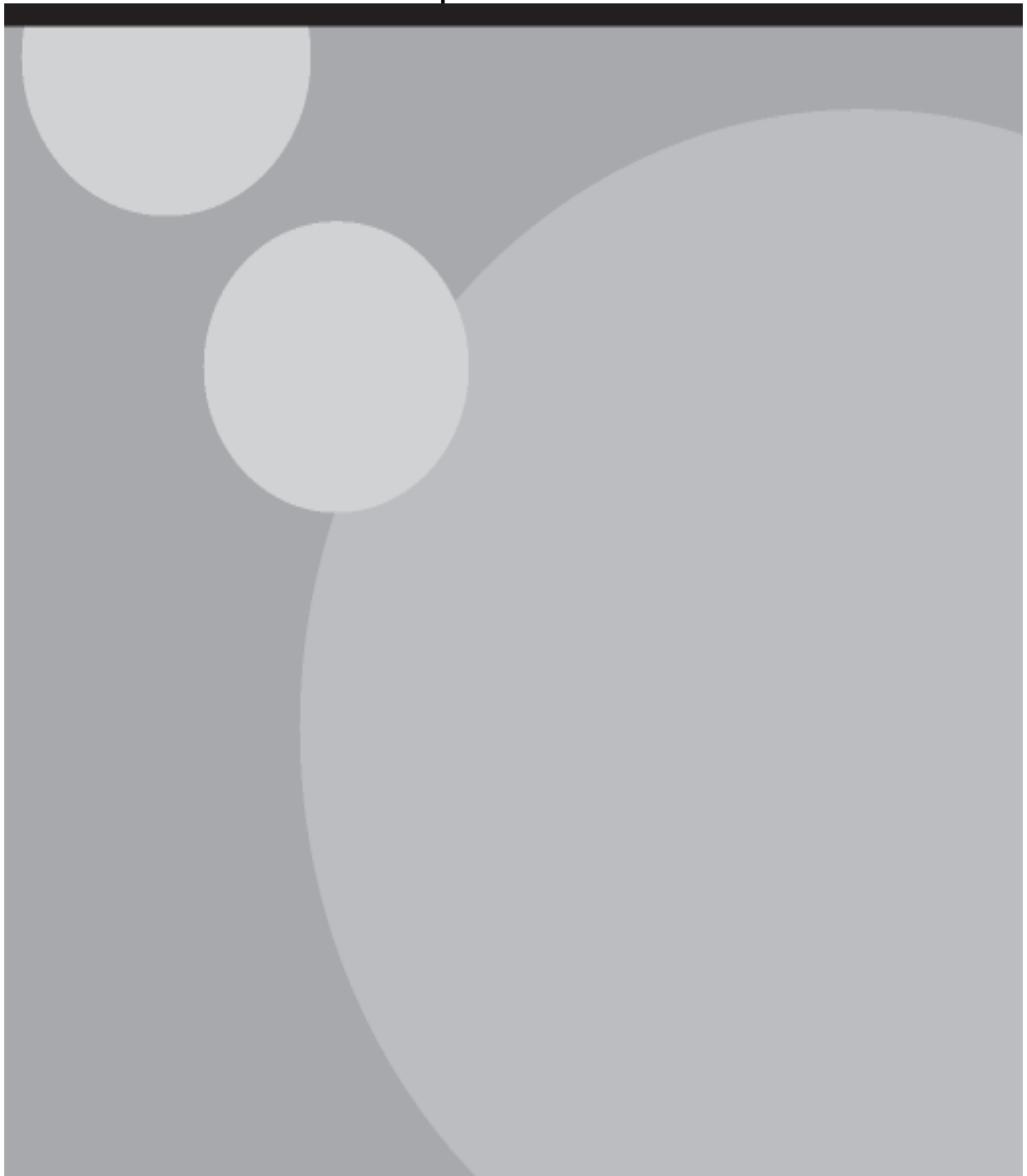




Streamlining council housing asset
management: Disposals and use of
receipts

The Government response to consultation





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Introduction

1. In August 2011 the Department for Communities and Local Government published its consultation paper “Streamlining council housing asset management: Disposals and use of receipts”. This is the Government’s response to the comments we received.
2. In November 2011 the Government published “Laying the Foundations: A Housing Strategy for England”, which set out its ambitions to reform social housing, explaining how it was making radical changes, removing counter-productive rules and allowing local authorities to take more sensible decisions about how to manage their housing. This response needs to be read in that context.

