



URGENT BUSINESS

Council Business Committee

Thursday, 12 January 2012

The Chairman has authorised the following item of urgent business:

| Agenda Item Number | Page | Title | Reason | Officer responsible |
|---------------------------|-------------|--|------------------------------------|----------------------------|
| 3 | 1 - 79 | A revised regulatory framework for social housing in England from April 2012: Consultation Response | To meet consultation response date | Principal Housing Manager |

COUNCIL BUSINESS COMMITTEE

**A revised regulatory framework for social housing in
England from April 2012
Consultation Response
12 January 2012**

Report of the Principal Housing Manager

PURPOSE OF REPORT

To inform the Committee of the Social Housing Regulator proposals to revise the regulatory framework for social housing in response to the provisions made within the Localism Act 2011, and to seek approval for the form of the council's response.

This report is public

RECOMMENDATIONS

- (1) **That the committee considers the response, considers the three options for responding to the consultation as set out in the report, and authorises the Principal Housing Manager to submit the committee's preferred response to the Social Housing Regulator on behalf of the council.**

1.0 Introduction

1.1 The council is a registered social housing provider, and is regulated by the Social Housing Regulator. Section 197 of the Housing and Regeneration Act 2008 ('the 2008 Act') gives the Secretary of State for Communities and Local Government certain powers to direct the Social Housing Regulator ('the Regulator') to set standards and about the content of standards. Through the Localism Act 2011 the Secretary of State has issued a direction order to the Regulator that will require amendments to the current standard we operate under.

1.2 The Localism Act, when commenced, will change the regulator's role. A number of the existing standards need revising to reflect these changes. The Social Housing Regulator is seeking views from across the social housing sector on significant changes to its regulatory framework.

1.3 The consultation paper (**Appendix A**) from the Social Housing Regulator sets out proposals for revised regulatory standards.

1.4 The key points are:

- the regulator will have a backstop role for consumer standards and may only consider intervention where it judges that there is serious harm, or a risk of serious harm to tenants.
- for breaches of regulatory standards that do not give rise to serious detriment (or harm), tenants will have to look to others – local tenant panels, councillors and MPs – to intervene if necessary
- the regulator’s main role will now be on economic regulation of private registered providers (housing associations)
- the regulator will retain its focus on governance and viability of private registered providers (housing associations)
- the regulator will have a new role on value for money in private registered providers (housing associations)

1.5 The table below shows how the standards apply across the whole of the social housing sector.

| Standard | Apply to local authorities? | Apply to not-for-profit registered providers (RPs)? | Apply to for-profit RPs? | Apply to low-cost rental? | Apply to low-cost home ownership? |
|------------------------------------|------------------------------------|--|---------------------------------|----------------------------------|--|
| Economic standards | | | | | |
| Governance and Financial Viability | No | Yes | Yes | Yes | Yes |
| Value for Money | No | Yes | Yes | Yes | Yes |
| Rent | No | Yes | Yes | Yes | No |
| Consumer standards | | | | | |
| Tenant Involvement and Empowerment | Yes | Yes | Yes | Yes | Yes |
| Home | Yes | Yes | Yes | Yes | Yes |
| Tenancy | Yes | Yes | Yes | Yes | No |
| Neighbourhood and Community | Yes | Yes | Yes | Yes | Yes |

1.6 The principal changes to the standards relate to consumer regulation. Registered providers will still be required to meet the relevant standards. As was highlighted earlier, from April 2012, the regulator will have a ‘backstop’ role in consumer matters limited to setting the service delivery standards and acting only where it considers there is risk of serious detriment (or harm) to tenants. The principal role in scrutinising landlord services

and intervening where consumer standards are not met will fall to others – tenants' panels, MPs and elected councillors.

- 1.7 Aside from the regulator's backstop role in respect of consumer regulation, some of the consumer standards are changing. There will be more focus on local mechanisms to resolve complaints and disputes. The scope for new tenancy agreements needs to be reflected. There is a need for new requirements in respect of tenant mobility and the increased scope for tenant involvement in the repair and maintenance of their homes.
- 1.8 The regulator's principal role will be the economic regulation of private registered providers (housing associations). In large part there is continuity from the existing economic standards. The regulator will continue its commitment to the co-regulatory approach, emphasising that boards are responsible and accountable for meeting their organisation's objectives and the regulator's standards. And the regulator will retain its focus on the proper governance and financial viability of providers.
- 1.9 The regulator will also have an expanded role on value for money in private registered providers (housing association). In future, the regulator expects boards to have a clear view of their risk appetite and associated risk management strategies, an informed view of their cost base and the factors affecting it, a strategy for making best use of their assets, and a plan for improving VFM that has been developed in a transparent way with input from stakeholders. In due course the regulator's findings on this will be reflected in regulatory judgements.
- 1.10 The full consultation paper is set out at **Appendix A**.

2.0 The consultation questions

- 2.1 The consultation document has been considered by relevant officers of the council and their views are summarised in a draft response set out at **Appendix B**.
- 2.2 The closing date for the consultation is 10 February 2012.

3.0 Options and Options Analysis (including risk assessment)

3.1 Option 1

That the Committee approves the attached as the Council's formal response. This would be on the basis that the Committee accepts all the points put forward and has no further views to be expressed.

Option 2

That the Committee makes amendments to the attached response. Different views may be taken on several of the issues raised, and this option provides for that scenario.

Option 3

That the Committee notes the attached document as an Officer technical response to the consultation, but that the Committee declines to submit a Member response at this time. In view of the subject matter, it is possible that the Council would prefer the response to be deemed purely technical and go forward as an Officer response only.

4.0 Conclusion

- 4.1 The Committee is asked to consider its response to the questions set out in the Consultation Paper, and to authorise the Principal Housing Manager, in conjunction with the Chairman, to finalise the Committee's response to the Government on behalf of the Council.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Impact assessments have already been published by the government for all of the policy changes that the proposed directions would implement.

FINANCIAL IMPLICATIONS

There are no financial implications directly arising from this report, although there may be implications from any future changes made to the framework.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

Legal have been consulted and have no further comments to make other than those already contained within the report.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Social Housing Regulator
Consultation Paper

Contact Officer: Mr Chris Hanna

Telephone: 01524 582516

E-mail: channa@lancaster.gov.uk

Ref: CBC01

Appendix B

**Draft consultation response on:
A revised regulatory framework for social housing in England from
April 2012**

**For consideration by the Council Business Committee
12 January 2012**

General Comments

The council notes the proposals for a revised regulatory framework to take effect from 1 April 2012 and welcomes the continuing commitment to the co-regulation approach. The revised framework builds on those arrangements.

The scale of change recommended by the Government's review and the Localism Act brings significant differences to the regulator's current role, especially on consumer protection. In future, the regulator's responsibilities in relation to the consumer standards will be limited to setting standards and intervening when there is risk of serious harm to tenants (the 'serious detriment' test). The regulator will have no role in monitoring how providers deliver the housing service (or 'consumer') standards. The proposals in this consultation document reflect these fundamental changes.

The proposals for a revised regulatory framework, taken as a whole, represents a comprehensive revision of regulatory arrangements. On balance the council regards the overall effect of the proposals as a welcome reduction of the regulatory burden on the social housing sector, particularly in respect of the Consumer standards.

Consultation questions

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| 1: | <p>Are these the right principles, in the context of changes brought about by the Localism Act?</p> <p>The principles for co-regulation are being maintained and the council welcomes the focus on ensuring that governance arrangements should be fit for purpose, and reflect the risk-profile of the organisation. The council endorses the revised principles as set out in the consultation document.</p> |
| 2: | <p>Does the revised Governance and Financial Viability standard:</p> <ul style="list-style-type: none"> • Effectively take into account amendments required by the Localism Act? • Give providers sufficient flexibility to run their businesses? • Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? <p><i>The Economic standard which include Governance and Financial Viability standard does not apply to local authority registered providers but the principles outlined appear sound.</i></p> |

| | |
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| <p>3:</p> | <p>Does the revised Value for Money standard:</p> <ul style="list-style-type: none"> • Effectively take into account amendments required by the Localism Act? • Give providers sufficient flexibility to run their businesses? • Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? <p><i>The Economic standard which includes the Value for Money standard does not apply to local authority registered providers but the principles outlined appear sound.</i></p> |
| <p>4:</p> | <p>Does the revised Rent standard (and associated Rent Standard Guidance in Annex E of this consultation document):</p> <ul style="list-style-type: none"> • Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act? • Give providers sufficient flexibility to run their businesses? • Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? <p><i>The Economic standard which includes Rent standard does not apply to local authority registered providers but the principles outlined appear sound.</i></p> |
| <p>5:</p> | <p>Does the revised Tenant Involvement and Empowerment standard:</p> <ul style="list-style-type: none"> • Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? <p>The council welcomes the increased emphasis on local mechanisms to involve tenants, scrutinise landlord performance and resolve problems with housing services, and the proposal that the regulator's role is limited to the setting the consumer standards and intervening only where a failure of the standard could lead to risk of serious harm to tenants (serious detriment). The council welcomes the increased responsibility to ensure that there are effective local arrangements in place to scrutinise performance.</p> <p>The expressed required outcomes are generally clear but "opportunities to influence and be involved in: the management of repairs and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made,....." would benefit from greater clarification. Establishing the administration for establishing any savings and sharing the costs may be more expensive than undertaking the landlord undertaking the repair.</p> |
| <p>6:</p> | <p>Does the revised Home standard:</p> <ul style="list-style-type: none"> • Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act? • Express requirements of providers in a way that is clear, succinct and as |

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| | <p>outcome focussed as possible?</p> <p>The council welcomes the continuing underpinning of the Home standard with the Government's Decent Homes Guidance.</p> |
| 7: | <p>Does the revised Tenancy standard:</p> <ul style="list-style-type: none"> Effectively take into account the Government's intended direction to the regulator and amendments required by the Localism Act? Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? <p>Again the council generally welcomes the proposals, and the detail given to support the development of the new requirement for a tenancy policy. Locally we have already established opportunities to exchange tenancies by way of internet based mutual exchange service through our choice based letting offer, however the requirements in the proposed regulation go further than this and require the council as a registered provider to subscribe to a national scheme. The council feels how this is delivered should be a local decision and not prescribed by regulation.</p> |
| 8: | <p>Does the revised Neighbourhood and community standard:</p> <ul style="list-style-type: none"> Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? <p>More general wording is now proposed to reflect cooperation with local partnerships rather than with Local Strategic Partnerships specifically helps broaden the concept of cooperation. Given there are no new requirements being introduced the council has no further comments to make.</p> |
| 9: | <p>Does the proposed approach to regulating the economic standards seem reasonable, taking into account the regulator's statutory objectives and future duty to minimise interference?</p> <p>These standards do not apply to local authority registered providers. The council has no comment to make.</p> |
| 10: | <p>Does the proposed approach to regulating the consumer standards seem reasonable, taking into account the regulator's future statutory duty to minimise interference and the serious detriment test introduced in the Localism Act?</p> <p>The approach is a welcomed development. It will allow the council, working with its tenants and other stakeholders, to develop its housing management to meet our own circumstances and needs, rather than the requirements of the regulator.</p> |
| 11: | <p>Do the proposed principles underpinning the use of the regulator's intervention and enforcement powers, and the associated guidance notes for each power (in Annex F of this consultation document) seem reasonable?</p> <p>The Localism Act does not substantially amend the regulator's powers of intervention and enforcement. The Social Housing Regulator proposes, therefore, that existing arrangements from the 2010 framework should largely be carried forward. The council welcomes the graduated approach to the use of powers and notes the regulator's continuing obligation to regulate proportionately and minimise interference.</p> |

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| 12: | Does the proposed approach to registration and deregistration seem reasonable? |
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Given the arrangements for registration and deregistration remain largely unchanged from the 2010 framework, and that the proposed new registration criteria reflect the regulator's revised role regarding consumer protection the council has no comments to make.

A revised regulatory framework for social housing in England from April 2012

A statutory consultation

The revised regulatory framework for social housing in England from April 2012

A statutory consultation

November 2011

Chairman's foreword

The present consumer and economic regulatory standards for registered social housing providers were introduced in April 2010. The Localism Act, when commenced, will change the regulator's role. A number of the existing standards need revising to reflect these changes.

This consultation document sets out proposals for revised regulatory standards. The introduction in chapter one maps out the elements of the new regulatory framework.

The principal changes relate to consumer regulation. Registered providers will still be required to meet the relevant standards. But the Government is creating a new landscape for the way tenants' problems with housing services are addressed. From April 2012, the regulator will have a 'backstop' role in consumer matters limited to setting the service delivery standards and acting only where it considers there is risk of serious detriment (or harm) to tenants. The principal role in scrutinising landlord services and intervening where consumer standards are not met will fall to others – tenants' panels, MPs and elected councillors.

Aside from the regulator's backstop role in respect of consumer regulation, some of the consumer standards are changing. There will be more focus on local mechanisms to resolve complaints and disputes. The scope for new tenancy agreements needs to be reflected. There is a need for new requirements in respect of tenant mobility and the increased scope for tenant involvement in the repair and maintenance of their homes.

The regulator's principal role will be the economic regulation of private registered providers. In large part there is continuity from the existing economic standards. The regulator will continue its commitment to the co-regulatory approach, emphasising that boards are responsible and accountable for meeting their organisation's objectives and the regulator's standards. And the regulator will retain its focus on the proper governance and financial viability of providers.

The regulator will also have an expanded role on value for money in private registered providers. In future, the regulator expects boards to have a clear view of their risk appetite and associated risk management strategies, an informed view of their cost base and the factors affecting it, a strategy for making best use of their assets, and a plan for improving VFM that has been developed in a transparent way with input from stakeholders. In due course the regulator's findings on this will be reflected in regulatory judgements.

