

Implementing Social Housing Reform:
Directions to the Social Housing Regulator – Consultation
Summary of responses



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Contents

Section 1:	Summary of consultation responses	4
	Number of responses	4
Section 2:	Introduction	5
	Issuing the final directions	5
Section 3:	Context	7
	Social housing reform	7
	Reform of social housing regulation	7
Section 4:	Comments on draft directions and the Government's response	10
	Summary	10
	Tenure reform	10
	Mutual exchange	12
	Tenant involvement and empowerment	14
	Rents	16
	Quality of accommodation	18
Annex A:	Final directions	20
Annex B:	List of respondents	26

Section 1

Summary of consultation responses

Number of responses

The consultation ran for a period of 12 weeks from Thursday 7 July 2011 to Thursday 29 September 2011.

In total 209 responses to the consultation were received and are broken down as follows:

Private registered providers	82
Local authorities	69
Tenant organisations	12
Individuals	9
ALMOs	5
Others	32
Total	209

The consultation included nine separate questions and the number of responses to each ranged from 169 to 187. There were also 49 responses which made overall comments about the Government's policy on the reform of social housing not specifically related to any of the consultation questions.

All of the responses to the consultation received are available on the Department of Communities and Local Government website at the following address:

www.communities.gov.uk/publications/housing/socialhousingregulatorresponse

Section 2

Introduction

In July 2011 the Government published a consultation paper seeking views on draft directions proposed to be given by the Secretary of State for Communities and Local Government to the Social Housing Regulator. This document summarises the consultation responses that we received, sets out the Government's response and includes the final directions that we intend to issue.

The consultation set out the policy context for each of the draft directions and set out a number of questions. The proposed directions were on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. The consultation ran for 12 weeks and closed at the end of September 2011. There were 209 responses in total.

Having considered the responses to each of the consultation questions, **the Government has decided to issue the final directions set out in Annex A.**

In the case of the directions on tenure and mutual exchange, this decision is subject to the commencement of the Localism Act (as explained below).

These directions will replace the previous directions issued in November 2009 and March 2010.

Issuing the final directions

As explained in the consultation document, the Localism Act includes certain amendments to the Secretary of State's powers to direct the Social Housing Regulator under Section 197 of the Housing and Regeneration Act 2008. The final directions on tenure and mutual exchange are contingent on these statutory changes and will not therefore be issued formally until the relevant Localism Act provisions are commenced. The Act makes provision for statutory consultations to be carried out prior to the relevant clauses being commenced.

The other three directions (i.e. on quality of accommodation, rents, and tenant involvement and empowerment) are being issued formally now.

The Social Housing Regulator has indicated that it intends to consult shortly on changes to its regulatory framework that reflect these directions and the statutory changes set out in the Localism Act. In doing so, we anticipate that the Regulator would take account of the two indicative final form directions published by the Secretary of State, as well as the three directions that are being issued formally now.

The final 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.

Section 3

Context

Social housing reform

Changes to the Regulator's national standards are essential to delivering the Government's social housing reforms, originally set out in *Local Decisions: a fairer future for social housing*. These reforms will ensure that landlords have greater flexibility to respond effectively to local needs and circumstances.

Reform of social housing regulation

As stated in the consultation document, the Government is taking forward significant reforms to the regulatory system for social housing. These changes were recommended by our Review of Social Housing Regulation ("the Review"), published in October 2010¹. The Review's recommendations are reflected in the Localism Act.

The Review's proposals encompassed institutional changes and reforms to the regulatory system.

In terms of institutional changes, the Review recommended that the Tenant Services Authority should be abolished and responsibility for regulation should be transferred to the Homes and Communities Agency. This recommendation was in line with the Government's commitment to reduce the number of quangos. In order to ensure the continued independence of regulation, the Review proposed that regulatory functions and powers should be vested in a statutory Regulation Committee within the Homes and Communities Agency.