The proposals

3. The Department sought views on its proposals to
 - (a) extend those situations where the specific consent of the Secretary of State would not be required to dispose of council housing assets (the General Consents issued under section 32 of the Housing Act 1985), and
 - (b) simplify the regulations governing the use of receipts arising from the disposal of council housing assets (the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended))
4. The Department proposed that local authorities would need the specific consent of the Secretary of State under section 32 only where
 - a. disposal was of tenanted stock to private landlords
 - b. disposal was to a body wholly or partly owned by the local authority
 - c. disposal was at less than market value (except in prescribed situations to assist people into home ownership).
5. The Department proposed that local authorities should not need specific consent to dispose of vacant land, vacant properties at market value, and certain properties at prescribed discounts for owner-occupation.
6. The changes to the regulations did not seek to alter the basic principles behind the regulations, but rather sought to produce a clearer, simpler version. The only proposed changes of significance were the ending of estimated payments, the re-definition of those receipts that had to be surrendered to central Government, and making the paying off of Housing Revenue Account debt a permissible use of retained receipts.
7. It will therefore continue to be the case that local authorities retain for any capital purpose the full receipt from the disposal of tenanted stock to private landlords (for which they would continue to need the consent of the Secretary of State) and may retain the full receipt from disposals other

than under the Right to Buy (or similar) sales provided it is spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt. Any receipts not spent in this way would have to be shared with central Government: 75% of the receipt arising from the disposal of a dwelling and 50% from the disposal of other assets. In such circumstances, the amount retained by the local authority may be used for any capital purpose.

The consultation

8. We received 55 responses; 45 from local authorities and 10 from other organisations and members of the public. The Department would like to thank everyone who took the trouble to respond. A full list of those who responded is at [Annex 2](#).
9. The consultation paper asked 12 questions. The following sections précis the comments received to each question and set out how the Government now intends to proceed. Many of the comments were extremely helpful and on the basis of them the Government has decided to amend some of the proposals set out in the paper. For ease of reference we've set these out in [Annex 1](#).

Reinvigorating the Right to Buy

10. In "Laying the Foundations: A Housing Strategy for England", the Government also announced its intention to increase the caps on Right to Buy discounts and on the 22 December 2011 the Department published its consultation paper "Reinvigorating the Right to Buy and one for one replacement"¹ on how this might be effected. This sought views on those parts of the Local Authorities (Capital Finance and Accounting) Regulations that concern Right to Buy (and similar) sales². **These are not therefore addressed in this response.**
11. The comments in this response are therefore solely concerned with those parts of the regulations governing receipts arising from sales other than those under the Right to Buy (or similar). The General Consents are, of course, concerned solely with voluntary sales.
12. Some respondents raised issues on which we were not seeking comments and similarly these are not addressed here.

Timing

13. The revised General Consents have now been published on the Department's website (www.communities.gov.uk). The regulations proposed here came into effect on 31st March 2012.

¹ <http://www.communities.gov.uk/publications/housing/reinvigoratingrighttobuy>

² Similar sales are voluntary sales to existing council tenants at a discount.

Response to Questions

Disposals at market value requiring specific consent

14. The Department proposed that for disposal at market value local authorities should need the consent of the Secretary of State only where:
- a. the disposal would result in a tenant of the council becoming a tenant of a private landlord
 - b. the disposal was to a body wholly or partly owned by the local authority

Consultation Question 1

Do you think there are situations where such disposals should not require the consent of the Secretary of State? If so, what are they?

