions than in the current legislation about the type of body which TSA may register: applicants must be English bodies and be, or intend to become, providers of social housing in England. This has the effect of opening registration up to profit-making organisations, but also imposes few restrictions on the type of body that can apply, supporting our objective of the provision of choice in social housing.

**14.7** Applicants must be English bodies, but do not have to be any particular type or status and could, for example, be a partnership. To be an English body, an organisation must have a base in England.

**14.8** To be eligible for registration, applicants must be, or intend to be, providers of low-cost rental or low-cost home ownership as defined in section 80 of the 2008 Act.

**14.9** In considering an application from an intending provider, we propose to require evidence either of existing homes or of financial provision for buying or developing homes. This is likely to be evidence of land ownership and planning permissions or loan or other financing arrangements. Once we are satisfied of the

applicant's intent, the applicant will be assessed in accordance with the registration criteria established.

**14.10** We propose a pragmatic approach to assessing the 'intention to provide', with us setting a timeframe for review of the intending provider's position that would be based on the development plans set out in the application rather than being an arbitrary fixed period. We would expect to discuss deregistration with a registered provider when the position was reviewed if there appeared to be no prospect of the planned development taking place. This discussion would likely result in us either continuing to consider the registered provider as an intending provider, or deciding that deregistration was appropriate as the registered provider was no longer eligible for registration.

**14.11** The requirement in the 2008 Act for registered providers to be "landlords" means that applications, after April 2010, could be received from subsidiary organisations of both non-profit and profit-making organisations where the parent is not technically eligible for registration. Given the approach to regulating group structures that the TSA (and the former Housing Corporation) has adopted – which effectively regulates at the group level – we want to ensure that any changes in this area are managed in a way that continues

to provide effective regulatory assurance and commands the confidence of the sector and lenders.

**14.12** If such a new applicant were to apply after April 2010 we will expect it to satisfy us that it can demonstrate that its group structure affords us effective and enduring regulatory assurance. This may involve agreeing with us appropriate ring-fencing agreements, which have been used in other sectors where the regulator regulates a subsidiary rather than the whole entity. We would not wish to register such an applicant unless we received such assurance.

**14.13** For existing providers (RSLs) that automatically transfer to the new register on 1 April 2010, the Government and the TSA have agreed that these providers will continue to be registered and regulated as if they meet the requirements for registration in the 2008 Act, whether or not in practice this is the case (for example as with a non-stock-holding parent of a social provider subsidiary)<sup>35</sup>.

The Government expects to revoke these transitional arrangements at a future date to ensure a level playing field between different types of provider. This is not expected to be within three years, during which period the TSA will work with existing providers to ensure that there is an orderly transition to new group structures that meet the requirements of the 2008 Act, give regulatory assurance and maintains lender confidence. The TSA will set out its process for taking forward this issue following Parliamentary approval of the relevant secondary legislation.

### TSA criteria

**14.14** Once the TSA is satisfied that an applicant is eligible for registration, the applicant will be assessed against any registration criteria set by the TSA. Any applicant that is eligible and meets our registration criteria must be registered.

**14.15** We are not required to set any criteria and could choose to register any applicant that is eligible. In deciding whether to set criteria, we have had in mind that we must preserve confidence in the sector and must put in place requirements

<sup>35</sup> Using the transitional arrangements in secondary legislation needed to support the introduction of the new Act in April 2010.



that support our objectives, most notably those on tenant protection, governance and viability and protection of public grant. We do, therefore, propose to establish registration criteria that applicants must meet.

**14.16** The TSA's criteria can be about:

- An applicant's financial situation
- Its constitution
- Other arrangements for its management

**14.17** In setting our proposed criteria, we have to balance our objective to encourage entry to the sector with our objectives to protect tenants. Setting low entry requirements might lead to more applicants for registration, but it might also mean that the quality of housing and the services provided to tenants were not of an acceptable standard, at least initially. We must also consider the wider reputation of the social housing sector. However, setting a higher threshold to be met at the point of registration could create a barrier to entry.

**14.18** Our proposed reference point for the registration criteria is the regulatory standards. Since applicants will have an ongoing obligation to meet these standards, it seems sensible to take a view on their ability to do so at the point

of registration. The standards put the interests of tenants at their heart and will ensure that the registration criteria keep as their focus our fundamental objectives. In using the standards as its reference point for the criteria, we are still confined by 2008 Act to setting criteria about an applicant's financial situation, its constitution and other arrangements for its management. This puts the focus on the governance and financial viability standard, with a decision to be made about the extent to which the other standards are taken into account at the point of registration.

**14.19** Our proposal is that financial viability should be an absolute requirement. We would expect all applicants to demonstrate that they meet this part of the standard at the point of registration and will continue to meet it over a period of time. We would not expect to register an applicant that was unable to satisfy us of this.

**14.20** We would also assess applicants against the governance requirements and those on tenant involvement and empowerment, but would not always expect compliance with these standards at the point of registration, accepting a reasonable path to compliance that would be subject to regular review.

**14.21** The service delivery related areas of standards do not appear to constitute 'other arrangements for an applicant's management', so compliance with these standards could not be required as part of the registration criteria. However, we consider that taking no view on service delivery might put the interests of tenants at risk, so our proposal is to set a criterion requiring that the management arrangements in place within an applicant's organisation provide a reasonable path to achieving compliance with the service delivery standards.

**14.22** In judging what is a 'reasonable path', we would take a risk-based view on the level of compliance already achieved, the nature of the actions needed to achieve compliance and the proposed timescale for completing these actions. A registered provider not achieving compliance with the relevant standard within a reasonable timescale could expect us to consider whether enforcement action was appropriate.

**14.23** The final area for consideration is that of an applicant's constitution. Unlike the current legislation where applicants must have within their objects the provision, construction, improvement or management of social housing, 2008 Act makes no such provision. We can establish requirements for

particular objects as part of our registration criteria and we note that 2008 Act requires us to consent to any change in the relevant rules, objects or articles of a non-profit registered provider. However, there is no such requirement for the profit-making registered providers.