The Review's main recommendations on the regulatory system related to consumer regulation. The key consumer protection outcomes that the Government wishes to see are:

- the provision of social housing of appropriate quality
- social housing tenants having an appropriate degree of choice and protection
- social housing tenants having opportunities to be involved in the management of their homes and to hold landlords to account

¹ www.communities.gov.uk/publications/housing/socialhousingregulation

- social housing provision making a contribution to the social and economic well-being of the areas in which it takes place.

The Review concluded that these outcomes could be delivered more effectively by enhancing the role of local mechanisms to scrutinise performance and hold landlords to account on service delivery. Landlords will have responsibility for service delivery and for putting things right when they go wrong, but this will be subject to scrutiny by tenants. In particular, the Government sees tenant panels at the heart of strong consumer protection – scrutinising performance and holding landlords to account.

We are not prescribing the precise form that these mechanisms should take, as that is a local matter. However our direction on tenant involvement and empowerment is designed to drive this shift to greater local challenge and scrutiny, by requiring registered providers to give tenants opportunities to scrutinise their performance, to support the formation of tenant panels where this is what tenants want and to provide timely and relevant performance information to support effective scrutiny by tenants. The Tenant Empowerment Programme provides opportunities for tenants to build their awareness of the new regulatory framework and their capacity to play a strong role within that framework. For example, it includes training to support tenants in challenging, influencing and managing local housing services. The Government believes that greater transparency is also crucial to meaningful landlord accountability at the local level.

The Review envisaged that the vast majority of individual service failures could be resolved through the social housing complaints process without any need for intervention by the Regulator. Currently the complaints process comprises the landlord's own complaints procedure and, if necessary, determination by an Ombudsman (the Housing Ombudsman or the Local Government Ombudsman).

Through the Localism Act, the Government is taking forward reforms to improve the capacity of the complaints process to provide speedy and effective redress where tenants receive a poor service. The Housing Ombudsman will become the single, specialist ombudsman for all complaints about social landlords (taking on responsibility for complaints relating to local authority landlords from the Local Government Ombudsman). The Act also strengthens the role of local representatives – MPs, councillors and tenant panels – in the complaints system. This will allow more complaints to be resolved locally, as well as enhancing the role of local representatives as advocates on behalf of tenants.

The Review concluded that, by enhancing local scrutiny mechanisms and strengthening the complaints process, regulatory intervention on consumer protection issues could be scaled back. The recommendation was that the Regulator's consumer protection role should be restricted to setting clear national standards and addressing only serious failures against those standards.

The Localism Act reflects this vision for consumer regulation by establishing a higher threshold above which the Regulator can use its monitoring and enforcement powers in relation to its consumer-facing standards. The threshold is “failures against the standards that give rise to actual or potential *serious detriment* to tenants or potential tenants”. When deciding whether this threshold is satisfied, the Regulator would need to consider the severity and extent of the harm (or potential harm) to tenants. Breach of a consumer-facing standard will not on its own be sufficient grounds for the Regulator to use its enforcement powers. Similarly the Regulator will not be proactively seeking out potential failures but will instead consider evidence submitted by third parties.

The Act includes a requirement on the Regulator to publish guidance on how it will apply the serious detriment test. The Regulator intends to consult on this draft guidance as part of its forthcoming consultation on its revised regulatory framework.

The Regulator’s consumer standards will continue to play a crucial role in the reformed system. As part of their responsibility for service delivery, landlords must meet the regulatory standards. Although some breaches may never cause actual or potential serious detriment to tenants, the standards have a meaning and a purpose that goes beyond the Regulator’s power to enforce them. By maintaining and, through this consultation, revising a framework of national standards we will ensure that landlords and tenants know the minimum standards that are expected. This is crucial if tenants are to be able to hold landlords to account effectively. The Housing Ombudsman also has regard to applicable standards when determining complaints.

In order to maintain lender confidence and protect taxpayers, proactive economic regulation of housing associations will continue as now, with a stronger focus on securing value for money for the taxpayer.