15. 62% broadly supported the proposal in the paper.
16. Many suggested that councils should not have to require consent at all, while others felt that our proposals made it too easy for local authorities to reduce levels of council housing stock. Some felt that a minimal number of transfers of tenanted stock should not require consent.
17. Some argued that disposals to subsidiaries should not require specific consent or at least a maximum level should be set. Some suggested that specific consent should not be required where there was a condition that the homes continued to be used as social housing. One asked how we defined “partly owned” with regard to local authority subsidiaries and sought clarity as to the circumstances under which the Secretary of State would grant consent. One respondent felt that any council without a Housing Revenue Account should be allowed to dispose to subsidiaries.
18. One respondent wished to see further amendments to permit the sale at market value of additional areas and / or floor space (e.g. a loft space) to an existing leaseholder, without the need to apply for specific consent. In fact, draft General Consent A already makes provision for such disposals.

THE GOVERNMENT’S PROPOSED WAY FORWARD

19. The Government continues to believe that local authorities are best placed to make decisions about their housing stock, but that it is right that central Government retains some direct control to protect tenants (no matter how many) and overall levels of housing debt (transfers to subsidiaries enable local authorities to borrow outside the cap imposed under self-financing).
20. However Ministers wish to be flexible and have agreed that a maximum level of 5 vacant dwellings a year should be permitted for disposals to subsidiaries. It is not the case that other larger disposals will never be permitted, but local authorities must demonstrate a clear purpose behind

the disposal and not simply to avoid the constraints of the Housing Revenue Account. All applications for specific consent will be considered on a case by case basis.

21. The Government agrees to grant a general consent to dispose at market value to a subsidiary where the local authority has closed its Housing Revenue Account.
22. The receipt from sales of vacant land, disposals of vacant properties at market value and disposals of vacant stock at a discount to non-secure tenants may be retained by the local authority provided it is spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt. Receipts from discounted sales to existing secure tenants will be subject to the same regulations governing the Right to Buy, the subject of the separate consultation.

Disposals at market value not requiring specific consent

23. The Department proposed that local authorities should not require specific consent to dispose at market value to individuals or bodies not wholly or partly owned by them of
 - a. vacant properties
 - b. occupied properties to the tenants
 - c. properties occupied by tenants of other landlords
 - d. communal parts of flats
 - e. garages, drying areas, and other assets not used as accommodation
 - f. empty plots of land

Consultation Question 2

Do you think there are situations where such disposals should require the consent of the Secretary of State? If so, what are they?

24. 55% broadly supported the proposal in the paper.
25. Beyond general comments that local authorities should not be allowed to dispose at all without specific consent (especially in areas of high housing demand) only one respondent made a specific comment on this question arguing that properties that had been vacant for only a short time should require consent.

THE GOVERNMENT'S PROPOSED WAY FORWARD

26. The Government continues to believe that local authorities are best placed to decide the merits or otherwise of a disposal and length of vacancy is but one factor for them to consider. The Government does not therefore propose changing this proposal.
27. Receipts from the disposal of tenanted stock to private landlords (under current policy these must be registered housing associations) can continue

to be retained for any capital purpose. Other receipts from disposals for which specific consent is required may continue to be retained provided they are spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt (unless the disposal is to an existing secure tenant at a discount, in which case it will be treated as a Right to Buy sale, the subject of the separate consultation).

Disposal of reversionary interests

28. The Department proposed that local authorities should continue to be free to dispose to the occupants of their reversionary interest in houses and flats at market value.

Consultation Question 3

Do you agree that local authorities should not require the consent of the Secretary of State to dispose of such interests? If not, why not?

29. 85% broadly supported the proposal in the paper.

30. One local authority argued for greater alignment between the disposals permitted under the General Consents and the statutory process.

THE GOVERNMENT'S PROPOSED WAY FORWARD

31. The Government is of the view that where circumstances demand it the statutory process should be followed and do not wish to amend the General Consents to provide a means to circumvent this.

32. Any receipt may continue to be retained provided it is spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt.

Vacant land sold at a discount

33. The Department proposed that local authorities should not require specific consent to dispose of vacant land at a price determined by them and for a purpose determined by them.

Consultation Question 4

Do you think that a limit should be placed on the amount of discount a local authority can offer on vacant land? If yes, what should it be?

