

Supplement to the  
Housing Transfer  
Manual

2006 Programme

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housing

# Supplement to the Housing Transfer Manual

2006 Programme

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June 2006

From 5th May 2006 responsibilities of the Office of the Deputy Prime Minister passed to the Department for Communities and Local Government.

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# CONTENTS

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<b>SECTION 1: Introduction</b>	<b>5</b>
Role of the National Housing Federation	5
<b>SECTION 2: Deciding to pursue transfer</b>	<b>6</b>
Proposed partial transfer	6
Co-ordination between planning and housing departments	6
Considering community-based transfer proposals	7
Community Gateway Model	8
Community Land Trusts	8
Choice-Based Lettings	9
Anti-social Behaviour	9
The Gershon Review	9
<b>SECTION 6: Deciding on the terms of transfer</b>	<b>11</b>
Drawing up a rent plan	11
Calculating the sale price and VFM	12
Assessment of Gap funding need	12
Payment of Gap funding	13
Aids and Adaptions and the Disabled Facilities Grant	15
<b>SECTION 10: The consultation exercise</b>	<b>16</b>
Timing of formal consultation and follow up	16
<b>SECTION 11: Securing funding</b>	<b>17</b>
Funding of 'Show Homes'	17
<b>SECTION 12: Setting up a new landlord</b>	<b>18</b>
Establishing arrangements for dealing with conflicts of interest	18
<b>SECTION 13: Finalising the Tenancy Agreement</b>	<b>19</b>
Preserved Right to Buy	19
<b>SECTION 15: Drawing up the transfer contract</b>	<b>21</b>
Warranties	21
<b>SECTION 16: Applying for the Secretary of State's consent and completing the transfer</b>	<b>24</b>
Applying to capitalise additional rent allowances	25
<b>ANNEX E: Meeting the needs of black and minority ethnic and hard-to-reach communities good practice guidance</b>	<b>26</b>
ODPM and Housing Corporation pilot project	26

<b>ANNEX K: Programme for Disposals (applications) Direction 2006</b>	<b>27</b>
<b>ANNEX L: Transfer proposal summary sheet</b>	<b>28</b>
<b>ANNEX M: Information to be provided on a proposed transfer</b>	<b>30</b>
<b>ANNEX U: Calculation and payment of the LSVT levy</b>	<b>38</b>
Background	38
Circumstances under which the levy is payable	38
Clarification of which set-up costs are deductible	39
Calculating the levy	39
Completing and submitting an initial return	43
Completing and submitting an auditor-certified return	44
Records	46
The Disposals Levy (Deduction) (England) Determination 2005	47
1. Citation, commencement and application	47
2. Interpretation	47
3. Formula	48
4. Revocation of determination	49
The Disposals Levy (Administration) (England) Determination 2005	50
1. Citation, commencement and application	50
2. Interpretation	50
3. Qualifying disposals	52
4. Returns and records	52
5. Issuing of demands and payment of levy	53
6. Payment in interest	54
7. Adjustment of levy	55
8. Revocation of determinations	55
<b>ANNEX 1</b>	<b>56</b>
<b>ANNEX V: Model gap funding agreement and milestones</b>	<b>57</b>
<b>CONTACT DETAILS</b>	<b>69</b>
DCLG, Decent Homes Division (DHD)	69
Housing Corporation (HC) contact details	70
Government Office contact details	71

# SECTION 1

## Introduction

*Insert new paragraph*

### Role of the National Housing Federation

1.27.1 The National Housing Federation offers a range of services aimed to assist local authorities, new transfer organisations and existing Housing Associations involved with transfers of housing stock. Listed below are just few areas of support:

- Transfers Today e-zine – providing news, information and practical experience targeted at those involved in transfer;
- Transfer to Transform briefings – a series of good practice briefings to assist with communications and training;
- Transfer briefings – a series of briefings aimed to assist with misinformation and anti transfer campaigns;
- Publications.

For further information and support, contact: Joanne Kelsall (National Stock Transfer Manager) [joanne@housing.org.uk](mailto:joanne@housing.org.uk) or view the NHF website:

**<http://www.housing.org.uk/policy/view.asp?id=10&p=4>**

## SECTION 2

# Deciding to pursue transfer

### Proposed partial transfer

*Replace para 2.29 with the following*

- 2.29 As outlined in Annex A of the *Housing Transfer Manual 2005 Programme*, an authority considering a partial transfer should have regard to the implications for its Housing Revenue Account (HRA). In the past the Office has provided a model to help authorities assess these implications although its use was never mandatory. The model is out of date and will not be updated but the DCLG expects to issue a more detailed advisory note on the effect of partial transfer on the remaining HRA. In the meantime authorities should use Annex A of the *Housing Transfer Manual 2005 Programme* as a guide to perform their own calculations to consider the impact on the HRA of a partial transfer. Items to consider include the effects on HRA subsidy levels, loss of rental income and changes in actual expenditure which may or may not be pro rata to the loss of stock. The findings should be included under item 'h' of the selection criteria (see para 8.14 of the 2005 Manual).

*Insert new paragraphs*

### Co-ordination between planning and housing departments

- 2.47.1 At the end of 2005, it became clear that a few local authorities appeared to be experiencing problems with planning issues which adversely affected their ability to deliver the Decent Homes target. The Department has carried out an internal analysis to determine whether difficulties over planning issues were widespread and whether they arose as a result of policy, process, operations or a mixture of all three.
- 2.47.2 It was found that the main factors which give rise to difficulties with planning are internal communications and timing. There can be a conflict between the timescale of the planning process and the timescale that the Housing Department will be working to. The optimum time for securing a positive ballot from tenants may not be at an optimum point in the planning process – for example, if the local authority introduces additional planning guidance after a positive ballot has been secured.

- 2.47.3 Examples from good practice case studies indicate that a clear logical process, which involves all interested parties from the outset, is the most effective way of taking a development forward. This process may involve the local authority starting with large overarching planning documents which show their overall plan for the area, and then gradually working down to local level documents, the details of which could be negotiated with a view to meeting the larger aims. The authority should also consider how best to time the production of supplementary planning guidance, or prepare more detailed statutory planning guidance at an earlier stage. Another important factor is to ensure that tenants and other key stakeholders are consulted from an early stage and kept involved as the project progresses (e.g. by holding public events).

*Replace paras 2.48 to 2.53 with the following*

## Considering community-based transfer proposals

- 2.48 In keeping with the wider Government policy of encouraging community empowerment and neighbourhood-focused renewal, the Department for Communities and Local Government wishes to encourage as wide a range of transfers as possible, including to small and/or community-based landlords. Ministers attach great importance to the extent to which transfer proposals achieve tenant management and community empowerment and ownership at local level.
- 2.49 Where a tenants' group, including those in management co-operatives, tenant management organisations and tenants' associations, puts forward a transfer proposal, we expect the authority to consider it seriously. Careful thought would need to be given to how such a proposal might be covered in its HRA Business Plan at the same time remembering to assess its impact on the HRA and that, if over 499 units, it will have to submit an application for the LSVT Programme.
- 2.50 As detailed in Section 4, tenants' groups wishing to explore options for transfers of their homes to community-based organisations may be eligible for Tenant Empowerment Programme funding, administered for the Department by the Housing Corporation, to contribute towards the development of proposals through to ballot stage. If the tenants opt for transfer, they can apply to the Housing Corporation for future funding.
- 2.51 In April 2004, the Housing Corporation introduced its Involvement Policy for the Housing Association Sector and all housing associations registered with the Corporation must comply with its requirements. Further details are available on the Housing Corporation website: [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk).
- 2.52 There is no reason why a community-based, tenant-led RSL should not be established, provided it is capable of meeting the Housing Corporation's standard tests of financial and managerial competence and governance, and has at least one third independent members on the Board (where a Co-op is seeking registration, this requirement does not apply). However, careful thought will need to be given to the precise nature of the new organisation – for example, it might best form part of group structure arrangement to resolve any viability issues.



- 2.53 DCLG wishes to encourage new and innovative approaches to tenant-led and community-based transfer, such as to Community Gateway Associations or to Community Land Trusts. These gives tenants more direct involvement in and control over the management and ownership of their homes.

## Community Gateway Model

- 2.54 The Chartered Institute of Housing, Confederation of Housing and Co-operative UK's publication *Empowering Communities: The Community Gateway Model (97)* shows how authorities can work with their tenants on setting up a Community Gateway Association (CGA). An approach that has to be tenant-driven, the Community Gateway Model (CGM) aims to give tenants and leaseholders more control over their homes and living environment and to place community regeneration at the heart of the housing organisation using the strength of the organisation as a catalyst for community involvement.
- 2.55 The CGA sets objectives to generate community pride and provision through providing opportunities for local tenant and community involvement in decisions about homes and neighbourhoods at a pace right for them and on issues that matter to them; to establish a tenant democracy by enabling tenants to become members and owners of the organisation and, through that membership, get involved in decision making; and to generate a cultural change, where tenants play a leading role in the organisation and work in partnership with staff to deliver homes and neighbourhoods they want.
- 2.56 A CGA is a new type of body where rights to influence the running of the organisation are built into its constitution and structure, through a tenant majority membership which can shape the organisation's strategies and policies, and through a pro-active local community empowerment strategy with opportunities to devolve power to tenants – where they want it.
- 2.57 The CGA is a type of not-for-profit organisation that, depending on discussions with tenants during the Options Appraisal process, can be used to manage the stock or take ownership of it as an RSL.

## Community Land Trusts

- 2.58 A Community Land Trust (CLT) is a model for the mutual ownership of land. They have their routes in community businesses. The principle is that an asset that is capable of being income generating is sold or given to a community. The income stream can then be used to fund broader community objectives.
- 2.59 This approach would be best used at a very local level. The authority would pass land or housing onto a community land trust that in turn could use the asset to generate income and would need to enter into a lease arrangement with an RSL.

*Insert new paragraphs*

## Choice-Based Lettings

- 2.60 *Homes for All*, the Government's 5-year housing plan, sets out the Government's plans for taking forward its choice-based lettings policy (CBL). The aim is to have in place a nationwide system of choice by 2010, with CBL extending to all social housing and including the private rented sector wherever possible.
- 2.61 CBL schemes allow people to apply for available local authority/RSL accommodation which is openly advertised (eg in local press or inter-active website). Home seekers can see the full range of available properties and apply for any home to which they are matched. The successful bidder is the one with the highest priority under the scheme. Authorities provide feedback which helps applicants to assess their chances of success in future rounds. Returns for 2004/5 show 90 authorities (26 per cent) have adopted CBL.
- 2.62 Authorities should be working up their proposals for CBL based on a partnership approach which brings together all stakeholders, including the transfer landlord and other RSLs in the scheme area to develop and deliver choice-based approaches. The Government is also keen that CBL systems should operate sub-regionally or regionally, recognising that housing markets do not follow local authority boundaries, and is therefore providing £4 million over three years to support the development of regional and sub-regional schemes, making money available by means of a bidding process. Any application for the transfer programme should explain the proposed way forward locally in relation to CBL.

## Anti-social Behaviour

- 2.63 We have already identified the need for social landlords to be more responsive to tenants' needs and involve them more in how their homes and estates are run. Parts of the sector do this very well and we will be looking for transfer applications to demonstrate best practice. In addition we will want clear proposals for tackling anti-social behaviour including prevention, support and enforcement as well as proposals for the transfer RSL to be at the forefront of the Respect agenda as neighbourhood managers.

*Insert new paragraphs*

## The Gershon Review

- 2.64 The Government's Efficiency Review set targets for efficiency gains across the public sector. The resources released through greater efficiency can be refocused on improving front line services. Ministers will wish to ensure that all housing programmes support the objectives of the Efficiency Review and make the best possible use of the big new investment being made in this area.

- 2.65 Applications should therefore set out how the proposed model will deliver a step-improvement in efficiency, including a clear strategy for driving efficiency through the life of the programme. This should include the establishment of an efficiency baseline, covering the whole organisation, and methods to measure and performance manage progress against this baseline. It should also include proposals for comparing performance with other organisations which use similar and different approaches to service delivery.
- 2.66 Without a strategic and co-ordinated approach to procurement there are significant risks that spend on meeting the decent homes standard will lead to skills shortages, higher costs and lower quality. We expect applications to consider the opportunities for collective procurement arrangements to raise quality and reduce costs. These include the sub-regional consortia of social landlords for procuring capital works and repairs and maintenance, which the DCLG is supporting through its Efficiency Challenge Fund. They also include arrangements offered by consortia such as Procurement for Housing for the joint procurement of commodity goods and services.
- 2.67 Proposals should incorporate the principles set out in Rethinking Construction, the report of Sir John Egan's Construction Taskforce. Central to this is greater use of longer term partnering arrangements with the supply chain, so that benefits are shared and all partners are incentivised continuously to improve their performance. Partnering arrangements should be backed up by effective performance measurement, performance targets and open book accounting.
- 2.68 Progress against the proposals on efficiency set out in a successful application will be an important factor in decisions about future tranches of funding under the programme. The Government will look more favourably on organisations that can demonstrate value for money, not simply in reducing costs but in improving outcomes. The Government will wish to focus its investment in organisations that can demonstrate the ability to achieve the best returns.

## SECTION 6

# Deciding on the terms of the transfer

### Drawing up a rent plan

*Replace paras 6.2 – 6.4 with the following*

- 6.2 In December 2000, Ministers announced their proposals for a major restructuring of social rents, to make them fairer and more transparent. Changes were introduced in April 2002. In July 2004 the ODPM consulted upon the outcome and proposals of the three-year review of rent restructuring.
- 6.3 The review concluded that the basic policy is sound and made the following recommendations for technical improvements which were:
- **larger properties:** higher bedroom weights for three- and four-bed properties, and new, higher weightings for properties with five and six (or more) bedrooms;
  - **harmonisation:** using the same formula for restructuring local authority rents as that which is currently used for restructuring RSL rents ensuring that by 2012 rents charged by stock transfer RSLs are identical to rents that would have been charged by the local authority for that area for similar properties;
  - **implementation:** for properties for which rents need to fall by 2011-2012 to achieve restructuring local authorities should ignore the downward limit of RPI+ ½ per cent minus a p per week on rent changes. RSLs should do the same where their finances permit.
- 6.4 The proposals were deferred for 12 months but will now be adopted for the 2006 Housing Transfer Programme. Rent plans should be consistent with these changes to the rent restructuring framework and the Single Transfer Model will be altered to take account of the changes.