We plan to make available further information that sets out the changes to the regulatory system and explains what it means for the users of the new system – in particular tenants, landlords and local representatives.

Section 4

Comments on draft directions and the Government’s response

Summary

Having considered the responses to each of the consultation questions, the Government has decided to issue the final directions set out in Annex A. (In the case of the directions on tenure and mutual exchange, this decision is subject to the commencement of the Localism Act – as explained in the Introduction.) These directions will replace the previous directions issued in November 2009 and March 2010.

We have made several alterations to the draft directions in light of the consultation responses. Our decisions are explained below.

Tenure reform

A number of respondents addressed only some of the questions on tenure or provided only general comments reiterating their opposition to, or more commonly, their support for the new flexibilities being provided. Those general comments have not been included in the analysis below.

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?

Over four-fifths of respondents agreed that the draft direction on tenure set out the right factors that should be considered when landlords decide what type of tenancies to offer. Of those respondents who disagreed, a number argued that the current ‘most secure form of tenancy...’ wording in the current Tenancy Standard should be retained to encourage the use of fully secure or assured tenancies. Others felt that to set out a list of factors could hamper local decision making or requested guidance on what types of tenancy to offer to which household.

Question 2

Does the draft direction on tenure set out the right minimum requirements for a registered provider's tenancy policy?

Almost three quarters of respondents agreed that the draft direction on tenure set out the right minimum requirements for a landlord's tenancy policy. Some respondents expressed concerns that landlords would interpret vulnerability differently and asked for guidance about who should be classed as vulnerable. Others however said that more prescription would be unhelpful as this would limit landlords' ability to adapt their individual tenancy policies to local needs.

Some responses from private registered providers requested further guidance on review and complaints procedures, but many emphasised that their existing complaints procedures were already tailored to their own tenants' needs and could be readily extended to cover challenges on tenancy lengths and renewal. Some local authorities wanted a minimum definition of what help and advice should look like. Whilst we recognise the importance of private registered providers working effectively with local authorities to prevent homelessness in the event that tenancies are not renewed, we do not believe that the format of help and advice should be a matter for central prescription.

Many responses from local authorities stated that there should be explicit reference to their tenancy strategy. Some local authorities wanted increased control over the content of private registered providers' tenancy policies to ensure greater uniformity and better strategic outcomes. We take the view that, in the interests of brevity, we should not repeat statutory requirements in the tenure direction and that the current statutory requirement for registered providers to have regard to local authorities' tenancy strategies provides the right balance between landlord flexibility and recognition of local authorities' strategic role.

Some respondents were concerned that the direction should provide further guidance on policies on the grant of discretionary succession rights, particularly for adult children with disabilities living with their parents. In light of those concerns **we have amended the direction to make clear that landlords should, in framing their policies on succession, take account of the needs of vulnerable household members.**

The clarity provided by the draft direction that private registered providers could extend probationary tenancies to up to eighteen months was widely welcomed. Some respondents expressed concern that the wording of the current text did not make sufficiently clear that tenants who were decanted, for example as a result of flooding or refurbishment work, should always receive a tenancy with no less security on their return to settled accommodation. **We have therefore made a minor change to the direction with a view to putting this beyond doubt.**

Question 3

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

Over three quarters of respondents agreed that the draft direction on tenure set out the right minimum protections for social tenants. Of those respondents who disagreed, many thought that there should be increased protections for the most vulnerable, with some consensus that this should be in the form of long term or lifetime tenancies. Even among those opposed to tenure reform more generally however, there was broad agreement that the amendment to the draft direction (to require that tenancies of less than five years be only used in exceptional circumstances) was a welcome step.

There was considerable support for existing secure or assured tenants being guaranteed continued security of tenure if they move to another social rent property and many respondents also thought that this guarantee should be extended where existing secure or assured tenants chose to move to Affordable Rent properties. Whilst it will of course be open to landlords to offer 'lifetime' tenancies to tenants choosing to move to Affordable Rent properties, we remain of the view that, to maximise provider flexibility in the delivery of new affordable homes, this should not be a matter of compulsion.