Consultation Question 5

Do you think that such disposals should be limited only to such situations where the land will be used for certain specified purposes? If yes, what are they?

34. 58% broadly supported the proposal in the paper.

35. Some argued that there should be a general consent to dispose of vacant land only for the provision of new affordable housing, regeneration or to pay off debt and that such disposals should not result in private profit.
36. Others asked that local authorities be required to prove that the land had been used for a beneficial purpose, while another suggested that parish councils (where applicable) should have a say in the intended purpose.
37. One respondent argued that the requirement in the definition of “vacant” land that any houses on the land to be sold must be demolished prior to redevelopment appeared unnecessary, and was a potential problem and additional cost for developers as well as councils.
38. Finally one respondent asked why the consent regime for housing land wasn’t more aligned with that for land held for other purposes.

THE GOVERNMENT’S PROPOSED WAY FORWARD

39. Again the Government believes that local authorities are best placed to decide whether or not the intended use of any land is beneficial to the community and clearance by relevant committees and cabinet members should ensure that this is transparent. The Government does not wish to impose any additional burdens on local authorities, but would encourage any local authority seeking to dispose of vacant land to seek the views of other local authorities with an interest (including parish councils).
40. The Government wishes to ensure that council dwellings are not sold at below market value except in prescribed circumstances and permitting houses to be included in the disposal of “vacant” land for a possible nil return could undermine this. The Government does not consider it an imposition in such circumstances to seek specific consent.
41. The Government regards land held for housing as unique and continues to believe it appropriate that the disposal of such land be governed by a unique disposal process.
42. Receipts from the disposal of vacant land may continue to be retained provided they are spent on affordable housing, regeneration and the paying off of Housing Revenue Account debt.

Homes sold at discounts

43. The Department proposed giving a general consent to the disposal to existing council tenants of
 - a. vacant houses up to the maximum discount to which the tenant would have been entitled had they had a tenancy of it
 - b. occupied houses to tenants who do not have the Right to Buy up to a discount equivalent to the discount to which they would have been entitled had they just qualified for the Right to Buy

- c. occupied houses to tenants who have the Right to Buy acquiring with others who do not have that right at the relevant discount.
44. The Department further proposed giving a general consent to the disposal of vacant houses to people who are not existing council tenants at a discount up to that to which they would have been entitled had they just qualified for the Right to Buy.

Consultation Question 6

Do you think that these discounts are appropriate? If not, what do you think they should be?

Consultation Question 7

Do you think that there are situations where local authorities should be permitted to dispose of council housing assets at a discount? If yes, what are they and what should the discount be?

Consultation Question 8

Do you think that there are situations included in the list above where local authorities should not be permitted to offer a discount? If yes, what are they?

45. 60% of respondents broadly supported the proposals.
46. A number of respondents were opposed to allowing any discounts, while others wanted such disposals restricted and / or capped: e.g. no discounts should be permitted to people on introductory tenancies or on homes suitable for the elderly or to people who already owned property. Some suggested that discounts should be permitted only where the home would continue to be used as social housing or should be permitted only in regeneration areas. One respondent felt that the discount should be denied to anyone who had already benefited from a discounted sale in the past.
47. Others felt that local authorities should determine their own discounts and that discounted sales of reversionary interests and discounted sales to registered housing associations and developers should also be permitted. One respondent felt the discount levels should be set at the regional levels of the Right to Acquire.
48. Many were keen not to see the system abused and that local authorities should be transparent and issue clear guidance as to who should qualify for such discounts.
49. One respondent wanted to see safeguards to ensure current tenants weren't disadvantaged, but the General Consents are clear that they cannot be used to dispose of a property to someone who has the Right to Buy it. Another wanted to be able to offer discounts on plots of land, but the General Consents as proposed allow the disposal of land without dwellings at any price. Finally, one respondent was keen that local

authorities had the ability to clawback money in a similar fashion to the Right to Buy. This is something that should be set in the conditions of sale and need not be explicit in the General Consents.

