



Department for  
Communities and  
Local Government



Homes &  
Communities  
Agency

**MAYOR OF LONDON**

# Housing Transfer Manual

## Summary of Responses to Consultation

November 2013  
Department for Communities and Local Government  
Homes and Communities Agency  
Greater London Authority

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# 1. Introduction

- 1.1 In *Laying the Foundations: A Housing Strategy for England* the Government committed to bring forward proposals for a new programme on housing transfer.
- 1.2 On 22 July 2013 the Department of Communities and Local Government (DCLG), in partnership with the Homes and Communities Agency (HCA) and the Greater London Authority (GLA) consulted on a draft Housing Transfer Manual for the period to 31 March 2015. The consultation sought views on the criteria that the Government intended to apply in assessing transfer proposals and the transfer process (including tenant led stock transfers in conjunction with the Right to Transfer regulations).
- 1.3 The consultation document posed four questions:
  - Question 1: How could the draft transfer manual express more clearly the criteria to be applied by Government when assessing transfer applications? Where is any further explanation or detail needed?
  - Question 2: How could the draft transfer manual express more clearly the transfer process? Where is any further explanation or detail needed?
  - Question 3: Does the draft transfer manual, taken together with the Right to Transfer Regulations and guidance, clearly explain the process for tenant led stock transfer? Where is any further explanation or detail needed?
  - Question 4: Are there any other comments you wish to make about specific policy issues in the draft manual?
- 1.4 The closing date for receipt of responses was 2 September 2013.
- 1.5 We would like to thank the individuals and organisations who took the time to respond to this consultation.
- 1.6 Copies of this document can be found on the Department's website at [www.communities.gov.uk](http://www.communities.gov.uk)
- 1.7 Enquires about this document should be addressed to: [housingtransferconsult@communities.gsi.gov.uk](mailto:housingtransferconsult@communities.gsi.gov.uk);

## 2. About the Responses

- 2.1 A total of 25 responses were received by the consultation closing date from a variety of organisations, falling into broad categories as follows:

	<b>Number of respondents</b>
Local Authorities	9
Representative Bodies	5
Consultants	4
Tenant Groups	3
Residents	2
Other	2
<b>Total</b>	<b>25</b>

- 2.2 Not all respondents commented on, or responded to, every question raised as part of the consultation exercise. We have tried to break down responses against each question, but there have been elements of subjective analysis in doing so.
- 2.3 In the light of consultation responses we have made amendments to the draft transfer manual, in particular to provide greater clarity, in the final transfer manual for the period to 31 March 2015 which is published alongside this document.

### 3. Summary of responses to the Housing Transfer Manual consultation

- 3.1 A summary of responses to each question regarding the draft transfer manual and the Government's response are outlined below.

**Question 1: How could the draft transfer manual express more clearly the criteria to be applied by Government when assessing transfer applications? Where is any further explanation or detail needed?**

- 3.2 A number of respondents requested further information and clarity around the calculations that will be made in the cost-benefit analyses and other tests as part of the assessment of an applicant's business case. Further information on the weighting of the tests to be applied to transfer applications was requested by some respondents. A number of local authorities felt that the lack of clarity left them "blind" to the possible outcome of the assessment.
- 3.3 The final manual has been revised to provide a fuller explanation of the tests and how calculations will be made, and how to create a strong application. We have included a detailed proforma of the input information required to be submitted. Whilst business cases will be looked at in the round and no specific weight will be applied to individual tests, the final manual emphasises the central importance of maximising the Transfer Value and hence receipt for the stock being transferred.
- 3.4 Concerns were raised around the Transfer Value Reconciliation, namely that the self-financing settlement was based on notional averages, whereas the transfer valuation is based on real capital expenditure. The concept of self-financing equivalence for transfer valuations was introduced during the development of Housing Revenue Account reform, and remains a core benchmark in our assessment of value for money. The reconciliation allows explanation of why the Transfer Value and self-financing value might differ; whilst emphasising the importance for a good application of maximising the Transfer Value.
- 3.5 A significant proportion of respondents indicated that the expectation that a 3.5% real discount rate should be used in the transfer valuation model was unrealistic and inconsistent with the 6.5% real discount rate used in self-financing. They suggested that using a 3.5% real discount rate could result in a transfer value that was unfundable.
- 3.6 The final transfer manual has been revised to make clear that whilst Government expects the Transfer Value to be maximised, and other

- things being equal, the lower the discount rate used the better the application's chance of being approved, no specific discount rate is prescribed.
- 3.7 Some respondents sought more clarity on whether the Transfer Value could comprise only the value placed on the existing stock or could include future development as well. The final manual sets out that the Transfer Value may include considerations not associated with the existing stock, for example income from new build where development is at an advanced stage.
  - 3.8 A number of respondents raised concerns that not all the economic and social benefits of transfer, particularly in relation to job creation and economic growth locally, were not included the cost-benefit tests. A number of respondents, particularly tenant groups, also asked whether Government could include wider criteria into the assessment of the transfer including localism and tenant and community empowerment.
  - 3.9 The final manual clarifies that where applicants are able to provide robust evidence of additionality, job impacts may be included in the economic impacts cost-benefits analysis. Applicants are also invited to suggest additional benefits for inclusion in the economic impacts cost-benefit analysis beyond those included in the transfer manual. The transfer manual has been amended to include strengthening tenant empowerment as a potential benefit from transfer to be included in the strategic case.

