



Implementing social housing reform: directions to the
Social Housing Regulator
Consultation



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Consultation

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Contents

Foreword	4
Scope of the consultation	6
Basic information	8
Introduction	10
Context	11
Commentary on proposed directions	17
Annex A Proposed directions	23
Annex B Consultation criteria	29

Foreword

Over the last few decades waiting lists for social housing have grown to record proportions. At the same time a deepening sense of unfairness has grown about how this fundamental publicly-funded asset is used. We have allowed a lazy consensus to develop that failed to address these problems.

This Government has made it a top priority to make the system of social housing in England do what it is meant to do. We have introduced the most radical shake up of social housing for 50 years to create a fairer system that will allow us to build more affordable homes.

I am determined that good, affordable housing should be available for those who genuinely need it and that people who live in it should have the opportunity to achieve their aspirations. I believe that this is best done by trusting local authorities and social landlords to run their own businesses and by giving tenants more control over the decisions they make about their lives.

We are devolving power from the State to the people. Tenants will have more of a say in how their services are provided and we will give greater freedoms and flexibilities to landlords to provide these services. The Localism Bill, when enacted, will bring about many of the changes necessary to deliver our package of reforms but we also need to bring about regulatory changes to make the reforms work in practice.

This consultation outlines the areas on which the Secretary of State proposes to direct the social housing regulator to set standards. These are:

- **Tenure reform:** to allow social landlords to issue flexible tenancies, subject to conditions, to make better use of existing and future stock. In implementing these reforms, we will respect the rights of existing secure and assured tenants.
- **Mutual exchange:** to require landlords to enable access to internet-based mutual exchange schemes allowing tenants who want to move the best possible opportunity of finding a match, making the scheme truly national for the first time.
- **Tenant involvement:** to strengthen landlord accountability to tenants and support the Tenant Cashback model, providing new opportunities for social housing tenants to get involved in commissioning repair and maintenance services for their homes.
- **Rent:** to make changes to reflect the introduction of the Affordable Rent model.
- **Quality of accommodation:** to clarify that providers are expected to maintain their stock at a decent level.

These new flexibilities will help local authorities, social landlords and tenants to work together to make the system of social housing in this country fairer and help people stand on their own two feet. A system that does not block aspiration but instead acts as a springboard to help people make a better life for themselves and for their communities.

I look forward to reading your response to this consultation.

A handwritten signature in black ink, reading "Grant Shapps". The signature is written in a cursive, flowing style with a period at the end.

Rt. Hon. Grant Shapps MP, Minister for Housing and Local Government

Scope of the consultation

<p>Topic of this consultation:</p>	<p>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. Once formally issued, the directions will be binding on the Regulator when it consults on and sets standards. Standards set by the Regulator will apply to registered providers of social housing ('registered providers'), commonly known as social landlords.</p> <p>The Secretary of State is proposing to use these powers to implement key elements of the Government's package of reforms to social housing. These reforms were outlined in the Government's summary of responses to a previous consultation document: <i>Local Decisions: a fairer future for social housing</i>¹ ('<i>Local Decisions</i>') and in its <i>Review of social housing regulation</i>².</p> <p>The Localism Bill currently before Parliament includes amendments to the Secretary of State's powers under section 197 of the 2008 Act. This consultation includes some proposals that are contingent upon these statutory changes being approved by Parliament. This is explained in more detail later in the document.</p>
<p>Scope of this consultation:</p>	<p>Section 197 of the 2008 Act requires the Secretary of State to consult on draft directions. This consultation paper proposes that the Secretary of State should:</p> <p>(a) withdraw all previous directions issued to the Regulator (directions were issued by the previous government on 10 November 2009 and 17 March 2010³); and</p> <p>(b) direct the Regulator to set standards (and about the content of those standards) on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. The draft directions are attached at Annex A.</p> <p>We are proposing to direct the regulator on tenure, mutual exchange and tenant involvement and empowerment in order to implement the Government's social housing reforms (as set out in the summary of responses to the <i>Local Decisions</i> consultation, the <i>Review of Social Housing Regulation</i> and elsewhere). In implementing these reforms, we will respect the rights of existing secure and assured tenants.</p> <p>The proposed direction on tenant involvement and empowerment also</p>

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

² <http://www.communities.gov.uk/publications/housing/socialhousingregulation>

³ <http://www.communities.gov.uk/publications/housing/tsadirectionresponses>

	<p>encompasses the Government's Tenant Cashback proposals, which are designed to enhance the opportunities available to social housing tenants to commission repairs and maintenance services for their homes.</p> <p>The proposed direction on rents reflects the creation of the Government's Affordable Rent model. It does not include any changes to the existing policy for traditional social rent. The proposed direction on quality of accommodation reflects the same policy as that which underpinned the previous direction.</p> <p>The scope of the consultation is limited to the proposed directions outlined later in this document.</p>														
Geographical scope:	This power affects the whole of England.														
Impact assessment:	<p>With one exception, impact assessments have already been published for all of the policy changes that the proposed directions would implement:</p> <table border="1" data-bbox="416 965 1417 1417"> <thead> <tr> <th data-bbox="416 965 916 1115">Proposed direction</th> <th data-bbox="916 965 1417 1115">Policy change (with link to accompanying Impact Assessment)</th> </tr> </thead> <tbody> <tr> <td data-bbox="416 1115 916 1151">Tenure</td> <td data-bbox="916 1115 1417 1151">Tenure reform⁴</td> </tr> <tr> <td data-bbox="416 1151 916 1227">Mutual exchange</td> <td data-bbox="916 1151 1417 1227">Nationwide homeswap programme⁵</td> </tr> <tr> <td data-bbox="416 1227 916 1339">Tenant involvement and empowerment</td> <td data-bbox="916 1227 1417 1339">Reform of social housing regulation⁶</td> </tr> <tr> <td data-bbox="416 1339 916 1375">Rents</td> <td data-bbox="916 1339 1417 1375">Tenant Cashback</td> </tr> <tr> <td data-bbox="416 1375 916 1417">Quality of accommodation</td> <td data-bbox="916 1375 1417 1417">Affordable Rent⁷</td> </tr> <tr> <td data-bbox="416 1417 916 1453"></td> <td data-bbox="916 1417 1417 1453">No policy change</td> </tr> </tbody> </table> <p>The exception is the Government's Tenant Cashback proposals, for which an impact assessment is being published alongside this consultation document.</p>	Proposed direction	Policy change (with link to accompanying Impact Assessment)	Tenure	Tenure reform ⁴	Mutual exchange	Nationwide homeswap programme ⁵	Tenant involvement and empowerment	Reform of social housing regulation ⁶	Rents	Tenant Cashback	Quality of accommodation	Affordable Rent ⁷		No policy change
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⁴ www.communities.gov.uk/publications/localgovernment/localismsocialhousingfuture (see p.28-50)