Full details of the Three Year Review can be found at:

**[www.communities.gov.uk/index.asp?id=1156912](http://www.communities.gov.uk/index.asp?id=1156912)**

## Calculating the sale price and VFM

*Insert new paragraph*

- 6.9.1 It is considered consistent with Housing Corporation Good Practice and DCLG Guidance to local authorities that each party has access to their own technical and legal advice when negotiating the terms and detail of the transfer proposals. The HC expects the Shadow Board and Executive Designate or Project Team to make use of this independent advice and to be involved in the decision making processes arising from negotiations.

## Assessment of Gap funding need

*Insert new paragraphs*

- 6.19.1 Gap funding is a funding stream of last resort and should not be used to replace other funding streams or to lessen the risk transfer that is an important element of the transfer process. Funding is limited. A transfer requiring gap funding will not secure a place on the transfer programme until a minimum valuation and a maximum ceiling for gap funding have been agreed. To enable this the DCLG will instead “hold a place open” on the programme subject to reaching an agreement.
- 6.19.2 For the gap-funding requirement to be reached the new landlord will need to be in place, the proposals well developed, and realistic assumptions made on an up-to-date Stock Condition Survey and a realistic and cost effective programme of works which will deliver the reasonable aspiration of tenants. It is possible this may all be in place when the transfer application is submitted and therefore an agreement on the gap funding ceiling reached in time for the programme announcement. However experience suggests that most authorities and their stakeholders need to undertake further work before they can give the assurances the Department seeks.
- 6.19.3 As with all transfer applications the Department will look for evidence that an intelligent response to the local circumstances has been identified and agreed with all stakeholders. In addition we will be looking for clearly identified assumptions about the scope for improved efficiency.
- 6.19.4 Gap funding is only available to the new landlord to contribute towards the costs of delivering decent homes to tenants and is not intended to meet the costs incurred by the local authority in delivering the transfer. Since there is no receipt in gap funded transfers to cover these costs, they must fall to the authority’s General Fund. There may be circumstances where the General Fund is unable to bear these costs. The Department will expect the local authority to consider whether it is appropriate to seek a contribution from the new landlord to these costs. Where a contribution from an RSL is not available, the Department will also expect the local authority to consider other funding sources (eg VAT Scheme, Right to Buy receipts) to keep their gap funding requirements to a minimum, and will seek confirmation that this has been done. Annex J covers the treatment of costs associated with transfer.

- 6.19.5 The Department recognises that in some areas the most cost-effective route to decent home delivery may include a significant level of demolition and new build. Where this is the case the Department will expect the redevelopment proposal to maximise the opportunities for cross subsidy and tenure mix and reduce or eliminate any possible gap funding requirement.

## Payment of Gap funding

- 6.19.6 Having agreed a maximum gap funding amount when securing a place on the transfer programme the obligation is on the local authority, new landlord and stakeholders to manage the transfer through to consent stage within the agreed amount of gap funding ceiling.
- 6.19.7 Prior to consent the Department will agree phasing for the gap funding with the local authority in agreement with the new landlord linked to the delivery of agreed milestones. As set out in Paragraph 6.14 this will be over a number of years. Where £3m or greater is sought for gap funding the funding will be spread over a minimum of three years. As the amount required increases so will the period over which it is phased.
- 6.19.8 A model funding agreement letter is at Annex V. This sets out the terms and conditions of the gap funding which should be considered by the new landlord and local authority in advance of transfer. The letter will set out the terms under which the gap funding will be paid to the new landlord, the phasing of the intended payments and the milestones against which payments will be recorded. The agreement will be cleared by the Department and the new landlord in draft prior to a final agreement being sent to the new landlord and its Chief Finance Officer to confirm acceptance of the terms and conditions. This will need to be completed ahead of the Secretary of State's consent to the transfer. To minimise the administrative burden it is recommended that the new landlord use the funding milestones it agrees with its funders as a basis for the gap funding milestones.
- 6.19.9 Where the new landlord does not already receive payments direct from the Department it will need to complete a SAP7B form to enable its bank details to be recorded by the office Accounts and Payments division. Where necessary the form will be sent out by the Department to the new landlord prior to consent.
- 6.19.10 While the agreement states the intention of the Department to pay gap funding over a number of years the agreement itself will normally cover only the financial year in which it is made. A new agreement will be put in place annually from 1 April for each year a gap funding agreement is required, regardless of the date in the previous financial year that the gap funded agreement was made (e.g. gap funded agreement from 25 October – firstly quarterly report for period 25 October – 31 December; second quarterly and end of year statement of milestone achievements for the period 1 January – 31 March).

- 6.19.11 The timing of gap funding grant payments will be agreed with the new landlord. All payments will be made in arrears of eligible expenditure. A quarterly monitoring return (at Annex V) will be required from the new landlord to confirm progress towards the annual milestones. This must be received within one calendar month of the quarter end. The Department will reserve the right not to make grant payments until quarterly monitoring reports are received. If significant underperformance emerges during the financial year. The Department will seek a review meeting with the new landlord and its funders to reassess the level of gap funding entitlement in that year. Where the level of gap funding is reduced in any one year to reflect slower than expected progress towards milestones this funding would not be lost and subject to need will instead be included in any future years grant agreement.
- 6.19.12 The Department will require a year end report confirming the delivery of annual milestone targets, which replaces the final quarter report and must be received by 30 April of that year. This will subsequently need to be audited as part of the new landlord's external auditor process, and an audited copy also submitted to DCLG. Where end year milestones have not been met the Department may seek to recover any gap funding grant to which the new landlord was not entitled. Alternatively it may abate future payments.
- 6.19.13 The Department will not increase the amount of gap funding made available in respect of current or prior year eligible works and expenditure.
- 6.19.14 It is open to the RSL to terminate the gap funding agreement at anytime subject to its and the Housing Corporation's confirmation that it remains viable without the funding and that transfer promises to tenants can be met in full.
- 6.19.15 The Department will arrange a review meeting with the new landlord, towards the end of second year after transfer, or earlier if the gap funded agreement is three years or less, to reassess the need for continued gap funding. This meeting will require work in advance by the new landlord to record outturn costs and income against estimates in the transfer valuation, and against the new landlord's business plan. Where this work suggests a lesser level of gap funding will deliver the agreed milestone targets the Department will seek a revision to the original proposal. This may take the form of agreeing a reduction in the level of gap funding or agreeing to the inclusion of additional milestones which deliver Government and tenant priorities against which gap funding will be paid. Further review meetings will be arranged as necessary for all gap funded schemes of five years or more.

*Replace para 6.26 with the following*



## Aids and Adaptations and the Disabled Facilities Grant

- 6.26 As with all other services, a housing transfer should improve the service given to vulnerable people and those with disabilities. This will be an issue in all housing transfers and should be planned for early in the transfer process.

### Local authority responsibilities and partnership working with the new RSL

- 6.27 An authority will retain its responsibility for administering the Disabled Facilities Grant (DFG). After transfer, RSL tenants are eligible to apply to the local authority for a DFG and they will be assessed for need on the same basis as private owners and tenants under the means test arrangements. RSLs as landlords may apply on behalf of the applicant. However, we expect the authority and RSL to consider how these arrangements will work in practice post-transfer and expressly set these out in the transfer contract and the business plan (asset management see Annex O).

### Resources

- 6.28 Authorities are strongly encouraged to enter into an agreement with the RSL which requires the latter to share a reasonable proportion of the future financial liabilities for the provision of adaptations under DFG. The precise terms of the agreement will depend on local circumstances but it is suggested that one determining factor should be the current budget set aside by the authority for providing adaptations to its properties pre-transfer. The authority should bear in mind that if it does not make arrangements with the new landlord, the burden for financing adaptations for the RSL tenants as required under the DFG legislation will fall entirely to itself.

### Information

- 6.29 The RSL must ensure that their tenants know their rights, what services are available and where to make requests. Clear public and management guidance should be published through a variety of accessible mediums, including the RSLs website.
- 6.30 The College of Occupational Therapists and the Housing Corporation published in January 2006 *Minor adaptations without delay – a practical guide for technical specifications for housing associations* as well as examples of good practice.
- 6.31 ODPM and the Department of Health issued joint guidance in November 2004 on delivering adaptations, which sets out examples of good practice. See *Delivering Adaptations: Good Practice System Review Checklist (Annex A)*.



# SECTION 10

## The consultation exercise

### Timing of formal consultation and ballot

*Replace para 10.41 with the following*

- 10.41 In order to ensure that a ballot reflects the views of tenants resident at the time of transfer, an authority should seek to minimise the time between ballot and transfer. Ideally it should be 6 to 12 months. In cases where the period between the ballot and completion of the transfer extends to 12 months or beyond, which may be the case in some of the more complex urban transfers (such as mixed community redevelopments), the Secretary of State will take a view on whether the original ballot reflects the views of current tenants or whether further consultation or further evidence is required. This will involve consideration of the local circumstances – for example, the number of re-lets and whether all tenants, particularly new tenants, have been kept informed about the transfer proposals and have been given an opportunity to make their views known to the authority and the Department.

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# SECTION 11

## Securing funding

*Insert new paragraphs*

### Funding of 'Show Homes'

- 11.17 Prior to ballot, some RSLs spend money on improving properties to show the local residents what they will look like once the estate has been refurbished.
- 11.18 There is a financial risk, especially with some smaller RSLs, that where there is an unsuccessful ballot the RSL will have improved local authority stock without being able to recover any of the monies spent. In other words, where there is a vote to remain with the local authority, that authority gains improved stock and the RSL is then out of pocket.
- 11.19 It is our aim to ensure that through full tenant engagement in the development of a housing transfer proposal the risk of tenants rejecting a transfer at the ballot stage is minimised. However, we recognise that a risk does remain. Therefore we believe it is wholly appropriate that potential successor RSL agree with a local authority in advance of a transfer ballot how costs incurred to date are met. As a general principle we would support an arrangement that, where at ballot tenants choose to remain with a local authority, the authority pays the RSL an agreed sum towards the cost of capital works to provide a show home. This will require both parties to agree the scope and cost of works that should be completed prior to ballot.
- 11.20 We would apply this principle generally so that small RSLs are not at a disadvantage when competing as successor landlords against larger RSLs. However should an RSL choose to undertake works to its own specification without agreeing the scope and cost with the local authority, then we believe it should remain free to do so. In such cases there should be no liability on the part of the local authority to recompense the RSL.

## SECTION 12

# Setting up a new landlord

### Establishing arrangements for dealing with conflicts of interest

*Insert new paragraphs*

- 12.41.1 Local authorities need to be particularly aware of financial conflicts arising where their housing officers and Members are being recommended for Board membership of the new RSL. This is especially the case for negative value transfers where gap funding is being sought, as conflicts could arise when the local authority is regularly negotiating and securing Government financial assistance for the new RSL.
- 12.41.2 Only where a local authority can be entirely certain that no conflict will occur, should they consider any of their Officers or Members to sit on the Board of the new RSL.

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# SECTION 13

## Finalising the Tenancy Agreement

### Preserved Right to Buy

*Replace paragraphs 13.8 – 13.15 with following*

- 13.8 When a local authority transfers housing to an RSL, the secure tenants who transfer will generally have a statutory Preserved Right to Buy (PRTB). This means that they retain their right to buy even though they have become assured tenants. However, there are some differences between a tenant who has the PRTB and one who has the RTB. These are listed below.
- 13.9 It should be noted, and explained to tenants early in the consultation period, that the effect of the Preserved Right to Buy changes the cost floor that may affect the price paid. This is because:
- the cost floor rule (which lets the landlords reduce discounts because of works carried out to a property) now allows landlords to take account of works carried out over a 15 year period from the point of transfer rather than a 10-11 year period for a local authority; and
  - new landlords are allowed to take account of works initially required to the property after transfer.
- 13.10 It should also be explained to tenants that:
- there is no right to service charge loans under the Preserved Right to Buy; and
  - that if tenants transfer to a different RSL they will lose their Preserved Right to Buy.

### **VOLUNTARY DISPOSALS ON EQUIVALENT TERMS TO THE RIGHT TO BUY**

- 13.11 Under General Consents, local authorities or registered social landlords may dispose of dwellings to individual tenants on terms which are equivalent to the Right to Buy (see General Consents A and B under section 32 of the Housing Act 1985 issued on 21 March 2005, and General Consent B under section 133 of the Housing Act 1988 issued on 21 March 2005, respectively).

13.12 The Government's modernisation of the Right to Buy affects the General Consents and the appropriate amendments have been incorporated into the General Consents issued on 21 March 2005.

13.13 In March 2003, the Government reduced to £16,000 the maximum discount available to tenants in 41 areas in London and the South of England that were subject to the greatest housing market pressure. It has also made it easier for local authorities to impose restrictions on the subsequent resale of homes in rural areas purchased under the Right to Buy scheme.

13.14 The Housing Act 2004 introduced further changes to the Right to Buy and to voluntary disposals by local authorities and by registered social landlords. They include:

- extending from two years to five years the period that a tenant must spend qualifying for the Right to Buy;
- extending from three years to five years the period during which owners must repay their discount if they choose to resell their home, and base the amount to be repaid on the resale value of the property;
- requiring tenants who enter into 'deferred resale' deals with companies to repay some or all of the Right to Buy discount they have received, as if they had sold the property in the conventional way;
- requiring owners who wish to resell their properties sold under the Right to Buy up to 10 years previously to offer them back to a local social landlord before reselling on the open market;
- exempting from the Right to Buy properties scheduled for demolition;
- shortening the deadline before which a landlord can serve a 'first notice to complete' on a tenant from 12 months to 3 months;
- ending the Rent to Mortgage scheme.

13.15 All but the last of these provisions came into force on 18 January 2005 (the Rent to Mortgage scheme ended with effect from 18 July 2005). They are not retrospective and so will not affect arrangements which were entered into before that date. The General Consents have been amended to reflect the changes.