**14.24** We question whether there is any purpose in including any registration criteria about the objects of profit-making registered providers when we have no subsequent oversight of these objects. If there were any requirements about a profit-making organisation's objects and these were subsequently changed, it could be argued that the registered provider might no longer meet our registration criteria and so TSA could propose to compulsorily deregister the registered provider. Our concern is that this is a very blunt instrument that we would be unlikely to use: deregistration may not be in keeping with our objectives (most notably those relating to protection of tenants, provision of choice and safeguarding of public funding); in addition, such an approach might also introduce perverse incentives for profit-making registered providers. We also question how our power to consent to changes in a non-profit-making organisation's relevant rules, objects or articles can be effectively discharged if no view is taken on these at the point of registration.

**14.25** We therefore propose to have a criterion, relating only to non-profit organisations, that would require an applicant to have within its objects:

- the provision of social housing
- not-for-profit status
- non-distribution of assets to members

We do not propose to have any requirements in the registration criteria about the objects of profit-making organisations.

**14.26** We have considered whether the registration criteria should be the same for non-profit and profit-making applicants and concluded that, other than as set out above on an organisation's objects, the criteria should be the same. This is because the standards are the same for all registered providers (except in relation to governance and viability for local authorities) and our view is that there are no differences between the two types of organisation which would cause it to set different criteria.

**14.27** In summary, the registration criteria proposed by the TSA are that:

- An applicant must meet the financial viability requirements within the Governance and

Financial Viability standard at the point of registration and for a period of time thereafter

- An applicant must meet, or demonstrate a reasonable path to meeting, the governance requirements of the Governance and Financial Viability standard
- An applicant must meet, or demonstrate a reasonable path to meeting, requirements on tenant involvement and empowerment
- An applicant must have in place management arrangements which enable it to meet, or demonstrate a reasonable path to meeting, the service delivery standards
- A non-profit applicant must have within its objects the provision of social housing, not-for-profit status and non-distribution of assets to members
- A for-profit applicant must agree assurances (eg contractual and ring-fencing arrangements) with the TSA to prevent inappropriate leakage of public funding to unregistered organisations, including a holding company

**14.28** The registration criteria can be reviewed and, following consultation, adjusted at any time after 1 April 2010. We think it is reasonable to plan for a review of the criteria periodically, and propose that this should be not more than three years after the start of the new framework coming into

effect on 1 April 2010. This is consistent with the proposals for periodic review for the standards.

## Registration process

**14.29** We propose:

- A proportionate registration process, seen in the context of the size of the social housing portfolio and risk profile of the potential entrant. Size of portfolio could be in absolute terms and related to geographic concentration
- When handling applications from, for example, large organisations, such as an ALMO, that own only a limited number of social housing properties, our assessment against the criteria would reflect the risk profile of the applicant and its size in terms of the number of social housing properties it has or intends to have, but the assessments against the Viability and Governance standards would take account of the wider organisation within which these properties rest
- The TSA will work closely with the HCA during the registration process where an organisation seeking grant funding from the HCA indicates that it expects to retain ownership of the property when it is let

- As now, in the event of the creation of a new organisation born out of an existing registered provider, perhaps as a result of a merger, the TSA would not normally expect the new organisation to complete the full registration process. We would have regard to the knowledge we have of the relevant registered provider(s)
- Where an applicant for registration has already been accredited by the TSA or its predecessor body the Housing Corporation under the Housing Management Accreditation Scheme, we propose that this accreditation should be taken into account during the registration process

## Deregistration criteria

**14.30** There are a limited number of defined circumstances set out in the 2008 Act that would lead to the compulsory deregistration of a registered provider (eg they have ceased to exist). A registered provider can also apply for voluntary deregistration on the grounds that it:

- no longer is or intends to be a provider of social housing in England
- is subject to regulation by another authority whose control is likely to be sufficient, or

- meets any relevant criteria for deregistration set by the TSA

**14.31** In considering an application for voluntary deregistration, the TSA will consider the following relevant criteria:

- the arrangements to ensure the continued protection of tenants
- the arrangements to ensure there is no misuse of public funds

**14.32** In looking at the continued protection of tenants, we would:

- expect the registered provider to demonstrate ongoing financial viability
- expect the registered provider to be achieving a satisfactory level of performance
- take into account any relevant regulatory or other controls that the registered provider would continue to be subject to after deregistration (including membership of the Housing Ombudsman scheme)
- take into account the views of the tenants and of any local authority in whose area the registered provider lets housing
- take into account the nature and scale of the social housing provision of a registered provider

**14.33** In considering arrangements for guarding against the misuse of public funds, we would consider the amount of capital public funding outstanding and any current or planned development for which the registered provider had received or would receive public funding. Deregistered providers would still be subject to TSA consent rules for disposals unless we have already directed that any specified dwelling should cease to be social housing. We would not expect the power to 'declassify' social housing to be widely used. Deregistered providers would also still be subject to any conditions attached to the public funding imposed by the HCA (or the predecessor body, the Housing Corporation).

**14.34** The current deregistration criteria prevent a deregistered RSL from seeking registration again within a five-year period. We do not propose to continue with this restriction as we wish to encourage registration and are particularly aware of the position of organisations that may register as intending providers but deregister when their plans do not come to fruition, only to see further opportunities arise.

## The register

**14.35** TSA must maintain a register of providers of social housing, available for public inspection, that shows whether an organisation is profit-making or not. Local authorities are a separate category and not included in this section of the register and all existing RSLs will automatically be designated as non-profit organisations. Some of our powers, for example consent on changes to objects, relate only to non-profit registered providers so this is an important distinction. Any registered and non-registrable charities will be designated as non-profit-making. For other organisations registering after April 2010, the 2008 Act requires us to designate them as non-profit-making if:

- the organisation does not trade for profit or is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under Section 1(1)(b) of the Housing Associations Act 1985
- a purpose of the organisation is the provision or management of housing
- any other purposes are connected with, or incidental to, the provision of housing

If a new registered provider does not meet these requirements then it will be designated profit-making.