⁵ www.communities.gov.uk/publications/localgovernment/localismsocialhousingfuture (see p.51-65)

⁶ www.communities.gov.uk/publications/localgovernment/localismsocialhousingreform

⁷ www.communities.gov.uk/publications/housing/rentimpactassessment

Basic information

To:	<p>Statutory consultees:</p> <ul style="list-style-type: none"> • the Regulator (currently the Tenant Services Authority) • the Homes and Communities Agency • the Audit Commission • bodies representing the interests of local housing authorities • bodies representing the interests of tenants of social housing • bodies representing the interests of registered providers • the Charity Commission <p>The Department will consider any consultation responses received from other interested bodies and individuals.</p>
Body/bodies responsible for the consultation:	<p>The Affordable Housing Regulation and Investment Division in the Department for Communities and Local Government is responsible for this consultation.</p>
Duration:	<p>The consultation starts on 7 July 2011 and finishes on 29 September 2011.</p>
Enquiries:	<p>For further information on this consultation document please email Directions@communities.gsi.gov.uk or telephone 0303 444 3779 or 0303 444 3653.</p>
How to respond:	<p>Consultation responses should be submitted by email to: Directions@communities.gsi.gov.uk</p> <p>Or by post to:</p> <p>Social Housing Directions Consultation Department for Communities and Local Government Zone 1/A4 Eland House Bressenden Place London SW1E 5DU</p>
Additional ways to become involved:	<p>Following the directions consultation, the Regulator intends to hold a consultation on the contents of its standards later in 2011. Bodies with an interest in those standards are advised to participate.</p>
After the consultation:	<p>The Government will publish all responses to the consultation and the final directions to the Regulator on the Department for Communities and Local Government website. This is expected in autumn 2011.</p>

Compliance with the code of practice on consultation:	This consultation document and consultation process have been planned to adhere to the Government code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria. The period of consultation will be 12 weeks.
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Introduction

1. This is a consultation on draft directions proposed to be given by the Secretary of State for Communities and Local Government to the Social Housing Regulator ('the Regulator') under section 197 of the Housing and Regeneration Act 2008 ('the 2008 Act'). These directions are needed in order to implement important elements of the Government's planned reforms to social housing. The Localism Bill, currently before Parliament, will deliver other elements of the reform programme.
2. The previous government issued directions to the Regulator in November 2009 and March 2010⁸. We are proposing to withdraw these directions and replace them with the draft directions attached at Annex A. Once issued formally, the directions will be binding on the Regulator when it consults on and sets standards for registered providers of social housing ('registered providers'). The Regulator will set standards in accordance with the directions.
3. The Localism Bill includes certain amendments to the Secretary of State's powers under section 197 of the 2008 Act. The proposed directions on tenure and mutual exchange are contingent on these statutory changes and therefore cannot be issued formally until the Bill has received Royal Assent and the relevant clauses have been commenced. However the Government intends to publish the indicative final form of the directions in autumn 2011 following this consultation, with the directions being issued formally in the event that the necessary powers are available.
4. The only organisation directly affected by the proposals included in this consultation is the Regulator. Two groups will be indirectly affected, via the standards set by the Regulator in accordance with these directions: registered providers and their social housing tenants.
5. The proposed directions have no pre-determined end date but they may be subject to change or revision. Any further amendments or changes will require a consultation.
6. The text in this consultation paper is not binding. The 'context' and 'commentary' sections are intended to enable a better informed consultation by explaining the rationale for the directions. **We invite your views on the questions listed in the 'commentary' section, and on the draft directions themselves, by 29 September 2011.**

⁸ www.communities.gov.uk/publications/housing/tsadirectionresponses

Context

Regulation of social housing

7. Social housing (as defined by the 2008 Act) is subject to regulation where it is provided by registered providers. Registered providers are local authorities or private bodies (known as private registered providers – these are mostly housing associations) that are registered with the Regulator. The current regulatory system, provided by Part 2 of the 2008 Act, has been in place since 1 April 2010. The current Regulator, the Tenant Services Authority, was established on 1 December 2008.
8. The principal regulatory tool is standards set by the Regulator. The Regulator currently has two standard-setting powers under the 2008 Act. Section 193 enables the Regulator to set standards for registered providers *“as to the nature, extent and quality of accommodation, facilities or services provided in connection with social housing.”* Section 194 permits the Regulator to set standards for private registered providers in *“matters relating to the management of their financial and other affairs.”*
9. Section 197 of the 2008 Act provides that the Secretary of State may direct the regulator to (a) set a standard under section 193; (b) about the content of standards under section 193; and to (c) have regard to specified objectives when setting standards under section 193 or 194. Directions to set a standard or about the content of standards can currently only be given where they relate to quality of accommodation, rent, or tenant involvement. A previous Secretary of State issued directions on these three issues in November 2009 and March 2010.
10. The Regulator currently has a range of monitoring powers which it can use to assess registered providers’ performance against the standards. Where a registered provider breaches one or more of the standards, the regulator can use its enforcement powers.