Some respondents were concerned that the wording of the draft direction would allow landlords to take no action and, after the end of a fixed tenancy term, leave tenants indefinitely on a periodic tenancy with effectively a six month rolling notice period. Our policy intention has always been that landlords should, in all circumstances, be required make a proactive decision on whether or not to reissue a tenant with another tenancy at the end of the fixed term. **We have therefore amended the direction to clarify that requirement.**

Mutual exchange

We asked one question about the direction on mutual exchange

Question 4

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

The majority of respondents indicated that they agreed with the proposed direction on mutual exchange. Landlords generally welcomed this proposal as a means of improving mutual exchange services for tenants, and thought it would make it easier for tenants to see possible exchange partners and would increase their choice and control over where they live. Many landlords commented that they already subscribed to one of the existing online mutual exchange services.

However, approximately one fifth of respondents indicated that they did not agree with the proposed approach. The majority of these felt that the direction was over-prescriptive and bureaucratic, and that registered providers should be free to determine locally what mobility services they put in place for their tenants. A small number of providers also questioned why there was a requirement to subscribe to a national service which did not currently exist.

A small number of mutual exchange service providers responded. There was support for the aims of the direction and comments that a simpler form of regulation was needed.

The majority of respondents also agreed with the content of the proposed direction on mutual exchange. The explicit requirement to provide reasonable support to tenants who do not have access to the internet was particularly welcome.

Around one fifth of landlords questioned the financial burden of complying with the direction. Some expressed concerns about the resources required to support tenants who do not have access to the internet, and requested clarification on what would be considered a "reasonable" level of service in this context. Others, particularly smaller landlords, believed that the direction would require them to pay an up-front subscription to an online mutual exchange scheme which would not offer value for money. In addition, a small number of landlords also expressed concern that they would be required to purchase expensive new IT equipment, or upgrade their existing services, to ensure that they met the terms of the direction.

A number of respondents expressed concern that the proposed tenure reforms, particularly in relation to the affordable rent model, could reduce the number of social tenants who want to pursue a mutual exchange. The Localism Act ensures that where existing secure or assured tenants wish to swap their tenancy with a tenant on a fixed term tenancy at social rent, they will be granted a new secure or assured tenancy in their new home.

The consultation responses set out a clear view in favour of improved support to tenants seeking to move, though with reservations from many respondents about the need for additional regulation. In the light of these responses, and of the continuing need to increase mobility options for social tenants, the Government believes that the case for the proposed Direction remains strong.

As a result of the consultation and the launch of *HomeSwap* Direct, the national home swap scheme, we intend to **simplify the terms of the Direction to give clarity to landlords that they can meet the terms of a new standard by subscribing to a provider who is part of *HomeSwap* Direct.**

HomeSwap Direct was launched in October and is already increasing tenants' choice and control over where they live. The four mutual exchange providers participating at launch are A Britas, HomeSwapper, House Exchange and LHS (Locata). The membership agreement which sets out the framework under which information will be shared by providers, the technical requirements of the scheme, and the process by which new members can apply to join, has been published. The Government's proposals for a Direction on mutual exchange have helped to bring about the *HomeSwap* Direct agreement by setting clear expectations to which the industry has responded.

Subscription to a *HomeSwap* Direct provider need not add to landlords' costs: indeed the great majority of landlords already subscribe to at least one of the members of the scheme. Nor will it be necessary to purchase new IT equipment in order to participate.

As was stated in the consultation document smaller registered providers will be able to decide whether to pay subscription fees for individual tenants who wish to move rather than one annual subscription for the entire organisation if this approach offers better value for money.

While we recognise respondents have raised concerns about the cost associated with supporting tenants who do not have access to the internet, we believe that it is for individual registered providers, in consultation with their tenants, to determine what support is appropriate: we do not intend to issue guidance on this point.