**14.36** The Secretary of State can make regulations providing that a specified purpose is or is not incidental to the provision of housing, but has indicated that no such regulations will be issued in the medium term so we will need to set out how we will decide what is “connected with or incidental to the provision of housing”. We propose to work with stakeholders to develop what constitutes the provision of housing, then determine what is incidental to or connected with this. If a registered provider has any activities which fall outside these definitions then, unless it is a registered or non-registrable charity, it will be designated on the register as a profit-making organisation.

## Fees

**14.37** The 2008 Act makes provision for the TSA to charge fees to providers for initial registration and/or continued registration. In July 2009, the Government announced that, in view of the current financial pressure on housing associations as a result of the economic downturn, fees would not

be levied on any providers to cover the costs of regulation until April 2011 at the earliest.

## Accreditation of managers

**14.38** At present accreditation of managers is carried out by the TSA on behalf of the HCA. The Housing Management Accreditation Scheme (HMAS) was established by the Housing Corporation to apply to the managers of properties where the grant recipient was not a registered social landlord. Accreditation of the manager for such properties was a condition of the giving of that grant. However, the power to accredit managers resides with the TSA in the 2008 Act. We are considering what the role of the HMAS should be in the future and will discuss this with organisations that are currently accredited and with the HCA.

## Consultation question

**9. Do our proposals for establishing registration and deregistration criteria seem reasonable?**

Part IV  
**Other**



# 15 TSA directions required under the 2008 Act

## Accounting direction

**15.1** The 2008 Act<sup>36</sup> enables the TSA to give directions to registered providers about the preparation of their accounts. A direction may only be given to a profit-making registered provider in respect of social housing activities. It does not apply to local authorities. Such a direction may only be given following consultation. This section constitutes our consultation on this issue.

**15.2** Accounting requirements for registered providers were previously subject to General Determinations issued by the Housing Corporation. The last accounting General Determination was issued in 2006<sup>37</sup>. For now we intend to continue to use this<sup>38</sup>. This will only be required from private registered providers and, in the case of for-profit registered providers, only in respect of their social housing activities.

**15.3** We intend to review the accounting requirements of registered providers and will

consult on this in due course. The TSA will wish to ensure that social housing activities can be ring-fenced. We will take due regard of the needs and wishes of stakeholders in ensuring that financial information is transparent and comparable whilst seeing where unnecessarily complex and detailed analysis may be reduced.

## Disposal Proceeds Fund

**15.4** The 2008 Act<sup>39</sup> establishes that in various circumstances registered providers need to create a disposal proceeds fund (DPF) and follow certain rules in regards to the use of that fund. A registered provider may only use DPF in accordance with a direction set by the TSA. A direction may only be given with the approval of the Secretary of State.

**15.5** The TSA intends to continue the use of the DPF in accordance with the guidelines and Determination published by the Housing Corporation, save that references need to be made to the TSA and the 2008 Housing and

<sup>36</sup> Section 127.

<sup>37</sup> This was issued subject to Section 218 and Paragraph 22 of Schedule 11 to the Housing Act 2004 and Section 7 and Part III of Schedule 1 to the Housing Act 1996. It is available from our website <http://www.tenantservicesauthority.org/server/show/nav.3545>.

<sup>38</sup> Save that technical references need to be made to the TSA and the 2008 Housing and Regeneration Act where appropriate.

<sup>39</sup> Section 177.

Regeneration Act where appropriate<sup>40</sup>. The TSA intends to review the DPF in due course and any future direction will be subject to consultation and Secretary of State approval, as appropriate.

## **Consultation question**

- 10. Does our approach to issuing directions on Accounts and the Disposal Proceeds Fund seem reasonable?**

<sup>40</sup> DPF was previously subject to section 24 of the Housing Act 1996 and determinations issued by the Housing Corporation. The last DPF General Determination was approved 17 November 2008.

# 16 Impact Assessments

## Equalities Impact Assessment

**16.1** The TSA has specific duties under equalities legislation, one of which is to conduct effective Equality Impact Assessments (EIAs) to ensure that we are basing our policies on the right evidence.

**16.2** EIAs are aimed at ensuring that policies promote equality and contribute to effective policy making providing opportunities to minimise risks, maximise the benefits of a policy therefore ensuring that we have the best policies in place. They also help to meet the requirements under the general duties. All our EIAs will consider potential impact of policies including the regulatory framework in respect of all seven areas of equality under which we have duties.

**16.3** Our approach to EIA will be one of the key drivers in our work to promote equality, and identify and eliminate potential discriminatory effects prior to introducing the proposed regulatory framework.

**16.4** Since publication of our June discussion document, we have engaged with a diverse range of housing providers, external agencies including voluntary agencies, tenants from diverse backgrounds and other organisations directly

or indirectly providing housing related services to affordable housing tenants from diverse backgrounds. We will continue this engagement to ensure any potential discrimination within the framework is eliminated and that we achieve equality outcomes as far as possible.

**16.5** The statutory consultation process provides a further opportunity for feedback on the proposed standards framework and in particular whether the outcomes we are looking to achieve have fully addressed the needs, concerns and general feedback that we have received. We intend to publish a detailed equalities impact statement alongside our Decision Statement.

## Regulatory Impact Assessment

**16.6** We are obliged under the Regulators' Compliance Code to consider the impact of new regulation. This is important in helping us judge whether we are meeting the Better Regulation Principles and minimising unnecessary burdens. Annex 5 contains our draft impact assessment, which we shall finalise following this consultation when we publish our Decision Statement. In responding to our key consultation questions, we would encourage stakeholders to take into account

our draft impact assessment and consider whether we could do more to achieve our required outcomes whilst meeting the Better Regulation Principles.