The context for economic regulation has changed and will continue to get more challenging. The social housing sector has proved resilient in the face of the global financial crisis. It continues to generate stable surpluses and to attract the private sector lending it needs. But the global financial crisis has changed the capacity and appetite of lenders to offer low margins and long-term debt. Providers will need to manage the impact of changes to the welfare system, which may increase the risk that some tenants do not pay all their rent. And the new affordable rent model means that providers will rely more on private finance and place more stress on their balance sheets. Some providers are diversifying and becoming more complex, potentially generating additional capacity but also taking on more risk.

It is up to the sector to manage these opportunities and risks. But it is also incumbent on the regulator to keep pace with the sector and manage risks where it needs to. This will be the main challenge for the new independent regulation committee in the Homes and Communities Agency, which takes over responsibility for the regulatory function in April 2012.

Anthony Mayer
Chairman, Tenant Services Authority

A revised regulatory framework for social housing in England from April 2012

A statutory consultation

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Bound separately:

- E. Rent Standard Guidance
- F. Guidance notes on use of the regulator's powers

Consultation statement

The regulator of social housing in England consultation statement

This sets out key information about the issues being consulted 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 | 10 February 2012 |
| Please respond to | <p>Amanda Newton Statutory Consultation Project Manager The Social Housing Regulator Fourth Floor One Piccadilly Gardens Manchester M1 1RG Email: statutoryconsultation@tsa.gsi.gov.uk</p> <p>If you would like to discuss any issue raised in this document before sending your response, please contact our Referrals and Regulatory Enquiries Team on 0845 230 7000 who will be pleased to help.</p> |
| Why we are asking for views | <p>The consultation is on revisions to the current framework in order to meet the revised statutory requirements and powers Parliament has given the social housing regulator in the Localism Act 2011, and directions that the Government has issued, or intends to issue, to the regulator.</p> <p>The Government has recently completed a consultation on changes to the directions it will give to the regulator. DCLG has published¹ its summary of responses, which includes the issue of formal directions to the regulator in respect of tenant involvement and empowerment, rents and quality of accommodation. These directions have been reflected in revised standards in this consultation document.</p> <p>The Localism Act grants the Secretary of State new powers to issue directions to the regulator on the contents of standards on tenure and mutual exchange. At the time of issuing this consultation, we have not yet been formally directed in relation to these two areas. However, DCLG's consultation included its draft directions in these areas, and its summary of responses includes the indicative directions it intends to issue formally to the regulator once those Localism Act provisions are commenced. We have incorporated these indicative directions in revised standards</p> |

¹ 'Implementing social housing reform: Directions to the social housing regulator: Summary of responses' published in November 2011, available from DCLG's website.

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| | in this consultation document. |
| What it means for you | <p>For landlords, tenants, lenders and other stakeholders who have an interest in the social housing sector, this consultation is an opportunity to influence how the regulator's revised powers are implemented from April 2012.</p> <p>A summary of key terms used in this consultation document is included for information at Annex D.</p> |
| Context for this consultation | The Localism Act, when commenced, will change the powers of the social housing regulator for registered providers (such as housing associations and local authorities) in England from 1 April 2012. It will revise the powers given to the regulator in the Housing and Regeneration Act 2008. |
| Who is being consulted | <p>Views are welcome from everyone who has an interest in the future of social housing in England. The regulator is required to consult certain statutory organisations, which are listed in Annex B.</p> <p>Views are also welcome on the proposed approach to regulatory and equalities impact assessments that can be found in Annex C.</p> |
| How we are consulting | Alongside the publication of this consultation document, including the separate Annexes E and F, the regulator will continue to engage in discussions with stakeholders, including through its Sounding Board and three Advisory Panels comprising providers, tenants and sector advisors respectively. Representation on each of these is shown in Annex B. |
| Taking account of your views and what happens next | The regulator will publish a decision statement in March 2012 before the new powers are activated on 1 April 2012. |
| Publication of responses | All formal written responses will be published shortly after the closing date of this consultation (unless you specifically ask us not to). |
| Freedom of Information | <p>The information provided in response to this consultation (including personal information) may be published in accordance with the Freedom of Information Act (FOIA) and the Environmental Information Regulations 2004.</p> <p>If you want the information that you provide in response to this consultation to be treated as confidential, please tell us but be aware that, under FOIA, we cannot guarantee confidentiality. There is a statutory Code of Practice on consultation that public authorities must follow and this sets out how confidential information must be dealt with.</p> |

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| | <p>If you are replying as an individual, the TSA will process your personal data in accordance with the Data Protection Act 1998 and this means that if you request confidentiality your personal information will not be disclosed to third parties.</p> <p>An automatic confidentiality disclaimer generated by your IT system will not, in itself, be binding on the regulator for social housing.</p> |
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1. Introduction to the revised regulatory framework

- 1.1 This consultation document sets out proposals for a revised regulatory framework to take effect from 1 April 2012.
- 1.2 The Government² and stakeholders have endorsed the regulator's existing co-regulation approach and the current regulatory standards. The revised framework builds on those arrangements. The changes proposed in this consultation document have been driven largely by the need to implement amendments in the Localism Act³ to the Housing and Regeneration Act 2008 (the 2008 Act).
- 1.3 The scale of change recommended by the Government's review and the Localism Act brings significant differences to the regulator's current role, especially on consumer protection. In future, the regulator's responsibilities in relation to the consumer standards will be limited to setting standards and intervening when there is risk of serious harm to tenants (the 'serious detriment' test). The regulator will have no role in monitoring how providers deliver the housing service (or 'consumer') standards. The proposals in this consultation document reflect these fundamental changes.

The principles of co-regulation (chapter two)

- 1.4 Boards and councillors who govern providers' service delivery will remain responsible for meeting the standards and being transparent and accountable for their organisation's delivery of its social housing objectives. Registered providers will still be required to meet the relevant standards. Except where failure to meet the consumer standards leads to risk of serious detriment to tenants, it will be for providers to support tenants both to shape and scrutinise service delivery and to hold boards and councillors to account.
- 1.5 Some co-regulatory principles have been updated, for example to reflect an increased emphasis on value for money, the regulator's 'backstop' role in consumer regulation, and to recognise that the regulator will not have a role in defining or promoting best practice.

Standards for registered providers (chapter three)

- 1.6 The core regulatory standards will continue. They are well recognised and understood throughout the sector and were broadly endorsed by the Government's review. Providers must meet the standards.
- 1.7 The standards will be re-classified as either 'economic' or 'consumer'⁴. Some will change significantly, notably:

² 'The review of social housing regulation', published in October 2010 by DCLG and available from their website.

³ See Annex D: Summary of key terms used in this document.

⁴ 'Economic' standards are those set under s.194 of the Housing and Regeneration Act 2008, 'consumer' standards are those set under s.193 of that Act.

- A new Value for Money standard will be introduced for private registered providers, which places an increased onus on boards to develop and deliver a clear strategy to drive value for money improvements
- In the Tenant Involvement and Empowerment standard, there will be more focus on local mechanisms to resolve complaints and disputes, and an increased scope for more tenant involvement in repairs and maintenance. The principles of 'local offers' and annual reporting to tenants are retained
- The proposed Tenancy standard reflects intended changes in government policy, where different lengths of tenancy agreement will be allowed. This also includes new expectations to promote mutual exchange arrangements⁵

Regulating the economic standards (chapter four)

- 1.8 The Government's review of regulation confirmed the rationale for economic regulation. These include protecting historic government subsidy, promoting access to private finance, and helping address the lack of competitive pressures on providers which might otherwise put pressure on service quality and efficiency.
- 1.9 The regulator will continue proactively to assure itself that private registered providers are well-governed and financially viable. There will also be a sharper focus on value for money. Following amendment in the Localism Act, the standard on rent will form part of the group of economic standards.
- 1.10 Regulation will continue to be carried out in a risk-based and proportionate way. The regulator will have a new statutory duty to minimise interference so there will be a continuing focus on regulatory burdens, consistent with meeting the regulator's overall objectives. The key features of the approach to economic regulation are set out in chapter four. A further more detailed document, setting out more practical information about the regulation of economic standards, will be published in 2012 once the regulatory framework has been finalised. We will work with stakeholders in developing this document.

Regulating the consumer standards (chapter five)

- 1.11 Boards and councillors who govern service delivery will remain responsible for ensuring providers meet the consumer standards. Under the Localism Act, the regulator will no longer have an active role in monitoring providers' service performance or delivery of the consumer standards. Under the new arrangements for regulation, it is expected that others such as tenant panels, MPs and elected councillors will have a more prominent role in helping tenants to get redress where they have received a poor service and in scrutinising landlords' overall performance. The revised Tenant Involvement

⁵ Changes in the s.193 regulatory standards follow Directions consulted on by DCLG and issued to the regulator in November 2011. Because the power to make Directions on tenure and mutual exchange is contained within the Localism Act, at time of publishing this consultation the Government Directions issued to the regulator on these standards are in indicative final form only. The Government will formally issue these Directions to the regulator when the statutory powers in the Localism Act are commenced.

and Empowerment standard reflects these objectives. Further information about what the changes mean for users of these local mechanisms will be provided by DCLG⁶.

- 1.12 The regulator's intervention powers will be restricted to circumstances where it has reasonable grounds to think that failure against the consumer standards has led, or may lead, to serious harm to tenants or potential tenants. The regulator will issue statutory guidance about this, which describes how it defines and operates the new 'serious detriment' threshold. The proposed guidance, set out in chapter five of this consultation document, includes the arrangements for how consumer matters may be referred to the regulator to consider if this threshold is passed. If this is the case, the regulator will then consider the most appropriate means of intervention, including the use of its powers for both private and local authority providers.

Intervention and enforcement (chapter six)

- 1.13 The Localism Act retains all the regulatory, enforcement and general powers that the regulator might use to intervene to deal with poor performance. These will continue to be used in a proportionate, consistent and transparent way as under the current framework. The serious detriment threshold will however require an amendment to general principles underlying the way the regulator uses its powers.
- 1.14 Detailed guidance notes on how the regulator uses certain of its powers have also been updated to reflect the serious detriment threshold. The revised guidance notes are published for consultation in Annex F.

Registration of social housing providers (chapter seven)

- 1.15 The regulator will continue to maintain a register of private and local authority providers. The Localism Act makes no changes to the definition of social housing or the eligibility criteria for registration. However, the regulator's discretionary registration criteria need to be amended so that its tests at registration, with respect to the consumer standards, are compatible with how it is able to regulate afterwards.

Continuing elements of the 2010 regulatory framework

- 1.16 The Localism Act leaves some fundamental parts of the April 2010 regulatory framework unchanged.
- 1.17 The elements that are outside the scope of this consultation, and which will continue unchanged under the 2012 regulatory framework, are:
- The TSA's Consent to Disposals (published separately as part of the 2010 regulatory framework)
 - Disposal Proceeds Fund (the regulator's requirements will continue to be based on the Disposals Proceeds Fund General Determination 2008)

⁶ 'Implementing social housing reform: Directions to the social housing regulator – summary of responses' published by DCLG in November 2011, available from their website.

issued by the Housing Corporation, as stated in the 2010 regulatory framework⁷)

- 1.18 The existing Accounting Direction, as issued by the Housing Corporation in November 2009, remains in place. As we said in the 2010 regulatory framework (para 8.3), it remains the intention to review the accounting requirements of registered providers and to consult on this in due course.

⁷ The validity of the General Determination 2008 was continued in relation to registered social landlords by the Housing and Regeneration Act 2008 (Commencement No. 7 and Transitional and Saving Provisions) Order 2010, Schedule, paragraph 33(2). The 2010 regulatory framework applied those provisions also to registered providers registered after 1 April 2010.

2. The principles of co-regulation

- 2.1 The current regulatory framework sets out the commitment to co-regulation – that is, that the regulator expects robust self-regulation by the boards and councillors who govern the delivery of housing services, incorporating effective tenant involvement. This approach was endorsed by the Government’s review of regulation, and remains the cornerstone of the regulatory approach.
- 2.2 However, the Government’s review and the Localism Act introduce some fundamental changes in the regulator’s role, particularly in respect of consumer regulation. The principles have been revised to reflect these changes.

Revised principles of co-regulation

I. Boards and councillors who govern providers are responsible and accountable for delivering their organisation’s social housing objectives

- 2.3 Good governance is the bedrock of every organisation’s ability to run itself effectively and efficiently. Primary responsibility for achieving their organisation’s social housing⁸ aims lies with the boards of private registered providers and the councillors who govern local authority housing services. The governing bodies are also accountable to their stakeholders, including to their tenants, for services delivered and for dealing with potential or actual problems.
- 2.4 This principle is the foundation of co-regulation. For both private and local authority providers, governance arrangements should be fit for purpose, and reflect the complexity and risk-profile of the organisation. Boards and councillors need to set clear objectives and develop a forward-looking strategy that enables their organisation to make the most of future opportunities and mitigate potential risks. There should be a continuous focus on effective financial management and improving value for money.

II. Providers must meet the regulatory standards.

- 2.5 The 2008 Act established a single social housing regulator covering all registered providers. This does not change under the Localism Act. Therefore, all registered private and local authority providers will be subject from April 2012 to the revised regulatory framework. They must all meet the applicable regulatory standards.
- 2.6 Under the Localism Act, standards are classified as either:
- standards relating to economic matters, or
 - standards relating to consumer matters

⁸ ‘Social housing’ is defined in sections 68-77 of the 2008 Act. The term covers low cost rented housing (including Affordable Rent properties), low cost home ownership housing and ‘legacy’ stock owned by social landlords that were registered prior to 1 April 2010.