Reform of social housing regulation

11. The Government is taking forward significant reforms to the existing regulatory system. These reforms were outlined in our Review of Social Housing Regulation ('the Review'), published in October 2010⁹.
12. In line with the Government’s commitment to reduce the number of quangos, the Tenant Services Authority will be abolished and responsibility for regulation will be transferred to the Homes and Communities Agency. In order to ensure the continued independence of regulation, regulatory functions and powers will be vested in a separate statutory Regulation Committee within the Homes and Communities Agency. The Committee’s members will be appointed by the Secretary of State.

⁹ www.communities.gov.uk/publications/housing/socialhousingregulation

13. The Review also recommended a significant refocusing of regulatory activity. Proactive economic regulation of housing associations will continue, in order to safeguard public investment in social housing and support social housing supply (including by retaining lender confidence in the sector). However consumer regulation will in future focus on setting clear service standards, with the Regulator's monitoring and enforcement powers only used where necessary to address failures against those standards that give rise to actual or potential serious detriment to tenants (or potential tenants). Instead there will be greater emphasis on local mechanisms to scrutinise performance and stronger tools for tenants to hold registered providers to account on service delivery. The Review also recommended a localist approach to the resolution of routine service problems, with an enhanced role for elected councillors, MPs and tenant panels in the complaints process.
14. To help drive the shift to local challenge and scrutiny, the Review recommended that the Secretary of State should direct the Regulator to issue a new standard on tenant involvement and empowerment. This standard would require registered providers to ensure that tenants are given the opportunity to form tenant panels (or equivalent groups) that will enable them to hold registered providers to account and scrutinise service delivery. In order to support effective scrutiny by tenants, the standard would require registered providers to provide timely, useful information about their performance in a form which providers should seek to agree with their tenants. The proposed direction on tenant involvement and empowerment is designed to deliver these outcomes.

Delivering regulatory reform

15. Our planned reforms to regulation will be delivered through a mixture of statutory and administrative changes.
16. Part 6 of the Localism Bill will, subject to the approval of Parliament, deliver the necessary changes to legislation. As noted above, the proposed direction on tenant involvement and empowerment will help to strengthen registered provider accountability to tenants. The Regulator has indicated that it intends to consult later in 2011 on changes to its regulatory framework that arise from these reforms. In doing so, the Regulator would take account of any indicative final form directions published by the Secretary of State.

Reform of social housing

17. In November 2010, the Government published *Local Decisions: a fairer future for social housing*, setting out plans for radical reform of the social housing system¹⁰. The paper made clear the Government's intention to change the legislation governing the types of tenancies granted to social housing tenants; the way social housing is allocated; how local authorities discharge their main homelessness duty; as well as legislating to improve mobility for social tenants.

¹⁰ www.communities.gov.uk/publications/housing/socialhousingreform

18. These changes are intended to provide greater freedoms and flexibilities for local authorities and registered providers to meet local needs and local priorities; make better use of resources; promote fairness; and ensure that support is focused on those who need it for as long as they need it.
19. The statutory reforms to the social housing system which were set out in *Local Decisions* are being taken forward in the Localism Bill which is currently being considered by Parliament. However, in some cases, regulatory changes are also needed in order to deliver the reforms, as outlined below.

Tenure reform

20. Registered providers currently have very little flexibility over the types of tenancy they offer. Local authority providers are obliged by law to provide secure lifetime tenancies in most cases. Private registered providers (typically housing associations) have much more flexibility in statute but are constrained by regulatory requirements. The Regulator's Tenancy Standard, which applies to all registered providers, requires them to 'offer and issue the most secure form of tenancy compatible with the purpose of the housing and the sustainability of the community'. In practice this means that private registered providers are required to grant periodic assured tenancies to the vast majority of new tenants in general needs social rented housing.
21. The Government wants to give all registered providers much greater flexibility, enabling them to offer lifetime security where it is needed but also to set shorter terms for social rent as well as Affordable Rent properties where that makes more sense.
22. Through the Localism Bill, the Government is seeking to:
 - create a new local authority flexible tenancy with a minimum fixed term of two years with similar rights to secure tenants
 - respect the rights of existing secure and assured tenants
 - provide that all new secure and flexible tenancies include a right to one succession for spouses and partners, while giving registered providers the flexibility to grant whatever additional succession rights they choose
 - place a new duty on local housing authorities to publish tenancy strategies, to which registered providers should have regard when formulating their own tenancy policies
 - give the Secretary of State a power to direct the Regulator on the content of a Tenancy Standard
23. We are proposing to use the new power of direction, if approved by Parliament, to allow greater flexibility for registered providers on the types of tenancies that they may grant. That includes clarifying that private registered providers have the same flexibility on probationary tenancies as local authority landlords currently enjoy. Our aim is to support and encourage their use as an important tool for tackling anti-social behaviour, alongside, as required, interventions to help tenants change their behaviour and maintain their tenancy.