# SECTION 15

## Drawing up the transfer contract

### ADDITIONAL KEY POINTS

- The authority may be asked to provide warranties covering certain matters affecting the transferred stock. These are usually business warranties; title warranties; and environmental warranties
- The task of identifying and managing the risks associated with warranties should be commenced **at the earliest possible stage**, preferably when the authority is preparing its application to DCLG for a place on the LSVT programme.

*Insert new paragraphs*

### Warranties

#### Dealing with uncertainty: The role of warranties in stock transfer

- 15.12.1 Substitute the following paragraph for the last paragraph on page 6 and the first paragraph on page 7 of the above publication which is available from the Housing Corporation

The local authority will want to consider how to limit the extent of its liabilities in addition to a time and financial cap within the RSL's Warranties Deed. The use of disclosures against specific warranties achieves this. However, disclosure should not be made in isolation to the impact they would have on the RSL's business plan and its ability to obtain funding.

The authority should disclose known liabilities at a very early stage so that the impact on the RSL's business plan can be addressed within a proper indemnity structure. The disclosures should be as specific and accurate as possible to achieve the prospect of a proper risk apportionment on commercial terms.

The assessment of what disclosures to make and indemnities to give is part of the negotiations of risk apportionment. Generally speaking, the RSL's business plan will not contain specific provision for the environmental risks covered by the warranties. Early preparation and discussions between parties would mean that the authority, the RSL and its funder(s) would have the opportunity to reach a negotiated settlement. This could involve:

- a one party bearing the risk to an agreed level and the other bearing the risk after that; and/or
- b the parties sharing the costs of the risk according to an agreed formula; and/or
- c one party bearing all the risk.

Where the RSL is to bear the risk, it can help considerably if it can be supported by warranted external surveys or reports that quantify the risk.

15.12.2 Substitute the following paragraphs on page 10 under the heading:

### **Statements**

This is a general warranty that all statements made in the warranties are true, and that the disclosures include all material information, which the local authority either knows or could have known.

The warranty requires the local authority to make accurate and material disclosures. It does not in itself put the authority in a position of having to disclose everything. This would be contrary to the apportionment device contained in the Warranties Deed.

### **CHTF – Good Practice Briefing Note Number 8 – Managing Environmental Risks**

15.12.3 Substitute the following text for the second bullet point in the box headed, “Key points to note in respect of environmental warranties are:”

- The liability of the Council for breach of any of the environmental warranties typically lasts for a period of between 18 and 20 years in relation to the warranties given to the RSL and for a period of 30 or more years in relation to the collateral warranties given to the lender. Currently the insurance market is providing 10-year indemnity cover in respect of the Council’s liability.

And substitute the following text for the fourth bullet point

- It is normal for certain information to be disclosed under the Transfer Agreement, in order to reduce the potential for liabilities to arise from breach of warranty. Local authorities should make disclosures of known problems. This will involve the authority identifying the risk profile of its stock – including the nature, distribution and quantum of environmental risks – so that appropriate steps can be taken towards the future management of the level of such risks. The disclosures made are normally declarations of specific issues relating to certain dwellings that do not accord with the warranties given and no claims for breach of warranty can normally be brought in relation to these disclosed matters. If lenders resist disclosure of information to the RSL or lender in respect of an environmental matter which the authority knows to be a problem, the authority should consider offering a specific indemnity to cover the disclosure. Authorities will need to consider, in particular circumstances, whether it would be appropriate to offer a warranty that something is known to be the case or an indemnity against a potential loss occurring.

- 15.12.4 Substitute the following paragraph for the last paragraph under the heading “*Approaching all available environmental insurance markets*”.

“It is also important to note that the premium for environmental insurance is normally payable as a one-off, up-front sum for the whole policy period. Other than in respect of relatively small transfers (in terms of numbers of units) with very good risk profiles, there is therefore a significant likelihood that the premium will exceed the amount above which EU public procurement rules (implemented in the UK by the relevant public procurement regulations) must be followed. Specific advice on how to comply with these should be taken as necessary. The Office of Government Commerce’s guidance on the EU Procurement Rules can be found at:

**<http://www.ogc.gov.uk/index.asp?id=1000084>**”

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## SECTION 16

# Applying for the Secretary of State's consent and completing the transfer

### ADDITIONAL KEY POINTS

- Where applicable, prior to consent the DCLG and the new landlord should have agreed the overhanging debt payment and completed the gap funding agreement.

*To be added to para 16.5*

- p. where gap funding is sought, a copy of the draft gap funding agreement with proposed milestones set out against agreed funding profile.

*Replace paragraphs with the following*

- 16.15 ODPM issued six general consents under section 133 of the Housing Act 1988 on 21 March 2005 covering the more common circumstances in which RSLs may wish to dispose of land and property acquired from a local authority. They relate to:
- small disposals of land containing no dwelling-house and at a value not exceeding £120,000 (£240,000 in London);
  - the preserved or contractual right to buy for certain successors to the tenancy of transferring tenants;
  - the grant of a shared ownership lease (which is not an assured tenancy) of a house or a flat where the tenant's initial premium is 90 per cent or less; and the transfer of a freehold of a house (or grant of a new lease for flats) where a tenant under a shared ownership lease has staircased to 100 per cent ownership;
  - the grant of a lease of business accommodation;
  - the grant of a short lease for community purposes or special needs housing;
  - the disposal of reversionary interests in houses or flats.

- 16.16 Copies of these general consents are available from Andrea Gibbs in Zone 2/D2 Eland House (telephone 020 7944 3642). They can also be found on DCLG's website [www.communities.gov.uk/housing](http://www.communities.gov.uk/housing). Only if the circumstances of a proposed disposal do not meet the criteria set out in one of the general consents will the RSL need to seek the Secretary of State's special consent by submitting a completed application form (also available from Andrea Gibbs).
- 16.17 DCLG takes the view that the granting of a charge by way of security for a loan on any transferred housing which is subject to the preserved right to buy requires consent under **Section 171D of the Housing Act 1985** because this is considered to amount to a disposal by the landlord of less than his whole interest as landlord in the dwelling-house.
- 16.18 A general consent under section 171D (2) of the Housing Act 1985 covering all RSLs was issued on 21 March 2005. A copy is available from Andrea Gibbs in Zone 2/D2 Eland House (telephone 020 7944 3642) or DCLG's website at [www.communities.gov.uk/housing](http://www.communities.gov.uk/housing).

## Applying to capitalise additional rent allowances

*Replace paragraph 16.36 with the following*

- 16.36 Therefore DCLG (formerly ODPM) was prepared to consider requests from authorities under section **16(2)(b) of the Local Government Act 2003** to capitalise, i.e. meet from capital resources, the additional rent allowance costs for up to three calendar years after transfer. However, since April 2004 Department for Works and Pensions (DWP) has been responsible for payment of all housing benefit and authorities no longer have to make a contribution. However, there are transitional arrangements in place which mean the full effect may not be felt until 2006-07. Therefore DCLG will continue to consider capitalisation requests where there remains an adverse effect.

# ANNEX E

## Meeting the needs of black and minority ethnic and hard-to-reach communities good practice guidance

*Insert new paragraphs after paragraph 29*

### ODPM and Housing Corporation pilot project

30. As part of our continuing work to promote diversity in the housing association sector, the ODPM and the Housing Corporation jointly sponsored a programme of pilot studies. The project was funded by Housing Corporation Innovation & Good Practice Grants. The four areas involved are:

- Bradford
- Tower Hamlets
- Trafford and
- Wakefield

The key issues that emerged were, in summary:

- Local authorities BME Housing Strategies are needed to create an open door for BME housing associations and communities;
- BME housing association need strategic frameworks to encourage their active engagement;
- Regional Housing Board strategies must include BME issues to ensure that funding addresses BME needs and that the capacity of BME housing associations is not seen as a barrier;
- A Housing Corporation role on equality and diversity strategies is needed for new LSVTs and existing housing associations, both before and after transfer;
- BME housing associations must be involved from the outset in strategic change. There should be a real and open choice of transfer vehicles – not just local authority choice.

The report titled “BME Housing Associations and Stock Transfers” can be found in Housing Corporation website.

<http://www.housingcorplibrary.org.uk/housingcorp.nsf/AllDocuments/C774ADCD685C26A68025707D005E3A2A>.

# ANNEX K

## Programme for Disposals (applications) Direction 2006

The Secretary of State, in exercise of the powers conferred on her by section 135(5) and (12) of the Leasehold Reform, Housing and Urban Development Act 1993, and of all other powers enabling him in that behalf, hereby makes the following direction:

### CITATION AND APPLICATION

1 (1) This direction may be cited as the Programme for Disposals (Applications) Direction 2006.

(2) This direction applies to local authorities in England only.

### REVOCATION OF DIRECTION

2 (1) Subject to paragraph 2. (2), the Programme for Disposals (Applications) Direction 2005 (the 2005 Direction) is hereby revoked.

(2) The 2005 Direction shall remain in force for any disposals programme application sent prior to the date of this direction.

### MANNER OF APPLICATION

3 (1) An application by a local authority for the inclusion of a disposal in a disposals programme for the financial year commencing on 1st April 2006 (a disposals programme application) shall be sent to the Decent Homes Division 3, Department for Communities and Local Government, Zone 2/D2, Eland House, Bressenden Place, London SW1E 5DU and shall be accompanied by 2 copies.

(2) A copy shall also be sent to the relevant Government Office for the Region; and the Housing Corporation's Stock Transfer Registration Unit.

### DATE OF APPLICATION

4 A disposals programme application shall be submitted by no later than 31 July 2006.

### INFORMATION TO BE INCLUDED IN AN APPLICATION

- A disposals programme application shall contain the information listed in Annex M of *Housing Transfer Manual 2005 Programme* as amended by *Housing Transfer Manual 2006 Programme*.

**Anne Kirkham**  
**Decent Homes Division**

# ANNEX L

## Transfer proposal summary sheet

Local Authority.	
Whether a proposed LSVT or SSVT.	
Whether whole stock or partial stock.	
If partial stock, give the name of area or that by which transfer proposal is known AND number of units and % of total housing stock that would transfer.	
If whole stock, how many units would transfer?	
How many leasehold properties would transfer?	
How many units that are currently tenanted would transfer?	
How many decent units would transfer?	
How many non-decent units would transfer?	
Date by which all properties would meet the decent homes target?	
How many (if any) new build properties would be available for social rent?	
How many (if any) new build properties would be for sale?	
How many (if any) properties would be demolished?	
Details of prospective new landlord (whether existing RSL, subsidiary or new RSL) and whether part of group structure?	
Where the new landlord has not been selected, timetable for the choice process.	
Proposed sale price/gross receipt (total and per dwelling).	
Estimated net receipt (gross receipt less set up costs).	
Estimated PSNB effect (total and per dwelling).	

Estimated private finance required to fund transfer.	
Estimated attributable housing debt.	
Estimated levy payable.	
Estimated usable receipt.	
Where there would be overhanging debt, estimate of one off payment necessary (excluding Debt Redemption Premia).	
Debt Redemption Premia.	
Proposed dates for formal consultation.	
Proposed date of ballot.	
Proposed date of Housing Corporation registration (if appropriate).	
Proposed date of transfer.	
Date of Options Appraisal sign-off.	
Full Name and address, including e-mail of lead local authority officer/project leader.	
Full Name and address, including e-mail of the Council's Chief Executive.	
Full Name and address, including e-mail of the Leader of the Council.	
Full Name and email address where possible of local MPs (i.e. whose constituencies fall within the transfer area).	

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# ANNEX M

## Information to be provided on a proposed transfer

The following information must be provided with an application for a place on the 2006 LSVT Programme or as a part of the “initial information” on a proposed SSVT.

- The information required at Annex L- a summary of the proposed transfer including its nature (LSVT, SSVT, whole stock or partial or part of a mixed model approach), the number of tenanted and leasehold units that would transfer, the type of housing concerned, the general condition of the housing, the nature and name of the prospective landlord, the estimated transfer price or if negative value, the source of funding and whether there would be overlapping bids and what the scheme would entail.

The remaining information requirements are listed beneath the Programme criteria to which they relate.

Programme Criteria	Demonstration of compliance with criteria
<b>Options Appraisal and preparatory work</b>	
a Whether the authority has undertaken an Options Appraisal, exercise and transfer has been identified as the preferred route for decent housing delivery.	Provide evidence that the GO-R has formally signed off the Options Appraisal.
b That the proposal can demonstrate that it provides value for money for the authority and that it forms a coherent part of the authority's HRA Business Plan, Local Strategic Partnership and Community Partnership and that these have been drawn up after the Options Appraisal in which tenants were involved and which was informed by a housing needs assessment and a stock condition survey.	Details of <ul style="list-style-type: none"> <li>• the investment appraisal and tenant involvement in this;</li> <li>• how transfer fits into the authority's HRA Business Plan;</li> <li>• the Housing needs assessment undertaken in Options Appraisal;</li> <li>• how transfer provides value for money for the authority as identified in Options Appraisal; and</li> <li>• the CHTF, GO-R and where appropriate NDC's role in advising on the scheme.</li> </ul>

Programme Criteria	Demonstration of compliance with criteria
<p>c That there would be long term demand for the housing it is proposed to transfer, how it is proposed it would be sustained and, if not, details of the strategy in place which will address demand problems.</p>	<p>Details of</p> <ul style="list-style-type: none"> <li>● the extent of long-term demand for social housing in the region, borough and wider area, and for the types of housing being proposed for transfer and whether this is likely to be sustained;</li> <li>● any demand and/or unpopular housing issues and proposed measures to address them;</li> <li>● how much detail will be available to tenants at the proposed time for ballot of any demolition proposals?</li> </ul>
<p>d The extent to which the transfer would contribute to the authority's strategy for building sustainable communities and achieving the Government's wider regeneration, social and economic objectives.</p>	<p>Provide:</p> <ul style="list-style-type: none"> <li>● an explanation of how transfer would contribute to achieving the Government's sustainable communities strategy and its regeneration, social and economic objectives; and</li> <li>● if the transfer is part of a larger regeneration scheme, give details of the roles of stakeholders in delivering the project and whether funds have been made to finance the project and the stage reached in the approval process; how the transfer will fit in with not only the NDC's strategy but also the authority's wider Options Appraisal.</li> <li>● What arrangements are in place to deal with any separate planning consent that may be required and how this fits in with the scheme timetable?</li> </ul>
<p>e The level of support amongst Councillors, tenants and leaseholders for the proposed transfer.</p>	<p>Details of:</p> <ul style="list-style-type: none"> <li>● the informal consultation on the proposed transfer carried out to date and the views of tenants expressed so far; and</li> <li>● the council's resolution to pursue transfer, in particular the composition of the Council and the level of support for the proposed transfer amongst Councillors, leaseholders and tenants federation and other stakeholders.</li> </ul>
<p>f That the proposed timetable for completion of the transfer appears achievable and that the authority has a project plan that allows sufficient time for the various key stages.</p>	<p>Details of:</p> <ul style="list-style-type: none"> <li>● the outline timetable, including proposed dates for tenant consultation, ballot, registration with the Housing Corporation and completion of the transfer; and</li> <li>● the planned activity and milestones since Options Appraisal sign off and a place being granted on the LSVT programme.</li> </ul>