- 2.7 Consumer standards apply to all registered providers, including local authorities. The consumer standards support co-regulation. In future, the regulator will not have a proactive role in monitoring compliance with these standards, and will only intervene in cases of serious detriment. (There is more about this in chapter five of this consultation document.)
- 2.8 Economic standards apply only to private registered providers. For profit-making providers, the economic standards apply to the management of their affairs only so far as they relate to the provision of social housing. The regulator will continue to have a proactive role on these standards, and will engage with providers to obtain assurance that these standards are being met.
- 2.9 In setting all standards, the regulator must have regard to the desirability of registered providers being free to choose how to provide services and conduct business⁹. Standards are set largely with a focus on outcomes, avoiding detailed prescription wherever possible.

III. Transparency and accountability is central to co-regulation

- 2.10 Providers and their boards and governing bodies should be transparent with their tenants, service users and other stakeholders. Providers' approaches to co-regulation should be honest and robust, and include evidence-based self assessment, external challenge, and regular reporting to tenants.
- 2.11 All providers should run their businesses with a presumption of openness and co-operation with stakeholders, including the regulator. Some of the regulatory standards rely on transparency to tenants as the means of giving explicit effect to a co-regulatory approach. This includes the reporting requirements in both the tenant involvement and empowerment and Value for Money standards.

IV. Tenants should have opportunities to shape service delivery and to hold the responsible boards and councillors to account

- 2.12 Providers are expected to engage meaningfully with their tenants and offer them opportunities to shape the tailoring of services to reflect local priorities. Tenants should have the ability to scrutinise their provider's performance, identify areas for improvement and influence future delivery. Providers will also need to continue to support tenants in developing their skills and capacity so that engagement and scrutiny are effective.
- 2.13 This principle is of fundamental importance in the system of consumer regulation envisaged by the Government's review. In the regulatory standards, it is articulated in the revised Tenant Involvement and Empowerment standard.

⁹ Section 193(3) Housing and Regeneration Act 2008.

V. Providers should understand the particular needs of their tenants

- 2.14 Providers' governance arrangements and approaches to management and service delivery must incorporate and demonstrate principles of equality and diversity, and apply them in a way that is relevant to their organisation's purpose and context. It is essential that providers understand tenants' needs including those within the equality strands¹⁰. This requirement is retained from the current standards framework as a cross-cutting element of the Tenant Involvement and Empowerment standard, which applies throughout the way providers should deliver services and engage with their tenants.

VI. Value for money goes to the heart of how providers ensure current and future delivery of their objectives

- 2.15 Providers should have a strategy for optimising value for money, and systems to ensure that this strategy is delivered.
- 2.16 For private providers, the regulator will set a new Value for Money standard. Boards will be expected to develop and deliver a strategy to achieve continuous improvement in their performance on running costs and the use of their assets. They will be expected to be transparent and to enable scrutiny of their performance. The regulator will comment in regulatory judgements on the assurance it has obtained on this standard. The regulator will also carry out and publish sector and provider level analyses of the performance of the sector as a whole, with the aim of adding to the available body of contextual information that can inform boards and stakeholders.

Consultation question 1:

Are these the right principles, in the context of changes brought about by the Localism Act?

¹⁰ The Equalities Act 2010 gives public bodies responsibilities in relation to: race, age, gender reassignment, pregnancy and maternity, religion or belief, sex, sexual orientation, disability and marriage and civil partnership; in policy making, delivery of services and public sector employment.

3. Standards for registered providers

3.1 Figure 1 summarises the regulatory standards that providers are expected to meet.

Figure 1 – The regulatory standards

| Economic standards* (s.194 of the HRA 2008 as amended by the Localism Act) | Containing requirements relating to the following areas |
|---|--|
| Governance and financial viability | <ul style="list-style-type: none"> • Governance • Financial viability |
| Value for money | <ul style="list-style-type: none"> • Value for money |
| Rent | <ul style="list-style-type: none"> • Rent |
| Consumer standards (s.193 of the HRA 2008 as amended by the Localism Act) | Containing requirements relating to the following areas |
| Tenant involvement and empowerment | <ul style="list-style-type: none"> • Customer service, choice and complaints • Involvement and empowerment • Understanding and responding to diverse needs of tenants |
| Home | <ul style="list-style-type: none"> • Quality of accommodation • Repairs and maintenance |
| Tenancy | <ul style="list-style-type: none"> • Allocations & mutual exchange • Tenure |
| Neighbourhood and community | <ul style="list-style-type: none"> • Neighbourhood management • Local area co-operation • Anti-social behaviour |

* These standards do not apply to local authorities.

3.2 Each standard is defined in terms of required outcomes and some specific expectations. The standards have regard to the desirability of providers being free to choose how they conduct business and deliver services. For the consumer standards, the specific expectations are not intended to describe entirely how to meet or comply with the outcomes. The consumer standards are subject to 'backstop' regulation only, in circumstances where there is evidence of or risk of serious detriment as detailed in chapter five of this consultation document.

3.3 The standards must comply with directions issued to the regulator by government. Following its consultation, government has confirmed its intentions on directions¹¹ in respect of:

- Rent, and
- The consumer standards for:
 - Tenure
 - Mutual exchange
 - Tenant involvement and empowerment
 - Quality of accommodation

¹¹ 'Implementing social housing reform: Directions to the social housing regulator – summary of responses' published by DCLG in November 2011, available from their website.

- 3.4 The regulator can issue a Code of Practice which relates to any matter addressed by an economic standard or amplifies an economic standard¹². These Codes of Practice can be taken into account in considering whether economic standards have been met. No Codes of Practice have been issued under the current regulatory framework, and there are no plans to do so as part of this revision.

¹² The regulator's power to issue Codes of Practice for consumer (s.193) standards is repealed in Localism Act amendments to section 195 of the 2008 Act.

Economic standards

Governance and Financial Viability standard

Why revise the standard? What is the proposed change?

No changes of substance are proposed to the viability element of the Governance and Financial Viability standard.

On the governance element of the standard, a minimal change to the 'required outcomes' is proposed which is intended to clarify for providers what the regulator would expect to see in effective approaches to risk management and their assurance framework. Good providers will already be meeting these: the intention in amending the specific text of the standard is to ensure that the regulator is clearly signalling to boards the fundamental importance of these matters.

Changes in specific expectation 1.1

This paragraph now combines the expectation that providers adopt and are transparent about their code of governance with the specific governance characteristics that we require. Most of these details are carried forward from paras 1.1 and 1.2 of the April 2010 standard and would already form part of a code of governance that is appropriate for providers in the sector. In addition, it is proposed that the standard should now include reference to appropriate probity arrangements. The intention is to emphasise that probity remains an essential element of the regulator's expectations about governance arrangements, and is essential to protect the good name of providers and the reputation of the sector as a whole.

Changes in specific expectation 1.2

This new paragraph is designed to emphasise to boards the importance of effective planning and control, which will include a framework that enables them to obtain assurance about the effectiveness of their arrangements. This change highlights an area the regulator regards as central to the way providers successfully manage their business. There is also a new requirement that providers will inform the regulator when they become aware of material non-compliance with the economic standards. We believe this appropriately reflects the co-regulatory responsibility of boards, while ensuring that in an environment of increasing risk, timeliness in alerting the regulator will leave open a greater range of options for any necessary regulatory intervention strategy, and secure better outcomes from such intervention.

Changes in specific expectation 1.3

This revised paragraph consolidates the data requirements for both financial and non-financial data. It combines the current requirements in paragraph 2.3 of the April 2010 standard, together with a reference to the submissions that are described in more detail elsewhere in the regulator's approach to economic regulation (see chapter four of this consultation document).

Proposed revised Governance and Financial Viability standard

Required outcome

1 Governance

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

- adhere to all relevant legislation
- comply with their governing documents and all regulatory requirements
- are accountable to tenants, the regulator and relevant stakeholders
- safeguard taxpayers' interests and the reputation of the sector
- have an effective risk management and internal controls assurance framework

2 Financial viability

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

Specific expectations

1 Governance

- 1.1 Registered providers shall adopt and comply with an appropriate code of governance. Governance arrangements should establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive and ensure appropriate probity arrangements are in place. Areas of non-compliance with their chosen code of governance should be explained. Providers' boards should assess the effectiveness of their governance arrangements at least once a year.
- 1.2 Registered providers shall ensure that they operate an appropriate strategic planning and control framework that identifies and manages risks to the delivery of their objectives and compliance with regulatory standards. Providers shall communicate in a timely manner with the regulator on material issues that relate to non compliance with the economic standards.
- 1.3 Registered providers shall provide accurate and timely returns to the regulator, including an annual report on any losses from fraudulent activity, in a form determined by the regulator.
- 1.4 Where there is a non-regulated element¹³, the registered provider shall demonstrate to the regulator that it has in place effective mechanisms (such

¹³ A "non-regulated element" refers to the activities, organisations or parts of organisations carrying out non-social housing activity within an organisation:

(1) which is a registered provider and which also carries out activities which are not regulated by the social housing regulator.

as commitments, undertakings or other assurances between itself and the non-regulated element) which ensure that:

- 1.4.1 It is and will be able to comply with the regulator's standards and other regulatory requirements.
- 1.4.2 Its ability to meet the regulator's standards and other regulatory requirements is not and cannot be prejudiced by the activities or influence of the non-regulated element.
- 1.4.3 In the event that the registered provider does not or may not be able to comply with the regulator's standards or other regulatory requirements:
 - a. the non-regulated element will give any necessary support or assistance to enable compliance, and
 - b. the registered provider has the ability to require the support or assistance of the non-regulated element to enable compliance

In some situations it may be appropriate for the regulator to be a party to such arrangements.

2 Financial viability

2.1 Registered providers shall 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 shall 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) which is not a registered provider but which has as part of its organisation, corporate structure or group of organisations, a registered provider, or

(3) which is a registered provider and is controlled or substantially influenced by another organisation which is not a registered provider

Consultation question 2:

Does the revised Governance and Financial Viability standard:

- Effectively take into account amendments required by the Localism Act?
- Give providers sufficient flexibility to run their businesses?
- Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Value for Money standard

Why revise the standard? What is the proposed change?

The Government's review of social housing regulation recommended that the regulator should be more proactive in its approach to regulating value for money. The Localism Act gives the regulator the power to set an economic standard (under section 194), applicable to private registered providers only, concerning their efficiency in carrying out their financial and other affairs.

The current Value for Money standard was framed under section 193 of the Housing and Regeneration Act 2008. The revised Value for Money standard has been developed to reflect its place amongst the economic standards and an expectation that it will be subject to proactive regulation. It is substantially different to the 2010 standard.

The proposed standard has been set with the objective of ensuring providers' boards maintain, and are transparent about, a view in the round of the optimum sustainable performance of all their assets – including for example financial, social and environmental returns - in the context of meeting their organisation's purpose and objectives.

Proposed revised Value for Money standard

Required outcomes

1 Value for money

Registered providers shall articulate and deliver a comprehensive approach to achieving value for money in meeting their objectives, taking into account the interests of and commitments to stakeholders. This means managing their resources economically, efficiently and effectively to provide quality services and homes, and planning for and delivering year on year improvements in value for money.

Specific expectations

1 Value for money

- 1.1 Registered providers' boards shall maintain and, on an annual basis, publish a robust self assessment of the provider's performance which sets out in a way that is transparent and accessible to stakeholders how they are achieving value for money in delivering their purpose and objectives.
- 1.2 In reaching their assessment, providers' boards shall demonstrate to stakeholders:
 - an understanding of the cost of delivering specific services, which underlying factors influence these costs and how they do so, and how costs relate to appropriate benchmarks

- the efficiency gains that have been and will be made and how these have and will be realised over time
- a robust approach to making decisions on the use of resources to deliver the provider's objectives, including an understanding of the trade offs and opportunity costs of its decisions. There will be clear evidence of delivery which may include: new supply, improved services and housing stock, and neighbourhood and community investment
- an understanding of the return on its assets, and a strategy for maximising the future returns on assets, measured against the organisation's purpose and objectives
- that its performance management and scrutiny functions are effective at driving and delivering improved performance with outcomes and outputs clearly demonstrated
- a rigorous approach to assessing options for value for money improvement, including where there are potential benefits in alternative delivery models that may involve partnerships, mergers and/or contracting with third parties
- how they have gained assurance in reaching their view on value for money

Consultation question 3:

Does the revised Value for Money standard:

- Effectively take into account amendments required by the Localism Act?
- Give providers sufficient flexibility to run their businesses?
- Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Rent

Why revise the standard? What is the proposed change?

In the 2010 regulatory framework, requirements on rent formed part of the Tenancy standard set under s.193 of the 2008 Act. The rent elements of the standard were amended, following consultation in December 2010, to reflect the introduction of Affordable Rent. Accordingly, the only changes proposed now to the current standard are to implement the Government's direction in relation to rent, and the Localism Act amendment to the 2008 Act whereby Rent becomes an economic (s.194) standard.

The current standard incorporates by reference the Rent Influencing Regime Guidance of 2001 and any guidance issued by the Housing Corporation or TSA, or its successors, in relation to that document. The 2001 guidance contains out of date terminology and there are some inconsistencies in use of language between the guidance and subsequent circulars, which can cause confusion. We have therefore taken this opportunity to consolidate the various sources which comprise the current rules on implementation of the rent influencing regime, and to combine it with existing guidance relating to Affordable Rent. This Rent Standard Guidance can be found in Annex E of this consultation document. The 'key requirements' set out within the Rent Standard Guidance constitute part of the Rent standard.

