



Homes &
Communities
Agency

Consultation on an amendment to the Tenant Involvement and Empowerment Standard



© Crown copyright, 2017

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. You can view this licence at, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.gov.uk/hca.

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Homes and Communities Agency
Fry Building
2 Marsham Street
London SW1P 4DF
Telephone: 03000 1234 500

For all our latest news and updates follow us on Twitter: https://twitter.com/HCA_UK

February 2017

ISBN: 978-1-4098-4989-6

Contents

Scope of the consultation	4
Foreword	6
1. Executive summary	7
2. Introduction	8
3. Proposed changes to the Tenant Involvement and Empowerment Standard	9
Current requirements	9
Proposed requirements	9
Analysis of the changes	9
Analysis of Equality	11
4. About this consultation	12
Annex 1 Tenant Involvement and Empowerment Standard 2017	13
Annex 2 Tracked changes version of Section 2.2.3 of the Tenant Involvement and Empowerment Standard 2012 showing proposed revisions	16
Annex 3 Business Engagement Assessment	17
Annex 4 Statutory consultees	20

Scope of the consultation

Topic of this consultation:	The regulator is proposing to clarify and strengthen paragraph 2.2.3 of the Tenant Empowerment and Involvement Standard in light of deregulatory measures due to come into force on 6 April 2017.
Scope of this consultation:	<p>This consultation is an opportunity for interested persons and organisations to influence how this change is set out in the Standard.</p> <p>Alongside the publication of this consultation document, the regulator will engage in discussions with stakeholders, including through its sounding board and advisory panels comprising providers and sector advisors respectively.</p>
Geographical scope:	These proposals relate to England only.
Impact assessment:	Impacts are considered in our business engagement assessment (Annex 3).

Basic information

To:	Registered providers, tenants, lenders and other stakeholders who have an interest in the social housing sector.
Body responsible for the consultation:	Home and Communities Agency – the social housing regulator.
Duration:	This consultation will last for 6 weeks from 8 February 2017. The closing date is 22 March 2017.
Enquiries:	For any enquiries about the consultation please contact our Referrals and Regulatory Enquiries Team on 0300 1234 500 (option 2) who will be pleased to help.
How to respond:	<p>You may respond online via SurveyMonkey.</p> <p>https://www.surveymonkey.co.uk/r/tenantinvolvementandempowerment</p> <p>Please be aware that unless you complete the survey and press the 'done' button your response will not be registered as a completed return. However, these incomplete responses will still be seen by the regulator and will be reviewed to determine whether they raise any new issues which it would be relevant for the regulator to consider.</p> <p>If for any reason you are unable to complete a response on Survey Monkey you can email your response to the questions in this consultation to: consultation@hca.gsi.gov.uk.</p>

Please include “**Tenant Involvement and Empowerment Consultation**” as your subject heading.

However, please avoid making responses via both SurveyMonkey and by email.

If you are responding in writing or by email, please make it clear which questions you are responding to.

Written responses can be sent to

Referrals and Regulatory Enquiries
Homes and Communities Agency – The Social Housing Regulator
Fry Building
2 Marsham Street
London SW1P 4DF

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post code),
- an email address, and
- a contact telephone number

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

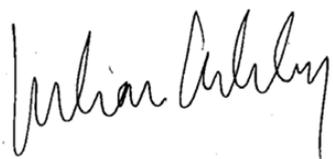
We intend to publish an analysis of all formal responses after the closing date of this consultation. Individual responses will not be acknowledged unless specifically requested.

Foreword

The Housing and Planning Act 2016 has introduced a range of changes to the regulator's powers that has led us to consider if any consequential changes to our standards are necessary.

In the short term, we have identified a change being needed to the Tenant Involvement and Empowerment (TIE) Standard as a result of the repeal of the requirement for registered providers to seek the regulator's consent before disposing of social housing. This change would clarify and strengthen the regulator's expectations of the tenant consultation required when providers are considering changing their tenants' landlord.

Our intention in proposing this change is to do only what is necessary in response to the impact of the deregulatory measures on our Consumer Standards. While deregulation provides greater operating freedoms for registered providers, it is essential that in exercising those freedoms registered providers have regard to the impact of their decisions on their tenants, their obligation to be accountable to tenants and other stakeholders and to safeguarding the reputation of the sector.

A handwritten signature in black ink, appearing to read 'Julian Ashby', written in a cursive style.