THE GOVERNMENT'S PROPOSED WAY FORWARD

50. The Government believes that there are clear benefits in offering up for sale council homes at discounted prices and that local authorities are best placed to decide who should benefit locally. The Government would however encourage all local authorities to publish clear guidance on eligibility.
51. The Government does not believe that there should be a general consent for discounted sales to other bodies (other than those detailed in the General Consents issued under section 25 of the Local Government Act 1988). The Government wishes to continue to exercise some control over the loss of public assets at less than market value.
52. However the Government recognises the benefits of offering a discount when a local authority disposes of its reversionary interest in a property (especially where the property is occupied entirely by long-leaseholders). It therefore intends to allow such disposals at any price determined by the local authority.
53. Receipts from disposals at a discount to non-secure tenants may be retained provided they are spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt. Receipts from disposals at a discount to existing secure tenants will be treated in the same way as Right to Buy receipts, the subject of the separate consultation.

Long Leases

54. The Department proposed continuing with a general consent to extend or grant long leases on appropriate terms that apply in accordance with the Leasehold Reform Act 1967 in the case of houses, and the Leasehold Reform, Housing and Urban Development Act 1993 in the case of flats.

Consultation Question 9

Do you agree that local authorities should not require the consent of the Secretary of State to dispose of such interests? If not, why not?

55. 45% supported continuation of the policy and no one responded with any specific objection.

THE GOVERNMENT'S PROPOSED WAY FORWARD

56. The Government intends proceeding with the current General Consent.

57. Receipts arising from such disposals may continue to be retained provided they are spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt.

Short Leases

58. The Department proposed giving a general consent to grant a lease of a term of less than 7 years and grant an assignment of a lease, which at the date of the assignment has not more than 7 years to run, but not if the lease is to a body wholly or partly owned by the local authority.

Consultation Question 10

Do you agree that local authorities should be free to grant such leases? If not, why not? Should such leases be granted to local authority subsidiaries? If yes, why?

59. 82% broadly supported the proposal.

60. Some felt that small scale disposals of this kind should be permitted to wholly or partly owned subsidiaries and all disposals where the local authority had closed its Housing Revenue Account.

THE GOVERNMENT'S PROPOSED WAY FORWARD

61. The Government intends to grant consent to such disposals to subsidiaries where no more than 5 dwellings a year are concerned or where the local authority has closed its Housing Revenue Account.

62. Receipts arising from such disposals may continue to be retained provided they are spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt.

Shared Ownership

63. The Department proposed permitting disposals without specific consent to individuals on shared ownership terms, either at market value or at a discount pro-rated to match discounts permitted regionally under the Right to Buy.

Consultation Question 11

Do you think that there are situations where a local authority should require the consent of the Secretary of State before entering into a shared ownership arrangement with an individual? If yes, what are they?

64. 56% broadly supported this proposal.

65. One respondent wanted freedom to charge an Affordable Rent on the portion remaining in local authority ownership.

THE GOVERNMENT'S PROPOSED WAY FORWARD

66. The Government does not want to be prescriptive about the level of rent charged on shared ownership arrangements. The level of rent is a matter entirely for the local authority mindful of any restrictions imposed by the Department for Work and Pensions with regard to people on Housing Benefit.
67. Where the local authority disposes of less than 50% of its interest in the property (and the occupant does not staircase beyond this within two years of purchase) then the full receipt may be retained provided it is spent on affordable housing, regeneration or the paying off of Housing Revenue Account debt. Where the disposal is of a 50% or greater share, the receipt will be treated as if it were a Right to Buy receipt, the subject of the separate consultation.

The Pooling of Housing Capital Receipts

68. The Department proposed amending the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 to
- a. clarify those receipts that must be surrendered to central Government
 - b. simplify and make fairer the treatment of Social HomeBuy and other shared ownership receipts
 - c. simplify the provisions on determining when pooling payments are due
 - d. simplify the incentives for local authorities to buy back dwellings
 - e. rationalise and extend the provisions on capital allowance (including making the paying off of Housing Revenue Account debt permissible expenditure), and
 - f. abolish defunct provisions

Consultation Question 12

Does any part of the Proposed Amendment Regulations explained below fail to effect the six aims listed above? Can any further provisions be introduced that would effect the six aims more successfully?