Proposed revised Rent standard

Required outcomes

- 1 Registered providers shall charge rents in accordance with the objectives and framework set out in the Government's direction to the regulator of November 2011.

Specific expectations

- 1.1 Registered providers shall ensure they meet the following requirements, which derive from the Government's direction to the regulator of November 2011, and the 'key requirements' set out in the Rent Standard Guidance that accompanies this standard.
- 1.2 Subject to paragraphs 1.3 and 1.5, registered providers shall set rents with a view to achieving the following so far as possible:
 - 1.2.1 Rents conform with the pattern produced by the rent formula set out in rent influencing regime guidance¹⁴ ('target rents') with a 5% tolerance in individual rents (10% for supported and sheltered housing) ('rent flexibility level') but subject to the maximum rent levels specified in that guidance ('rent caps').

¹⁴ 'rent influencing regime guidance' is contained within the regulator's Rent Standard Guidance. That Rent Standard Guidance is 'guidance issued in relation to' and consolidates the previous documents, particularly: the Rent Influencing Regime Guidance issued by the Housing Corporation in October 2001; the Rents guidance in the Explanatory Note to Decision Instrument 5 (Revision to the Tenancy Standard: Affordable Rent); and any other guidance issued by the Housing Corporation or TSA, or its successors, in relation to those documents.

- 1.2.2 Weekly rent for accommodation increases each year by an amount which is no more than $RPI^{15} + 0.5\% + £2$ until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower.
 - 1.2.3 Weekly rent for accommodation that has reached or is above the upper limit of the rent flexibility level increases each year by an amount that is no more than the increase to the target rents.
 - 1.2.4 Rent caps increase annually by $RPI + 1\%$.
 - 1.2.5 Target rents increase annually by $RPI + 0.5\%$.
- 1.3 The requirements of paragraph 1.2 do not apply to homes let on Affordable Rent terms. Subject to paragraph 1.5, where accommodation is let on Affordable Rent terms, registered providers shall set rents with a view to achieving the following, so far as possible:
- 1.3.1 Rent for accommodation (inclusive of service charges) is set at a level which is no more than 80% of the estimated market rent for the accommodation (inclusive of service charges), based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.
 - 1.3.2 Rent for accommodation increases each year by an amount which is no more than $RPI + 0.5\%$.
 - 1.3.3 Rent for accommodation is re-set, based on a new valuation, each time the accommodation is:
 - (i) let to a new tenant, or
 - (ii) re-let to the same tenant (but where a probationary tenancy comes to an end and the registered provider re-lets the accommodation to the same tenant the provider is not required to re-set the rent).
- 1.4 Affordable Rent terms can only be used where a delivery agreement for new supply of social housing has been agreed under a new supply agreement entered into between a private registered provider and the Homes and Communities Agency (HCA) or the Greater London Authority (GLA) under the 2011-15 Affordable Homes Programme Framework.
- 1.5 Where the application of the Rent 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 lending covenants, the regulator may allow extensions to the period over which the requirements of the rent standard are met.
- 1.6 Registered providers shall 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).

¹⁵ '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.

Consultation question 4:

Does the revised Rent standard (and associated Rent Standard Guidance in Annex E of this consultation document):

- Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act?
- Give providers sufficient flexibility to run their businesses?
- Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Consumer standards

Providers' boards and councillors are responsible for ensuring their organisation meets the consumer standards. The regulator's role is limited to setting the consumer standards and intervening only where failure of the standard could lead to risk of serious harm to tenants (the 'serious detriment' test) as described in chapter five of this consultation document.

Tenant Involvement and Empowerment standard

Why revise the standard? What is the proposed change?

The Tenant Involvement and Empowerment standard must be revised to reflect a new government direction. The direction reflects an emphasis on local mechanisms to involve tenants, scrutinise landlord performance and resolve problems with housing services.

The proposed revised standard retains the principle that providers should offer their tenants opportunities to tailor service delivery to local priorities (known in the 2010 regulatory framework and in the proposed standard below as 'local offers'). It also retains, unchanged, the requirements of the current standard in relation to 'Customer service, choice and complaints' and 'Understanding the diverse needs of tenants'.

The requirements on annual reports that appear in each of the current s.193 standards are now replaced by the requirements in this revised Tenant Involvement and Empowerment standard, as reflected in the Government's direction.

Proposed revised Tenant Involvement and Empowerment standard

Required outcomes

1 Customer service, choice and complaints

Registered providers shall:

- provide choices, information and communication that is appropriate to the diverse needs of their tenants in the delivery of all standards
- have an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly

2 Involvement and empowerment

Registered providers shall ensure that tenants are given a wide range of opportunities to influence and be involved in:

- the formulation of their landlord's housing related policies and strategic priorities
- the making of decisions about how housing related services are delivered, including the setting of service standards

- the scrutiny of their landlord's performance and the making of recommendations to their landlord about how performance might be improved
- the management of their homes, where applicable
- the management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made, and
- agreeing local offers for service delivery

3 Understanding and responding to the diverse needs of tenants

Registered providers shall:

- treat all tenants with fairness and respect
- demonstrate that they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs

Specific expectations

1 Customer service, choice and complaints

1.1 Registered providers shall provide tenants with accessible, relevant 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, including any additional costs that are relevant to specific choices
- progress of any repairs work
- how tenants can communicate with them and provide feedback
- the responsibilities of the tenant and provider
- arrangements for tenant involvement and scrutiny

1.2 Providers shall offer a range of ways for tenants to express a complaint and set out clear service standards for responding to complaints, including complaints about performance against the standards, and details of what to do if they are unhappy with the outcome of a complaint. Providers shall inform tenants how they use complaints to improve their services. Registered providers shall publish information about complaints each year, including their number and nature, and the outcome of the complaints. Providers shall accept complaints made by advocates authorised to act on a tenant's/tenants' behalf.

2 Involvement and empowerment

2.1 Registered providers shall support their tenants to develop and implement opportunities for involvement and empowerment, including by:

- supporting their tenants to exercise their Right to Manage or otherwise exercise housing management functions, where appropriate

- supporting the formation and activities of tenant panels or equivalent groups and responding in a constructive and timely manner to them
 - the provision of timely and relevant performance information to support effective scrutiny by tenants of their landlord's performance in a form which registered providers seek to agree with their tenants. Such provision must include the publication of an annual report which should include information on repair and maintenance budgets, and
 - providing support to tenants to build their capacity to be more effectively involved
- 2.2 Registered providers shall consult with tenants on the scope of local offers for service delivery. This shall include how performance will be monitored, reported to and scrutinised by tenants and arrangements for reviewing these on a periodic basis.
- 2.3 Registered providers shall consult with tenants, setting out clearly the costs and benefits of relevant options, if they are proposing to change their landlord or when proposing a significant change in their management arrangements.
- 2.4 Registered providers shall consult tenants at least once every three years on the best way of involving tenants in the governance and scrutiny of the organisation's housing management service.

3. Understanding and responding to diverse needs

- 3.1 Registered providers shall demonstrate how they respond to tenants' needs in the way they provide services and communicate with tenants.

Consultation question 5:

Does the revised Tenant Involvement and Empowerment standard:

- Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Home standard

Why revise the standard? What is the proposed change?

The current 2010 Home standard has two elements: quality of accommodation and repairs and maintenance. The former is subject to a direction issued by the Government in November 2011.

There are no substantive changes proposed to the repairs and maintenance element of the home standard. The requirement in the current Home standard for an annual report to tenants is replaced by new requirements in the Tenant Involvement and Empowerment standard, following the direction by the Government.

We propose some minor revisions to the quality of accommodation element of the standard to reflect the direction to the regulator. The revised Home standard will continue to cross refer to the Government's Decent Homes Guidance, as set out in the direction.

The minor revision to the quality of accommodation element is needed as the original date for compliance with the Decent Homes Standard (31 December 2010) has now passed. The new text has removed the reference to this fixed compliance date to provide clarity for registered providers and tenants that compliance is required with on going effect rather than at a fixed date in the past.

The direction gives the regulator the ability to agree a temporary period of non-compliance (previously known as an 'extension') with a registered provider, where this is reasonable. The text of the 'specific expectation' of the quality of accommodation element has been amended accordingly.

Proposed revised Home standard

Required outcomes

1 Quality of accommodation

Registered providers shall:

- ensure that tenants' homes meet the standard set out in section five of the Government's Decent Homes Guidance¹⁶ and continue to maintain their homes to at least this standard
- meet the standards of design and quality that applied when the home was built, and were required as a condition of publicly funded financial assistance¹⁷, if these standards are higher than the Decent Homes Standard

¹⁶ '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.

¹⁷ 'Financial assistance' is assistance given by the Homes and Communities Agency (HCA) under section 19(3) of the Housing and Regeneration Act, 2008; and (with effect from 1 April 2012) given by the Greater London Authority (GLA). For the purpose of this standard, it includes financial assistance provided by predecessor bodies to the HCA.

- in agreeing a local offer, ensure that it is set at a level not less than these standards and have regard to section six of the Government's Decent Homes Guidance

2 Repairs and maintenance

Registered providers shall:

- provide a cost-effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choices to, tenants, and has the objective of completing repairs and improvements right first time
- meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes

Specific expectations

1 Quality of accommodation

- 1.1 Registered providers may agree with the regulator a period of non-compliance with the Decent Homes Standard, where this is reasonable. Providers shall ensure their tenants are aware of the reasons for any period of non-compliance, their plan to achieve compliance and then report on progress delivering this plan.

2. Repairs and maintenance

- 2.1 Registered providers shall ensure a prudent, planned approach to repairs and maintenance of homes and communal areas. This should demonstrate an appropriate balance of planned and responsive repairs, and value for money. The approach should include: responsive and cyclical repairs, planned and capital work, work on empty properties, and adaptations.
- 2.2 Registered providers shall co-operate with relevant organisations to provide an adaptations service that meets tenants' needs.

Consultation question 6:

Does the revised Home standard:

- Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Tenancy standard

Why revise the standard? What is the proposed change?

The current 2010 Tenancy standard contains requirements in relation to rents, allocations and tenure. The rent element of the standard has been reclassified as an economic standard (s.194) and has been moved from this revised Tenancy standard. The allocations element of the standard is retained without further change.

The tenure elements of the standard were amended, following consultation in December 2010, to reflect the introduction of Affordable Rent. The changes proposed now to the requirements on tenure are necessary to incorporate the Government's intended¹⁸ direction to the regulator and constitute significant change to the current standard with regard to the introduction of flexible tenancies, protection for existing tenants, and requirements for tenancy policies.

The Government has also indicated it will direct the regulator with regard to mutual exchange services and the revised standard places these new requirements alongside the existing allocations elements.

Continuing the approach established in the 2010 framework, the revised Tenancy standard does not apply to intermediate rent properties. See Table 1 for further details.

Proposed revised Tenancy standard

Required outcomes

1 Allocations and mutual exchange

- 1.1 Registered providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how their lettings:
- make the best use of available housing
 - are compatible with the purpose of the housing
 - contribute to local authorities' strategic housing function and sustainable communities

There should be clear application, decision-making and appeals processes.

- 1.2 Registered providers shall enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services.

¹⁸ See 'Implementing social housing reform: Directions to the social housing regulator: Summary of responses' published in November 2011 by DCLG

2 Tenure

- 2.1 Registered providers shall grant tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.
- 2.2 They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements.

Specific expectations

1 Allocations and mutual exchange

- 1.1 Registered providers shall 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 shall publish their reasons for doing so.
- 1.2 Registered providers shall develop and deliver services to address under-occupation and overcrowding in their homes, within the resources available to them. These services should meet the needs of their tenants, and will offer choices to them.
- 1.3 Registered providers' published policies shall include how they have made use of common housing registers, common allocations policies and local letting policies. Registered providers shall 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.
- 1.4 Registered providers shall 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.
- 1.5 Registered providers shall minimise the time that properties are empty between each letting. When doing this, they shall take into account the circumstances of the tenants who have been offered the properties.
- 1.6 Registered providers shall record all lettings and sales in the Continuous Recording of Lettings (CORE) system.
- 1.7 Registered providers shall provide tenants wishing to move with access to clear and relevant advice about their housing options.
- 1.8 Registered providers shall subscribe to an internet based mutual exchange service which allows:
 - a tenant to register an interest in arranging a mutual exchange through the mutual exchange service without payment of a fee

- the tenant to enter their current property details and the tenant's requirements for the mutual exchange property they hope to obtain
 - the tenant to be provided with the property details of those properties where a match occurs
- 1.9 Registered providers shall ensure the provider of the internet based mutual exchange service to which they subscribe is a signatory to an agreement, such as Home Swap Direct, under which tenants can access matches across all (or the greatest practicable number of) internet based mutual exchange services.
- 1.10 Registered providers shall take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to its tenants.
- 1.11 Registered providers shall provide reasonable support in using the service to tenants who do not have access to the internet.

2 Tenure

- 2.1 Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:
- 2.1.1 The type of tenancies they will grant.
 - 2.1.2 Where they grant tenancies for a fixed term, the length of those terms.
 - 2.1.3 The circumstances in which they will grant tenancies of a particular type.
 - 2.1.4 Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
 - 2.1.5 The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
 - 2.1.6 The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
 - 2.1.7 Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
 - 2.1.8 The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
 - 2.1.9 Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- 2.2 Registered providers must grant general needs tenants a periodic secure or assured (excluding assured shorthold) tenancy, or a tenancy for a minimum

fixed term of five years, or exceptionally a tenancy for a minimum term of no less than two years, in addition to any probationary tenancy period.