Julian Ashby
Chair, Regulation Committee

1. Executive summary

- 1.1 From 6 April 2017, the deregulatory measures of the Housing and Planning Act 2016 (HPA) will come into force, which remove the regulator's consent powers over constitutional matters and the disposal of social housing assets.
- 1.2 The regulator has considered whether any amendments to our regulatory framework are necessary as a result of the deregulatory measures to ensure that the regulator can continue to meet its consumer regulation objective and specifically:
 - to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection, and
 - to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account
- 1.3 We have already consulted on revised registration criteria and the introduction of new registration criteria for organisations who have undertaken a qualifying restructure.
- 1.4 An assessment of the requirements within our Consumer Standards has highlighted that in the regulator's view the TIE Standard requires strengthening in relation to the regulator's requirements with regard to consultation with tenants in the event that the registered provider is considering changing the landlord of its tenants either through disposal or through constitutional changes.
- 1.5 This consultation document introduces the changes proposed by the regulator to its TIE Standard and outlines the rationale for this change.
- 1.6 In the Annex 1 of this consultation you will find the proposed TIE Standard 2017 including revised wording to Section 2.2.3. Annex 2 provides an extract of the TIE Standard 2012 Section 2.2.3 along with a tracked changed version to show the difference between the original text and the revised text in the proposed new Standard.

2. Introduction

- 2.1 The deregulatory measures in the HPA 2016 amend the HRA 2008 by removing the requirement for private registered providers to seek the regulator's consent to the disposal of social housing and to constitutional changes.
- 2.2 Since 2012 the regulator has had an expectation within its TIE Standard that if a registered provider is considering changing the landlord for some (or all) of its tenants it must consult.
- 2.3 Through the disposal and constitutional consents process undertaken by the regulator we sought assurance that this requirement had been complied with and took this into account when granting consent for the disposal of tenanted property outside of the sector and thus changing the landlord. This gave the regulator the assurance it needed that 2.2.3 of the Consumer Standards was being met in relation to the disposal
- 2.4 When the disposal and constitutional consents framework is withdrawn on the 6 April 2017 on the commencement of the relevant provisions of the HPA 2016, the regulator will no longer have that mechanism to gain assurance on the quality and effectiveness of the consultation undertaken with tenants through its interaction with providers during the consent application.
- 2.5 As a result, the regulator considers that Section 2.2.3 of the TIE Standard needs to be strengthened to ensure that the regulator's requirements in this area are fully understood by both registered providers and tenants.
- 2.6 The next section of the document introduces the proposed changes to Section 2.2.3 and compares these against the original text.

3. Proposed changes to the Tenant Involvement and Empowerment Standard

Current requirements

3.1 The current requirements of Section 2.2.3 of the TIE Standard are set out below:

2.2.3 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

3.2 The regulator's experience of dealing with proposed changes of landlord through the current consents framework indicates this is an area where we need to ensure our requirements are clearly set out and understood by the sector.

Proposed requirements

3.3 Due to this we are proposing to replace Section 2.2.3 with the following requirements:

2.2.3 Where registered providers are proposing a change in landlord for one or more of their tenants or a significant change in their management arrangements, they shall consult with affected tenants in a fair, timely, appropriate and effective manner. Registered providers shall set out the proposals clearly and in an appropriate amount of detail and shall set out any actual or potential advantages and disadvantages (including costs) to tenants over the short, medium and long term. Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision.

3.4 As indicated earlier these changes build on the existing requirements and the next section will look at these changes in detail.

Analysis of the changes

3.5 Firstly within the proposed 2.2.3 we have added the clarification that when we specify that 'registered providers shall consult with tenants' we actually only require consultation with 'affected tenants'. While we consider that this was well understood and implied in the wording from 2012, we think adding this clarification would make the requirement clearer for registered providers.

Consultation question 1

Do you agree with the clarification which restricts the consultation only to 'affected tenants'?

- 3.6 Secondly in the proposed 2.2.3 we have added in the clarification that the consultation should be undertaken ‘in a fair, timely, appropriate and effective manner’, which has always been an implied requirement of the quality of consultation expected by the regulator taken into account in its consent considerations. It would also make it clear that the regulator expects the consultation to take place before any decision is taken on a disposal or merger so that consultation with tenants is meaningful.

Consultation question 2

Do you agree with the inclusion of the requirement that the consultation should be ‘fair, timely, appropriate and effective’?

- 3.7 The third change we are proposing is that we have replaced ‘proposing to change their landlord’ with ‘proposing a change in landlord for one or more of their tenants’. We have proposed this for two reasons; firstly it would make it clear whose landlord we are referring to and secondly the change would make it clearer that we would be expecting providers to consult with affected tenants regardless of the proposed scale of the change being proposed.

Consultation question 3

Do you agree with the replacement of ‘proposing to change their landlord’ with ‘proposing a change in landlord for one or more of their tenants’?

- 3.8 The fourth change we are proposing is where we currently outline that the consultation should set out ‘clearly the costs and benefits of relevant options’ we are proposing to strengthen this and replace it with the following:

Registered providers shall set out the proposals clearly and in an appropriate amount of detail and shall set out any actual or potential advantages and disadvantages (including costs) to tenants over the short, medium and long term.