Tenant involvement and empowerment

We asked two questions about the proposed tenant involvement and empowerment direction – this included the proposals to make the 'Tenant Cashback' model available to tenants.

Question 5

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

The majority of responses from landlords and tenants supported the principle that tenants should be given a bigger say over the services they receive. However, a minority of responses from the landlord sector questioned whether it was necessary for this to be specified in directions to the Regulator. Respondents welcomed the proposal that the direction should encourage landlords to support tenants in scrutinising landlords' performance. Many also agreed that tenant panels were well placed to carry out this scrutiny role, though some identified other possible mechanisms for achieving a similar outcome.

There was widespread agreement that landlords should provide timely and relevant performance information to help tenants carry out their scrutiny role. Responses from the tenant sector welcomed this information being agreed with tenants in advance. A number of respondents agreed that tenants should be given opportunities to influence the formation of their landlord's policies and priorities. Similarly, there was support from the tenant sector to proposals that tenants be given support to exercise their Right to Manage where this applies or exercise other housing management functions.

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?

Overall there was a mixed response from respondents to the wording in the direction that reflects the Government's Tenant Cashback proposal. Many respondents supported the overarching aims of Tenant Cashback, particularly the opportunity to give tenants more responsibility over their own homes through an active role in assessing repairs and maintenance contract specifications.

However, a large majority of respondents from the landlord and tenant sector reserved judgement on the viability of introducing a scheme until the outcome of the pilots was known. Just under a third of responses from both providers and tenant groups questioned whether it was appropriate for Government to be regulating in this area, and a number of other respondents raised implementation concerns, such as the potential risks to health and safety, the quality of repairs undertaken, legal and insurance implications, and the impact on contractual relationships. Providers, in particular, felt that the costs of administering a scheme could outweigh potential savings for tenants.

Many respondents welcomed the flexibility that the direction allowed providers and tenants in working together to design schemes that reflected local circumstances. In some cases respondents identified ways in which similar local schemes were already involving tenants in repairs and maintenance of their homes.

As a result of the responses we do not intend to amend the wording in the draft direction on involvement and empowerment. We believe there is considerable support for strengthening the opportunities for tenants to scrutinise landlord services, establish tenant panels and have a bigger say over the management of their homes.

Whilst recognising respondents' concerns about the repairs element of the direction, we consider that the direction allows considerable flexibility for providers and tenants to design repairs and maintenance schemes to meet local circumstances. It will, for example, be the responsibility of providers – in consultation with their tenants – to consider the extent to which savings are achievable and to agree the basis for sharing any savings made. In some cases, providers may decide that additional costs can be justified as part of a wider agenda to empower and involve tenants.

Rents

The Government proposed an updated direction on rents to reflect the introduction of the new Affordable Rent model. Other elements of the existing direction, in particular the formula for traditional social rents, would remain unchanged. Our intention was that the resulting standard would continue to apply to private registered providers only.

As explained in the consultation document, the rent element of the Regulator's Tenancy Standard already permits private registered providers to offer Affordable Rent in certain circumstances and – consequently – updating the rents direction was unlikely to result in material changes to the regulatory framework. Nevertheless the Government considered that it made sense to update the direction to reflect the introduction of the new model.

In that context, we asked the following consultation question:

Question 7

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

Approximately three-fifths of those responding to this question agreed that the proposed revisions to the direction adequately reflected the introduction of Affordable Rent. Where respondents disagreed, they raised a number of detailed points about the text of the direction – the main points raised are addressed below. Other responses did not answer the consultation question directly and instead provided more general views about the Affordable Rent model. As the consultation was focused on how to reflect the introduction of the Affordable Rent model in the direction, these views fall outside the scope of the consultation.

Some respondents were concerned about the potential costs for providers of the requirement to rebase rents each time an Affordable Rent property is let or re-let. The draft direction required that valuations for the purposes of initial rent-setting and subsequent rebasing should be *"based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors."* The Royal Institution of Chartered Surveyors, the Social Housing Regulator and the Homes and Communities Agency will jointly publish a user guide to assist providers when assessing market rents. This guidance will provide a straightforward and relatively simple process to help providers undertake valuations that are both cost-effective and sufficiently robust.