- 2.3 Before a fixed term tenancy ends, registered providers provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the fixed term or do not propose to do so.
- 2.4 Where registered providers use probationary tenancies, these shall be for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review.
- 2.5 Where registered providers choose to let homes on fixed term tenancies (including under Affordable Rent terms), they shall offer reasonable advice and assistance to those tenants where that tenancy ends.
- 2.6 Registered providers shall make sure that the home continues to be occupied by the tenant they let the home to for the duration of the tenancy period allowing for regulatory requirements about participation in mobility schemes.
- 2.7 Registered providers shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions.
- 2.8 Registered providers shall grant those who were social housing tenants on the day on which section 150 of the Localism Act 2011 comes into force, a tenancy with no less security where they choose to move to another social rented home. (This requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms).
- 2.9 Registered providers shall grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.

Consultation question 7:

Does the revised Tenancy standard:

- Effectively take into account the Government's intended direction to the regulator and amendments required by the Localism Act?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Neighbourhood and Community standard

Why revise the standard? What is the proposed change?

The requirements of the Neighbourhood and Community Standard are not subject to direction by the Secretary of State; nor are they affected by changes in the Localism Act. Therefore, the proposed Neighbourhood and Community Standard remains largely unchanged from the current standard. One minor terminology change is proposed, as detailed below. The requirement in the current Neighbourhood and Community standard for an annual report to tenants is replaced by new requirements in the Tenant Involvement and Empowerment standard, reflecting the direction by the Government.

The current 2010 standard includes a specific expectation under 'local area cooperation' that registered providers should 'co-operate with Local Strategic Partnerships and strategic housing functions of local authorities where they are able to assist them in achieving their objectives.' More general wording is now proposed, to reflect cooperation with local partnerships rather than with Local Strategic Partnerships specifically.

Proposed revised Neighbourhood and Community standard

Required outcomes

1 Neighbourhood management

Registered providers shall keep the neighbourhood and communal areas associated with the homes that they own clean and safe. They shall work in partnership with their tenants and other providers and public bodies where it is effective to do so.

2 Local area co-operation

Registered providers shall co-operate with relevant partners to help promote social, environmental and economic wellbeing in the areas where they own properties.

3 Anti-social behaviour

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

Specific expectations

1 Neighbourhood management

- 1.1 Registered providers shall consult with tenants in developing a published policy for maintaining and improving the neighbourhoods associated with their homes. This applies where the registered provider has a responsibility (either exclusively or in part) for the condition of that neighbourhood. The

policy shall include any communal areas associated with the registered provider's homes.

2 Local area co-operation

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

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

3 Anti-social behaviour

3.1 Registered providers shall publish a policy on how they work with relevant partners to prevent and tackle anti-social behaviour (ASB) in areas where they own properties.

3.2 In their work to prevent and address ASB, registered providers shall demonstrate:

- that tenants are made aware of their responsibilities and rights in relation to ASB
- strong leadership, commitment and accountability on preventing and tackling ASB that reflects a shared understanding of responsibilities with other local agencies
- a strong focus exists on preventative measures tailored towards the needs of tenants and their families
- prompt, appropriate and decisive action is taken to deal with ASB before it escalates, which focuses on resolving the problem having regard to the full range of tools and legal powers available
- all tenants and residents can easily report ASB, are kept informed about the status of their case where responsibility rests with the organisation and are appropriately signposted where it does not
- provision of support to victims and witnesses

Consultation question 8:

Does the revised Neighbourhood and Community standard:

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

Table 1: How the standards apply

| Standard | Apply to local authorities? | Apply to not-for-profit registered providers (RPs)? | Apply to for-profit RPs? | Apply to low-cost rental? | Apply to low-cost home ownership? <small>See note 3</small> |
|--|------------------------------------|--|---------------------------------|----------------------------------|---|
| Economic standards¹⁹ | | | | | |
| Governance and Financial Viability | No | Yes | Yes | Yes | Yes |
| Value for Money | No | Yes | Yes | Yes | Yes |
| Rent | No | Yes | Yes | Yes | No |
| | | | | <small>See note 1</small> | |
| Consumer standards | | | | | |
| Tenant Involvement and Empowerment | Yes | Yes | Yes | Yes | Yes |
| Home | Yes | Yes | Yes | Yes | Yes |
| Tenancy | Yes | Yes | Yes | Yes | No |
| | | | | <small>See note 2</small> | |
| Neighbourhood and Community | Yes | Yes | Yes | Yes | Yes |

Notes²⁰

1. Some types of property, including intermediate rent, are excluded from the Rent standard. These are detailed in the associated Rent Standard Guidance in Annex E of this consultation document.
2. The Tenancy standard does not apply to intermediate rent properties.
3. Section 68 of the 2008 Act results in some leasehold properties being included within the legal definition of 'social housing'. These are mainly shared ownership properties. It also includes (1) some "legacy" housing stock - those RSL properties where grant (including as defined in section 77(3) of the Act) has been paid and where the leaseholder owns 100% of the equity in their dwelling or (2) it is owned under equity percentage arrangements. None of the standards under section 193 apply to these two groups; nor does the Rent standard. They are called "100% ownership leaseholders" for the purpose of this document.

¹⁹ The economic standards do not apply to local authorities in recognition that oversight of their responsibilities in these areas are subject to other arrangements.

²⁰ The notes bring forward arrangements established in the April 2010 framework.

4. Regulating the economic standards

- 4.1 The regulator will set economic standards on:
- Governance and Financial Viability
 - Value for Money, and
 - Rent
- 4.2 The regulator will take a proactive approach to obtaining assurance that these standards are being met.
- 4.3 Economic standards apply only to private registered providers (not local authority providers). For profit making providers, regulation of the economic standards applies to the management of their affairs only so far as it relates to the provision of social housing.
- 4.4 The regulator's approach will recognise that boards are primarily responsible for their organisation's performance. The regulator will seek assurance that the provider is delivering its objectives effectively and properly managing its financial and other affairs. The approach will take into account the regulator's future statutory duty to minimise interference.
- 4.5 The regulator's approach to economic regulation is designed to give it adequate assurance that arrangements in the sector:
- a. protect public investment in social housing
 - b. maintain confidence of private investors to invest into the sector
 - c. ensure that social housing²¹ continues to be available to current and future tenants
 - d. enable landlords to be able to invest in new social housing, assuming other conditions are in place
 - e. are open and transparent, to allow tenants and other stakeholders to form views on and influence the services delivered by providers
 - f. enable providers to meet the regulatory standards and statutory requirements
 - g. deliver value for money improvements to support providers to deliver their social housing objectives
 - h. protect the reputation of the sector as a whole
- 4.6 In 2012, having worked with stakeholders and following the outcomes of this consultation on the revised regulatory framework, the intention is that the regulator will set out more information about regulation of the economic standards in practice.

²¹ 'Social housing' is defined in sections 68-77 of the 2008 Act. The term covers low cost rented housing (including Affordable Rent properties), low cost home ownership housing and 'legacy' stock owned by social landlords that were registered prior to 1 April 2010.

The risk based approach to economic regulation

- 4.7 Boards are expected to ensure that their organisations are well governed, understand their financial risks and remain financially viable, deliver value for money in all their activities and comply with the rent requirements for social housing properties.
- 4.8 These standards are so fundamental to maintaining the confidence of key stakeholders, including government, taxpayers and funders that the regulator will need to obtain assurances on compliance. Boards are primarily responsible for dealing with issues or emerging indications of regulatory concern. Where the regulator considers boards to be unable or unwilling to do this effectively, it will review its options for proportionate intervention including the use of its regulatory powers²².
- 4.9 In general, the regulator will gain assurance through an overall approach to risk assessment which combines:
- an understanding of providers' operating environment, including the financial, economic, social and constitutional risks that could cause them to fail the economic regulation standards
 - sector level profiling and data analyses to enable the regulator to identify and assess major risks and issues affecting providers as a whole
 - dialogue with providers and other relevant stakeholders to test and discuss potential risks at sector and sub-sector levels
 - engagement with individual providers, the nature of which will reflect the potential impact on them of sector-wide risks and other risks specific to them (for example, risks identified from intelligence or existing concerns about compliance)
- 4.10 This approach ensures that regulatory resources are deployed so as to ensure the regulator focuses proportionately on those organisations most exposed to risk. It recognises providers' fundamental responsibility to manage their own businesses, and the regulator's duty to minimise interference while obtaining the necessary level of assurance to meet its objectives.
- 4.11 For larger providers, i.e. those with more than 1,000 homes, this means:
- those organisations where there are no indications of risk of failure on economic standards, and about whom there are no other contra-indications giving regulatory concern, can expect to be subject to minimal levels of regulatory engagement necessary for the regulator to gain assurance and to issue public judgements that maintain the confidence of stakeholders in the sector
 - those providers where there is information suggesting cause for concern, or where there is other evidence of risk of failure on economic standards, can expect an increased level of regulatory engagement, based on the presumption that this will initially be a

²² Where this may also be impacted by consumer issues, the regulator's intervention on those will be subject to the serious detriment test as described in the following chapter of this consultation document.

dialogue to support the provider's self-improvement approach, prior to any further regulatory intervention. However, where the regulator considers such an approach to be ineffective or inappropriate, it is able to deploy the full range of its powers in a proportionate manner

- 4.12 Minimum levels of assurance-based regulatory engagement on the economic standards are described below.
- 4.13 Larger private providers have a named individual who will act as a point of contact for dealing with queries and who involves other staff with specialist expertise, where necessary. Regulators will at all times be clear why engagement is considered necessary. Specific engagement will be led by staff with relevant technical expertise, in conjunction with the designated lead contact.
- 4.14 Further details of the regulator's broader strategic approach to engagement on sector risk, to inform regulatory analyses and risk assessment, will be developed through discussions with stakeholders during 2011/12. In addition, the regulator will continue to publish quarterly surveys and global accounts analyses.

Information requirements for providers

- 4.15 Providers are expected to be open and transparent in their relationship with the regulator. They must provide timely and relevant information to the regulator, including on significant events that relate to current or future non-compliance with the economic standards. If providers fail to do this, the regulator will regard that failure as a relevant factor in its opinion of the governance of the organisation.
- 4.16 The regulator will require data from providers to enable it to regulate the economic standards, whilst minimising the administrative burden placed on providers. In future, the regulator will not ask routinely for performance information on the consumer standards as it will not monitor compliance with these standards²³. However, providers should provide information to tenants to enable them to scrutinise performance, in line with requirements in the Tenant Involvement and Empowerment standard, which includes the publication of an annual report. The Value for Money standard also requires providers to publish information for their stakeholders. Whilst this information should not breach commercial confidentiality, it should be sufficient to allow tenants to form a view of the performance of the organisation.
- 4.17 To further minimise the burdens of data collection from 1 April 2012, it is the intention to collect all financial and statistical data from private providers through one consolidated administrative return, NROSH+. The details of data requirements were consulted on during summer 2011 and the regulator's response is now available from the TSA website:
(www.tenantservicesauthority.org)

²³ Also, the regulator will no longer issue guidance on or collect an annual report by providers about performance against the consumer standards, as this power has been repealed by the Localism Act (Sections 204 and 205 of the Housing and Regeneration Act 2008 as amended by the Localism Act 2011).

4.18 The requirements comprise:

- financial data to support the regulator's routine assessments of viability and enable it to prioritise and focus work on key areas of financial risk, and
- data and information to help the regulator understand the context and the environment in which providers operate, for example: the type of homes owned by providers, how these are managed and stock movement into and out of the sector

4.19 The form determined by the regulator in respect of its data requirements (as referred to in the revised Governance and Financial Viability standard) currently²⁴ includes:

- Financial forecast returns for larger providers (those with 1,000 or more homes)
- Annual account returns for larger providers
- Quarterly financial risk survey for larger providers, which focus on key areas of financial and economic risk
- Annual report on net losses from fraudulent activity
- Annual return about providers' social housing and its use (for all providers but with a very limited data requirement for the smallest providers)
- Annual return setting out (limited) organisational and administrative detail

4.20 These returns will be supplemented by the regulator's review of larger providers' business plan (or similar) and associated documents to enable it to understand the organisation's business strategy and context.

Regulating financial viability, governance and value for money

4.21 The regulator will carry out annual engagement with larger providers to enable it to achieve a minimum level of assurance that economic standards are being met, and to make public judgements on governance and financial viability.

4.22 Information available to the regulator will be considered in the round to build an overall assessment of compliance with these standards. For example:

- the regulator's conclusion on viability must include an opinion on the ability of management to deliver the underlying assumptions in the business plan
- the ability of a board to manage the risks to its viability is a good indicator (amongst others) of the quality of governance
- the ability of a provider to demonstrate its compliance with the Value for Money standard provides strong evidence on the quality of governance arrangements and helps demonstrate how its viability will be ensured for the longer term

²⁴ The regulator will notify providers from time to time if there are changes.

- 4.23 The starting point for the regulator's overall assessment of providers is the financial position. The regulator's financial analysis team carries out a comprehensive annual programme of viability reviews for all providers over 1000 units²⁵ to assess financial viability. Prioritisation within the programme, and the depth of analysis for individual providers, is determined according to risk. This review is based upon:
- financial returns submitted to the regulator
 - the business plan (and other relevant documents) for the organisation, and
 - the regulator's existing knowledge and discussions with key staff at the provider
- 4.24 The regulator's consideration of the quality of governance takes into account a range of factors including the effectiveness of the provider's financial management and its ability to deliver business plan assumptions successfully and manage the risks to delivery. Annual engagement with providers will also examine the assurance obtained by boards and the level of probity and control.
- 4.25 The provider's ability to drive value for money across its operations and asset base will also be taken into account by the regulator as a key indicator of the quality of governance. In its consideration of a provider's approach to VFM, the regulator will review how boards assure themselves that they are delivering value for money in an appropriate manner for their business. The regulator will reflect the level of its assurance on boards' engagement with the Value for Money standard in its governance judgements, where appropriate.
- 4.26 Where routine engagement gives cause for concern or new adverse information comes to light, regulators would expect to have further contact with the provider to enable resolution of the issues identified. This further contact could include the regular receipt of additional monitoring information (including financial information) to allow the regulator to assess how well the presenting issue has been addressed. Similarly, there may be implications for the regulator's view of private providers' governance arising from reactive work on referrals relating to consumer standards.
- 4.27 Whilst the regulator will look to the provider to address concerns, the regulator will take a view on the materiality of issues arising and reserve the right to use its full range of statutory powers as appropriate to address a presenting issue, where the provider may be unable or unwilling to do so.