Mobility

24. The Government is committed to introducing a nationwide social home swap programme to ensure that social tenants wishing to move can maximise their chances of securing a suitable match. Our aim is to make it easier for tenants to see possible exchange partners and to increase tenants' choice and control over where they live.
25. If this ambition is to be delivered, it is important that all registered providers provide their tenants with access to good internet-based home swap services and ensure that appropriate support is provided for those tenants who do not have internet access.
26. The Localism Bill therefore provides a power for the Secretary of State to direct the Regulator on the content of a standard for registered providers on "*methods of assisting tenants to exchange tenancies.*" We are proposing to use this new power of direction, if approved by Parliament.

Affordable Rent

27. The Government's new Affordable Rent model, announced at the Spending Review, is designed to maximise the delivery of new social housing by making the best possible use of constrained public subsidy and the existing social housing stock. It will also provide a more diverse offer for the range of people accessing social housing.
28. Affordable Rent homes will be made available to tenants up to a maximum of 80 per cent of local market rent, with the option to offer flexible tenancies. Affordable Rent homes will be allocated in the same way that social rent properties are now, and existing lettings arrangements operated by local authorities and registered providers will continue to apply. Where appropriate, Affordable Rent properties will be made available through choice based lettings. The statutory and regulatory framework for allocations provides scope for local flexibility, and local authorities and registered providers may wish to exercise this discretion in relation to Affordable Rent in order to meet local needs and priorities in the most effective way possible. The 2011-15 Affordable Homes Programme framework provides full details of the Affordable Rent model¹¹.
29. In December 2010 the Regulator launched a consultation on a number of changes to its Tenancy Standard that were necessary in order to give registered providers the freedom to benefit from the opportunities that Affordable Rent provides¹². In April 2011, following the conclusion of the consultation, the Regulator issued a revised Tenancy Standard which is now in effect¹³.
30. Although the regulatory framework has already been amended to allow

¹¹ www.homesandcommunities.co.uk/affordable-homes

¹² www.tenantservicesauthority.org/server/show/ConWebDoc.20976

¹³ www.tenantservicesauthority.org/server/show/ConWebDoc.21239

registered providers to offer Affordable Rent properties, the Government considers that it makes sense to update the existing direction on rents to reflect the introduction of the new model. The proposed revisions are consequential upon the introduction of Affordable Rent and are therefore unlikely to have a material impact on the regulatory framework.

31. The Minister for Housing and Local Government has confirmed that the existing inflation-linked formula, inherited from the previous government, for annual rent increases in traditional social rented housing will continue to apply throughout the 2011-15 period as part of the Government's rent restructuring policy¹⁴. Therefore we are not proposing any other changes to the rents direction.

Tenant Cashback

32. The purpose of the Tenant Cashback model is to give social housing tenants opportunities to be involved in the management of repair and maintenance services for their homes. Rather than registered providers always carrying out or commissioning repairs, the model would give tenants opportunities to undertake or commission routine repair tasks themselves, as agreed with their landlords.
33. Tenants who choose to take up these opportunities will be able to take more responsibility for the upkeep of their homes and neighbourhoods. They will have a chance to share in resulting efficiencies, potentially building up worthwhile savings through the scheme. They may also gain practical and transferable skills.
34. We recognise that local circumstances, including the age, condition and type of housing, will need to be taken into account in each locality. We do not therefore propose to prescribe how registered providers should run local Tenant Cashback schemes. However we are proposing that registered providers should offer opportunities to their tenants to be involved in managing repairs and maintenance services and to share in savings made.
35. We are piloting the Tenant Cashback model to work through the detailed practicalities of how a scheme will work in practice. We envisage that evidence from pilot schemes will be made widely available to help registered providers to run their own schemes successfully.

Decent Homes programme

36. The target was for all social homes to meet the Decent Homes standard by December 2010. The great majority of social housing met the standard before this date and registered providers' statistical returns show that 92 per cent was expected to meet the standard by April 2011. Some landlords, particularly in the local authority sector, had formal agreements with the Regulator that some of their stock would be made decent after this date. (Some agreements had

14

www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110214/wmstext/110214m0001.htm#110214600020

been granted by the Government Offices and were inherited by the Regulator with the introduction of cross-domain regulation.)

37. The extensions granted to these registered providers still stand. Providers should make every effort to revise their spending plans and improve their procurement efficiency to meet their agreed deadline before seeking to renegotiate it. In the Spending Review the Government earmarked £2.1bn to help tackle the backlog of non-decent homes in the social sector. This funding is essential in helping to ensure all social homes meet the Decent Homes standard and will help registered providers meet their commitments. Some providers with less than 10 per cent of their homes non-decent may have expected to receive further funding but will not do so following the Spending Review settlement. However it is expected that through effective use of other resources and procurement efficiencies they will still be able to improve their non-decent homes.
38. In future registered providers are expected to maintain their stock at a decent level, investing capital and using their asset management strategy to ensure pre-emptive improvements are delivered so that their homes do not fall into a non-decent state. Our expectation is that temporary exemptions to the standard for specific homes will only be given in exceptional circumstances.

Localism Bill: changes to direction powers

39. The Secretary of State has a power to direct the Regulator to set a standard and on the content of a standard. However he can only use this power in relation to the specific matters listed in subsection (2) of section 197 of the 2008 Act. Currently these matters are the quality of accommodation, rent and tenant involvement. As noted above, the Bill will add two further categories to this list – tenure (clause 133) and mutual exchange (clause 154). This consultation includes proposals to issue directions on tenure and mutual exchange, in the event that these clauses are approved by Parliament.
40. The Bill makes only one other change to this power – to provide that it can be used in relation to standards set under section 194 (i.e. economic standards) as well as standards set under section 193 (i.e. consumer standards). This change is necessary because, as part of the re-classification of the standards into 'consumer' and 'economic', standards on rents will – in future – be set under section 194 rather than under section 193 (as is provided by paragraph 4(5) of Schedule 17 to the Bill). The classification of the standard on rents as 'economic' will ensure that the Regulator can continue to monitor and enforce compliance with the standard on a proactive basis.
41. In relation to rents, our proposal is therefore to issue a direction in relation to a standard set under section 194, in the event that Parliament approves this clause.