A number of respondents were concerned that the requirement to rebase rents may apply where a tenant moves from a starter tenancy to an assured (or assured short hold) tenancy. As stated in the consultation paper, the Government encourages the use of starter tenancies as a tool for tackling anti-social behaviour and we do not want to create a disincentive to their use. Given that the tenure direction provides that starter tenancies cannot be extended beyond 18 months, **we have decided to amend the direction to clarify that there is no requirement to rebase a rent where a tenant moves from a starter tenancy to an assured (or assured short hold) tenancy.**

Other respondents called for more frequent rebasing than was proposed in the draft direction. In particular, there was some concern that the RPI + 0.5 per cent formula for maximum annual rent increases could potentially result in rents on some Affordable Rent properties rising above 80 per cent of market rents, particularly where longer tenancies are offered. The Government believes that the RPI-based formula for maximum annual rent increases is important in order to maintain lender confidence and protect tenants, but it is also important that Affordable Rent remains a sub-market product within the statutory definition of social housing. Should it prove necessary, we will issue a further direction to the Regulator to require more frequent rebasing. Any future direction would be subject to consultation.

Some respondents expressed concern about the potential implications of rebasing for investors or for tenants where a tenancy is reissued. As explained above, it is important that Affordable Rent remains a sub-market product, consistent with the statutory definition of social housing. Therefore we are not minded to change the requirement to rebase rents before each new or reissued tenancy.

A number of respondents suggested that there could be variations in how the market rent was calculated in different areas. The guidance to be published jointly by the Royal Institution of Chartered Surveyors, the Social Housing Regulator and the Homes and Communities Agency is designed to help providers to carry out valuations on a common basis wherever possible. In particular, providers will need to indicate the comparables on

which valuations are based. There may be situations (e.g. for specialist types of housing or in location where there are few comparables) where alternative methods are appropriate; the guidance will assist providers in using these methods consistently and appropriately.

Several respondents argued that service charges should be excluded from the calculation of 80 per cent market rent. The Government believes that service charges should be included within the 80 per cent limit given the importance of Affordable Rent remaining a clearly sub-market product. Another respondent suggested that the direction should refer explicitly to service charges in supported housing; however we think that this is already covered by the general requirement to set the Affordable Rent with reference to “*estimated market rent for the accommodation (inclusive of service charges)*.”

One respondent helpfully pointed out that the direction should refer to the Royal *Institution* of Chartered Surveyors (not “institute”). **We have amended the direction accordingly.**

Quality of accommodation

We proposed making minor revisions to the existing quality of accommodation direction to reflect the expiry of the original December 2010 decent homes target and to continue to provide flexibility for the Regulator to grant extensions to landlords. We asked two questions about the proposed revision to the direction.

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?

The majority of those who responded to this question were in agreement and this was particularly so among landlords. Tenant representative bodies expressed concerns at the prospect of further extensions to the target. However, by the end of 2010 92 per cent of social housing met the decent homes standard and further funding over the next four years will help reduce the backlog of non decent homes even further. We expect that the changes to the council housing finance system (Self Financing) from April 2012 will help local authority landlords to make more efficient use of their resources. Some responses sought further information on the circumstances in which any further extensions to the target would be granted. This is a matter for the Regulator.

Question 9

Energy efficiency is implicit in the revisions to the Quality of Accommodation direction, should we make it more explicit?

Around half of the respondents to this question were in favour of making energy efficiency more explicit, including around half of the landlords who responded. Many responses assumed that we have asked whether to strengthen the energy efficiency component rather than simply draw it out, and there were a range of suggestions, some of which seek to increase requirements for landlords. Among these was the suggestion that the Quality of Accommodation standard should reflect current requirements or expectations on landlords in relation to energy efficiency. The Government's policy is to take forward initiatives to improve energy efficiency in housing through schemes such as the 'Green Deal' and amending the direction would unnecessarily change the Decent Homes guidance and its primary purpose.