Programme Criteria	Demonstration of compliance with criteria
<b>Decent Homes</b>	
<p>g That the authority has validated information on the extent of condition of decency within its current stock and how the proposal would ensure as a minimum delivery of the decent home target by 31 December 2010 for all homes transferred.</p>	<p>Details of the condition of the stock to be transferred including</p> <ul style="list-style-type: none"> <li>● the type of housing concerned;</li> <li>● any problems faced by it and an indication of how these have arisen, eg poor initial design, subsequent misuse, inadequate maintenance, lack of routine repairs etc; and</li> <li>● an assessment of the stock to identify appropriate energy efficiency improvements.</li> </ul>
	<p>Details of the repairs and improvements works the new landlord would carry out and an estimate of their cost over 30 years, broken down into the following categories (which correspond to those in the cost generation model):</p> <ul style="list-style-type: none"> <li>● Catch up repairs</li> <li>● Future major repairs/planned maintenance</li> <li>● Contingent repairs</li> <li>● Cyclical maintenance</li> <li>● Response and void repairs</li> <li>● Exceptional extensive works</li> <li>● Estate works</li> <li>● Improvements</li> </ul>
	<p>An explanation of how the works expenditure data has been gathered and calculated, including the date and nature of any stock condition survey.</p>
	<p>Details of proposed energy efficiency measures and advice, installation or updating of community heating systems and mechanisms for the new landlord to report to the authority on energy efficiency measures.</p>
	<p>A draft action plan setting out how the prospective new landlord would achieve “Egan Compliance” and Gershon Efficiencies for its procurement principles.</p>
	<p>A timetable showing the years in which various portions of the transferred housing would reach the decent home target.</p>

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Programme Criteria	Demonstration of compliance with criteria
<p>h Where partial transfer is proposed, that the authority has a coherent strategy for the delivery of decent homes.</p>	<p>For a proposed partial transfer</p> <ul style="list-style-type: none"> <li>● an explanation of how the properties were selected;</li> <li>● plans for the rest of the stock, including any other small or large scale transfer proposals and/or PFI, ALMO or retention proposals in the HRA Business Plan;</li> <li>● an assessment of the net effect on the authority's HRA and HRA subsidy entitlement for future subsidy years, using the HRA Business Plan; and</li> <li>● details (number and location) of any properties transferred to the prospective new landlord in the five years prior to the proposed transfer date.</li> </ul>
<p><b>Tenant Involvement</b></p>	
<p>i Following on from the work on Options Appraisal, how tenants have been instrumental in developing the transfer proposal (including whether the possibility of a tenant led or community based transfer has been considered) and will continue active involvement throughout the proposed delivery stages including considering and choosing landlord options and, where there is a competition for the prospective new landlord, that tenant representatives are included on the assessment panel.</p>	<p>Provide</p> <ul style="list-style-type: none"> <li>● a description of the authority's tenant participation policy and procedures and whether these have been brought together in participation compact. Where a compact does not exist, details of the arrangements established to involve tenants in the development of the transfer proposal, including the repair and improvement plans and the post transfer monitoring;</li> <li>● information on whether an Independent Tenant Adviser had been appointed and, if so, at what stage, details of how tenants were involved in their selection, the length of the appointment, i.e. whether it will extend beyond the formal consultation period, and brief details of their remit;</li> <li>● details of the future consultation strategy;</li> <li>● what the process will be for selecting the new landlord;</li> <li>● whether the prospective new landlord had yet been selected and, if so, how tenants were involved in considering the alternatives and choosing the landlord;</li> <li>● what consideration to pursue a tenant or community led transfer</li> <li>● whether the authority has considered that the recipient landlord reflects the make-up of the tenants and whether a role for BME RSLs has been considered; and</li> <li>● if the prospective new landlord has yet to be selected, how it is proposed to involve tenants in considering the alternatives, drawing up any shortlist and making the final selection.</li> </ul>

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Programme Criteria	Demonstration of compliance with criteria
<p>j How the transfer would provide greater tenant participation opportunities across all communities within the transferring stock, including consideration of whether a tenant led or community based transfer would work locally.</p>	<p>Details of</p> <ul style="list-style-type: none"> <li>● the policies and procedures that the new landlord would put in place to ensure all tenants would be more effectively involved in the management of their homes and decision making post-transfer;</li> <li>● any discussions with existing TMOs or TMOs that are in the process of being established; and</li> <li>● how the authority has engaged local BME communities and other hard to reach groups.</li> </ul>
<p><b>Landlord Issues</b></p>	
<p>k That the prospective new landlord is registered or is likely to achieve registration with the Housing Corporation and that any group structure complies with policy on operational independence and de-merger.</p>	<p>Details of</p> <ul style="list-style-type: none"> <li>● discussions with the Housing Corporation Stock Transfer Registration Unit and name of contact.</li> </ul> <p>Details of prospective new landlord including</p> <ul style="list-style-type: none"> <li>● whether an existing RSL, a subsidiary of an existing RSL or a new RSL, and whether it is or would become part of a linked group;</li> <li>● whether it is or would be a not-for-profit Companies Act company or Industrial and Provident Society, and whether it has or would seek charitable status;</li> <li>● if it is or would become part of a linked group, the nature of that group and the distribution (by local authority area) of housing stock owned by members of the group; and</li> <li>● the actual or proposed make up of the governing body and the management structure.</li> <li>● if it is intended that the RSL would be a Community Gateway Association, how it is intended to implement the Community Gateway principles on community empowerment, tenant membership and providing local opportunities for community involvement.</li> </ul> <p>Details of the arrangements to be put in place to avoid conflicts of interest on the part of officers and councillors in addition the report of the council should be attached as an Annex.</p>
<p>l That the prospective new landlord would not become a predominant owner of social housing in the region.</p>	<p>Details of</p> <ul style="list-style-type: none"> <li>● what the landlord's vision of its role within the area is, its growth strategy and other stock it has in the area;</li> <li>● how the landlord's proposals fit in with the authority's priorities in the area eg sustainability, liveability, and growth; and</li> <li>● what other RSL presence is there in the area.</li> </ul>

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Programme Criteria	Demonstration of compliance with criteria
<p>m That there is a strategy to deliver a higher quality housing service for tenants and take into account the findings of previous Best Value Reviews and Housing Inspectorate reports.</p>	<p>Detail of</p> <ul style="list-style-type: none"> <li>● what the authority's current star rating is for its housing service and what is its strategy for improving the rating or for ongoing improvement;</li> <li>● how the transfer would deliver a higher quality housing service for tenants;</li> <li>● any Best Value Reviews and Housing Inspectorate reports on the services that would be transferred, together with details of their findings and how these have been taken into consideration in drawing up the proposals for the prospective new landlord's housing service; and</li> <li>● an outline plan for Best Value reviews by the prospective new landlord after transfer.</li> <li>● What proposals the RSL has in place to address the agenda as Respect neighbourhood managers</li> </ul>
<b>Financial Appraisal</b>	
<p>n That DCLG is satisfied that the transfer would provide value for money for the taxpayer.</p>	<p>Details of how this has been assessed by the authority.</p> <p>Include a copy of the value for money assessment supporting transfer as the choice of option.</p>
<p>o A Single Transfer Model has been completed for an authority proposing an LSVT or an SSVT involving 200 properties or more.</p>	<p>A written account (the figures and their derivation) of the following assumptions in the Pricing Model:</p> <ul style="list-style-type: none"> <li>● Relet rate</li> <li>● Initial rents for transferring tenants</li> <li>● Initial rent for new tenants</li> <li>● Void and bad debt rate</li> <li>● Per unit supervision and management expenditure</li> <li>● Discount rate.</li> </ul>
<p>p That the proposed terms of the transfer are acceptable, including whether the price would take account of the housing's Tenanted Market Value, which has been calculated on the basis of a rent plan which conforms to government policy and reasonable estimates of expenditure.</p>	<p>Whether it is proposed to transfer the freehold or the leasehold interest in the property and, if the latter, an explanation of why this is necessary.</p> <p>Details of the prospective new landlord's proposed rent plan, including an outline strategy for delivery of the rent reforms by 2011/12, how rents for new tenants would be set, the level and length of any rent guarantee and an explanation of the proposals for handling service care and support charges.</p> <p>The proposed sale price and, for proposed SSVTs of less than 200 properties where a Pricing Model has not been completed, an explanation of how this had been calculated.</p>

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Programme Criteria	Demonstration of compliance with criteria
<p>q That the transfer would be fundable and, where an authority would have</p> <p>(i) overhanging debt, the transfer receipt would be sufficient to cover set up costs and the remainder used to offset part of the PWLB loan and premiums.</p> <p>(ii) Gap funding, that the cost of debt home delivery to the public purse has been minimised.</p>	<p>Where the stock has a negative value, the proposed source of dowry and whether a firm commitment has been secured.</p> <p>An estimate of the private finance needed to fund the transfer, whether the new landlord intends to fund from within existing loan facilities or take out a new loan and details of any feedback from potential funders.</p> <p>Where there would be overhanging debt</p> <ul style="list-style-type: none"> <li>● confirmation that the proposed valuation is based on expenditure requirements revealed by a recent stock condition survey and the date of the survey;</li> <li>● confirmation that funders have indicated that the transfer would be fundable on the basis of the proposed valuation;</li> <li>● an estimate of the total PWLB debt at the time of transfer;</li> <li>● an estimate of the premiums payable on the early debt redemption of the attributable housing debt; and</li> <li>● an estimate of the one off payment necessary to enable the attributable housing debt to be redeemed and details of how this has been calculated.</li> </ul> <ul style="list-style-type: none"> <li>● confirmation that the proposed valuation is based on expenditure requirements revealed by a recent stock condition survey and the date of the survey</li> <li>● all options for either reducing or meeting the gap have been pursued</li> <li>● confirmation that funders have indicated that the transfer would be fundable on the basis of the proposed valuation</li> <li>● that there are clearly identified assumptions about the scope for improved efficiency</li> </ul>
<p>r That the proposed use of any usable capital receipt from the transfer would benefit the delivery of the sustainable community.</p>	<p>Provide</p> <ul style="list-style-type: none"> <li>● an explanation on what the receipt will be used for;</li> <li>● an estimate of the capital receipt (gross receipt less set-up costs);</li> <li>● an estimate of the authority's attributable housing debt at the time of transfer, how this has been calculated and an estimate of the overall debt position;</li> <li>● an estimate of the amount of levy payable;</li> <li>● whether the authority will become debt free; and</li> <li>● where whole stock is proposed, confirmation that the authority intends to close its HRA.</li> </ul>

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Programme Criteria	Demonstration of compliance with criteria
<b>Monitoring</b>	
s That the authority and prospective landlord have in place proposals to ensure they comply with DCLG and Housing Corporation requirements to monitor delivery of the transfer proposal and promises made to tenants.	What plans the authority has in place to monitor delivery of the transfer proposal and promises to tenants.
<b>Authority</b>	
t That the authority has appointed a project manager and where necessary a support team to see through the transfer.	Name and their involvement in the transfer to date.
u That the authority has assessed the corporate impact of the proposed transfer and not identified any insurmountable problems, that the authority has worked with its staff to consider the implications of the housing transfer on their employment arrangements agreed an acceptable way forward for all parties and that it has in place a change management plan.	Provide <ul style="list-style-type: none"> <li>● an assessment of the impact of the transfer on the authority's other services and, in the case of whole stock transfer, on the authority's corporate structure, together with proposed solutions to address any potential problems identified; and</li> <li>● details of staff involvement in the process to date and the authority's approach to managing the change that the transfer will constitute for its staff.</li> </ul>
v. That the authority has set out clearly how it will undertake its strategic housing function and other statutory housing functions post transfer.	Provide <ul style="list-style-type: none"> <li>● evidence of a strengthening of the strategic role of the council following transfer;</li> <li>● details of how the authority would continue to fulfil its statutory obligations in respect of social housing, including maintenance of a housing register and an allocation scheme.</li> <li>● Details of the proposed way forward for dealing with choice-based lettings policy.</li> </ul>

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*Replace previous Annex U with the following*

## **ANNEX U**

# Calculation and payment of the LSVT levy

### **Background**

- 1 This is not intended as an authoritative statement of the law and should be read in conjunction with the two relevant determinations: the Disposals Levy (Deduction) (England) Determination 2005 ('the 2005 Deduction Determination'), and the Disposals Levy (Administration) (England) Determination 2005 ('the 2005 Administration Determination'), which can be found at the end of this section. You may also wish to look at section 136 of the Leasehold Reform, Housing & Urban Development Act 1993 – which is the legislative framework governing the LSVT Levy. Please note that section 136 of the 1993 Act was amended by the Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004 (SI 2004/533).

### **Circumstances under which the levy is payable**

- 2 Authorities are legally required to pay the levy when:
  - more than 49 dwellings are transferred to the same Registered Social Landlord over any 5 year period;
  - the Secretary of State's consent is required under section 32 or section 43 of the Housing Act 1985; and
  - the capital receipt (as defined by section 136, Leasehold Reform, Housing and Urban Development Act 1993) received by the authority from the sale of its stock is greater than the housing debt attributable to those dwelling-houses. Such a transfer is referred to as a "qualifying disposal". Levy is not payable where the attributable debt is greater than the capital receipt.