# Annexes

# Annex 1

## Key consultation questions

1 Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?

2 Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?

3 Does it seem reasonable to extend the same approach to those providers owning less than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?

4 Do our proposals on how we will approach the regulation of local authorities appear reasonable?

5 Does the proposed text for the following standards:

- address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?

- express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

5A Involvement and Empowerment

5B Home

5C Neighbourhood and Community

5D Tenancy

5E Value for Money

5F Does the proposed text for the Governance and Financial Viability standard:

- allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?
- express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

6 Does our approach to monitoring and compliance against the standards and regulatory requirements seem a reasonable basis for 'how' we regulate in 2010-11?

7 Does our approach to dealing with complaints seem reasonable?

8 Is our general approach to using our formal regulatory and enforcement powers reasonable?

9 Do our proposals for establishing registration and deregistration criteria seem reasonable?

10 Does our approach to issuing directions on Accounts and the Disposal Proceeds Fund seem reasonable?

## Annex 2

# List of statutory consultees and members of TSA's Sounding Board and advisory panels

### Statutory consultees

The 2008 Act requires us to consult with the following statutory organisations in the development of our regulatory framework:

- The Secretary of State, Communities and Local Government
- The Homes and Communities Agency
- The Audit Commission
- The Charity Commission

Considered for the purposes of this consultation by the TSA to represent the interests of registered providers:

- National Housing Federation
- Local Government Association

Considered for the purposes of this consultation by the TSA to represent the interests of secured creditors of registered providers:

- Council of Mortgage Lenders

Considered for the purposes of this consultation by the TSA to represent the interests of tenants of social housing:

- Tenants and Residents Organisation of England (TAROE)
- Tenant Participation Advisory Services (TPAS)
- National Tenant Voice (NTV) Project Group

Considered for the purposes of this consultation by the TSA to represent the interests of local housing authorities:

- Local Government Association

We intend that our consultation is much wider than solely with these bodies, as is described in the Consultation Statement for this document.

### TSA's Sounding Board and advisory panels

To help make sure we maximise a sense of 'ownership' throughout the sector for our regulatory approach, we have set up a sounding board of some of our key stakeholders which includes:

- National Tenant Voice (NTV), the organisation set up by Government to represent the interests of tenants of social housing



- Tenants and Residents Organisations of England (TAROE), the national umbrella body for tenant and resident groups
- Tenants Participation Advisory Service (TPAS), the national organisation which works to empower tenants of social housing
- Local Government Association (LGA), representing local authorities
- National Housing Federation (NHF), representing housing associations
- National Federation of ALMOs (NFA), representing ALMOs
- Council of Mortgage Lenders (CML), representing those who lend to providers
- Chartered Institute of Housing (CIH), representing professionals from across the housing sector
- Communities and Local Government (CLG), TSA's sponsoring Government department
- Audit Commission, responsible for assessing local authority performance and inspecting housing services in all providers
- Homes and Communities Agency (HCA), the national housing and regeneration agency that provides funding for building social housing and improving the physical and social environment

We have also set up three further panels, one comprised of tenants, one of providers and one of advisory organisations to the social housing sector. These panels have provided, and will continue to provide, a valuable source of information and feedback to us throughout the development of the regulatory framework.

# Annex 3

## Existing data submissions

### Use of data sets available to the TSA

**A3.1** The TSA currently has access to a range of data through standardised returns completed by landlords. The returns form an important part in both providing indications of the performance of individual landlords and enabling our national and regional sector risk analysis, which will continue to inform our risk-based approach to regulation. To facilitate a smooth transition to the new regulatory framework, we will continue to collect this data in its current form in 2010-11 and until we have assessed the need for an alternative approach to data. We are keen to engage collaboratively with providers during the consultation period and into 2010-11 to model a design for data that is more suited to the developing co-regulatory approach.

**A3.2** For local authority providers we will rely on the data provided to the Communities Department (CLG) within the National Indicator Set, the Housing Strategy Statistical Appendix (HSSA) and Business Plan Statistical Annex (BPSA) that are relevant to the range of activities covered by our service standards. Non-local authority providers will continue to submit the Regulatory and Statistical Return (RSR) and financial returns to TSA.

**A3.3** We will use data to corroborate other performance information we will have and to identify outliers, which may indicate compliance issues. Where assurance we receive is comprehensive and includes, for example, validation which is independent of the organisation's management, we will balance this against the standardised data; where assurance is less compelling we will look more carefully at contraindications in the data. In addition to data described below, we will monitor complaints made about providers' performance and other information we receive from tenants and other stakeholders.

**A3.4** In summary, the current standard datasets, with reference to the particular areas of interest are set out in table A3.1 below.

Table A3.1

Data submitted by both local authority and non-local authority providers	
Continuous Recording of Lettings and Sales (CORE)	Information provided on each letting and sale made by the landlord. This data provides important information covering: <ul style="list-style-type: none"><li>▪ choice in lettings</li><li>▪ type of tenancy</li><li>▪ accessibility</li><li>▪ allocations</li></ul>
National Register of Social Housing (NROSH)	This developing data source provides a more efficient and streamlined process to collect key information about each property (based on that currently collected by housing associations and to include local authorities).