- 3.9 Again ensuring that the actual or potential advantages and disadvantages are outlined to affected tenants in an appropriate amount of detail has always been expected by the regulator and this change is would make that expectation clear.
- 3.10 Being explicit that we require advantages and disadvantages to be set out over the ‘short, medium and long term’ would bring clarity on what the regulator expects from consultations.

Consultation question 4

Do you agree with the inclusion within the Standard that providers should set out 'clearly and in an appropriate amount of detail and shall set out any actual or potential advantages and disadvantages (including costs) to tenants over the short, medium and long term'?

- 3.11 The fifth and final change we are proposing to make to Section 2.2.3 is to add in the requirement that 'Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision'.
- 3.12 While this was absent from the wording of the original 2.2.3, this has always been an implied requirement of the quality of consultation expected by the regulator and its inclusion would help ensure that any consultation with tenants is meaningful.

Consultation question 5

Do you agree with the inclusion of a requirement that 'Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision'?

- 3.13 Annex 1 of this document contains a revised TIE Standard which we hope to bring into force on 6 April 2017. Annex 2 of this document contains a tracked changes version of Section 2.2.3 to assist people understanding where we have amended the original text.

Analysis of Equality

- 3.14 An assessment of the impacts of these changes is provided in our draft business engagement assessment (Annex 3). This includes consideration of any implications of the proposals in relation to equality and diversity.
- 3.15 Given the very limited proposed changes to the TIE Standard as a result of this consultation and the fact that these are only clarifying current requirements, we have not found any equality-related impact associated with the proposed changes.
- 3.16 The regulator is committed to a full consideration of potential impacts, and comments on the draft business engagement assessment are sought. A final impact assessment including any issues in relation to equality which are uncovered as part of the consultation will be published following the conclusion of this consultation.

Consultation question 6

Do you have any comments on our business engagement assessment including in relation to equality and diversity?

4. About this consultation

- 4.1 This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.
- 4.2 Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.
- 4.3 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.)
- 4.4 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Agency.
- 4.5 The Homes and Communities Agency will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
- 4.6 Individual responses will not be acknowledged unless specifically requested.
- 4.7 Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Annex 1: Tenant Involvement and Empowerment Standard 2017

1 Required outcomes

1.1 Customer service, choice and complaints

1.1.1 Registered providers shall:

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

1.2 Involvement and empowerment

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

- (a) the formulation of their landlord's housing-related policies and strategic priorities
- (b) the making of decisions about how housing-related services are delivered, including the setting of service standards
- (c) the scrutiny of their landlord's performance and the making of recommendations to their landlord about how performance might be improved
- (d) the management of their homes, where applicable
- (e) 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
- (f) agreeing local offers for service delivery.

1.3 Understanding and responding to the diverse needs of tenants

1.3.1 Registered providers shall:

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

2 Specific expectations

2.1 Customer service, choice and complaints

2.1.1 Registered providers shall provide tenants with accessible, relevant and timely information about:

- (a) how tenants can access services
- (b) the standards of housing services their tenants can expect
- (c) how they are performing against those standards
- (d) the service choices available to tenants, including any additional costs that are relevant to specific choices
- (e) progress of any repairs work
- (f) how tenants can communicate with them and provide feedback
- (g) the responsibilities of the tenant and provider
- (h) arrangements for tenant involvement and scrutiny.

2.1.2 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.

2.2 Involvement and empowerment

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

- (a) supporting their tenants to exercise their Right to Manage or otherwise exercise housing management functions, where appropriate
- (b) supporting the formation and activities of tenant panels or equivalent groups and responding in a constructive and timely manner to them
- (c) 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
- (d) providing support to tenants to build their capacity to be more effectively involved.

2.2.2 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.

2.2.3 Where registered providers are proposing a change in landlord for one or more of their tenants or a significant change in their management arrangements, they shall consult with affected tenants in a fair, timely, appropriate and effective manner. Registered providers shall set out the proposals clearly and in an appropriate amount of detail and shall set out any actual or potential advantages and disadvantages (including costs) to tenants over the short, medium and long term. Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision.

2.2.4 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.

2.3 Understanding and responding to diverse needs

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

Annex 2 Tracked changes version of Section 2.2.3 of the Tenant Involvement and Empowerment Standard 2012 showing proposed revisions

- 2.2.3 ~~Where R~~registered providers ~~are proposing a change in landlord for one or more of their tenants or a significant change in their management arrangements, they shall consult with affected tenants in a fair, timely, appropriate and effective manner~~ ~~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.~~ Registered providers shall set out the proposals clearly and in an appropriate amount of detail and shall set out any actual or potential advantages and disadvantages (including costs) to tenants over the short, medium and long term. Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision.