## Clarification of which set-up costs are deductible

- 3 There has been some confusion over the set-up costs that are deductible under item 'B' in the levy formula. Set-up costs are those costs relating to leviable assets (i.e. the dwelling-houses) which were incurred by the authority in pursuing the transfer. These costs include the costs incurred by the authority in discharging its statutory duty to consult – under Section 106A of and Schedule 3A to the Housing Act 1985 and the administrative costs of and incidental to the disposal defrayed by the authority. These costs may include the costs of Lead consultants, Legal consultants, Tenant advisors, Ballot or opinion survey, Public information and consultation, Staff change and consultation, Accommodation, Board appointment and training, Staff training and IT. Any costs incurred by the local authority in meeting any shortfall or deficit in their pension scheme at the time of transfer are not considered to be a 'cost of and incidental' to the transfer and as such may not be included in the setup costs.

## Calculating the levy

- 4 Set out below is the formula used for calculation of the Levy which in its simplest terms is the leviable receipt multiplied by the levy (**P**) which for the 2005 Programme will equal 20per cent. The leviable receipt is derived by taking from the capital receipt four deductible items (**A, B, C & E**) which collectively form item 'D'. A more detailed description of the formulae and definitions for calculating the levy is set out in the 2005 Deduction Determination and section 36 of the Leasehold Reform, Housing & Urban Development Act 1993.

**L = (CR – D) x P**, where

**L** = the amount of the levy;

**CR** = the capital receipt of the transfer;

**D = A+B+C+E**

Where:

**A** is capital receipts relating to any non-leviable assets transferred (i.e. the value of any assets transferred that are not leviable assets, where leviable assets means dwelling houses disposed of in a qualifying disposal) i.e. hostels, free-standing garages, shops and public houses;

**B** is set-up costs relating to leviable assets (the costs incurred by a local authority which relate to a disposal, including costs incurred by the authority in discharging its statutory duty to consult under section 106A of and schedule 3A to the Housing Act 1985, and administrative costs of and incidental to the disposal defrayed by the authority);

**C** is housing debt attributable to the dwelling-houses transferred; and

**E** an amount (if any), which is specified in the Agreement to Transfer as the value of any covenant undertaking or obligation given or assumed by the local authority in that Agreement in respect of the repair, modernisation, improvement, replacement, demolition or any other development of any land or premises which are included in the qualifying disposal

**P** = 20% – the levy rate



- 5 In calculating the levy, the authority should follow the 6 steps set out below and use the relevant data to complete the Initial Return at Part 1[S1] of the schedule to the 2005 Administration Determination. This is a self-calculating form and can be found on the Department’s website at [www.communities.gov.uk/decenthomes](http://www.communities.gov.uk/decenthomes) or a copy can be sent to you by request.
  
- 6 To help illustrate how this calculation is carried out, a hypothetical authority that transfers all its stock has been used, with the following assumptions:

£	
Capital receipt from transfer	<b>£60m</b>
Non-leviable assets <b>(A)</b>	<b>£2m</b>
Set-up costs <b>(B)</b>	<b>£3m</b>
Number of dwellings at 1 April on year of transfer <b>(Z)</b>	<b>6,050</b>
Number of dwelling-houses transferring <b>(Y)</b>	<b>6,000</b> (assumes <b>50</b> Right to Buy transfers occur between 1 April and transfer date)
Housing Attributable debt to the dwellings transferring (i.e., the purchase arrangements) <b>(C)</b> (note <b>C = <math>\frac{M \times Y}{Z}</math></b> )	<b>£10m</b>
Plus the principal debt (if any) in relation to deferred purchase arrangements in which are not included in the calculation of the authority’s Subsidy Capital Financing Requirement (SCFR)	<b>£1m</b>
an amount (if any) which is specified in the Agreement to Transfer as the value of any covenant undertaking or obligation given or assumed by the local authority in that Agreement in respect of the repair, modernisation, improvement, replacement, demolition or any other development of any land or premises which are included in the qualifying disposal. <b>E</b>	<b>£2m</b>

**Step 1** – covered by boxes 1 – 3 of the Initial Return.

The levy only applies to transferred dwelling-houses (as defined in the 2005 Administration Determination). Therefore, the value of non-leviable assets **(A)** included in the transfer (shared ownership dwellings, hostels, free standing garages, shops and public houses) should be deducted from the capital receipt to give the capital receipt relating to leviable assets as follows:

	£60,000,000
–	<u>£2,000,000</u>
	<b>£58,000,000</b>

**Step 2** – at box 5, using the data in boxes 1, 3 and 4 of the Initial Return.

Calculate the proportion of set-up costs relating to leviable assets **(B)** as follows:

£3,000,000 total set up costs x	$\frac{£58,000,000}{£60,000,000}$	=	<b>£2,900,000</b>
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**Step 3** – Box 6.

Deduct the set-up costs relating to leviable assets **(B)** (Box 5) from the capital receipt relating to non-leviable assets (Box 3) as follows:

	£58,000,000 (transfer receipt less capital receipt relating to non-leviable assets)
–	<u>£2,900,000</u>
	<b>£55,100,000</b>

Box 7.

Enter the housing attributable debt **(M)**

Box 8. Enter the number of dwellings in the Housing Revenue Account at the start of the financial year. **(Z)**

Box 9. Enter the number of leviable assets (dwelling-houses) in the disposal **(Y)**.

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**Step 4 – Box 10** (please see para 3 of the 2005 Deduction Determination for calculation):

Calculate the amount of Housing Attributable debt related to leviable assets (dwelling-houses transferred) **(C)**. The proportion of debt in the HRA should be calculated using the SCFR and the principal of any outstanding deferred or advanced purchase arrangements not included in the SCFR. If it is a whole stock transfer (i.e., all the leviable assets in an authority's HRA), then the total debt in the HRA should be used. For a partial transfer, it should be apportioned accordingly, and the calculation below takes account of this. The proportion used in this part of the calculation is arrived at by dividing the number of dwellings in the transfer by the number of dwellings in the HRA at the beginning of the year in which the disposal takes place, and then multiplying by the total debt. Both sets of dwelling figures should exclude shared ownership properties etc – (see Step 1 above). Plus the principal debt (if any) in relation to deferred purchase arrangements which are not included in the calculation of the authority's SCFR

Therefore, in this example:

$$\begin{aligned} \text{£10,000,000 (HRA debt)} \times \frac{6,000 \text{ (dwelling-houses transferred)}}{6,050 \text{ (dwellings at start of year)}} &= \text{£9,917,355} \end{aligned}$$

Referring to the Initial Return form, this could also be read as  $\text{Box 7} \times \frac{\text{Box 9}}{\text{Box 8}}$

$$+ \text{£1,000,000 principal debt} = \text{£10,917,355}$$

**Step 5 – Box 12.**

Deduct from the capital receipt (from which non-leviable assets **(A)** and set-up costs relating to leviable assets **(B)** have already been deducted) the HRA debt attributable to the dwelling-houses transferred **(C)** as calculated at step 4 above; and an amount (if any), which is specified in the Agreement to Transfer as the value of any covenant undertaking or obligation given or assumed by the local authority in the Agreement in respect of the repair, modernisation, improvement, replacement, demolition or any other development of any land or premises which are included in the qualifying disposal **(E)**. This then gives the leviable receipt **(D)** (i.e., that portion of the receipt to which the levy is applied).

Thus **(D)** is calculated as:

£55,100,000 (capital receipt for all assets **(CR)** minus capital receipt relating to non-leviable assets **(A)** and set-up costs relating to leviable assets) **(B)** –  
 £10,917,355 (debt attributable to leviable assets) **(C)** – £2,000,000 an amount (if any), which is specified in the Agreement to Transfer as the value of any covenant undertaking or obligation given or assumed by the local authority in that Agreement in respect of the repair, modernisation, improvement, replacement, demolition or any other development of any land or premises which are included in the qualifying disposal **(E)**

$$\text{£55,100,000} - \text{£10,917,355} - \text{£2,000,000} =$$

**£42,182,645 (Box 12)**

**Step 6 (Box 13)**

The four costs identified at para. 4 have now been deducted from the gross capital receipt. The levy payable (**P**) will be 20% of the figure arrived at Step 5 above. The levy is

$$43,182,645 \times 20\% = \mathbf{£8,436,529}$$

## Completing and submitting an initial return

- 7 An authority must submit an initial return where it makes a qualifying disposal (as defined in para 5 above); a copy of the initial return should be sent as a paper copy signed by the Chief Finance Officer or other authorised officer. It must be sent to the Department within 28 days of the disposal. The form of initial return is in the Schedule to the 2005 Administration Determination and when completed will include information such as the receipt received in respect of the disposal, the number of dwelling-houses involved etc. Where no levy is payable on a qualifying disposal, then no return is required.
- 8 Upon receipt of an initial return, the Department will verify the levy calculation and when satisfied will issue a demand letter requesting payment. Where an authority takes longer than 28 days to pay the levy, interest will be charged from the 29th day (see paragraph 6 of the Administration Determination 2005).
- 9 Authorities will subsequently need to have the initial calculations auditor certified by an external auditor appointed by the Audit Commission and confirmed in an Auditor Certified Return which must be sent to the Department by 31 December following the financial year in which the authority receives any receipts in respect of a qualifying disposal. Like the initial return, the Auditor Certified Return forms part of the Schedule to the 2005 Administration Determination.
- 10 Payment should be made through either the Clearing Houses Automated Payment System (CHAPS), the Bankers Automated Clearing System (BACS), or by cheque.
- 11 Having calculated the amount of levy and completed the Initial Return, the next steps of the payment process are set out in detail in the 2005 Administration Determination. They can be summarised as:
- (i) Submit the completed Initial Return to DCLG within 28 days of completing the disposal. The address for the submission of all returns is:

Ann Hinds  
Decent Homes Division  
Department for Communities and Local Government  
Zone 2/D1  
Eland House  
Bressenden Place  
London SW1E 5DU

- (ii) The Department will then check your figures and:
  - (a) if in agreement with the authority's calculation of the amount payable, the Department will send the authority a demand for payment.
  - (b) If not in agreement with the authority's calculation of the amount payable, the Department will set out the reasons why they disagree.
  - (c) Where the Department disagrees with the calculation the local authority may make representations explaining their calculations and the deductions made.
  - (d) If upon receipt of the representations from the local authority the Department then agrees with the calculation of the amount payable, the Department will send a demand for payment.
- (iii) If, following receipt of the representations from the local authority the Department still do not agree with the local authority's calculation of the amount payable, the Department will send a demand for payment of the amount of levy which he calculates.
- (iv) The authority must then pay the levy demanded within 28 days. Any discrepancies are dealt with when the levy is audited (please see below).
- (v) If an authority fails to pay a demand for levy within 28 days of receiving the Secretary of State's demand, interest on the amount of levy is payable from and including the 29th day up until the day of the payment. It is calculated as 1.5 per cent per annum above the median base rate prevailing on that day. Para 6 of the 2005 Administration Determination sets out this requirement in more detail.

## Completing and submitting an auditor-certified return

- 12 An Auditor Certified Return must be submitted to the Department by 31st December following the financial year in which the receipts were received by the authority (para. 4(3) of the 2005 Administration Determination). This form is part of the initial return form and is also self-calculating. So, for a disposal that took place between 1 April and 31 March in any financial year, the authority should compile an Auditor Certified Return by 30 September in the next financial year (this year is referred to as the 'Return Year') for certification by the external auditor, and secure its submission, via the auditor, to DCLG by the following 31 December.
- 13 The Auditor Certified Return is a record of all leviable disposals that took place during any financial year. There are a number of ways in which a qualifying disposal (see para 3 above) can arise that will give rise to leviable capital receipts. These are set out on the Auditor Certified Return and are, specifically:
  - (i) **Receipts arising from an initial qualifying disposal** – This is a single disposal, which is also a qualifying disposal, of 499 properties within the relevant period, where there have previously been no disposals to the landlord concerned.

- (ii) **Receipts arising from ‘cumulative’ qualifying disposals** – These are housing transfers that accumulate over time and eventually become a qualifying disposal. They occur where, over a period of five or less years, a first disposal of less than 500 properties is followed by one or more further disposals that cumulatively reach or exceed 500 dwellings. They therefore become a qualifying disposal because more than 499 dwellings have been transferred to the same landlord within the 5 year period laid down in the 1993 Act. An example of such a transfer would be as follows:

No. of dwellings transferred in year (inc. previous years)	Cumulative No. of dwellings	Value/ dwelling (£K)	Receipt £m	Cumulative receipt (£m)	Levy payable (£m)
200	200	25	5	5	Nil
100	300	25	2.5	7.5	Nil
100	400	25	2.5	10	Nil
100	500	25	2.5	12.5	2.5
100	600	25	2.5	15	0.5

In the above example, an authority disposes of 200 properties to a landlord, followed by an additional 100 in each of the subsequent years. By the 4th year, the authority has transferred 500 properties to the same landlord, the transfer has become a qualifying disposal and levy is payable. **It is at this point that the receipt becomes leviable**, and the authority would be required to pay levy on £12.5m. The receipt generated by the sale of the 100 properties the following year (year 5) would also be leviable, but would be counted as a ‘subsequent qualifying disposal’ for the purposes of the Auditor Certified Return – please see (iii) below.

- (iii) **Receipts arising from subsequent qualifying disposals** – where there are further qualifying disposals to the same landlord following either an ‘initial’ or a ‘cumulative’ qualifying disposal. In other words, once the first qualifying disposal is made, whether it be one single LSVT (an ‘initial disposal’) or a number of smaller disposals accumulated over time (‘cumulative disposals’), then any additional disposals to the same landlord that are not RTB sales fall into this category.

14 Because it would be administratively burdensome for an authority to report each transfer as it happens, the Department only requires that subsequent transfers are reported in, and levy is paid on, ‘batches’ of 100 or more dwellings. If the subsequent qualifying disposal is less than 100 dwellings, then the authority should report the transfer(s) on an Initial Return at the end of the financial year, and record it/them on the Auditor Certified Return as appropriate.

15 Please note that receipts arising from the proceeds of Right to Buy sales where the local authority has entered into a sharing agreement with the RSL are not subject to the levy.

- 16 You should complete the boxes in the Auditor Certified Return form as follows:

**Box 1**

Enter the date on which the qualifying disposal took place, if it is an initial or cumulative qualifying disposal. For subsequent qualifying disposals, enter the date of the transfer of the 100th property or, if fewer than 100 have been transferred during the year, the number of properties transferred by 31 March.