## Non-local authority providers

Regulatory and Statistical Return (RSR)	<p>This provides a range of local data about the nature of homes and a range of organisational level information, including diversity data. Of particular relevance is information on:</p> <ul style="list-style-type: none"><li>▪ the quality of homes (DHS), SAP rating, void levels and reason for voids</li><li>▪ the geographical dispersion of homes and areas of significant presence</li><li>▪ rent levels and service charges and target rents</li><li>▪ information on ASBOs</li><li>▪ types of tenancies</li><li>▪ sustaining tenancies – evictions and reasons</li><li>▪ approach to lettings</li><li>▪ allocations</li><li>▪ sales and shared owner repossessions</li><li>▪ tenant satisfaction measures with:<ul style="list-style-type: none"><li>▪ overall service</li><li>▪ opportunities for participation in management and decision making</li><li>▪ repairs and maintenance</li><li>▪ quality of new homes</li><li>▪ overall sales process (shared owners)</li></ul></li></ul>
Annual accounts	<p>Audited financial information, together with the annual report and audit management letter. This information source is particularly important for our assurance and risk assessment of smaller providers and provides key trends in costs and income.</p>

#### Forecast financial information

Forecast of non-local authority providers' financial position over a five- or 30-year time frame. We will use this data to support our independent assessment of viability. In particular this source provides:

- assumptions on economic variables and outliers
- future growth plans
- maintenance and improvement spend
- funding requirements and sources
- impact of non-rental activity
- key financial risk exposures
- improvements in efficiency

All of these will be used for viability assessment and our risk assessment process.

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#### Quarterly survey

This provides key information on important current market factors. It provides key data for sector analysis and reporting and enables assurance on particularly, solvency risk for individual providers. Key information includes:

- housing market and sales issues
- funding requirements and source
- emerging risk issues

## Local authority providers

Housing Strategy Statistical Appendix (HSSA)

Provides local authority housing strategy information including key information on:

- choice-based lettings schemes
- mobility schemes
- allocations
- rents

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Business Plan Statistical Annex (BPSA)

This data source complements the HSSA. It provides details on the nature of social housing, its use and condition. Key data includes:

- Decent Homes Standard compliance achieved and forecast
- energy efficiency (SAP)
- repairs completed within timescales
- re-let times and levels of voids properties
- tenant satisfaction:
  - with the overall service (for BME and non-BME tenants)
  - with repairs and maintenance
- time and funding commitment to tenant involvement activities
- average weekly rents and costs

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National Indicator Set

The National Indicator set contains two key housing-related indicators:

- Decent Home Standard compliance
  - tenant satisfaction
-

# Annex 4

## Guidance on our use of our powers

**A4.1** The 2008 Act requires us to consult on guidance on how we use or intend to use certain powers. These powers are set out in the table below along with references to sections in this document that consult on our guidance. For some powers, a separate detailed Guidance Note has been published and is contained within a supplementary consultation document, *Guidance of Use of our Powers* (available from our website).

**A4.2** There are also a number of powers we have where we are not obliged to consult on guidance but believe doing so is in the interest of transparency. These relate to our powers to direct the HCA not to provide financial assistance to a registered provider (s.106), the power to collect information (s.107), insolvency of a registered provider (ss.144-159), restructuring and dissolution (ss.160-165), petition to wind up a registered provider (s.166), transfer net assets on dissolution (s.167) and give financial assistance (s.95(3)). Guidance on all these areas is contained within our supplementary consultation document.

**A4.3** We are not at this stage consulting on guidance on all our powers. There are some that relate to local authorities (such as censure of an officer during or after an inquiry, or appointment of an adviser) where we are keen to work with local authority stakeholders to understand better how these powers might be used. There are also some powers that are novel where more time is required for discussion with stakeholders before we can produce guidance. These relate to powers to transfer and tender management. These powers will be subject to a further supplementary consultation document on use of powers in due course.

Figure A4.1 **Guidance on our use of powers**

Power in the 2008 Act	Reference in the 2008 Act
Setting standards for provision of social housing	Chapter 6 (s.193)
Setting standards for management	Chapter 6 (s.194)
Codes of Practice	Chapter 6 (s.195)
Arranging a survey	Chapter 6 (ss.199-200)
Arranging an inspection	Chapter 6 (ss.201-203)
Performance information	Chapter 6 (ss.204-205)
Conduct an inquiry	Chapter 6 (ss.206-209)
Arrange an Extraordinary Audit	Chapter 6 (s.210)
Changes to non-profit providers management and constitution	Chapter 6 (ss.211-214)
Complaints to us	Chapter 6 (s.215)
Operate an accreditation scheme	Chapter 6 (s.217)
Enforcement Notice	Chapter 7 (ss.219-225)
Impose fines	Chapter 7 (ss.226-235)
Award compensation	Chapter 7 (ss.236-245)
Management tender	Chapter 7 (ss.247-248)
Management transfer	Chapter 7 (ss.249-250)
Appointment of manager	Chapter 7 (ss.251-252)
Transfer of land	Chapter 7 (ss.253-254)
Amalgamation	Chapter 7 (s.255)
Restrictions on dealings	Chapter 7 (ss.256-258)
Suspension and removal of officers during or following an inquiry or audit	Chapter 7 (s.259-265)
Removal of officers other than following an inquiry or audit	Chapter 7 (ss.266-268)
Appoint a new officer	Chapter 7 (s.269)
Appoint adviser to a local authority provider	s.252A (domain order)
Censure a local authority during or after an inquiry	s.269A+B (domain order) <sup>41</sup>

<sup>41</sup> 'Domain order' in this context means the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009 Consultation, Annex A, July 2009, CLG.



Relevant section in this document where guidance can be found	Separate detailed Guidance Note published for consultation?
Sections 3 and 4	No
Sections 3 and 4	No
Sections 3	No
General principles contained in section 13	Yes
General principles contained in section 12	Yes
Section 12	No
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13	Yes
Section 12	No
Not contained in this document as we will work with the HCA to review the requirements for accreditation after 1 April 2010	No
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13	No. Detailed guidance will be published at a later date
General principles contained in section 13	No. Detailed guidance will be published at a later date
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13.	Yes
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13	Yes
General principles contained in section 13	No. Detailed guidance will be published at a later date
General principles contained in section 13	No. Detailed guidance will be published at a later date

# Annex 5

## Regulatory Impact Assessment

### Our approach to regulation

**A5.1** Part I of this document sets out our vision for co-regulation and describes how co-regulation is intended to support delivery of our fundamental objectives including our commitment to minimising regulatory burdens. This approach affects the impact of our activities on the sector. We understand that the co-regulatory vision cannot be achieved straightaway, that there will be a transitional phase as the new framework is introduced and also as we move over time to the mature form of co-regulation which is our longer-term goal. The new system will not be imposed complete and unchanging on day one but will develop through time. This assessment of the impacts of our activities should be seen in this dynamic context.