Therefore we will formally issue the direction on Quality of Accommodation without further amendment.

Annex A

Final 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 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 apply to low cost rental accommodation of registered providers but do 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 are 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 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, are to be treated as references to private registered providers,
- (b) the Housing Corporation are to 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 grant tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

(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 preventing unnecessary evictions and tackling tenancy fraud, and set out—

- (a) the type 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) any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
 - (e) the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property;
 - (f) 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;
 - (g) 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;
 - (h) the advice and assistance to tenants on finding alternative accommodation they will give in the event that they decide not to grant another tenancy; and
 - (i) their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- (4) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that—
- (a) registered providers grant general needs tenants a periodic secure or assured (excluding assured shorthold) tenancy or a tenancy for a minimum fixed term of five years, or exceptionally a tenancy for a minimum term of no less than two years, in addition to any probationary tenancy period;
 - (b) before a fixed term tenancy ends, registered providers provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the fixed term or do not propose to do so;
 - (c) 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;
 - (d) registered providers grant those who were social housing tenants on the day on which section 150 of the Localism Act 2011 comes into force, a tenancy with no less security where they choose to move to another social rented home (this requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms); and
 - (e) registered providers grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.

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, that—

- (a) registered providers 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 ensure the provider of the internet based mutual exchange service to which they subscribe is a signatory to an agreement, such as *HomeSwap Direct*, under which tenants can access matches across all (or the greatest practicable number of) internet based mutual exchange services;
- (c) registered providers take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to its tenants; and
- (d) registered providers 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, that—

- (a) 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) 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 includes 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 the 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—
 - RPI + 0.5% + £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—
 - RPI + 1%,
 - (e) target rents increase annually by—
 - 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 Institution of Chartered Surveyors,
 - (b) rent for accommodation increases each year by an amount which is no more than—
 - RPI + 0.5%,
 - (c) rent for accommodation is re-set, based on a new valuation, each time the accommodation is—
 - (i) let to a new tenant, or

(ii) re-let to the same tenant (but where a probationary tenancy comes to an end and the registered provider re-lets the accommodation to the same tenant the provider is not required to re-set the rent).

(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, that—

(a) 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) 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

List of respondents

A2Dominion
Abbeyfield Society
Accent Group
Affinity Sutton Group
Agencies and Trainers for Involved Communities (ATIC)
Agudas Israel Housing Association
Akmol Ali
AmicusHorizon
Anchor
Applelodge
Arena Housing Group
Ashfield District Council
Ashford Borough Council
Aspire Housing Association
Association of Retained Council Housing
Axiom HA
Basingstoke and Deane Borough Council
Bedford Citizens Housing Association
Bedfordshire Pilgrims Housing Association
Berkshire Court Tenants Association
Birmingham City Council (Resident Involvement Team)
Blackpool Council and Blackpool Coastal Housing
Bolton at Home
Bournemouth Borough Council
Bradford City Council
Bromford Group
Broxbourne Borough Council

Broxbourne Housing Association
Broxtowe Borough Council
Bury Council and Six Town Housing
Camden Council
Cannock Chase Council
Canterbury City Council
Caroline Lucas MP (Brighton Pavilion)
Catalyst Housing Group
Central and Cecil
Centrepoint
Chartered Institute of Housing
Chelmsford CAB
Cherwell District Council
Cheshire West and Chester Council
Circle
Citizens Advice Bureau
City of Stoke-on-Trent
Colchester Borough Council
Colchester Borough Homes
College of Occupational Therapists
Communities Homes People
Community Gateway Association
Confederation of Co-operative Housing
Co-Regulation Champions
Council of Mortgage Lenders
Councils with ALMOs Group
Coventry City Council
Crawley Borough Council
Crisis
Cross Keys Homes
Dacorum Borough Council
Dartford Borough Council