**Box 2**

Enter the name of the acquiring RSL.

**Box 3**

Receipts arising from an initial qualifying disposal.

**Box 4**

Receipts arising from cumulative qualifying disposals.

**Box 5**

Receipts arising from subsequent qualifying disposals.

**Box 6**

This is the sum of boxes 3 and 5, giving the total capital receipts relating to qualifying disposals for the financial year in question (that is, the previous financial year to that in which the Auditor Certified Return is submitted). The form will calculate this automatically.

**Box 7**

This is the total levy payable for the year in question, and is the total leviable receipts multiplied by 20 per cent. Again the form will calculate this automatically.

- 17 Having received the Auditor Certified Return, and on the basis of the information contained in that Return, the Department will consider if there are grounds for an adjustment of levy. If it is considered that there are grounds for an adjustment, the authority will be sent a second demand for the additional payment if the authority has underpaid, or the Department will reimburse the authority if it has overpaid the levy.

## Records

- 18 Local authorities must keep records of all information relevant to the completion of the initial and Auditor Certified Returns.

# The Disposals Levy (Deduction) (England) Determination 2005

The First Secretary of State, in exercise of the powers conferred on him by section 136(3), (4), and (13) of the Leasehold Reform, Housing and Urban Development Act 1993 and of all other powers enabling him in that behalf, and after consulting such representatives of local government as appear to him to be appropriate in accordance with section 136(11) of that Act, hereby makes the following determination –

## 1. Citation, commencement and application

- (1) This determination may be cited as the Disposals Levy (Deduction) (England) Determination 2005 and shall come into force on 18 March 2005.
- (2) This determination applies to England only.

## 2. Interpretation

- (1) In this determination –

“the 1989 Act” means the Local Government and Housing Act 1989;

“the 1993 Act” means the Leasehold Reform, Housing and Urban Development Act 1993;

“Agreement to transfer” means the agreement referred to as such in the Secretary of State’s consent to a disposal pursuant to sections 32 or 43 of the Housing Act 1985;

“dwelling”, in relation to the number of dwellings within the Housing Revenue Account of an authority on the first day of a year, has the meaning given to that term in the determination made under section 80 of the 1989 Act in force for that year;

“dwelling-house” has the meaning given in section 135 of the 1993 Act (programme for disposals);

“the Housing Revenue Account” means the account kept pursuant to section 74 of the 1989 Act;

“receipts” which are capital receipts or non-money receipts for the purpose of the definition of CR in section 136(3) of the 1993 Act;

“set-up costs” means the costs incurred by a local authority which relate to a disposal, including costs incurred by the authority in discharging its statutory duty to consult under section 106A of and Schedule 3A to the Housing Act 1985, and administrative costs of and incidental to the disposal defrayed by the authority;



“Subsidy Capital Financing Requirement (SCFR)” means a version of the HRA CFR, which is used to calculate subsidy entitlement in the light of debt financing costs or investment income. It is in effect a measure of HRA debt for subsidy purposes, taken at the mid-year point;

“transferee” means the person to which the dwellings are transferred under the qualifying disposal;

“Works” means works of repair, modernisation, improvement, replacement, demolition or any other development of any land or premises which are included in the qualifying disposal;

“Workforce” means the local authority’s staff transferring to the transferee; and

“year” means a period of twelve months ending on 31 March.

- (2) Where a local authority makes a disposal which is not or does not include a qualifying disposal (within the meaning of section 136(1) of the 1993 Act) when it is made but which subsequently becomes or includes a qualifying disposal on the making of a further disposal to the same person, the earlier disposal shall, for the purposes of this determination, be treated as being part of that further disposal.

### 3. Formula

In relation to a disposal which includes a qualifying disposal made by a local authority on or after 18 March 2005, the amount of D referred to in section 136(3) of the 1993 Act shall be calculated in accordance with the following formula –

$$D = A + B + C + E$$

where –

A = (i) zero, if the whole of the disposal is a qualifying disposal; or

(ii) in any other case, the amount of any receipts received by the local authority in respect of the disposal, other than receipts received in respect of the qualifying disposal;

B = (i) the set-up costs of the disposal, if the whole of the disposal is a qualifying disposal; or

(ii) in any other case, such proportion of the total amount of set-up costs of the disposal, as the amount of the receipts in respect of the qualifying disposal bears to the total amount of receipts in respect of the disposal;

$$C = \frac{M \times Y}{Z}$$

where –

M = (i) the Subsidy Capital Financing Requirement for the local authority making the disposal for the year in which the disposal takes place, where that figure is positive, or (ii) zero, in any other case plus the principal of any outstanding debt resulting from any deferred or advance purchase arrangement relating to the qualifying disposal which is not or was not a credit arrangement or transitional credit arrangement within either section 48 or section 52 of the Local Government and Housing Act 1989.

Y = the number of dwelling-houses included in the qualifying disposal; and

Z = the number of dwellings within the Housing Revenue Account of the local authority on the first day of the year in which the disposal takes place;

E = an amount (if any), which is specified in the Agreement to Transfer as the value of any covenant, undertaking or obligation given or assumed by the local authority in that Agreement to carry out Works to property included in the qualifying disposal.

E includes the following:

- (a) any VAT saving separate to the valuation of the transferring dwellings which is retained by the local authority or is paid to the local authority by the transferee as provided for in the Agreement to Transfer or as a direct result of the transfer;
- (b) insofar as such amount is not already accounted for within A in the formula, any amount specified in the Agreement to Transfer as the value of any covenant, undertaking or obligation given or assumed by the local authority in that Agreement in respect of the transfer of the Workforce, for example, relating to goodwill, plant and machinery, or buildings.

E does not include

any increase in the receipt received by the local authority (whether specified in the Agreement to Transfer or not) in respect of the qualifying disposal which relates to the value of any covenant, undertaking or obligation given or assumed by the local authority to carry out Works specified in the Agreement to Transfer, and where as a consequence, VAT is not payable. This includes Works both carried out by the transferee's own workforce and carried out by the Workforce following transfer.

#### 4. Revocation of determination

The Disposals Levy (Deduction) (England) Determination 2003 is hereby revoked.

Anne Kirkham

*Signed by an official of the Office of the Deputy Prime Minister, authorised to sign on behalf of the First Secretary of State*

18 March 2005

## The Disposals Levy (Administration) (England) Determination 2005

The First Secretary of State, in exercise of the powers conferred on him by section 136(5) and (13) of the Leasehold Reform, Housing and Urban Development Act 1993 and of all other powers enabling him in that behalf, and after consulting such representatives of local government as appear to him to be appropriate in accordance with section 136(11) of that Act, hereby makes the following determination –

### 1. Citation, commencement and application

- (1) This determination may be cited as the Disposals Levy (Administration) (England) Determination 2005 and shall come into force on *[31st January]* 18th March 2005.
- (2) This determination applies to England only.

### 2. Interpretation

In this determination –

“the 1989 Act” means the Local Government and Housing Act 1989;

“the 1993 Act” means the Leasehold Reform, Housing and Urban Development Act 1993;

“auditor certified return” means, in relation to any year, a return in the form set out in Part 2 of the Schedule to this determination, completed in respect of the receipts received by the authority during that year;

“cumulative disposal” means a disposal to a person which subsequently becomes or includes a qualifying disposal as a result of one or more further disposals being made by the local authority to the same person within the relevant period; and each of those further disposals is also a cumulative disposal;

“cumulative qualifying disposal” means a qualifying disposal that is, or is included in, a cumulative disposal;

“dwelling”, in relation to the number of dwellings within the Housing Revenue Account of an authority on the first day of a year, has the meaning given to that term in the determination made under section 80 of the 1989 Act in force for that year;

“dwelling-house” has the meaning given in section 135 of the 1993 Act (programme for disposals);

“Housing Revenue Account” means the account kept pursuant to section 74 of the 1989 Act;

“initial disposal” means a disposal to a person which is or includes a qualifying disposal of more than 499 dwelling-houses, where no other qualifying disposal has been made previously by the local authority to that person within the relevant period;

“initial qualifying disposal” means a qualifying disposal that is or is included in an initial disposal;

“initial return” means, in relation to a disposal, a return in the form set out in Part 1 of the Schedule to this determination, completed in respect of the receipts received by the authority in respect of the disposal;

“leviable assets” means dwelling-houses disposed of in a qualifying disposal;

“levy” means the levy payable under section 136 of the 1993 Act;

“non-leviable assets” means assets, other than leviable assets, included in a disposal;

“person” (except in paragraph 6(3) of this determination) includes a person and any of his associates taken together;

“qualifying disposal” has the meaning given in section 136(1) of the 1993 Act;

“receipts” means receipts which are capital receipts or non-money receipts for the purpose of the definition of Capital Receipts in section 136(3) of the 1993 Act;

“relevant period” has the meaning given in section 136(2)(a) and (b) of the 1993 Act;

“required return” shall be construed in accordance with paragraph 5(1);

“return address” means Decent Homes Division, Department for Communities and Local Government, Zone 2/D1, Eland House, Bressenden Place, London SW1E 5DU;

“return year” means a year in which a local authority receives any receipts in respect of qualifying disposals and in relation to which an auditor-certified return is required to be made under paragraph 4(3) of this Determination;

“set-up costs” means the costs incurred by a local authority which relate to a disposal, including costs incurred by the authority in discharging its statutory duty to consult under section 106A of and Schedule 3A to the Housing Act 1985, and administrative costs of and incidental to the disposal defrayed by the authority;

“set-up costs relating to leviable assets” means such proportion of the total amount of set-up costs of the disposal, as the amount of the receipts in respect of the qualifying disposal bears to the total amount of receipts in respect of the disposal;

“subsequent qualifying disposal” means a qualifying disposal which is neither an initial qualifying disposal nor a cumulative qualifying disposal; and

“Subsidy Capital Financing Requirement (SCFR)” means a version of the HRA CFR which is used to calculate subsidy entitlement in the light of debt financing costs or investment income. It is in effect a measure of HRA debt for subsidy purposes, taken at the mid-year point;

“year” means a period of 12 months ending on 31st March.

### 3. Qualifying disposals

- (1) Sub-paragraphs (2) and (3) of this paragraph do not apply for the purposes of the definitions of “cumulative disposal” and “initial disposal”.
- (2) Where a local authority makes a disposal which is not or does not include a qualifying disposal when it is made but which subsequently becomes or includes a qualifying disposal on the making of a further disposal to the same person, the earlier disposal shall, for the purposes of this determination, be treated as being part of that further disposal and any receipts already received in relation to the disposal shall be treated as having been received on the making of the further disposal.
- (3) Where a local authority makes a qualifying disposal of fewer than 100 dwelling houses to a person and, during the same year, makes a subsequent qualifying disposal to the same person, the earlier qualifying disposal shall, for the purposes of this determination, be treated as being part of that subsequent qualifying disposal and any receipts already received in relation to the earlier qualifying disposal shall be treated as having been received on the making of the subsequent qualifying disposal.

### 4. Returns and records

- (1) A local authority which makes a qualifying disposal of 100 or more dwelling-houses shall send to the Secretary of State, by sending it to the return address, within 28 days of the disposal, an initial return setting out the authority’s calculation of the amount of levy payable in accordance with the Disposals Levy (Deduction) (England) Determination 2005.
- (2) A local authority which makes a qualifying disposal of fewer than 100 dwelling houses (which is not treated as part of a qualifying disposal of 100 or more dwelling houses by virtue of paragraph 3 above) shall send to the Secretary of State, by sending it to the return address, an initial return in relation to the disposal, on or before the last day of the year in which the disposal is made or, if later, within 28 days of the disposal, setting out the authority’s calculation of the amount of levy payable in accordance with the Disposals Levy (Deduction) (England) Determination 2005.

- (3) A local authority which receives any receipts in respect of qualifying disposals in any year (whether in relation to a qualifying disposal made in that year or in a previous year) shall arrange for its auditor appointed by the Audit Commission to send to the Secretary of State, by sending it to the return address, by 31st December in the year following that year, the Auditor Certified Return (at Annex 1 to this determination) in relation to that year, setting out the authority's calculation of the amount of levy payable in accordance with the Disposals Levy (Deduction) (England) Determination 2005 certified by the auditor.
- (4) A local authority shall keep records relating to any disposal which is or includes, or which may subsequently become or include, a qualifying disposal in such a way as to show that a return made under this paragraph is correct.
- (5) An authority shall, on receipt of notice in writing by the Secretary of State
  - (a) make any records kept under subparagraph (4) available for inspection by a person named in the notice;
  - (b) send to the Secretary of State a copy of the information kept in such records in relation to such disposals as may be specified in the notice.

## 5. Issuing of demands and payment of levy

- (1) In verifying any levy calculation of the local authority, the Secretary of State may request any further information he so requires from the authority in support of their calculation.
- (2) If he agrees with the authority's calculation of the amount payable, the Secretary of State shall send to the authority a demand for payment of the amount of the levy calculated by the authority.
- (3) If he disagrees with the calculation, the Secretary of State will set out the reasons why he disagrees and notify the local authority within 14 days.
- (4) Where the Secretary of State notifies the authority he disagrees with the calculation, the local authority may make representations to the Secretary of State within 28 days explaining their calculations and the deductions they have made.
- (5) If, following receipt of representations from the local authority in accordance with sub-paragraph (4) above, the Secretary of State agrees with the authority's calculation of the amount payable, he shall within 28 days of receipt of the representations send to the authority a demand for payment of the amount of the levy calculated by the authority.
- (6) If, following receipt of representations from the local authority in accordance with sub-paragraph (4) above, the Secretary of State does not agree with the authority's calculation of the amount payable, he shall within 28 days of receipt of the representations send a demand for payment of the amount of levy which he calculates as payable, setting out his reasons for the disagreement.

- (7) Where an authority receives a demand for payment, they shall send the amount demanded to the Secretary of State within 28 days of receiving the demand.