Commentary on proposed directions

General principles

42. The Government is proposing to issue five directions, on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. In the case of the latter three, our approach is to revise and reissue the existing directions on these issues. The draft directions are attached at Annex A.
43. The Government's intention is that the standards resulting from these directions should apply to all registered providers, with the exception of rents (which will apply to private registered providers only).
44. The directions are intended to apply only to the low cost rental accommodation of registered providers, as defined by the 2008 Act. Low cost rental includes Affordable Rent as well as traditional social rented housing. However it is intended that the directions will not apply to intermediate rent (which is technically a form of low cost rental) or to low cost home ownership accommodation. It continues to be for the Regulator to decide within its statutory framework what standards are appropriate for these groups.
45. The Government believes that the draft directions should contain the minimum amount of detail needed to achieve the desired goals, and where possible should be set at a high level (while setting clear boundaries where necessary).

Direction on tenure

46. In framing the draft direction on tenure, we have carefully considered the right balance between central prescription and flexibility. The draft direction begins by setting an overall outcome that we are seeking to achieve, but then offers flexibility for registered providers to decide how to deliver this outcome locally. However it is essential that this is done in a transparent way (hence the proposed requirement on registered providers to publish and maintain a clear and accessible tenancy policy) and that there are certain minimum guarantees that all tenants can expect.
47. The proposed overall outcome at the start of the direction (*“that registered providers offer and issue tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability of the community and the efficient use of their housing stock”*) is intended to replace the required outcome on tenure in the Regulator's existing Tenancy Standard. The current required outcome (*“registered providers shall offer and issue the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community”*) effectively requires providers to grant lifetime tenancies to the vast majority of new tenants in general needs social rent housing.

Question 1: Does the draft direction on tenure set out the relevant factors that registered providers should consider when deciding what type of tenancy they should offer and issue?

48. The proposed requirement on registered providers to “*publish clear and accessible policies which outline their approach to tenancy management*” is of a similar form to the requirement in the existing Tenancy Standard. It also incorporates tackling tenancy fraud and preventing unnecessary evictions, issues covered in the ‘specific expectations’ section of the existing Standard. We propose that tenancy policies should set out how tenants or prospective tenants can appeal or complain against tenancy decisions – we envisage that registered providers will normally wish to refer to their existing complaints procedures, taking account, in respect of local authority landlords, of the statutory provisions for appeals which we are planning to introduce.
49. We expect that in developing, communicating and implementing their tenancy policies, registered providers will pay particular regard to the needs of more vulnerable tenants and their children, for example through the provision of tailored interventions where tenancy conditions are not being met and by providing additional support through any complaints or appeals process.

Question 2: Does the draft direction on tenure set out the right minimum requirements for a registered provider’s tenancy policy?

50. The Government believes that the minimum guarantee should be a two-year tenancy. However we would expect, and responses to the *Local Decisions* consultation suggest, that the vast majority of tenancies will be provided on longer terms – particularly for vulnerable households or those with children. Paragraph 2(3)(f) of the draft direction reflects that expectation. We are proposing that registered providers’ tenancy policies should explain how they will take account of the needs of vulnerable households, including through the provision of tenancies which provide a reasonable degree of stability for those households.
51. The draft direction makes clear that for new tenants, a flexible tenancy may be preceded by a probationary tenancy. Probationary tenancies are used by the majority of registered providers, prior to the grant of secure or assured tenancies, as an important tool to identify and deal with anti-social behaviour at an early stage. For the same reason, the Government wants to ensure that landlords are able to grant probationary tenancies prior to the fixed term of a flexible tenancy for new tenants.
52. The Government also wants to ensure that all registered providers have the same level of flexibility on the use of probationary tenancies, as part of encouraging their use for new tenants as standard practice. The draft direction therefore clarifies that private registered providers can extend probationary tenancies to up to 18 months (as local authority landlords can already).
53. The draft direction incorporates a requirement that the Standard must include a guarantee of a tenancy of no less security for existing social tenants who choose to move to another social rent home. This guarantee does not apply

where a tenant chooses to move to an Affordable Rent home, although registered providers will have discretion to provide the same level of security in this situation should they wish to do so. This approach matches the Government's proposals in paragraph 2.51 of the *Local Decisions* consultation. The guarantee will apply where tenants are decanted to another property (regardless of whether it is a social rent or Affordable Rent property).

Question 3: Does the draft direction set out the right minimum protections for tenants of registered providers?