Annex 3@ Business Engagement Assessment

Business Engagement Assessment	
Title of proposal	Consultation on changes to the Tenant Involvement and Empowerment Standard
Lead regulator	Homes and Communities Agency – the social housing regulator
Contact for enquiries	Referrals and Regulatory Enquiries team 0300 1234 500 (option 2) consultation@hca.gsi.gov.uk

Date of assessment	January 2017	Stage of assessment	Final
Net cost to business (EANCB)		Commencement date	1 May 2017
Which area of the UK will be affected by the change(s)?	England	Price and present value base years	
Does this include implementation of Red Tape Challenge commitments?	No	Is this directly applicable EU or other international legislation?	No

Brief outline of proposed change

The regulator is making a change to its Tenant Involvement and Empowerment Standard (TIE) to clarify and strengthen its expectations around the quality of registered providers' consultation when they are proposing to change the landlord of any of their tenants. These changes are in response to the deregulatory measures contained in the Housing and Planning Act 2016 (HPA), specifically the removal of the regulator's power to require providers to obtain its consent before proceeding with disposals or some constitutional changes. There is no impact on the regulatory burden because the change is to an existing expectation in this area and is being made in the context of much wider statutory deregulation which significantly reduces the overall regulatory burden.

Why is the change proposed? Evidence of the current problem?

Currently, the quality of consultation which providers carry out when they are proposing to change the landlord of any of their tenants is something that providers have to provide assurance about during the application process for consent to dispose of stock or to make some constitutional changes. From 6 April 2017, as the de-regulatory measures in the HPA come into effect, this application process will no longer take place. The regulator believes it would therefore help providers to have its expectations set out more fully in the TIE Standard itself.

In addition to the above, the change is being proposed to ensure the regulator can continue to meet its consumer regulation objective and specifically:

- to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection, and
 - to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account.
-

Which types of businesses will be affected? How many are affected?

As at 1 December 2016, there were 1,562 private registered providers (registered with the social housing regulator). Of those, approximately 1,200 were non-profit making registered providers with less than 1,000 units and 35 were profit making registered providers. There are also 198 local authority registered providers.

All existing registered providers and local authority registered providers are within the scope of being affected by the clarification in the TIE Standard. In practice, however, there would be no, or negligible effect. For those registered providers who do not undertake disposal of stock or constitutional changes which result in any tenants changing their landlord, there would be no impact at all. Local authority registered providers, in particular, are unlikely to be able to carry out any such disposals or constitutional changes because of their different legal powers and obligations. For those providers that do dispose of stock or make relevant constitutional changes, there would also be negligible impact as there has always been a requirement to consult tenants in the TIE Standard. The change is only that the regulator is now making explicit within the Standard the required quality of consultation which has always been required by the regulator.

How will the change impact these businesses?

See above, there would be no impact on these businesses from the change.

Impact on small businesses

The majority of private registered providers are small, around 1200 out of a total of around 1500. As set out above, the impact on any of the providers, including for small providers, covered by this change is nil to negligible.

Equality and diversity

The regulator is mindful of its statutory equality duties under Section 149 of the Equality Act 2010. The regulator has recently consulted on its revised equality objectives that we will be working to deliver in the future. As with our previous equality objectives, our revised objectives include work to ensure that we pay due regard to equality when undertaking our regulatory functions. The regulator takes a proportionate approach to its equality obligations and, as the effects on providers of the changes covered by this consultation are nil to negligible, considers that there are no specific equalities implications for this consultation and has not carried out a full equalities impact assessment.

It is the case that amongst the tenants of registered providers of social housing, there are higher proportions of individuals with some protected characteristics than is found in the general population, particularly with regard to race and disability. For further details see the [English Housing Survey](https://www.gov.uk/government/statistics/english-housing-survey-2014-to-2015-headline-report) (<https://www.gov.uk/government/statistics/english-housing-survey-2014-to-2015-headline-report>). The clarificatory change the regulator is making in being more explicit about its consultation expectations may help to discourage any decline in quality of consultation following the removal of the requirement for providers to seek the regulator's consent where tenants' landlord is changed. Therefore, any impact from this change on those with protected characteristics compared with the general population should be a positive one.

Annex 4: Statutory consultees

Section 196 HRA 2008

(1) Before setting standards, or issuing, revising or withdrawing a Code of Practice, the regulator shall consult the following or ensure that they have been consulted --

- (a) one or more bodies appearing to it to represent the interests of registered providers
- (b) one or more bodies appearing to it to represent the interests of secured creditors of registered providers
- (c) anybody for the time being nominated under Section 278A
- (d) one or more other bodies appearing to it to represent the interests of tenants of social housing
- (e) one or more bodies appearing to it to represent the interests of local housing authorities
- (f) the Greater London Authority
- (g) the Secretary of State.

(2) Before setting a Standard which would apply to charities, or issuing, revising or withdrawing a Code of Practice which applies or would apply to charities, the regulator must consult the Charity Commission.