## 6. Payment of interest

- (1) Where an authority receives a demand under paragraph 5(2), 5(5) or 5(6) and the authority does not send the amount demanded to the Secretary of State within the 28 day period mentioned in paragraph 5(7), the authority shall pay interest from the end of that period on the amount outstanding.
- (2) Where an authority is required to pay interest under this paragraph in relation to a demanded amount, interest shall be paid at 1.5 per cent per annum above the median base rate, prevailing 29 days after the authority receives the Secretary of State's demand, on the amount outstanding until payment of the demanded amount is made.
- (3) For the purposes of subparagraph (3), the median base rate is the base rate quoted by the reference banks or, if different base rates are quoted, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence at that time; and for the purposes of this subparagraph –
- (a) the reference banks are the seven largest persons who –
    - (i) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
    - (ii) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and
    - (iii) quote a base rate in sterling;
  - (b) the size of a person for the time being is to be determined by reference to his total consolidated gross assets denominated in sterling, as shown in his audited end-year accounts last published before that time;
  - (c) and “consolidated gross assets” of an institution is a reference to the gross assets of that institution together with any subsidiary (within the meaning of section 736 of the Companies Act 1985);
- (c) sub-paragraphs (a)(i), (ii) and (iii) above must be read with:
- (i) section 22 of the Financial Services and Markets Act 2000;
  - (ii) any relevant order under that section; and
  - (iii) Schedule 2 to that Act.

## 7. Adjustment of levy

Where the auditor certified return shows that a levy in respect of a disposal has been overpaid and the Secretary of State is satisfied of the accuracy of the auditor certified return, he shall repay the overpayment.

## 8. Revocation of determinations

The Disposals Levy (Administration) (England) Determination 2003 is hereby revoked.

Anne Kirkham

*Signed by an official of Office of the Deputy Prime Minister, authorised to sign on behalf of the First Secretary of State*

18 March 2005

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# ANNEX 1

This is the Audit Commission Certificate, to be completed and signed in conjunction with Part 2 (Form of Auditor Certified Return).



## Certificate of the auditor appointed by the Audit Commission

The Statement of Responsibilities of grant-paying bodies, authorities, the Audit Commission and appointed auditors in relation to claims and returns, issued by the Audit Commission, sets out the respective responsibilities of these parties, and the limitations of our responsibilities as appointed auditors.

I/We have examined the entries in this form (which replaces or amends the original submitted to me/us by the authority dated \_\_\_\_\_)\* and the related accounts and records of the authority in accordance with Certification Instruction A01 and I/we have:

*For claims and returns above de minimis and up to the threshold#*

- carried out Part A tests in Certification Instruction number HQUC 05 E and obtained such evidence and explanations as I/we consider necessary.

(Except for the matters raised in the attached qualification letter dated \_\_\_\_\_)\*

I/we have concluded that the claim or return is in accordance with the underlying records.

*For claims and returns over the threshold#*

- assessed the control environment for the preparation of this claim or return in accordance with Certification Instruction A01 and, on the basis of my/our assessment, carried out Part A/Parts A and B\* tests in Certification Instruction number HQUC 05 E and obtained such evidence and explanations as I/we consider necessary.

(Except for the matters raised in the attached qualification letter dated \_\_\_\_\_)\*

I/we have concluded that the claim or return is:

- fairly stated; and
- in accordance with the relevant terms and conditions.

Signature \_\_\_\_\_

Name (block capitals) \_\_\_\_\_  
on behalf of the Audit Commission

Date \_\_\_\_\_

*\*Delete as necessary*

*# Delete non-applicable certificate*

**CF1 (4/04)**

# ANNEX V

## Model gap funding agreement and milestones

### FUNDING AGREEMENT FOR LARGE SCALE VOLUNTARY TRANSFER FROM XXXXXXXXXXXXXXX BOROUGH COUNCIL TO XXXXX RSL.

Project number: \_\_\_\_ ( area of transfer)

#### Introduction and interpretation

- 1 I am pleased to tell you that the Secretary of State has decided to offer gap funding grant to XXXXXRSL for the project on the terms and conditions set out below. This offer is conditional on securing registration with the Housing Corporation for XXXXX RSL and the Secretary of State's consent to the transfer of XXXXXXXX Borough Council's ('the Council') housing stock to XXXXXXXRSL by XX XXXXX 200X.
- 2 If you accept the offer, this letter will constitute a funding agreement for the period from the date of your acceptance until 31 March 200X. It is the intention of the Department to issue further annual funding agreements up to and including 200X/0X subject to the terms and conditions stated below.
- 3 In this letter, except where the context requires otherwise:

**"the funding period"** is the period specified in paragraph 2;

**"the grant recipient"** means XXXXRSL, which, having accepted the offer of grant, is responsible for receiving, expending and accounting for all amounts paid under the funding agreement;

**"the lender"** means: XXXXXXXXXXX Bank plc as Agent for the Finance Parties as each term is defined in and pursuant to a loan facility agreement to be entered into on or about this date between (1) XXXXXXXRSL as Borrower (2) XXXXXXX Bank plc as arranger (3) XXXXXXX Bank plc as lender (4) XXXXX Bank plc as agent and (5) XXXXXXXX Limited as Security Trustee from time to time (which expression shall include the successors in title, transferred and assignees of any lender an any agent, single lender or mortgagee under any refinancing agreement);

**"the Department"** means the Department for Communities and Local Government;

“**the project**” means the works towards which gap funding grant is contributing to improve, repair and maintain XXXX dwellings in the area of XXXXXXXX Borough Council to meet the Decent Homes Standard (as a minimum), regenerate the area and improve its environment, as set out in the Transfer Agreement between the Council and XXXRSL, and included in the gap funding project summary sheet and Investment Plan of XXXXXRSL;

“**RSL**” means XXXXRSL which was registered by XX XXX 2005 by the Housing Corporation as a registered social landlord;

“**milestone**” means an agreed works phase or works stage;

“**you**” (or “**your**”) means the grant recipient (s); and

“**we**” (or “**us**”) means the Department.

### **Grant offer**

- 4 The letter we sent to the Council of XXXX 200X indicated that the project had gained a place on the Disposals Programme 200X and that DCLG intended to pay gap funding grant, subject to Parliamentary approval, up to a maximum of £Xm to the grant recipient on the basis of a minimum valuation was £XM. Since then the agreed minimum valuation has been revised to £Mn. As a result DCLG now intends to pay gap funding grant to the grant recipient as a contribution to eligible expenditure on the project up to a maximum of £XXm over a period of five years from 20XX/XX to 20XX/XX inclusive, subject to the grant recipient meeting the agreed milestones set out in the attached Schedule A and complying with the grant terms and conditions set out in this letter.
- 5 The maximum amount of grant payable for the funding period of 200X/0X will be the lesser of the total eligible expenditure (*see paragraph 8*) and £XXm. Payments for subsequent years will be adjusted in line with the Bank of England's Consumer Prices Index for September of the previous year up to the agreed anniversary date when the funding gap valuation will be subject to review.
- 6 Grant is paid in exercise of the power conferred on the First Secretary of State by section 126 of the Housing Grants, Construction and Regeneration Act 1996. As required by sections 126(1) and 128(1) of that Act, the Treasury has consented to the giving of such financial assistance on the terms set out in this offer of grant.
- 7 If the total funding gap for the project exceeds the maximum amount of grant mentioned in paragraph 4 the grant recipient will be expected to find the balance required to bring the project to a successful conclusion. The Secretary of State will not pay gap funding grant above the maximum of £XXm (as adjusted by the Bank of England's Consumer Prices Index) over a period of three years from 2005/06 to 2007/08 inclusive.

### Eligible expenditure

- 8 Eligible expenditure consists of payments made by the grant recipient to achieve the transfer and thereafter which contribute towards the cost of meeting milestones for the project. But any expenditure on any of the items or for any of the purposes specified in paragraph 24 is not eligible expenditure.
- 9 For the purpose of defining the time of payments, a payment is made by the grant recipient when and only when, money passes out of the grant recipient's control. Money will be assumed to have passed out of the grant recipient's control at the moment when legal tender is passed to a supplier (or, for wages, to an employee), when a letter is posted to a supplier or employee containing a cheque, or an electronic instruction is sent to a bank to make a payment to a supplier or employee by direct credit or bank transfer.

### Payment arrangements

- 10 Grant will be paid [frequency to be agreed with grant recipient] in arrears for eligible expenditure in meeting milestones set for the financial year for which the claim is made.
- 11 The fourth quarter milestone report will also be an end year statement of milestone achievements which the grant recipient must submit by 30 April 200X for works completed between 1 April 200X and 31 March 200X.
- 12 Schedule A is a profile of milestones to be achieved during the period of the project over which the First Secretary of State intends to pay gap funding grant. Any delay in completing any agreed milestone will affect the timing of grant payments and may affect your entitlement to grant in any particular year. The grant recipient is required to submit quarterly milestone reports to the Department to inform of progress made (*see paragraphs 17 and 18*), so that we can monitor eligibility for ongoing gap funding grant payments. Where the grant recipient intends to re-phase work that will impact on the delivery of agreed milestones, he must first agree the changes with the Department.
- 13 For grant payments for years beyond 200X/0X, the amount of further funding which the Secretary of State intends to pay will depend upon satisfactory progress being made in meeting agreed milestones for the project, and compliance with grant terms and conditions. The Secretary of State will after consultation with and in agreement with the lender and the grant recipient, review and re-assess the need for gap funding grant on the second anniversary date subject to the receipt of agreed papers. It is expected that this will provide for downward revision of the total amount of grant required because of the Department's expectation that you will outperform against the valuation assumptions which were agreed with the Department when the stock transferred. The review will assess your performance against the original assumptions in the grant recipient's Investment Plan at transfer, and your ability to draw down additional private finance or to re-finance.
- 14 You may approach us at any time to bring forward the review of the business plan with a view to ending this agreement where you no longer wish to be tied to the conditions of this agreement.

- 15 Where you propose to re-finance all of your existing loan facilities with a new lender or extend your finance with your existing lender, it is a condition of this agreement that you notify us immediately. We will then work with you to consider whether grant for gap funding is still required or whether a lower level of grant should be set in a new gap funding agreement.

### **Monitoring progress**

- 16 Quarterly progress reports against agreed milestones must be signed by the grant recipient's Finance Director or by a person notified in advance as having full delegated authority to sign the report on behalf of the Finance Director.
- 17 These reports must be made on a standard form provided by the Department (attached) and should be submitted to the Department within one month of the end of each quarter, i.e. by 30 June 200X, 30 September 200X, 31 December 200X and 30 April 200X. This will provide for certification of progress made since the date of the last report on the implementation of all agreed milestones for that year and on the completion of any milestone or milestones. The progress report will also draw attention to any delay in the implementation of any agreed milestone, account for the delay and state what actions have been taken to make good any missed milestones. The report will confirm that the grant recipient has observed the terms of this grant funding agreement. Report forms must be sent to the grant recipient's principal contact in the Department, who is named below. Incomplete or incorrect reports will be returned to the grant recipient for resubmission within 10 working days from receipt from the Department.
- 18 If necessary at the request of and in agreement with the grant recipient and lender, the Department will consider extending the period of the project over which DCLG intends to pay grant relative to progress achieved in meeting any agreed milestone or in completing the project provided that:
- (a) the delay is not such as to necessitate a reduction or suspension or the withholding or recovery of grant under paragraph 33; and
  - (b) the estimated project completion date is not later than 31st March 200X.
- 19 The end year statement of milestone achievement should summarise the works carried out in meeting all milestones which have given rise to eligible expenditure for grant under the project and confirm the total amount of eligible expenditure incurred during the financial year.

### **Financial controls**

- 20 The grant recipient must:
- (a) agree in advance with the Department any significant changes to the phasing of eligible expenditure that would impact on meeting milestones for the project;
  - (b) maintain and operate effectively all relevant monitoring and financial management systems, in order to control expenditure and ensure that the costs of implementing the project are properly incurred and can be clearly identified;

- (c) ensure that the project architects, surveyors and other consultants appointed for the project competently perform all services relating to the monitoring, control and certification of works and expenditure;
- (d) keep a record of all milestones delivered wholly or partly by grant, and retain all accounting records relating to that expenditure for a period of at least six years after the end of the funding period. Accounting records include accounts, deeds, writings and documents on paper or in electronic form. The grant recipient must make these available at any reasonable time for inspection by the Department or anyone acting on our behalf, or by the Housing Corporation or the Housing Inspectorate.

### Statement of Grant Usage

- 21 If the amount of the grant paid to the grant recipient for the funding period is more than £20,000, then by 30 September 200X, the grant recipient must complete and submit to the Department, a Statement of Grant Usage, giving details of eligible expenditure incurred in delivering milestones during the funding period. This must be accompanied by a report from a reporting accountant appointed and paid for by the grant recipient. Guidance for reporting accountants is at Annex 1.
- 22 Manuscript alterations to the Statement of Grant Usage must be initialled by the original signatory as well as by the reporting accountant. If negative figures are used in any of the documents to which this note refers, the figures must be written thus: “minus £x”. Figures in brackets or in red will not be recognised as negative.
- 23 After receiving the Statement of Grant Usage, the Department will pay any outstanding grant due against milestones for the funding period up to the maximum amount of grant stated in paragraph 4. Alternatively, if the Statement of Grant Usage identifies any overpayment of grant against milestones achieved, the grant recipient must repay this amount within 60 days of being asked by the Department to repay it.

### Ineligible expenditure

- 24 Grant recipients should not incur liabilities for eligible expenditure before there is an operational need for them to do so. Grant recipients should not pay for eligible expenditure sooner than the due date for payment. No grant will be paid by the Department for any of the following purposes or items of expenditure:
  - (a) activities of a political or exclusively religious nature;
  - (b) expenditure financed from other central or local government sources or from European Community funds;
  - (c) depreciation, amortisation or impairment of fixed assets;
  - (d) input VAT recoverable by the grant recipient from H.M. Revenue & Customs;
  - (e) payments made before the issuing of the funding agreement letter;
  - (f) interest payments or service charge payments for finance leases;

- (g) bad debts to a party related to officers, members and employees of the accountable body (see accounting standard FRS8 for the definition of a “party related”);
- (h) statutory fines and penalties;
- (i) entertainment costs.