Publishing regulatory assessments

- 4.28 The regulator is committed to being transparent in its approach by publishing assessments of providers' performance on the economic standards. This will help inform lenders, tenants and other stakeholders, drive up performance of

²⁵ For some low risk associations with over 1,000 units, a financial health check will be conducted rather than a viability review.

individual providers and provide assurance on the regulator's global perspective of the sector.

- 4.29 The regulator will continue to publish graded assessments in relation to viability and governance as these are key areas where lenders, boards and others value assessments. The regulatory judgment will also comment on the assurance obtained with regard to the Value for Money standard.

Requirements for smaller private providers (that own and manage fewer than 1,000 homes)

- 4.30 All the standards apply to small providers. In general, smaller providers should expect to have little regulatory engagement. The regulatory arrangements for smaller providers include review by the regulator of:
- annual accounts audited or reviewed by an independent accountant, if appropriate
 - auditor's management letter (not required if accounts are independently reviewed)
 - a shortened regulatory return
- 4.31 Regulatory judgements are not published for smaller providers. Direct regulatory engagement is by exception and usually only in response to specific problems. Ongoing development plans that would see providers owning in the near future more than 1,000 properties may mean that those providers are subject to increased reporting requirements.

Consultation question 9:

Does the proposed approach to regulating the economic standards seem reasonable, taking into account the regulator's statutory objectives and future duty to minimise interference?

5. Regulating the consumer standards

- 5.1 The recommendations of the Government's review and the provisions in the Localism Act lead to significant changes to the regulator's role in, and its approach to, regulating the consumer standards. The review recommended a localist approach to the resolution of service delivery problems, and an enhanced role in the complaints process for designated tenant panels, MPs and elected councillors. Further information about what the changes mean for users of these local mechanisms will be provided by DCLG²⁶. The regulator's responsibilities are limited to setting standards and intervening when there is, or is a risk of, serious harm to tenants (the 'serious detriment' test).
- 5.2 The regulator will set clear service standards on:
- a. Tenant Involvement and Empowerment
 - b. Home
 - c. Tenancy
 - d. Neighbourhood and Community
- 5.3 The regulator has no role in monitoring providers' performance or compliance with consumer standards. Boards and councillors that govern providers' services are responsible for ensuring that their organisation meets the consumer standards. Performance issues should be resolved by providers through local routes to resolution and without reference to the regulator. Consequently, any action by the regulator will be reactive in nature in response to referrals or other information received. The regulator's regulatory and enforcement powers will only be used where it is necessary to address failures against these standards that give rise to actual or potential serious detriment to tenants (or potential tenants). The regulator's judgement about the need for further intervention will be based on the approach to intervention and enforcement set out in chapter six of this consultation document and in guidance notes on the use of powers in Annex F.
- 5.4 The proposals in this chapter will fundamentally change the current regulatory framework in order to reflect the serious detriment test in the Localism Act. This chapter describes the regulator's proposed approach to regulating the section 193 standards, and comprises the regulator's proposed guidance on the submission of information to it about the performance of registered providers, as is required by section 215(1)(a) of the 2008 Act as amended by the Localism Act.

The serious detriment test

- 5.5 The serious detriment test - the regulator's assessment of whether there are reasonable grounds to suspect there has been or there is a risk of serious harm to tenants - is derived from the new threshold for intervention in relation to the consumer standards introduced in the Localism Act, when commenced. This threshold is significantly higher, and in addition to, the threshold for the regulator's intervention in relation to economic standards

²⁶ 'Implementing social housing reform: Directions to the social housing regulator – summary of responses' published by DCLG in November 2011, available from their website.

(explained in chapter six of this consultation document). The threshold at which the regulator may consider whether to intervene on consumer standards is when there is risk of, or actual, serious harm to tenants. Failure to meet one or more of the consumer standards will not, therefore, in itself lead directly to a judgement of serious detriment by the regulator.

- 5.6 It is not feasible or desirable for the regulator to attempt to produce a prescriptive list of issues that would constitute a definition of serious detriment. This would inevitably fail to cover all current or potential eventualities and would need frequent updating to reflect changes in the policy and operational environment of providers. In addition, the same issue might have very different implications in different circumstances, leading to the risk of a disproportionate regulatory response. The regulator will judge whether actual or potential serious detriment exists depending on the circumstances of each case based on an evaluation of the harm or potential harm to tenants.

Referrals on serious detriment: what the regulator will and won't consider

- 5.7 The regulator's initial role is to assess whether there are reasonable grounds to suspect there has been or is a risk of serious detriment to tenants. The regulator will not proactively monitor compliance with consumer standards. The main sources of intelligence about potential cases of serious detriment will be information provided by third parties. The Localism Act introduces the concept of external referrals to the regulator. In considering whether to use its powers in relation to consumer standards, the regulator is obliged to have regard to information received from a number of authorities, representative bodies and individuals that are specified in the legislation. These include the housing ombudsman, recognised tenant panels, MPs, local authority councillors, the Health and Safety Executive or a fire and rescue authority.
- 5.8 Additionally, the regulator may also consider relevant information it receives directly, for example through whistleblowing or during the course of routine regulatory activity in connection with its economic regulation remit. Such information will be assessed in the same way as information received through the statutory referral routes.
- 5.9 The regulator does not have a statutory mandate to deal with individual complainants and cannot mediate in disputes between landlords and tenants. The regulator has no locus in the contractual relationship between a provider and its employees and cannot become involved in disputes between them or in any other contractual disputes.
- 5.10 Providers have principal responsibility for dealing with, and being accountable for, complaints about their service, and the Tenant Involvement and Empowerment standard requires that they have clear and effective mechanisms for responding to tenant complaints. A tenant with a complaint against their landlord should raise it with their landlord in the first instance

and, should the complaint remain unresolved consider contacting the relevant Ombudsman via the route(s) available at that time.²⁷

- 5.11 The authorities to whom the regulator must have regard in assessing whether to exercise its powers in relation to consumer matters include parties who may be or could become involved in local complaints resolution processes. Where the regulator receives a referral from one of these specified authorities (or any other party), the regulator's role will not be to seek redress for an individual complainant. Rather, the regulator will assess whether, in its judgement, the serious detriment test has been met in accordance with the approach set out below.
- 5.12 Although the regulator will not become involved in the resolution of individual complaints, it does not exclude the possibility that assessments of serious detriment might originally stem from an individual tenant complaint which indicated a more far-reaching problem causing harm or potential harm to tenants.
- 5.13 Information can be referred to the regulator in a number of ways:
- Telephoning 0845 230 7000 to speak to the regulator's Referrals and Regulatory Enquiries Team
 - Writing to:
Referrals and Regulatory Enquiries Team
The Social Housing Regulator
Fourth Floor
One Piccadilly Gardens
Manchester
M1 1RG
 - Emailing: enquiries@tsa.gsi.gov.uk

Assessing serious detriment

- 5.14 The proposed approach is to assess serious detriment based on the regulator's opinion of the actual or potential impact on tenants, irrespective of the nature of the issue that gives rise to the concern. This is in effect a test based around an assessment of the degree of harm or potential harm that may be caused to tenants by a breach of standards. In broad terms there are two tests in the assessment: the first is whether the regulator has reasonable grounds to suspect there is a failure that has led to serious detriment; and the second is whether there is an identified risk of failure that would lead to serious detriment.
- 5.15 In assessing whether there could be serious detriment, or reasonable grounds to suspect this may be the case, the regulator will consider four questions. They are:

²⁷ The Localism Act changes the Ombudsman arrangements relevant to social housing. When brought into force these provisions will mean that the Housing Ombudsman's jurisdiction is expanded to include complaints about local authority landlords. There will then be a single Ombudsman for social housing. Arrangements for accessing this Ombudsman are set out in the Localism Act. Until the single housing Ombudsman provisions are brought into force, council tenants must continue to refer complaints to the Local Government Ombudsman, and tenants of other registered providers to the Housing Ombudsman.

- Does the issue raised relate to a matter within the regulator's remit?
- If the issue raised were true, is it likely that there has been, or might be, a breach of a consumer standard?
- If the issues raised were true would there be any impact on tenants which would cause actual harm or potential harm?
- If the issues raised are true is the actual harm or potential harm likely to be serious?

5.16 If the regulator is satisfied that there could be serious detriment, it will then seek to determine whether this is the case through examining the evidence and the nature and extent of the impact or potential impact on tenants. The regulator's consideration is likely to include, but not be limited to the following questions:

- Is there reason to believe or evidence that a tenant or group of tenants is at risk of imminent harm?
- If the issue raises a risk of serious detriment, how big is the risk and how do we measure it?
- What is the quality of the evidence?
- How recently did the incident complained of occur?
- Is the presenting issue the only problem or could other standards be breached?
- Could there be indications of systemic failure against the standards?
- Has the issue complained of happened before, and is the regulator aware of a pattern?
- Are there indications that the provider may not be meeting the needs of vulnerable tenants which might lead to serious harm?
- Is there evidence that the provider is operating in a discriminatory way?

5.17 Irrespective of from where and how information is received, the regulator is ultimately responsible and accountable for the decisions it takes. Therefore, the regulator retains the right to conduct, or agree that the provider commissions, appropriate investigations in order to determine whether there is evidence of a breach of standard and serious detriment.

Intervention and enforcement in cases of serious detriment

5.18 The regulator's consideration of these questions will inform its regulatory response. In some cases, the regulator may need to intervene directly to address the problem(s) identified. The regulator's approach to intervention and enforcement and the specific implications in relation to the threshold for serious detriment are set out in chapter six of this consultation document. The regulator's approach to the use of its regulatory, enforcement and general powers is set out in separate guidance notes in Annex F of this consultation.

5.19 Where the regulator believes the serious detriment threshold has been crossed in relation to consumer standards, or may be crossed if effective remedial action is not taken, for private registered providers the regulator will also assess the implications of the issue against the economic standards (particularly the governance element of the Governance and Financial Viability

standard) in accordance with its published approach. The regulator will implement a strategy for investigating the issues, determining what assurances on governance may be required of the provider's board, and whether any further regulatory action is required.

- 5.20 In the case of a serious detriment problem being identified in a local authority housing service the regulator may still use relevant powers. The economic standards do not apply to local authorities. Where investigation of a case of serious detriment raises concerns about governance issues, as well as taking any necessary action to deal with the presenting serious detriment problem, it may also be necessary for the regulator to refer concerns about governance to the authority's monitoring officer and others where relevant, such as its auditors, chief executive and lead councillor, and DCLG.
- 5.21 It is possible that other agencies or regulators will have responsibility for dealing with the presenting issue. The (social housing) regulator may refer the issue directly to the relevant authority if this has not already been done. However, in such cases the regulator may also act in anticipation of, or at the same time as, other agencies, with particular reference to implications for the provider's governance that may arise from the problem.
- 5.22 The regulator will give reasons for its decisions to intervene or investigate, or for not taking any action. Where a referral does not meet the criteria for serious detriment, the regulator will advise the referring party of the appropriate route to take. If the referral appears to the regulator to be a misdirected complaint, it will advise the referring party of the options that should be available to them. If the referring party has explored this route but without a response, the regulator will signpost them to agencies that may be able to provide appropriate advice.
- 5.23 As with the regulator's existing procedures, for those cases that the regulator decides to follow up, it will give the referring party an indication of its anticipated timetable. The regulator will, in general terms, keep the referring party informed of the action that is being taken and the outcomes.
- 5.24 Where the regulator makes a finding of serious detriment it will publish its decision.

Examples of potential serious detriment

An actual or potential failure against the consumer standards will be assessed in relation to the regulator's opinion of the impact, or risk of impact, on the tenants of a registered provider in order to determine whether it constitutes serious detriment.

In reaching this assessment, the regulator will require evidence of harm in particular, but not exclusively, in relation to:

- health and safety
- loss of home
- unlawful discrimination
- loss of legal rights

- financial loss

What follows is an illustration of how the impact of these issues might be reflected under each of the consumer standards. This is not intended to be an exhaustive list of issues, for the reasons set out above, but illustrative examples of the threshold tests that the regulator might apply. Ultimately, this will be a matter of judgement by the regulator, based on the evidence available and its published approach. It is also possible that problems under one consumer standard may result in problems under one or more of the other standards, indicating a systemic failure, and thus increasing the likelihood of regulatory intervention.