54. As noted above, the Regulator published a revised Tenancy Standard on 13 April 2011 in order to enable registered providers to participate in Affordable Rent. The revised Standard provides greater flexibility for registered providers on the types of tenancy they can grant on Affordable Rent properties. The proposed direction will extend these flexibilities to traditional social rented housing as well. In doing so, the direction seeks to build on the requirements in the existing Standard. The key differences between the proposed direction and the current Standard are as follows:
- the draft direction provides more detail about the matters that tenancy policies should set out
 - the draft direction makes clear that, in relation to general needs housing, the alternative to Assured or Secure periodic tenancies is to offer fixed term tenancies. The draft direction also clarifies the maximum length of probationary tenancies
 - the draft direction sets out the circumstances in which existing social tenants are guaranteed the same level of security where they move home

Direction on mutual exchange

55. In formulating the draft direction on mutual exchange we have sought to build on the existing regulatory requirement to participate in mobility and mutual exchange schemes where available, and make clearer our expectation that registered providers should offer a better mutual exchange service to tenants.
56. The purpose of sub-paragraph 3(2)(a) of the draft direction is to require registered providers to subscribe to an internet based mutual exchange service which enables tenants to register their details for a mutual exchange and search for reciprocal matches.
57. Paragraphs 8.25-8.29 of the *Local Decisions* consultation document described work by Government and existing providers of internet-based mutual exchange services to develop a new national scheme which would enable tenants wishing to identify a mutual exchange to see all available matches. It is our intention that registered providers should subscribe to a provider who is part of this scheme (as provided by sub-paragraph 3(2)(b)(i)), but the draft direction retains the choice for landlords to subscribe to a number of individual providers if they prefer (see sub-paragraph 3(2)(b)(ii)). The intended outcome is that tenants

should be able to access easily the details of as many available reciprocal matches as possible.

58. We want also to ensure that registered providers proactively promote the option of mutual exchange to tenants, including access to a service which the registered provider has subscribed to on their behalf. This is provided for in sub-paragraph 3(2)(c) of the draft direction. Registered providers will need to provide support for tenants who may not have access to a computer, or may not be able to use a computer without assistance (see subparagraph 3(2)(d)). This point was made particularly in relation to older or more vulnerable tenants in response to our earlier consultation on *Local Decisions*. We are not seeking to prescribe how support might be offered but suggest this could include access to computers in public buildings, or housing officer support to register and search for matches on behalf of a tenant.
59. It is our intention that all registered providers should subscribe to a service on behalf of their tenants, and in the majority of cases this is likely to prove the most cost effective option. However it may be the case for smaller registered providers, where they perceive a full subscription to not offer value for money, that they would consider paying the subscription fee for individual tenants on request. Individual registered providers will have the flexibility to make this choice.
60. This new direction is intended to replace the required outcome on mobility in the Regulator's existing Tenancy Standard.

Question 4: Do you agree with the principle and detail of our proposed direction on mutual exchange?

Direction on tenant involvement and empowerment

61. We are proposing to amend the existing tenant involvement and empowerment direction in order to:
 - implement several recommendations set out in the Review of Social Housing Regulation on strengthening the ability of tenants to hold registered providers to account¹⁵; and
 - reflect the Government's Tenant Cashback scheme
62. The draft direction reflects three key recommendations set out in the Review. Firstly, that there should be a clear expectation in regulation that tenants are able to scrutinise registered providers' performance. The text in sub-paragraph 4(2)(a) of the proposed direction is designed to deliver this outcome. In particular we are proposing that tenants should have a wide range of opportunities to influence and be involved in "*the scrutiny of their landlord's performance and the making of recommendations to their landlord about how performance might be improved.*" Alongside effective scrutiny, the Government

¹⁵ The draft direction is a further iteration of the indicative direction on tenant involvement and empowerment that was published as an annex to the *Review of Social Housing Regulation*.

wishes to ensure that registered providers provide further opportunities for tenants to take responsibility for managing their homes, and support tenants in exercising this choice, including through the Right to Manage where this is appropriate. Sub-paragraph 4(2)(b)(i) reflects this policy.

63. Secondly, that registered providers should welcome scrutiny via a tenant panel (or equivalent group). The text in sub-paragraph 4(2)(b)(ii) of the draft direction reflects this recommendation. The proposed text is designed to sit alongside the provisions in the Localism Bill for tenant panels that have been recognised as a designated person for the purpose of referring complaints to the Housing Ombudsman. It is recognised that tenant panels will not necessarily choose to fulfil the function of a designated person for the purpose of referring complaints.
64. Thirdly, that there should be a clear regulatory obligation on registered providers to provide timely, useful performance information to tenants in order to support effective scrutiny. The Review also proposed that the Regulator's statutory power to require registered providers to submit an annual report of their performance should be replaced with a regulatory obligation to provide an annual report of performance to tenants. The text in sub-paragraph 4(2)(b)(iii) of the draft direction reflects these commitments.
65. Sub-paragraph 4(2)(a)(v) of the draft direction reflects the Tenant Cashback model. The intention is to give tenants opportunities to be involved in the commissioning or carrying out of routine repairs, as agreed with their landlord, and to share in any financial savings made as a result. We believe that the publication of information about repair and maintenance budgets will help tenants to judge whether local schemes are sufficiently ambitious. Sub-paragraph 4(2)(b)(iii) is designed to achieve this outcome via registered providers' annual reports.

Question 5: Do you agree with the principle and detail of our proposed revisions to the direction on tenant involvement and empowerment?

Question 6: What type of models for involving social tenants in repair and maintenance services are registered providers likely to offer, how many tenants might participate in these and what costs and benefits might they result in?

Direction on rents

66. The Government is proposing to update the existing direction on rents to reflect the introduction of the new Affordable Rent model. The formula for traditional social rents will remain unchanged. The Government intends that the resulting standard will continue to apply to private registered providers only.
67. Our proposed amendments to the direction are consistent with the 2011-15 Affordable Homes Programme Framework. The wording is very similar to that already used by the Regulator in its recent amendments to the rent element of its Tenancy Standard. The revised direction is therefore unlikely to result in material changes to the existing regulatory framework.

68. In particular, the draft direction provides that:

- properties are to be treated as Affordable Rent where they are provided pursuant to a housing supply delivery agreement with the Homes and Communities Agency under the 2011-15 Affordable Housing Programme
- in line with the Housing Minister's statement to Parliament on 9 December 2010¹⁶, Affordable Rent properties are outside the Government's rent restructuring policy and the social rent formula
- Affordable Rent properties are subject to separate requirements relating to initial rent setting, annual increases and periodic rebasing as set out in the direction

Question 7: Do the proposed revisions to the rent direction adequately reflect the introduction of Affordable Rent?