**Question 2: How could the draft transfer manual express more clearly the transfer process? Where is any further explanation or detail needed?**

- 3.10 A number of respondents commented on the front loading of the process and the amount of risk that this places on the local authority. A key aim of the transfer manual is to ensure decisions on the provision of financial support from Government and the level of that support are made early in the process to safeguard against nugatory work on transfer and provide certainty for all parties. We consider that the process as set out will help support strong transfer proposals that deliver good value for money.
- 3.11 The majority of respondents commented on the tight timescales to achieve transfer by March 2015. Concerns were raised about the effect that delays on the approval of the business case could have on subsequent parts of the process, such as registration with the Regulator of the recipient organisation, and possible delays caused by Government beyond the control of local authorities. The Government recognises these concerns regarding the tight timeframe within which transfer must be completed, but reaffirms the 31 March 2015 deadline. We would encourage ongoing

dialogue between prospective applicants and the HCA/GLA to help mitigate against timetable risk. In the case of registration with the Social Housing Regulator, we encourage early engagement. We would expect the length of the registration process to reflect the complexity of the registration.

- 3.12 Some respondents raised specific questions about the assessment of applications, for example securing Ministerial approval and why the time line was longer where Government financial support in excess of £50 million was sought. Others asked for a detailed example of a typical transfer process showing key stages.
- 3.13 The final manual clarifies that Ministerial approval to provide financial support for a transfer application will be required and that approval will come at the end of a combined assessment process by HCA/GLA and DCLG and Her Majesty's Treasury that will include normal internal expenditure approval processes. We have revised the flow chart in Annex G to reflect this.
- 3.14 A few responses questioned the feasibility of securing HCA/GLA approval to the Offer Document and formal letter to residents within a week of notification that financial support for overhanging debt write-off would be available. The final manual clarifies that drafts of these documents may be provided to the HCA/GLA in advance of this time to ensure that approval can be given expeditiously.
- 3.15 Some respondents raised more specific questions about the transfer process and the associated transactions. A number of respondents felt that the draft manual was unclear about whether the transfer receipt had to be used to pay down debt. Our expectation, as set out in the final manual, is that the transfer receipt will be used to pay down debt, but this is not a requirement and, in line with the treatment of other capital receipts, it may be used for any capital purpose.
- 3.16 A few respondents asked about the timescales surrounding the closure of the Housing Revenue Account under the new self financing regime. The final manual clarifies that the Housing Revenue Account can be closed at any time following the transfer.
- 3.17 One local authority commented that the relationship between the new manual and the 2009 Statutory Guidance on tenant consultation needs to be clarified. The Statutory Guidance continues to apply and we consider that the new manual is consistent with it.

**Question 3: Does the draft transfer manual, taken together with the Right to Transfer Regulations and guidance, clearly explain the process for tenant led stock transfer? Where is any further explanation or detail needed?**

- 3.18 There was widespread support for the introduction of a tenants' Right to Transfer.
- 3.19 Some respondents requested further detail about the circumstances in which a local authority could object to a tenant group's transfer proposal under Right to Transfer and the type of information that the Secretary of State would take into account before deciding whether the transfer process should continue if a local authority sought a determination to halt the process. More generally there were some concerns that additional guidance on the stages of the Right to Transfer process was needed as well as dedicated funding. DCLG will publish statutory guidance on the Right to Transfer Regulations alongside the final transfer manual and will work with tenant groups to provide further advice as required. DCLG are developing a financial support package through the Tenant Empowerment Fund for Right to Transfer proposals.
- 3.20 We had a number of responses (especially from tenant groups) commenting on the lack of overhanging debt write off for small scale stock transfers (i.e. those under 500 units) and suggesting that this would prove a barrier to tenant led transfers. This is however consistent with the existing position and reflects a concern that the additional complexity involved in transfers with debt write-off will usually be disproportionate and hard to manage for small scale transfers.
- 3.21 There were also concerns that the manual failed to distinguish between local authority led transfers and tenant led transfers. The latter might for example take place where the local authority and tenant group had a different view on the valuation of the stock. The transfer manual is clear that from the submission of a business case, the transfer process for both local authority and tenant led transfers should apply in the same way, including the need to demonstrate that the transfer represents good value for money. The Right to Transfer Regulations compel a local authority to co-operate with a tenant group in exploring and taking forward a transfer where this is the favoured option. The Regulations make provision, through arbitration and the determination process, for the resolution of differences of opinion between the tenant group and local authority over the value of the stock to be transferred.