### National standards

#### Service standards

**A5.2** Part I of this document also develops our proposals for national standards. These proposals are described in greater depth in Part II with rationale and requirements for each standard. Our regulatory focus means that these requirements

on providers are expressed in ways which are different to the previous regulatory system. This new approach entails new assessments of risk and new compliance tests. The national standards are the triggers for regulatory intervention and enforcement action (see Part III), which makes it essential for us to understand not only where providers have failed to meet standards but the circumstances and roots of any failure.

**A5.3** We anticipate that a variety of mechanisms may be used to achieve better outcomes for tenants and to meet the terms of national standards and this will inform the evolution of our risk assessments of the sector. These refinements in focus and approach mean that transitional costs may arise to providers in embedding the standards.

#### Standards subject to Secretary of State Directions

**A5.4** Three of the national standards: Quality of Accommodation, Rent and Tenant Involvement are subject to Directions to us from the Secretary of State. These Directions have been consulted on separately and Government has said explicitly that the Directions represent no change overall in social housing policy other than the rent floor for non-local

authority providers. The Directions do not impose any additional costs.

### **Governance standards**

**A5.5** Some standards, in particular those relating to governance, viability and efficiency, are not expected to be significantly different in impact from the current system. Providers will continue to need competent governing bodies and robust internal controls. The way that we assess compliance with these standards may also be informed by external market conditions and the characteristics of individual providers' risk exposure. Again, this is not a departure from the present approach for housing associations.

### **Local authorities**

**A5.6** This document makes clear our commitment to support the principles of the Local Performance Framework (LPF). CLG's impact assessment for inclusion of local authorities in our regulation makes clear that local authorities may need to undertake some adjustments to their procedures in order to respond to the new regulatory system.

**A5.7** This could equally apply to other providers in any refocusing of processes that may arise

through introduction of national standards and other requirements. The distinction, however, is that for local authorities specific regulation of the housing function is a shift in management emphasis; for other providers, responsiveness to regulation is already in place. Within our commitment to the principles of the LPF we will also need to take account of the funding position of local authorities when assessing progress towards meeting standards, for example where local authorities are granted exemptions from the Housing Revenue Account Subsidy System.

### **Local standards**

**A5.8** Our commitment to promoting sector-led improvement and best practice emphasises the role of providers to take more responsibility for enhancing local innovation and for recognising and tackling poor performance. The new regulatory framework supports the improvement agenda and aspires to enable providers and tenants to take responsibility for shaping service delivery at local level.

**A5.9** Inevitably, this may mean that some providers will need to work with tenants in a different and possibly a more intensive way. We

do not regard this as an increased burden in itself. Providers must be responsive to the needs and aspirations of their tenants and should tailor their activities to local circumstances. That is no change from the previous system. Introduction of local standards is about how providers perform and their corporate responsiveness to engagement and to meeting tenants' needs. Burdens may arise from new ways of working but we would expect these to be compensated by achievement of better outcomes.

## Performance information

**A5.10** Annex 3 sets out the data sets currently available to us and suggests their relevance to the proposed standards. As noted in Part III we are proposing no new performance information requirements for routine reporting in 2010-11. We understand that changes will be needed to our headline data returns in due course and we will consider with providers and tenants what data is needed at local and national level, to support improvement and enable our assessments of compliance. Overall, we will look to ask for no more information than a good provider would need to demonstrate it is delivering good services.

**A5.11** We have proposed that all providers should publish an annual standards report for their tenants and other stakeholders. In general terms we do not believe that this is any more burdensome than previous requirements around annual reporting. Our principle aim of asking providers to publish information that is "used and useful" should minimise any additional burden arising from this requirement.

## Benefits of regulation

**A5.12** Among the key aims of reform are to deliver regulation that is better value for money, with greater transparency about the burdens placed on regulated bodies and real opportunities for those burdens to be reduced for providers that perform well. We are bound by the terms of the Regulators' Compliance Code and the costs of any intervention should be balanced by the benefits of improved outcomes.

**A5.13** We aspire that in future the way that compliance costs are generated should be clearer and that any costs should be reducible as we move towards a mature framework for co-regulation. Essential to this is implementation of local standards and devolution of responsibility for

improvement to providers working in partnership with tenants. We believe that a prescriptive, top-down approach would be more costly as well as less effective.

**A5.14** We note that the CLG impact assessment for inclusion of local authorities in our regulation suggests that over time efficiency savings should arise from cross-domain regulation. Social housing is likely to continue to require substantial capital and revenue investment. A core benefit of regulation is safeguarding of this investment and the transparency around provider performance and efficiencies achieved by regulation should drive opportunities for co-regulation, burdens reduction and savings.

**A5.15** We have to account publicly for our internal costs and we acknowledge that our costs will be affected by transition to the new framework and the necessary period of embedding reforms. Ministers have confirmed that although we have powers to charge fees, for registration and inspection, no fees will be charged in 2010-11. For the time being, our costs will continue to be met directly by central Government. We do not envisage the resources required by the TSA to deliver our regulatory activities in 2010-11 being any greater than the level of resources provided by CLG to the TSA in

2009-10. We believe this gives a clear statement of intention, given the proposed doubling of the number of homes that fall within our remit, to deliver value for money for tenants and the taxpayer.

## Developing the framework

**A5.16** The system we put in place is not intended to be static and will develop over time, as co-regulation takes root and as the sector responds to the challenge of meaningful tenant engagement. We aim to improve and to drive improvement and our role and activities will evolve to reflect this. It is possible that over time the profile of costs and burdens will change. We need to review any changes in a structured way and consult fully on any proposals to refine our approach. April 2010 will form the baseline for future review.