### **Value for money and procurement requirements**

- 25 The grant recipient must secure value for money in all transactions for the procurement or purchase of works, goods and services. You will be expected to adhere to the principles and practices set out in the Housing Corporation publication *“Assess Procurement: ensuring probity and value for money in property development, regeneration and maintenance procurement. A self assessment framework for Boards of Housing Associations”* (July 2003). If we require you to do so, you must produce evidence of compliance with this condition.
- 26 If the grant recipient follows a single tender procedure, for example, where the value of a contract is below £5,000 or there is only one provider capable of executing or supplying the works, goods or services concerned, you must keep a record of the reasons why you considered that procedure to be appropriate.
- 27 The grant recipient will be expected to ensure, where applicable, it meets the requirements of the EC Public Procurement Directives, which, apart from the Utilities Directive, are implemented in the UK by the Public Contracts Regulations 2006 (S.I. 2006/05).
- 28 In accepting this offer of grant, the grant recipient warrants that these procedures and requirements, wherever they may be appropriate, have been followed in awarding all contracts already entered into for the project.

### **Income and other contributions**

- 29 In determining the amount of grant with which he intends to support the project, and the amount of grant he is prepared to offer for the funding period 200X/0X, the Secretary of State has taken account of such estimates of income, contributions and other grants towards the costs of the project as you have given in the valuation agreed with the Department at the time of transfer. If at any time during the period of the project over which the Department intends to pay gap funding grant the project attracts income, contributions or grants significantly in excess of these amounts, the grant recipient must notify the Department as soon as possible and state the amounts received or to be received.
- 30 The Department may allow the grant recipient to retain the amount notified after discussion with and with the agreement of the grant recipient and its lender. Otherwise, the grant recipient must with the agreement of the lender pay the amount notified, or such part as requested, to the Secretary of State. If the repayment received is equal to the grant paid and no future grant is to be paid the funding agreement will be discharged upon repayment.



### **Conflicts of interest and financial or other irregularities**

- 31 Employees of the grant recipient and any other persons consulted about the project must be careful to avoid conflicts of interest. The grant recipient must set up formal procedures to require all such persons to declare any personal or financial interest in any matter concerning the project and to be excluded from any discussion or decision-making relating to the matter concerned.
- 32 If the grant recipient has any grounds for suspecting financial irregularity in the use of grant, you must notify the Department immediately, explain what steps are being taken to investigate the suspicion, and keep the Department informed about the progress of the investigation. For these purposes “financial irregularity” includes fraud or other impropriety, mismanagement, and the use of grant for purposes other than those for which it has been provided.

### **Other grant conditions:**

- 33 The grant recipient must:
- (a) use all grant paid under this funding agreement for the purposes of the project;
  - (b) make documents relating to the grant funding and its application available on request and provide access to such documents at any time as required for inspection and scrutiny by the Department or anyone acting on our behalf, and by the Housing Corporation and Housing Inspectorate;
  - (c) ensure that there is obtained all necessary permission and authority (whether required by legislation or otherwise) to undertake the project and all works and activities connected with the project; and
  - (d) take all reasonable steps to ensure that you and anyone acting on your behalf in connection with the project complies with the law for the time being in force in the United Kingdom, including, in particular (so far as binding on the grant recipient), the requirements of the Health and Safety at Work Act 1974, Data Protection Act 1998, the Human Rights Act 1998, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 1995. Note: The Commission for Racial Equality and the Equal Opportunities Commission have issued Codes of Practice giving guidance on the law relating to equal opportunities and on good practices in employment.

### **Breach of conditions and withholding or recovering grant**

- 34 If the grant recipient fails to comply with any of the terms and conditions of grant set out in this funding agreement, or if any of the events mentioned in paragraph 33 occurs and in respect of 33 a, b, d, f and j it has not been possible to agree a course of action to remedy the situation, the Secretary of State may review this agreement and may, after consultation with and in agreement with the lender reduce, suspend, or withhold grant, or require all or any part of the grant to be repaid. The grant recipient will repay any amount required to be repaid under this condition within 30 days of receiving the demand for repayment.



35 The events referred to in paragraph 34 are as follows:

- (a) the quarterly monitoring reports demonstrate that the grant recipient is failing or has failed to make satisfactory progress in delivering the milestones;
- (b) whether through delay or poor project management, the costs of the project are escalating to an extent that, in the opinion of the Secretary of State, is unacceptable;
- (c) the grant recipient persistently fails to submit quarterly monitoring reports on time;
- (d) it appears to the Department that other circumstances have arisen or events have occurred which are likely to affect the grant recipient's ability to complete the project in a satisfactory manner;
- (e) the grant recipient's lenders are no longer satisfied that funding covenants are being met and are no longer permitting the drawdown of funds;
- (f) the grant recipient is not making satisfactory progress towards fulfilling the commitments to its tenants within the timescales set out in the Offer Document from XXXXXXXXX Borough Council;
- (g) the grant recipient makes any significant change to the project without the approval of the Department or, where an unapproved change can be reversed, fails to reverse it if asked by the Department to do so;
- (h) in support of the application for grant funding or in a quarterly report or other communication concerning this funding agreement, the grant recipient or anyone on your behalf has provided, or provides, information that is in any significant respect incorrect, incomplete or otherwise misleading;
- (i) the grant recipient takes inadequate measures to investigate and resolve any reported irregularity;
- (j) a report on a Statement of Grant Usage is unsatisfactory because it contains an adverse opinion, a qualified opinion or a disclaimer of opinion;
- (k) the grant recipient is the subject of a proposal for a voluntary arrangement; or has a petition for an administration order or a winding up order brought against it; or passes a resolution to wind up; or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors, or purports to do so; or is subject to the appointment of a receiver, administrator or liquidator; or is struck from the register at the Charity Commission, or, being a company, is struck from the register at Companies House;
- (l) the grant recipient purports to transfer or assign any rights, interests or obligations arising under this funding agreement without the agreement in advance of the Department other than to its lenders or any assignee or transferee of that lender.

36 It is hoped that most difficulties encountered by the grant recipient can be overcome with the advice and support of the Department and in consultation with the grant recipient and its lender. If the Department has concerns it will initially set these out in writing to you seeking reassurances. If matters are not satisfactorily resolved the Department will request a meeting with you and your advisers and lenders to explore its concerns. In the event that it becomes necessary to take steps to enforce the terms and conditions of this funding agreement we will write to you, copied to your lenders confirming our concerns about the project or of any breach of a term or condition of this grant offer letter.

37 Within a reasonable time, depending on the severity of the problem and in any event not later than 30 days after the receipt of our letter, you must take steps to address our concerns or rectify the breach. You may consult the Department or agree with us an action plan for resolving the problem. If we are not satisfied with steps taken to address our concerns or rectify the breach, or if the breach cannot be rectified, we may in consultation with and with the agreement of your lenders take steps to reduce, suspend or withhold grant payments, or to recover grant already paid.

**Acceptance of grant offer**

38 If you wish to accept this offer of funding from the Large Scale Voluntary Transfer Gap Funding Grant Fund, would you please sign both copies of the funding agreement letter in the space indicated below and return one of the copies to this office and retain the other for your records.

39 I am sending a copy of this letter to XXXX at the Council and should be grateful if you would ensure you also send them a copy of your signed funding agreement letter when you return the same to me.

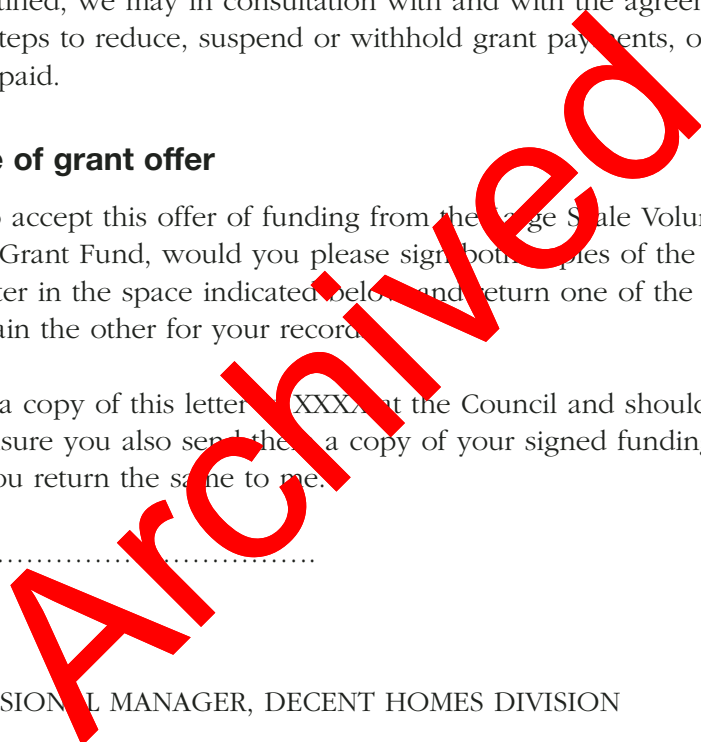
Signature: .....

Name:

Position: DIVISIONAL MANAGER, DECENT HOMES DIVISION

(authorised to sign by the Secretary of State)

Date: .....



**XXXXXXXXXRSL accept the offer of grant contained in this letter and agree to comply with the terms and conditions of grant on which the offer is made.**

Signature: .....

Name: XXXXXXXXXXXX.....

Position: Director of Finance  
(authorised to sign on behalf of the grant recipient)

Date: .....

**PRINCIPAL CONTACTS**

The principal contact in the Department for Communities and Local Government is xxxxxxxx on 020 7944 xxxx, xxxxxxxx@communities.gsi.gov.uk

The principal contact for the grant recipient is

Name

Telephone

Email

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**Schedule A RSL – Gap Funding Milestone Profile:**

Element Description	Year 1 2005/2006	Year 2 2006/2007	Year 3 2007/2008
	Units Completed	Units Completed	Units Completed

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# Quarterly Progress Report

Year 20XX/XX

Element description (for illustration purposes)	original milestones for year	quarter 1				quarter 2				quarter 3				quarter 4				Total achieved in year		Net difference with original milestones	
		Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed	Units Completed			
Kitchen																					
Bathrooms																					
Central Heating																					
Rewiring																					
Asbestos Removal																					
Front Doors																					
Windows, Walls and Roofs																					
Stairs and Lifts																					
Total																					

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Signed by .....

Position .....

To be signed by Chief Finance Officer or above

## Contact details

### DCLG, Decent Homes Division (DHD)

Zone 2/D2, Eland House, Bressenden Place, London, SW1E 5DU  
Tel: 020 7944 (ext), Fax: 020 7944 3259/3639,  
E-mail: [housing.transfer@communities.gsi.gov.uk](mailto:housing.transfer@communities.gsi.gov.uk)  
Transfer policy website: [www.communities.gov.uk/decenthomes](http://www.communities.gov.uk/decenthomes)

	<b>Zone</b>	<b>Ext.</b>
<b>Housing Transfer Manager</b>		
Ken Swan	2/C2	3608
<b>Housing Transfer Programme Manager</b>		
Sally Turner	2/1	3613
<b>Regional contacts for the North West and Merseyside</b>		
John Flower	2/D1	3622
Ann Hinds	2/D1	6476
<b>Regional Contact for the North East and London South</b>		
Vacant	2/D1	3623
<b>Regional Contact for Yorkshire, the Humber and West Midlands</b>		
Jo Thorpe	2/D2	4202
<b>Regional contact for the East Midlands and London North West</b>		
Sally Turner	2/C1	3613
<b>Regional contact for East of England</b>		
Mala Harinath	2/D1	3661
<b>Regional contact for the South West</b>		
Andrea Gibbs	2/D2	3642
<b>Regional contact for the South East and London North East</b>		
Jean-Claude Letendrie	2/C1	3614
<b>Housing Transfer Programme Administrator</b>		
Sally Hunt	2/C1	3618

## Housing Corporation (HC) contact details

Web site: [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)

### **Headquarters**

Maple House  
149 Tottenham Court Road  
London W1P 0BN  
Tel: 020 7393 2000  
Fax: 020 7393 2111  
[Enquiries@housingcorp.gsx.gov.uk](mailto:Enquiries@housingcorp.gsx.gov.uk)

### **Stock Transfer and Registration Unit (STRU)**

Attenborough House  
109/119 Charles Street  
Leicester  
LE1 1FQ  
Tel: 0116 242 4878  
Fax: 0116 242 4801  
[John.Green@housingcorp.gsx.gov.uk](mailto:John.Green@housingcorp.gsx.gov.uk)  
[Jane.Duncan@housingcorp.gsx.gov.uk](mailto:Jane.Duncan@housingcorp.gsx.gov.uk)  
[Steve.Fox@housingcorp.gsx.gov.uk](mailto:Steve.Fox@housingcorp.gsx.gov.uk)  
[Robert.buswell@housingcorp.gsx.gov.uk](mailto:Robert.buswell@housingcorp.gsx.gov.uk)

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# Government Office contact details

## GO – North West

City Tower  
Piccadilly Plaza  
Manchester  
M1 4BE  
Tel: 0161 952 4000  
Fax: 0161 952 4099  
Web site: [www.gonw.gov.uk](http://www.gonw.gov.uk)  
**Contact:** Paul Schofield  
Tel: 0161 952 4275  
Mobile: 07775 706497  
Email: [paul.schofield@gonw.gsi.gov.uk](mailto:paul.schofield@gonw.gsi.gov.uk)

## GO – NW (Merseyside)

Cunard Building  
Pier Head  
Water Street  
Liverpool  
L3 1QB  
Tel: 0151 224 6300  
Fax: 0151 224 6470  
Web site: [www.gonw.gov.uk](http://www.gonw.gov.uk)  
**Contact:** Paul Schofield  
Tel: 0161 952 4275  
Mobile: 07775 706497  
Email: [paul.schofield@gonw.gsi.gov.uk](mailto:paul.schofield@gonw.gsi.gov.uk)

## GO – North East

Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4WH  
Tel: 0191 201 3300  
Fax: 0191 202 3998  
Web site: [www.go-ne.gov.uk](http://www.go-ne.gov.uk)  
**Contact:** David Siddle  
Tel: 0191 202 3504  
Mobile: 07810 657289  
Email: [david.siddle@gone.gsi.gov.uk](mailto:david.siddle@gone.gsi.gov.uk)

## GO – Yorkshire and the Humber

PO Box 213  
City House  
New Station Street  
Leeds  
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