Tenant Involvement and Empowerment standard

- failure to consult tenants on a substantial variation to how services are provided, which has a material detrimental impact on, for example, the condition of their homes, or the terms and the security of their tenancies
- failure to operate an effective complaints or scrutiny system, which results in the risks of harm noted above not being addressed

Home standard

- provision and maintenance of accommodation, or failure to meet statutory requirements, that endangers the health and safety of tenants. This would include such issues as fire safety, asbestos, gas servicing, electrical testing and legionella
- failure to provide an effective emergency repairs service which places the health and safety of tenants at risk

Tenancy standard

- discrimination in the allocation of tenancies resulting in the unlawful denial of the rights of groups of tenants or potential tenants
- breach of tenancy terms resulting in actual or potential loss of home or an unlawful denial of rights

Neighbourhood and Community standard

- failure to deal effectively with anti social behaviour affecting a large proportion of tenants in a locality, or which could lead to the death of, or serious harm to the physical or mental health of an individual tenant
- failure to manage the clearance and regeneration of an estate to the extent that the security of remaining tenants is at risk, or the condition of their housing places their health and safety at risk

Consultation question 10:

Does the proposed approach to regulating the consumer standards seem reasonable, taking into account the regulator's future statutory duty to minimise interference and the serious detriment test introduced in the Localism Act?

6. Intervention and enforcement

- 6.1 The regulator expects providers to identify problems and take effective action to resolve them. If a provider takes responsibility for self-improvement and the regulator concludes that the provider has the capacity and capability to respond to the problems, the regulator will work with the provider to achieve the necessary corrective actions. However, in circumstances where self-improvement has not succeeded, or where a provider is unable or unwilling to respond positively, or where the regulator concludes that such an approach is not appropriate, for example where urgent action is necessary or there is an immediate and significant risk of serious detriment to a provider's tenants in relation to consumer matters, the regulator may need to consider the use of its regulatory, enforcement and general powers.

Guidance on use of powers

- 6.2 This section sets out the regulator's general approach to intervention and enforcement and presents the high level objectives and principles that underpin its approach to dealing with poor performance.
- 6.3 In March 2010 and June 2011, following statutory consultations, the regulator published guidance on the use of the regulatory powers in chapter six, the enforcement powers in chapter seven and the general powers in the 2008 Act. Some guidance needs to be updated as a result of the Localism Act, as shown in Annex F of this consultation. Each guidance note sets out the scope of the power, its applicability in relation to different types of provider, the circumstances in which the power might be exercised and potential triggers to its use. Each guidance note should be read in conjunction with the general approach set out in this section.

Approach to use of powers

- 6.4 The Localism Act sets out the regulator's economic regulation objectives and consumer regulation objectives. The standards are now classified as either standards relating to economic matters or standards relating to consumer matters.
- 6.5 The thresholds set for the use of regulatory and enforcement powers under the economic standards are unchanged as the regulator can exercise those powers where it suspects or has evidence of a failure against a standard or where the provider has mismanaged its affairs. Additionally, the regulator may exercise a regulatory power where there is a risk that if no action is taken by a private provider or the regulator, the provider will fail to meet a standard.
- 6.6 The threshold for intervention by the regulator is made significantly higher in relation to consumer standards by the introduction of the serious detriment test. Failure to meet one or more of the consumer standards will not in itself lead directly to a judgment of serious detriment by the regulator. However, the regulator may consider whether evidence of failures on consumer standards calls into question a provider's capacity to meet the governance requirements of the economic standards.

- 6.7 The regulator's approach to use of powers is underpinned by five key components: the economic regulation objectives, the consumer regulation objectives, the statutory duty to minimise interference, the standards and any specific requirements set out in the 2008 Act as modified by the Localism Act.
- 6.8 The regulator may consider the use of its regulatory powers to investigate where it suspects there may have been a failure to meet the economic standards or that the affairs of a provider have been mismanaged. Where there is a potential failure in relation to consumer standards, the regulator may seek information in order to inform the serious detriment test. It may be necessary to investigate where:
- there are reasonable grounds to suspect that the failure has resulted in serious detriment to the provider's tenants or potential tenants, or
 - there is a significant risk that a serious detriment will result if no action is taken by the regulator, or
 - there is a risk that if no action is taken by the provider or the regulator, the provider will fail to meet a consumer standard
- 6.9 When such investigations have been completed, the regulator will consider whether further action is necessary and, if it is, what action is most appropriate to the particular circumstances of the case. This may include the use of enforcement powers.
- 6.10 The regulator is not required to use its regulatory powers before exercising its enforcement powers. However, the regulator's general approach will be to apply the most appropriate and least intrusive power available taking into account proportionality, the statutory duty to minimise interference and the seriousness of the issue under consideration.
- 6.11 The regulator will keep the use of its powers under regular review, and may decide to exercise them if the circumstances of the case make it necessary to do so. The regulator may use its powers either singly or in combination depending on the circumstances and issues of the case.

Principles underpinning the approach: what providers can expect

- 6.12 Providers can expect the regulator to apply the following principles in relation to intervention and enforcement. The regulator:
- may consider any proposals for self-improvement made by the provider before using its powers, but in cases where this is either not appropriate, for example, where it is necessary to protect tenants from immediate harm or to protect public funds, or has not been successful, the regulator will consider how best to address the issue
 - may adopt a graduated approach to the use of enforcement powers, but given the high threshold for intervention in relation to consumer standards, the materiality of the problem may mean the regulator cannot do so. In these circumstances, the regulator will aim to use the least intrusive powers that are appropriate, but the provider is likely to be subject to one or more enforcement powers with little or no advance warning

- will have regard to the economic regulation and consumer regulation 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
- will be proportionate and consistent in making judgements, accountable for its actions, and transparent in relationships with the provider, its tenants and other stakeholders, but there may be occasions where the circumstances of the case will limit how transparent the regulator can be with third parties
- will explain the grounds and give reasons for taking action, and will usually give notice of any action - in some cases this is a requirement of the 2008 Act - unless to do so would undermine the regulator's ability to act
- will assess the most appropriate course of action taking account of the particular circumstances of the provider, the level of risk and the potential impact associated with the provider, tailor the regulatory engagement accordingly and always take action which is commensurate with the materiality of the breach or failure
- will give careful consideration to any remedial strategies proposed by the provider, including any relevant voluntary undertakings, and seek to agree the way forward with the provider when it is prepared to resolve the presenting issues and the regulator concludes that it has the capacity, the capability and all the resources necessary to do so
- will take account of any significant changes in circumstances and adapt the approach accordingly

6.13 The regulator 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 it is necessary and expedient to do so, the regulator may adjust the intensity of its engagement with a provider, or exercise one or more of its 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 the regulator will engage with providers

6.14 The regulator wants to be transparent in its relationship with a provider when considering the use of powers. The use of some powers requires the regulator to follow detailed procedures which are specified in the 2008 Act and set out in the relevant guidance notes. While the regulator will always follow the procedures established in the 2008 Act, its approach must have regard to the circumstances of the case, particularly where the regulator concludes that urgent or immediate action is necessary and it has to use its powers with little or no notice. As far as practicable, the regulator will apply the following principles when considering the use of powers. The regulator:

- will have dialogue with the provider before, during and following the process in accordance with the regulator's usual approach to regulatory engagement in order to protect tenants, social housing assets and public funding. This includes informing a provider when the

regulator is minded to use a power, explaining the issues and concerns and giving the provider an opportunity to respond

- will give notice to a provider when proposing to use a power. The regulator will explain the power and the issues or concerns that have led to the possibility of using it
- will invite the provider to make representations in response to the notice within a reasonable timescale, and to give the regulator any information or comments, including any relevant voluntary undertaking, it thinks might help make the decision about whether or not to use the power
- 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 the regulator intends to take
- will notify the provider of the decision and give reasons for making it
- will inform providers about the protocol that the regulator has developed that allows a provider to appeal against decisions on the use of some of our powers. Additionally, the guidance notes set out details of those powers where statutory appeals processes are specified in the 2008 Act

Factors that may lead to the use of powers

6.15 In broad terms, any decision will be based on:

- the seriousness of the failure or problem identified, including harm or potential harm to tenants
- 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 regulator in relation to action it is taking or will take to resolve the issue. The regulator 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 the regulator's regulatory engagement with the provider

6.16 In order to bring about improvements, the regulator may propose an action plan setting out the key corrective actions it requires the provider to take and the milestones and timetable in which they should be achieved. In such circumstances, the regulator will work with the provider to agree how best to implement the plan and will carefully consider any remedial plan submitted by the provider, including any voluntary undertaking it offers. When the regulator is satisfied that the key corrective actions have been completed it will notify the provider. Given the high threshold for intervention in relation to the consumer standards, the materiality of the problem is likely to provide grounds for the regulator not to follow a self-improvement approach.

6.17 The regulator's aims will always be underpinned by its economic regulation and consumer regulation objectives and the standards. The regulator's

specific objectives may vary from case to case or change during the course of a case, but broadly speaking it would want to:

- address and resolve the presenting problems and any related or contributory problems
- maintain the financial viability of private providers and require the provider to meet acceptable standards of organisational effectiveness
- 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 interests of tenants
- 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 regulatory, enforcement or general powers, particularly in relation to governance issues
- where necessary, co-ordinate the approach with other regulatory bodies

Checks and balances on the use of our powers

6.18 There are a number of checks and balances which must be applied to the use of powers.

Duty to minimise interference

6.19 The regulator has a duty under the 2008 Act as amended by the Localism Act to exercise its functions in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable. These requirements overlay how the regulator carries out all its functions.

Regulators' Compliance Code

6.20 The regulator must also comply with the Regulators' Compliance Code²⁸. The code does not apply to the exercise by a regulator of any specific regulatory function in individual cases.

Consideration before exercising a power

6.19 The regulator must consider some specific matters before exercising a power. They are, in relation to all enforcement powers in chapter seven of the 2008 Act:

- the desirability of a provider being free to choose how to provide services and conduct business
- the speed with which the failure or other problem needs to be addressed

²⁸ By virtue of the Legislative and Regulatory Reform (Regulatory functions) (Amendment) Order 2009.

and, in relation to all regulatory powers in chapter six of the 2008 Act and in relation to some specific enforcement powers in chapter seven of the 2008 Act:

- whether the failure or other problem is serious or trivial
- whether the failure or other problem is a recurrent or isolated incident

Details are set out in the relevant guidance notes on the use of each power.

Voluntary undertakings

- 6.20 A provider can give the regulator a voluntary undertaking in respect of any matter concerning social housing²⁹. The circumstances in which such a voluntary undertaking can be given are widely drawn. For example, a provider may offer a voluntary undertaking whilst subject to regulatory, enforcement or general powers. In exercising some powers, the regulator must have regard to any voluntary undertaking offered or given by a provider.
- 6.21 The regulator may take into account whether a sufficient voluntary undertaking has been offered and honoured. In considering a voluntary undertaking, the regulator will:
- assess whether or not the terms of a voluntary undertaking are satisfactory, giving reasons for the decision
 - monitor the provider's progress towards meeting its voluntary undertaking and assess whether the provider has honoured the voluntary undertaking, giving reasons for the decision
- 6.22 Although giving a voluntary undertaking will always be a matter for the provider, the regulator will respond in the event a provider asks whether a voluntary undertaking would address matters that have necessitated enhanced scrutiny by the regulator.
- 6.23 While the regulator must have regard to any voluntary 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 the regulator considers that the voluntary undertaking is unsatisfactory or insufficient to resolve the problems or where urgent or immediate action is necessary.

Consultation question 11:

Do the proposed principles underpinning the use of the regulator's intervention and enforcement powers, and the associated guidance notes for each power (in Annex F of this consultation document) seem reasonable?

²⁹ Section 125 of the 2008 Act.

7. Registration and deregistration

- 7.1 This section outlines the proposed registration and deregistration arrangements from 1 April 2012. It is largely unchanged from the 2010 regulatory framework, except in respect of the regulator's registration criteria.
- 7.2 The Localism Act does not amend the 2008 Act in respect of registration and deregistration. However, the regulator has discretion over the registration criteria it may set. The April 2010 criteria refer to the regulator assessing an applicant's plans for bringing about compliance with one of the consumer standards, and regularly reviewing progress after registration. This approach is no longer consistent with the regulator's revised role in consumer protection matters. The revised registration criteria are proposed in paragraphs 7.14-7.18 and Figure 2 below.
- 7.3 The registration arrangements apply to non local authority applicants only, since local authority providers are registered without the need to apply³⁰.

The eligibility criteria and conditions for new entrants

- 7.4 Applicants eligible for registration will need to meet registration conditions that reflect the 2008 Act. The regulator, consistent with its fundamental objectives, wants to encourage increasing numbers of providers to register to support an increased supply of social housing and to provide greater choice to tenants.

Eligibility criteria

- 7.5 Applicants must:
- **be English bodies**
 - **be, or intend to be, providers of social housing in England**
 - **satisfy the criteria established by the regulator**
- 7.6 To be an English body, applicants do not have to be any particular type or status and could, for example, be a partnership. However, the regulator requires that an applicant has a legal presence in England. This enables the regulator to exercise any necessary statutory functions and similarly provides tenants with the legal presence they will require. 'Social housing' means low-cost rental or low-cost home ownership as defined in sections 68 to 77 of the 2008 Act; the meaning of 'provider' is defined in section 80 of the Act.
- 7.7 In considering an application from an intending provider, the regulator requires a strongly evidenced business plan that clearly sets out the plan for market entry (including any organisational changes) and demonstrates how funding or land ownership will be secured to put the plan into action. Evidence either of existing homes or land, or of financial provision for buying or developing homes, provides assurance of the intent to provide social housing. This is likely to be evidence of land ownership and planning

³⁰ Any local authority that becomes a provider of social housing and is not already registered must notify the regulator of this change in its position.

permissions or loan or other financing arrangements. Once the regulator is satisfied of the applicant's intent, the applicant will be assessed in accordance with the registration criteria established.