## Reducing burdens

**A5.17** From April 2010 the regulatory requirements set by the TSA's predecessor body, the Housing Corporation, will not, with the exceptions noted below, be enforced within the TSA's regulatory framework.

All of the following will be replaced by the new regulatory framework:

- the Regulatory Code and Guidance
- 54 Circulars (of a total of 58)\*
- all Good Practice Notes

\*Four Circulars are retained in reference to the definition, in the Government's direction to the TSA on rents, of rent policy and its operation.

# Annex 6

## Glossary of terms

### **ALMO/Arm's-Length Management Organisation**

An ALMO is a company set up by a local council to manage and improve part or all of the council's housing stock. The company is owned by the council but works to an agreement (the Management Agreement) between the ALMO and council. ALMOs are managed by a board of directors which includes tenants and leaseholders, local council nominees and independent members.

### **Audit Commission**

A public corporation, the Commission has an independent role assessing local authorities' performance (appoints auditors to audit accounts, produces value for money reports on public service providers, inspects local services, collects and publishes performance information on councils, police and fire services and monitors and compares service performance). Since 2003, its Housing Inspectors have also been responsible for inspecting RSLs' housing management services.

### **CAA/Comprehensive Area Assessment**

CAA is a new way of assessing how effectively local partnerships are working together to deliver the priorities of local people. It is a joint assessment made by a group of independent watchdogs (including the Audit Commission) about the performance of local public services.

### **Cave Review of Social Housing**

Set up by the Government in 2007, Dr Martin Cave's review made recommendations for the shape of future regulation for social housing, which led to the TSA being established in 2008.

### **CLG/Communities and Local Government**

TSA's Government sponsoring department.

### **Code of Practice**

In this paper, this expression refers to a TSA Code, which will be used to amplify a standard. It has a statutory (ie a formal, legal) status under the Housing and Regeneration Act 2008.

### **CORE/COntinuous REcording of lettings data**

CORE (COntinuous REcording) is a national information source funded jointly by the Tenant Services Authority (formerly the Housing Corporation) and the CLG that records information on the characteristics of both housing association and local authority new social housing tenants and the homes they rent and buy. Policy makers and practitioners regard the system as an essential tool for monitoring housing costs, assessing affordability and developing policy.

### **Decent Homes Standard**

In 1997 the Government committed to tackling the £19 billion backlog in repairs of social housing and in 2001 set a target that it would make all social housing decent by 2010. The Decent Homes Standard (DHS) was set as a threshold so that homes below the standard should be improved. It was not set as a standard to which homes were improved to. The DHS has four criteria, which are that the home should:

- meet the current statutory minimum standard for housing (in other words, the dwelling should be free of category 1 hazards under the Housing Health and Safety Rating System)
- be in a reasonable state of repair
- have reasonably modern facilities and services
- provide a reasonable degree of thermal comfort

### **Domain**

A word describing the extent of TSA's influence under the Housing and Regeneration Act 2008, to cover all social housing providers. See also 'sector'.

### **Existing Tenant Survey**

A survey of the views and aspirations of a large sample of people currently living in social housing, carried out every four years by the TSA's predecessor, the Housing Corporation.

### **GO/Government Offices for the regions**

Government Offices work with regional partners and local people to help deliver the Government's key aims at regional level.

There are nine regions throughout England:

- East Midlands
- East of England
- London
- North East
- North West
- South East
- South West
- West Midlands
- Yorkshire and the Humber

### **HCA/The Homes and Communities Agency**

A non-departmental public body delivering housing and regeneration, bringing together the functions of English Partnerships, the investment functions of the Housing Corporation, the Academy for Sustainable Communities, and key housing and regeneration programmes previously delivered by Communities and Local Government, including the Thames Gateway, Housing Market Renewal, Decent Homes.



**Housing association**

In this paper, this expression refers to non-profit organisations also known as registered providers (RSLs).

**Housing Corporation**

This non-departmental public body had responsibility to regulate RSLs in England, until this function was taken over by TSA on 1 December 2008.

**The 2008 Act/The Housing and Regeneration Act 2008**

This is the legislation that establishes the TSA and specifies what it is expected and allowed to do under the law. It received Royal Assent on 22 July 2008. It is being implemented in stages.

**KLOE/Key line of enquiry**

The Audit Commission Housing Inspectorate's framework for inspecting providers' housing services.

**Local authority/council**

The local government administrative body that governs local services such as education, housing and social services. An umbrella term that could refer to any unitary authority or county, metropolitan or district council.

**Local Housing Company (LHC)**

The Local Housing Company model is a joint venture between the public and private sectors, with local authorities 'investing' land in the development process and private developers and other investors providing funding to an equivalent amount.

**LAA/Local Area Agreement**

These are agreements between local authorities and Government to set out how Sustainable Communities Strategies will be achieved for the area covered by the LAA.

**Provider****LGA/Local Government Association**

The representative body for local authorities in England.

**LPF/Local Performance Framework**

The LPF framework is about two things: improving the quality of life in local communities and better public services. The LPF includes a national set of performance measures (the NIS), up to 35 shared targets for improvement focused on the most important priorities in each local area (Local Area Agreements), the CAA assessment regime and effective co-ordination at regional level (the Multi Area Agreement). Within the LPF there will also be support for improvements and greater financial

rewards and flexibility to target funding on what matters to local people.

### **LSP/Local Strategic Partnership**

A single body that brings together at a local level the different parts of the public sector as well as the private, business, community and voluntary sectors so that different initiatives and services support each other and work together. It is a non-statutory (ie not legally binding) partnership, and it provides a single overarching local co-ordination framework within which other partnerships can operate. It is responsible for developing and driving the implementation of Sustainable Community Strategies and Local Area Agreements (LAAs) in areas receiving neighbourhood renewal funding, and is responsible for agreeing the allocation of this funding.