**Question 4: Are there any other comments you wish to make about specific policy issues in the draft manual?**

- 3.22 There were a wide variety of responses and helpful suggestions about where the manual could be made clearer or more consistent on policy issues.
- 3.23 A number of respondents asked for clarity on the treatment of set up costs. The final manual sets out our expectation that the local authority and transfer landlord will each meet their share of set up costs. It clarifies that set up costs may be included in the Transfer Value Model, although this will reduce the Transfer Value and we would expect these costs to be offset by planned efficiencies, for example lower management and maintenance costs, increasing the transfer value. In accordance with regulations under Section 9 of the Local Government Act 2003, a local authority may defray set-up costs from the capital receipt for the stock but Government will not increase its contribution in respect of overhanging debt write-off to cover any such costs defrayed by the local authority.
- 3.24 The use of VAT shelters and the extent to which reductions in irrecoverable input VAT should be taken into account in arriving at a Transfer Value was a significant theme in responses. There was broad concern that funding might not be available for increases in the Transfer Value that were driven by the use of a VAT shelter, particularly if no guarantee in respect of the ongoing efficacy of the shelter were provided by Government. Some respondents argued for disregarding a proportion of the VAT shelter in order to cover set-up costs, pension deficits and contingent liabilities.
- 3.25 The final manual makes clear that the Government does not expect local authorities and transfer landlords to use a VAT shelter, although individual local authorities may wish to make the case for this, where the use of a VAT shelter will have the effect of significantly increasing what would otherwise be a Transfer Value that is much lower than the self-financing valuation. The Government does not intend to provide a guarantee in respect of VAT shelter arrangements.
- 3.26 A few respondents raised questions about the apportionment of debt on partial transfers. The final manual clarifies that for local authority led transfers, the local authority has flexibility to propose an approach that is reasonable and evidence based. For tenant led transfers, if the local authority and tenant group are unable to reach agreement, we consider that the self-financing debt on the properties to be transferred, based on property archetype, should provide the benchmark.

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- 3.27 Two local authority respondents raised the issue of whether the Government will write off non-PWLB debt and associated early redemption premiums. The final manual clarifies that the Government will exceptionally, on a case by case basis, write off non-PWLB debt but that associated early redemption premiums will in all cases need to be met by the local authority or from the receipt from the transfer landlord.
  - 3.28 Several respondents sought further clarity on the use of preserved Right to Buy receipts and Right to Buy receipts retained but not yet utilised by the local authority for one-for-one replacement at the time of transfer. The final manual sets out our intention that net preserved Right to Buy receipts should be paid into the transfer landlord's Disposals Proceeds Fund and used to fund new supply, or if unspent, returned to the HCA/GLA. Any balances from Right to Buy receipts that the local authority holds at the point of transfer must be utilised in line with their Section 11(6) of the Local Government Act 2003 Agreement or returned to DCLG.
  - 3.29 Clarity was sought by a few respondents on the calculation of the Disposals Levy, and the argument made that levies should be calculated after taking account of set up costs, as under the Disposals Levy (Deduction)(England) Determination 2004. The final manual reflects that position.
  - 3.30 A few respondents sought reassurance that there was no expectation that transfer would result in a change in the landlord's policy on the grant of tenancies and questioned the appropriateness of using conversions to affordable rent as a means of enhancing the transfer value. The Government's position is that it is entirely a matter for landlords to decide whether to use the new flexibilities on tenure introduced by the Localism Act 2011 and changes to Regulatory Framework. It is expected that existing tenants will transfer on a form of tenancy that protects their current position. Whilst we expect the strategic case for transfer to include the number of additional affordable homes that transfer is expected to deliver, we would not anticipate transfer applications including proposals for conversions to affordable rent as a means of increasing the Transfer Value.
  - 3.31 Queries were raised about landlord selection and there were suggestions that further guidance should be provided in the transfer manual on procurement and tenant consultation on the selection of a private registered provider. We consider that this is outside the scope of the manual.
  - 3.32 Concerns were raised that the draft manual put tenant management organisations in a weakened position in comparison to the 2005 manual. This was not our intention and the final manual emphasises that tenant

management organisations should be involved from the outset of the transfer process and our expectation that transfer landlords should continue to support existing tenant management organisations or those in the process of being set up.

- 3.33 A few respondents (in particular residents) raised concerns around the accessibility of the manual to non-specialists and elderly or disabled tenants. We look to the National Tenant Organisations to communicate information they think is of interest to their members and to engage directly with tenant groups. Where a local authority is considering transfer, Annex F of the manual references good practice in engaging tenants, and statutory guidance on consultation around proposed transfers continues to apply.

## 4. Next Steps

- 4.1 The final version of transfer manual for the period to 31 March 2015 has been published, in the light of consultation responses, alongside this document.

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