69. 82% were broadly supportive of our proposals.

Estimated and specified proposals

70. The simplification of the deadline for pooling payments elicited only three expressions of concern, on the basis that one month was insufficient time to calculate the quarterly pooling liability. However, other authorities explicitly said one month was adequate and welcomed the simplification.

Capital Allowance

71. There was support for the provision to allow the repayment of housing debt to count towards the capital allowance. The provision to allow a

greater proportion of shared ownership receipts to be used for affordable housing or regeneration attracted limited support, though some called for more concessions here. Finally, some authorities asked that receipts arising from sales to secure tenants of dwellings in which they were not living not be treated as if they were Right to Buy receipts.

Other Issues

72. One respondent suggested replacing quarterly pooling payments with annual pooling payments for those authorities with low levels of housing receipts.

THE GOVERNMENT'S PROPOSED WAY FORWARD

73. The Government welcomes the broad support for its proposals. It does not accept that a month is insufficient time for a local authority to calculate its pooling liability nor does it believe that a low housing receipt is justification for making fewer payments (which would, in any case, add a further complexity to the regulations).

74. The announcement of changes to the policy on Right to Buy affects the proposed changes. However, insofar as the consultation covered non-Right to Buy receipts, the Government intends to proceed as set out in the consultation paper with one substantial change: sales to secure tenants at market value will no longer be treated as Right to Buy sales for the purposes of pooling.

Annex 1

Our Original Proposal – that for the purpose of the pooling regulations receipts arising from sales to existing (and recent) council tenants be treated the same as receipts arising from the Right to Buy (to prevent local authorities circumventing their requirement to pool receipts).

Comments received – this makes it difficult to sell unwanted properties at auction (where the identity of the purchaser is not known in advance). Sales at market value are not akin to the Right to Buy.

Our Revised Proposal – that for the purpose of the pooling regulations receipts arising from sales at a discount to existing council tenants be treated the same as receipts arising from the Right to Buy.

Our Original Proposal – to require the consent of the Secretary of State to dispose of properties to wholly or partly owned subsidiaries to ensure the borrowing cap imposed under self-financing is not compromised.

Comments received – places an unnecessary bureaucratic burden on delivering simple administrative disposals (e.g. the transfer of a home to an ALMO for use by an estate caretaker employed by the ALMO). Not clear of the purpose if the local authority has no Housing Revenue Account (and is therefore unaffected by the borrowing cap).

Our Revised Proposal – permit such disposals without consent (including the granting of short leases) provided they do not amount to more than 5 a year or where the local authority has no Housing Revenue Account.

Our Original Proposal – that local authorities should be free to dispose of their reversionary interest in dwellings for the best price that can be reasonably obtained.

Comments – freedom to offer discounts would remove a bureaucratic hurdle to local authorities freeing themselves more easily from long-term management and maintenance commitments.

Our Revised Proposal – that local authorities should be free to dispose of their reversionary interest in dwellings for whatever price they deem appropriate.

Annex 2

Those who responded to the consultation

Local Authorities

Ashford
Barnsley
Basildon
Birmingham
Brighton & Hove
Bury
Cambridge
Camden
Cheltenham
Colchester
Daventry
Derby
Durham
East Devon
East Riding
Gravesham
Guildford
Hackney
Halton
Haringey
Harrow
Leeds
Lichfield
Milton Keynes
Newark & Sherwood Homes
Newark & Sherwood
Newcastle upon Tyne
Newham
North Kesteven
North Warwickshire
Northampton
Northumberland UA
Nottingham
Reading
Shepway
Solihull
Southwark
Stockport
Thanet
Wandsworth
Wealden
West Dorset
Westminster

Woking
Wolverhampton

Other organisations and member of the public

District Councils' Network
Chartered Institute of Housing
Chartered Institute of Public Finance and Accountancy
Local Government Association

SECTOR

The Society of District Council Treasurers
National Federation of ALMOs
Association of North East Councils
James Derounian – University of Gloucestershire
Dean Sanders