### **NHF/National Housing Federation**

The body that represents the independent social housing sector. It is the central representative, negotiating and advisory body for RSLs and other non-profit housing bodies in England.

### **National Conversation**

TSA's ongoing consultation with tenants and providers, the first phase of which ran from January to March 2009 and gathered the views of over

27,000 tenants and providers to develop the shape of TSA's emerging regulatory framework. During June to September 2009, the second phase of the National Conversation was based around propositions in the discussion paper Building a New Regulatory Framework. The current statutory consultation follows and builds on responses to this.

### **National Indicator Set**

Part of the Local Performance Framework, this is a suite of performance measures (indicators) from which the local authority and partners (through the LAA) decide which ones will be monitored to track progress and delivery on national and local priorities.

### **NTV/National Tenants Voice**

A body set up by Government to ensure that tenants can shape and influence policy making at local, regional and national level.

### **Provider/Registered provider**

A social housing provider, registered with TSA under powers in the 2008 Act. This may be a local authority, ALMO, housing association, co-operative or any other registered provider.

### **RSL/Registered social landlord**

A social housing provider, registered with the Housing Corporation under the provisions of the

Housing Act 1996. RSLs will transfer automatically on to the new register under the 2008 Act, and thereafter be known as non-local authority registered providers.

### **Regulator**

In this paper, this refers to the Tenant Services Authority, the TSA.

### **REIP/Regional Improvement and Efficiency Partnerships**

RIEPs are partnerships of councils and other local services working together to deliver excellent services and greater efficiency. The priorities and work programmes of each RIEP, which are set out in their strategies and emerging delivery plans, are based on and reflect needs and challenges of authorities in the region or sub-region.

RIEPs will act as a hub to ensure that councils and their partners can access support from a range of programmes. In doing so, the RIEPs will provide the platform for a single conversation to embed and sustain real improvement.

### **Sector**

In this paper, this term refers to the entire spread of the activities within social housing. See also 'domain'.

### **Standards**

In this paper, this term refers to TSA standards that set the regulator's expectations of providers. They have statutory status under the Housing and Regeneration Act 2008.

### **Social housing (homes)**

Social housing is defined in sections 68 to 77 of the 2008 Act. The definition includes low-cost rental housing, low-cost home ownership, and most other housing owned by registered providers.

### **Sustainable Communities Strategies**

A set of goals or actions set by local authorities (through Local Strategic Partnerships) representing the residential, business, statutory and voluntary interests of a local area which they wish to promote.

### **Tenant**

In this paper, 'tenant' means people living in social housing (whose provider could be a local authority, ALMO, housing association, co-operative or other registered provider). Under the TSA's remit, it includes shared owners but does not include leaseholders.

### **TEP/Tenant Empowerment Programme**

Previously known as Section 16 grant, this fund was established to support the Government's housing

aims of increasing the effectiveness of housing management and improving the quality of life of residents living on local authority estates. TEP now enables local authority and housing association tenants and residents to access independent advice, training and information directly.

### **Tenant Excellence Fund**

Grants available from the TSA, under powers granted by Section 95 of the 2008 Act. It supersedes Innovation and Good Practice grants that were available under the Housing Corporation.

### **TMO/Tenant Management Organisation**

A TMO is a means by which council or housing association tenants and leaseholders can collectively take on responsibility for managing the homes they live in.

Those resident members of the TMO create an independent legal body and usually elect a tenant led management committee to run the organisation. The TMO can then enter into a legal management agreement (contract) with the provider. The TMO is paid annual management and maintenance allowances in order to carry out the management duties that are delegated to them.

TMOs can take different forms and sizes. Many are tenant management co-operatives – using co-op rules. Others may take the form of not-for-profit companies. Some TMOs manage just a handful of homes while others manage large estates of 2,000 or 3,000 properties. The small TMOs may rely mainly on voluntary effort but most employ staff such as housing managers, caretakers and repair workers.

The services managed by the TMO vary with local circumstances but may include day-to-day repairs, allocations and lettings, tenancy management, cleaning and caretaking, and rent collection.

### **TAROE/Tenants and Residents Organisations of England**

A democratically run, accountable, national organisation which unites tenants' and residents' groups from social housing across England. TAROE is run by tenants for tenants to represent and campaign for their interests and to ensure that all have rights of access to well maintained, safe and secure homes.

### **TPAS/Tenant Participation Advisory Service**

A national membership organisation representing over 1,000 tenant groups and 300 registered providers. TPAS promotes excellence in tenant

and resident involvement through independent accreditation, training and guidance in best practice.

### **TSA/Tenant Services Authority**

Set up as a result of the 2008 Housing and Regeneration Act, the TSA is the independent regulator for social housing. It launched on 1 December 2008, having taken over the regulatory powers of the Housing Corporation. The TSA's goal is to raise the standard of services for social housing tenants.

### **TSA web portal**

An internet-based tool to be developed by the TSA to enable tenants and providers to compare the performance of different providers of social housing services in a postcode area.

## Our offices

Maple House  
149 Tottenham Court Road  
London W1T 7BN

Fourth Floor  
One Piccadilly Gardens  
Manchester M1 1RG

For enquiries, contact us at:  
Tel: 0845 230 7000  
Fax: 0113 233 7101  
Email: [enquiries@tsa.gsx.gov.uk](mailto:enquiries@tsa.gsx.gov.uk)  
Website: [www.tenantservicesauthority.org](http://www.tenantservicesauthority.org)

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# A new regulatory framework for social housing in England

## A statutory consultation

The new regulatory framework for social housing providers is due to come into effect in full from 1 April 2010. It will herald a significant change in the way that providers are regulated.

This statutory consultation paper explains how we propose to implement this statutory framework. It sets out information about the issues we are consulting on, what effects we think any proposals or changes could have, who we are asking for views, and when and how to respond.

**TSA**

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