Direction on quality of accommodation

69. We are proposing some minor revisions to the existing quality of accommodation direction. These changes are needed to reflect the fact that the original date for compliance with the Decent Homes Standard (31 December 2010) has now expired.
70. We are proposing to remove the fixed date for compliance from the direction. The resulting Quality of Accommodation Standard would instead work in much the same way as other standards, where compliance is required with immediate effect rather than within a certain period.
71. The existing direction gives the Regulator's scope to provide 'extensions' to the date by which registered providers must comply with the Quality of Accommodation Standard. The draft direction attached at Annex A retains this flexibility in a slightly modified form. As registered providers are expected to maintain their stock at a decent level on an ongoing basis, the direction would give the Regulator scope to grant a temporary exemption for specific properties where the requirements of the standard should be met by an agreed date. Our expectation is that such an exemption would only be granted to local authorities with a backlog of work now and then only in exceptional circumstances in the future.

Question 8: Do you agree with the proposed revisions to the Quality of Accommodation direction to reflect the expiry of the original target date for compliance?

Question 9: Energy efficiency is implicit in the revisions to the Quality of Accommodation Direction; should we make it more explicit?

¹⁶

www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101209/wmstext/101209m0001.htm#10120948000017

Annex A: Proposed directions

The Directions on Regulatory Standards

The Secretary of State, in exercise of the powers conferred by section 197 of the Housing and Regeneration Act 2008 (“the 2008 Act”) makes the following Directions:

Citation, application and interpretation

1.—(1) These Directions may be cited as the Directions on Regulatory Standards and shall apply to registered providers from 1 April 2012.

(2) The Regulatory Standards set by the Regulator of Social Housing (“the Regulator”) pursuant to these Directions shall apply to low cost rental accommodation of registered providers but shall not apply to—

- (a) in relation to a registered local authority, accommodation not accounted for within the local housing authority's Housing Revenue Account; and
- (b) in relation to private registered providers, rental accommodation to which grant has been given on the basis that the accommodation is intermediate rent, or accommodation specified as exempt from the rent influencing regime in the Rent Influencing Regime Guidance.

(3) In these Directions—

“category 1 hazard” has the meaning given by or under section 2 of the Housing Act 2004,

“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,

“Housing Revenue Account” means the account a local housing authority is required to keep by virtue of section 74 of the Local Government and Housing Act 1989,

“internet based” means a service which is accessed through the internet,

“let on Affordable Rent terms”, in relation to accommodation, means provided pursuant to a housing supply delivery agreement entered into between a registered provider and the Homes and Communities Agency under the Agency's 2011-15 Affordable Housing Programme Framework,

a “match” occurs where a property is identified which fulfils the required property details entered and there is a reciprocal match for the tenant of that identified property,

“mutual exchange” means an agreement between tenants to swap homes, whether or not the tenants are tenants of the same registered provider,

“mutual exchange property” means a property the tenants of which have registered an interest in arranging a mutual exchange with a mutual exchange service,

“mutual exchange service” means a service which enables tenants who have registered an interest in arranging a mutual exchange to search for other mutual exchange properties,

“property” means any low cost rental accommodation of a registered provider,

“property details” include the property type (flat, bungalow, house, etc), address and number of bedrooms,

“Rent Influencing Regime Guidance” means the Rent Influencing Regime Guidance published 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) published by the Regulator in April 2011 and any other guidance issued by the Housing Corporation, the Regulator or its successors, in relation to those documents,

“Right to Manage” means the exercise of the rights in relation to the management of premises provided for under sections 27 and 27AB of the Housing Act 1985,

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

“set” in relation to a standard, includes revise, and cognate expressions shall be construed accordingly,

“Social Rent Guidance” means the Guide to Social Rent Reforms published by the Department of Environment, Transport and the Regions in March 2001, the Written Ministerial Statement on Affordable Rent made on 9 December 2010 and any guidance issued by the Department or its successors, in relation to that document, and

“tenant” means a tenant of a registered provider of social housing.

(4) Expressions which are used, but not defined, in these Directions shall have the same meaning as in the 2008 Act.

(5) References in any document referred to by these Directions to—

(a) registered social landlords, or cognate expressions, shall be treated as references to private registered providers,

(b) the Housing Corporation shall be treated as references to the Regulator.

Tenure

2.—(1) The Regulator must set a standard relating to types of tenure and relating to the content of registered providers’ tenancy policies (“the Tenure Standard”).

(2) The Regulator must set the Tenure Standard with a view to achieving, so far as possible, that registered providers issue 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.

(3) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that registered providers publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, tackling tenancy fraud and granting discretionary succession rights, and set out—

(a) the kinds of tenancies they will grant;

(b) where they grant tenancies for a fixed term, the length of those terms;

(c) the circumstances in which they will grant tenancies of a particular type;

(d) the circumstances in which tenancies may or may not be reissued at the end of the fixed term, in the same property or in a different property;

- (e) 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;
- (f) 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; and
- (g) the advice and assistance to tenants on finding alternative accommodation they will give in the event that they decide not to reissue a tenancy.

(4) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that—

- (a) where registered providers grant general needs tenancies, these are for a minimum fixed term of two years⁽¹⁷⁾, in addition to any probationary tenancy period;
- (b) where registered providers use probationary tenancies, these are 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;
- (c) registered providers grant those who were social housing tenants on the day on which section 132 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 should not apply where tenants choose to move to accommodation let on Affordable Rent terms); and
- (d) registered providers grant tenants who have been moved into alternative accommodation during any redevelopment works a tenancy with no less security of tenure on their return to settled accommodation.