Dean Sanders
Derby City Council (x2)
Derwent Living
Devon and Cornwall Housing
Diocese of Salisbury
District Forum of Tenants of Carrick Housing Ltd
East Devon District Council (Tenant Panel)
East Lindsey District Council
East Midlands Tenant Participation Forum (EMTP)
Erewash Borough Council
Exchange Forum
Exeter City Council
Fabrick Housing Group
First Ark Group
Franklands Village Housing Association
G15
Gateshead Council
Generate Group
Gloucester City Homes
Grand Union Housing Group
Great Places
Great Yarmouth Community Housing
Great Yarmouth Community Housing Tenants Forum
Greater London Authority
Greenfields Community Housing
Greenoak Housing Association
GreenSquare Group
Guildhouse
Harlow Common Residents Forum
Harvest Housing Group
Hastoe Housing Association
Haverbury Housing Partnership Tenants' Forum

Hexagon Housing Association
Hightown Praetorian & Churches Housing Association Ltd
Hillingdon Borough Council
Hinkley & Bosworth Borough Council
Home Group
Housing Law Practitioners Association
Housing Partners
Housing Plus
Hull City Council
Hyde Group
Incommunities
Islington Council
Isos Housing
Jennifer Kelley
John Selway (River Fusion)
Kensington and Chelsea Tenant Management Organisation
Kirklees Council
Leeds City Council
Liverpool Mutual Homes
Local Government Group
London Borough of Ealing
London Borough of Enfield
London Borough of Hackney
London Borough of Lewisham
London Borough of Redbridge
London Borough of Waltham Forest
London Borough of Wandsworth
Longhurst Group
Luton Community Housing
Manchester City Council
Mencap
Metropolitan Housing Partnership

Michael Siggs

Midland Heart

Moat

N Carr

National Federation of Tenant Management Organisations

National Housing Federation

Network Housing Group

New Charter Housing Trust Group

Newark and Sherwood District Council

Newcastle City Council & Your Homes Newcastle

Newcastle Tenants Federation

Newlon Housing Trust

Nigel Carter

North Hertfordshire Homes

North Kesteven District Council

North Somerset Council

Northampton Borough Council

Northumberland County Council

Norwich City Council

Notting Hill Housing Trust

Nottingham City Council and Nottingham City Homes

Nottingham Community Housing Association

Orbit Group

Orwell Housing Association

Oxford City Council

Peabody

Places for People

Plymouth Community Homes

Radcliffe Housing Society

Radian Group

Redcar and Cleveland Borough Council

Regenda Housing Group

Royal Borough of Kensington and Chelsea
Sanctuary Group
Sentinel Housing Association
Sheffield City Council
Shelter
Shoreline Housing Partnership Ltd
Simon Randall CBE
Sitra
Six Town Housing
Society of St. James
Soha Housing
South Kesteven District Council
South Norfolk Council
South Somerset District Council
South Tyneside Council
South Yorkshire Network of Tenants and Residents
Sovereign Group
Stockport Borough Metropolitan Council and Stockport Homes Ltd
Stonewall
Stratford-on-Avon District Council
Stroud District Council
Sutton Housing Society
Swan Housing Association
Symphony Housing Group
Tenants & Residents Organisations of England
Teign Housing Tenants Forum
Tendring District Council's Tenants Panel
The Business Services Association
The Law Society
The Riverside Group
Thrive Homes
Time and Place Community Interest Company

Tonbridge and Malling Borough Council

TPAS

Trowers & Hamlins LLP

Vale of White Horse District Council

Vela Group

Wakefield and District Housing

Waterloo Housing Group

Wealden District Council

Welwyn Hatfield Borough Council

West Lancashire Borough Council

Westminster City Council

Wigan and Leigh Housing

Wiltshire Rural Housing Association

Wirral Council

Wirral Partnership Homes

WM Housing Group

Wolverhampton Homes

Worcester Community Housing

Wulvern Housing Ltd

Wychavon District Council

Zoe Bremer