- 7.8 A pragmatic approach will be taken to assessing the 'intention to provide', setting a timeframe to review the intending provider's position based on the applicant's business plan. At the point of review, if there appears to be no prospect of the business plan coming to fruition the regulator will discuss deregistration with the registered provider. This discussion may result in either continuing consideration of the registered provider as an intending provider, or the regulator's decision that deregistration is appropriate as the registered provider is no longer eligible for registration.
- 7.9 For all existing providers (RSLs) that automatically transferred to the register on 1 April 2010, transitional provisions³¹ put in place by the Government mean 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 housing provider subsidiary).
- 7.10 For new applicants the requirement in the 2008 Act is that a registered provider must be a 'landlord'. Since April 2010, applications for registration are considered from organisations including:
- subsidiary organisations of both non-profit and profit-making organisations where the parent is not eligible for registration, and
 - profit-making providers where the regulator needs to consider the practical effect of the requirement in Section 194(2) of the 2008 Act that allows standards to be set under this section only so far as they relate to the provision of social housing
- 7.11 Where an application for registration is made, including one from an applicant falling into either of these circumstances, the regulator expects to be satisfied that the applicant can demonstrate its structure and governance arrangements afford effective and enduring regulatory assurance. This may involve agreeing with the regulator appropriate ring-fencing agreements, which have been used in other sectors where the regulator regulates a subsidiary or part of an entity. Such an applicant will not be registered unless the regulator receives this assurance. The regulator's requirements are set out in the Governance and Financial Viability standard (1.4) and are not therefore duplicated in the registration criteria.
- 7.12 The 2008 Act provides for the registration of landlords of social housing. An ALMO or TMO that is not a landlord but a property manager does not meet the eligibility conditions in the Act and so is not capable of registration. However, ALMOs and TMOs that are themselves landlords are eligible for registration, although there is no requirement for them to register unless it is a condition of funding agreements with the HCA or the Greater London

³¹ Transitional arrangements in secondary legislation that supported the introduction of the 2008 Act in April 2010.

Authority (GLA) and they wish to remain as landlord of the property. Unlike for a local authority, if an ALMO or TMO is registered they are subject to the full range of economic and consumer regulatory standards in relation to the social housing that they own.

Legislative basis

- 7.13 Once the regulator is satisfied that an applicant is eligible for registration, the applicant will be assessed against any registration criteria set by the regulator. The regulator **must** register any applicant that is eligible and meets our registration criteria.
- 7.14 The regulator's registration criteria are based on:
- an applicant's financial situation
 - its constitution
 - other arrangements for its management

Registration Criteria

- 7.15 Financial viability is an absolute requirement. The regulator expects 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. An applicant will not be registered if it is unable to satisfy the regulator of this.
- 7.16 The regulator will assess applicants against the governance requirements, but will not always expect compliance with this standard at the point of registration, accepting a reasonable path to compliance that will be subject to regular review.
- 7.17 The governance assessment will also take into account the management arrangements in place within an applicant's organisation, to see whether these provide a reasonable indication of capacity to achieve compliance with the other regulatory standards. The registration process will not directly assess compliance with these other standards.
- 7.18 In judging what is a 'reasonable path', the regulator will 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. Following registration, a registered provider will be subject to the regulatory approach published in the regulatory framework.
- 7.19 Non-profit making organisations are required to have within their objects:
- the provision of social housing
 - not-for-profit status
 - non-distribution of assets to members
- 7.20 There are no requirements in the registration criteria about the objects of profit-making organisations as the regulator has no subsequent oversight of changes to these objects.

- 7.21 Other than on an organisation's objects, the registration criteria are the same for both non-profit and profit-making applicants. This is because the standards are the same for all private registered providers.
- 7.22 Figure 2 sets out a summary of the registration criteria. The registration criteria can be reviewed and, following consultation, adjusted at any time. We plan to do this periodically.

Figure 2 The Registration Criteria

- An applicant must meet the financial viability requirements within the Governance and Financial Viability standard at the point of registration and demonstrate it can sustain this on an ongoing basis
- An applicant must meet, or demonstrate a reasonable path to meeting, the governance requirements of the Governance and Financial Viability standard
- An applicant must have in place management arrangements that enable it to demonstrate the capacity to meet the other regulatory 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

Registration process

- 7.23 The registration process will be influenced by a number of objectives including:
- 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, the regulator's assessment against the criteria will 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 Governance and Financial Viability standard will take account of the wider organisation within which these properties rest
 - where an organisation seeking grant funding from the HCA or GLA indicates that it expects to retain ownership of the property when it is let, the regulator maintains close liaison with the relevant investment team during the registration process
 - in the event of the creation of a new organisation out of an existing registered provider, perhaps as a result of a merger, the regulator takes a proportionate approach having regard to the knowledge it has of the relevant registered provider(s).

Deregistration criteria

- 7.24 There are a limited number of defined circumstances set out in the 2008 Act that may lead to the compulsory deregistration by the regulator of a registered provider (e.g. they have ceased to exist).
- 7.25 A registered provider can 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 (such as, for example, the Charity Commission)
 - meets any relevant criteria for deregistration set by the regulator
- 7.26 In considering an application for voluntary deregistration, the regulator considers the following relevant criteria:
- the arrangements to ensure the continued protection of tenants
 - the arrangements to ensure there is no misuse of public funds
- 7.27 In looking at the continued protection of tenants, the regulator:
- expects the registered provider to demonstrate ongoing financial viability
 - expects the registered provider to be achieving a satisfactory level of performance
 - takes 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)
 - takes into account any representations made by tenants and any local authority in whose area the registered provider lets housing
 - takes into account the nature and scale of the social housing provision of a registered provider
- 7.28 In considering arrangements for guarding against the misuse of public funds, the regulator considers 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 are still subject to regulator consent rules for disposals unless the regulator has already directed that any specified dwelling should cease to be social housing. The regulator does not expect the power to 'declassify' social housing to be widely used. Deregistered providers are also subject to any conditions attached to the public funding imposed by the HCA (or the predecessor body, the Housing Corporation).
- 7.29 Deregistered providers can apply again for registration at any time.

The register

- 7.30 The regulator must maintain a register of providers of social housing, available for public inspection, that shows whether an organisation is profit-

making or not. Some of the regulator's 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 are designated as non-profit making. For other organisations registering after April 2010, the 2008 Act requires the regulator 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

7.31 If a new registered provider does not meet these requirements in the regulator's assessment then it will be designated profit making.

7.32 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 the regulator sets out how it will decide what is "connected with or incidental to the provision of housing". Permissible purposes were established prior to 1 April 2010 under Section 2(4) of the Housing Act 1996 and subsequent statutory instruments. The regulator proposes to have regard to the list of permissible purposes but will clarify over time the purposes it considers are connected with or incidental to the provision of housing.

Fees

7.33 The 2008 Act makes provision for the regulator to charge fees to providers for initial registration and/or continued registration. There are no plans to introduce fees in April 2012.

Consultation question 12:

Does the proposed approach to registration and deregistration seem reasonable?

Annex A – Summary of consultation questions

| Consultation questions | |
|-------------------------------|--|
| 1: | Are these the right principles, in the context of changes brought about by the Localism Act? |
| 2: | <p>Does the revised Governance and Financial Viability standard:</p> <ul style="list-style-type: none"> • Effectively take into account amendments required by the Localism Act? • Give providers sufficient flexibility to run their businesses? • Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |
| 3: | <p>Does the revised Value for Money standard:</p> <ul style="list-style-type: none"> • Effectively take into account amendments required by the Localism Act? • Give providers sufficient flexibility to run their businesses? • Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |
| 4: | <p>Does the revised Rent standard (and associated Rent Standard Guidance in Annex E of this consultation document):</p> <ul style="list-style-type: none"> • Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act? • Give providers sufficient flexibility to run their businesses? • Enable the regulator to provide adequate protection to taxpayers' interests, and to maintain the confidence of lenders and stakeholders in the regulator's economic role? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |
| 5: | <p>Does the revised Tenant Involvement and Empowerment standard:</p> <ul style="list-style-type: none"> • Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |

| | |
|-----|--|
| 6: | <p>Does the revised Home standard:</p> <ul style="list-style-type: none"> • Effectively take into account the Government’s direction to the regulator and amendments required by the Localism Act? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |
| 7: | <p>Does the revised Tenancy standard:</p> <ul style="list-style-type: none"> • Effectively take into account the Government’s intended direction to the regulator and amendments required by the Localism Act? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |
| 8: | <p>Does the revised Neighbourhood and community standard:</p> <ul style="list-style-type: none"> • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? |
| 9: | <p>Does the proposed approach to regulating the economic standards seem reasonable, taking into account the regulator’s statutory objectives and future duty to minimise interference?</p> |
| 10: | <p>Does the proposed approach to regulating the consumer standards seem reasonable, taking into account the regulator’s future statutory duty to minimise interference and the serious detriment test introduced in the Localism Act?</p> |
| 11: | <p>Do the proposed principles underpinning the use of the regulator’s intervention and enforcement powers, and the associated guidance notes for each power (in Annex F of this consultation document) seem reasonable?</p> |
| 12: | <p>Does the proposed approach to registration and deregistration seem reasonable?</p> |

Annex B: List of statutory consultees and members of TSA's Sounding Board and Advisory Panels

Statutory consultees

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

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

In addition, in anticipation of commencement of amendments in the Localism Act:

- Greater London Authority³²

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

- National Housing Federation
- Local Government Group

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)

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

- Local Government Group
- London Councils

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

³² Under the Localism Act, the GLA will become a designated statutory consultee. Also, the HCA is removed from the named list (ref. section 196 Housing and Regeneration Act 2008) as a logical consequence of the regulator's institutional change. Since this consultation takes place in a transition period before commencement of the Localism Act, the view has been taken to consider both these bodies as having similar statutory consultee status.

TSA's Sounding Board and Advisory Panels

To widen consultation throughout the sector for the revised regulatory approach, we have set up a sounding board comprising key stakeholders, which includes:

- 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 Group (LGG), 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
- The Charity Commission, the regulator of charities in England and Wales
- Department for Communities and Local Government (DCLG), sponsoring Government department for the social housing regulator
- Audit Commission, responsible for assessing local authority performance and inspecting housing services
- 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
- Greater London Authority, reflecting the statutory role of the Mayor in relation to housing under the GLA Act 2007, and changes in the Localism Act that will devolve further powers to the Mayor in relation to housing

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 throughout the development of the revised regulatory framework.

Annex C: Assessment of impacts

1. The regulator is committed to ongoing consideration of the impacts of its regulatory framework on the sector it regulates and on equality and diversity. This work will support the regulator in complying with its forthcoming duty to minimise interference and in complying with its public sector equalities duty.
2. The regulator's assessment of impacts should only focus on issues where:
 - the regulatory framework is changing, and
 - where the regulator has discretion on changes being made; and
 - the changes are likely to have material impacts
3. In applying the criteria above the regulator's view is that the two areas where more detailed assessment of impacts is required are in relation to:
 - the way in which the proposed approach to value for money regulation is implemented for regulatory impacts
 - the way in which the serious detriment test is implemented for equality and diversity impacts
4. The regulator takes the view that it has limited discretion over the level at which it will intervene on consumer matters as a result of the serious detriment test and the focus of its equality and diversity impacts work will be on operational procedures.
5. Since most of the impacts we propose to assess relate to detailed operational matters, we intend to publish impact assessments once operational procedures are settled. This will of necessity be after the outcomes of this consultation are known as operational procedures must follow the final decisions on the regulatory framework.
6. Many of the changes proposed in this consultation document implement government policy, where the regulator has limited discretion. These changes were subject to impact assessment at the time when policy was being formulated. The Government's impact assessments can be found on the DCLG web site.

Annex D - 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 established the Tenant Services Authority (TSA) (formally known as the Office for Tenants and Social Landlords) responsible for social housing regulation, and the Homes and Communities Agency (HCA) responsible for public investment in housing and regeneration
- The Localism Act. The Localism Bill received Royal Assent on 15 November 2011. This legislation, when commenced, significantly amends parts of the 2008 Act in relation to the objectives and certain powers of the social housing regulator. It implements, as approved by Parliament, the recommendations made in the Government’s October 2010 Review of Social Housing Regulation
- The Regulator for Social Housing in England (the regulator) - currently, this is the TSA. Under the Localism Act, responsibility for social housing regulation will pass to a new statutory regulatory committee within the HCA from 1 April 2012
- Social housing – this includes low-cost rented housing, low-cost home ownership and “legacy” stock owned by social landlords that were registered prior to 1 April 2010 (social housing is defined in sections 68 to 77 of the 2008 Act)³³
- 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 leaseholders³⁴
- Provider – this means a registered provider within the definition in the 2008 Act. All providers registered with the TSA as of 31 March 2012 will continue to be registered as providers with the regulator after 1 April 2012. This includes existing registered local authority landlords and private registered providers (such as not-for-profit housing associations and for-profit bodies)
- ALMO – an Arm’s-Length Management Organisation established by local authorities as management agents of their stock. ALMOs that own stock and are already registered under the 2008 Act will continue to be registered with the regulator. Those who do not own stock will not be registered 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)

³³ Section 68 of the 2008 Act results in some leasehold properties being included within the legal definition of ‘social housing’. These are mainly shared ownership properties. It also includes (1) some “legacy” housing stock - those RSL properties where grant (including as defined in section 77(3) of the Act) has been paid and where the leaseholder owns 100% of the equity in their dwelling or (2) it is owned under equity percentage arrangements. None of the standards under section 193 apply to these two groups; nor does the Rent standard. They are called “100% ownership leaseholders” for the purpose of this document.

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A revised regulatory framework for social housing in England from April 2012 A statutory consultation

This consultation document sets out proposals for a revised regulatory framework to take effect from 1 April 2012. It sets out key information about the issues being consulted on, what effects we think any proposals or changes could have, who we are asking for views, and when and how to respond.