Mutual exchange

3.—(1) The Regulator must set a standard relating to methods of assisting tenants to exchange tenancies, in particular the provision of access to an internet based mutual exchange service (“the Mutual Exchange Standard”).

(2) The Regulator must set the Mutual Exchange Standard with a view to achieving the following, so far as possible—

- (a) registered providers must subscribe to an internet based mutual exchange service which allows—
 - (i) a tenant to register an interest in arranging a mutual exchange through the mutual exchange service without payment of a fee;
 - (ii) the tenant to enter their current property details and the tenant’s requirements for the mutual exchange property they hope to obtain;
 - (iii) the tenant to be provided with the property details of those properties where a match occurs;
- (b) registered providers must subscribe to either—
 - (i) an internet based mutual exchange service which, with the consent of the tenant, shares the property details of each such tenant registered with that service with other providers of mutual exchange services, or
 - (ii) as many internet based mutual exchange services as necessary to provide tenants with access to as many mutual exchange properties as possible;

⁽¹⁷⁾ This does not apply where registered providers grant periodic secure or assured tenancies

- (c) registered providers must take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to the attention of its tenants; and
- (d) registered providers must provide reasonable support to tenants who do not have access to the internet.

Tenant involvement and empowerment

4.—(1) The Regulator must set a standard relating to the involvement by tenants in the management by registered providers of accommodation (“the Tenant Involvement Standard”).

(2) The Regulator must set the Tenant Involvement Standard with a view to achieving the following, so far as possible—

- (a) that tenants are given a wide range of opportunities to influence and be involved in—
 - (i) the formulation of their landlord’s housing related policies and priorities,
 - (ii) the making of decisions about how housing related services are delivered, including the setting of service standards,
 - (iii) the scrutiny of their landlord’s performance and the making of recommendations to their landlord about how performance might be improved,
 - (iv) the management of their homes, where applicable, and
 - (v) 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,
- (b) that registered providers support their tenants to develop and implement the opportunities in sub-paragraph (2)(a), including by—
 - (i) supporting their tenants to exercise their Right to Manage or otherwise exercise housing management functions, where appropriate;
 - (ii) supporting the formation and activities of tenant panels or equivalent groups and responding in a constructive and timely manner to them; and
 - (iii) 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.

Rent

5.—(1) The Regulator must set a standard relating to rent (“the Rent Standard”)

(2) The Rent Standard is to apply to private registered providers only.

(3) The Rent Standard is to apply in relation to the setting of rents in the financial year beginning on 1 April 2012 and subsequent financial years.

(4) In setting the Rent Standard the Regulator must have regard to the Social Rent Guidance.

(5) Subject to sub-paragraph (8), the Regulator must set the Rent Standard with a view to achieving the following, so far as possible—

(a) rents conform with pattern produced by the rents formula set out in the Rent Influencing Regime Guidance (“target rents”) with a 5% tolerance on individual rents (10% for supported housing and sheltered housing) (“rent flexibility level”) but subject to the maximum rent levels specified in that Guidance (“rent caps”),

(b) weekly rent for accommodation increases each year by an amount which is no more than—

$$\text{RPI} + 0.5\% + \text{£}2,$$

until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower,

(c) weekly rent for accommodation which has reached or is above the upper limit of the rent flexibility level increases each year by an amount which is no more than the increase to the target rents,

(d) rent caps increase annually by—

$$\text{RPI} + 1\%,$$

(e) target rents increase annually by—

$$\text{RPI} + 0.5\%.$$

(6) Sub-paragraphs (4) and (5) do not apply to accommodation let on Affordable Rent terms.

(7) Subject to sub-paragraph (8), where accommodation is let on Affordable Rent terms the Regulator must set the Rent Standard with a view to achieving the following, so far as possible—

(a) 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 Institute of Chartered Surveyors,

(b) rent for accommodation increases each year by an amount which is no more than—

$$\text{RPI} + 0.5\%,$$

(c) rent for accommodation is re-set, based on a new valuation each time the accommodation is let to a new tenant or re-let to the same tenant.

(8) Where the application of the Rent Standard would cause 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 meeting existing commitments such as banking or lending covenants, then the Regulator may allow extensions to the period over which the requirements of the Rent Standard are met.

Quality of accommodation

6.—(1) The Regulator must set a standard relating to the quality of accommodation (“the Quality of Accommodation Standard”).

(2) In setting the Quality of Accommodation Standard, the Regulator must have regard to the Decent Homes Guidance.

(3) The Regulator must set the Quality of Accommodation Standard with a view to achieving the following, so far as possible—

(a) that accommodation—

(i) contains no category 1 hazard,

- (ii) is in a reasonable state of repair,
- (iii) has reasonably modern facilities and services, and
- (iv) includes facilities or services for the provision of a reasonable level of thermal comfort,

(b) that accommodation which is at the standard set out in the Decent Homes Guidance is maintained by the registered provider at that standard.

(4) Where, in relation to a registered provider, the application of the Quality of Accommodation Standard would not be reasonable the Regulator may agree a temporary period with the registered provider during which the requirements of the Quality of Accommodation Standard need not be fully met.

Annex B: Consultation criteria

The seven consultation criteria and this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Better Regulation Executive in the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

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.

Please note that section 197(8)(b) of the 2008 Act requires the Secretary of State to publish each response to this consultation. Information provided in response to this consultation, including personal information, may also be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, 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 department.

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

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please inform the DCLG Consultation Co-ordinator.

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