



# Localism Bill: reform of social housing regulation

## Impact assessment



Localism Bill: reform of social housing  
regulation  
**Impact assessment**

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<b>Title:</b> Localism Bill: reform of social housing regulation <b>Lead department or agency:</b> Department for Communities and Local Government	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> DCLG 0065
	<b>Date:</b> January 2011
	<b>Stage:</b> Final Proposal stage
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

There remains a clear rationale for regulation of social housing, based on the lack of competitive pressures towards good, efficient service provision and the presence of substantial public subsidy. However, there are now important drivers for change: the Government's localism agenda (which aims to enhance power and accountability at the local level while refocusing the role of central government on those issues where it is best placed to act); the imperative to make financial savings across government; and the Government's policy objective to reduce the number of quangos. In order to address these concerns the Government has undertaken a review of the role and purpose of the Tenant Services Authority (TSA) and the framework for social housing regulation in England. Both TSA and the current regulatory system were established by the Housing and Regeneration Act 2008, implementing the recommendations made by the Cave Review of Social Housing Regulation in 2007.

### What are the policy objectives and the intended effects?

Government policy as set out in manifestoes and the Coalition Agreement gave a high priority to reducing the number of quangos. The review of social housing regulation objectives (from which the measures set out in the Impact Assessment stem) were, whilst protecting the primacy of economic regulation of the sector, first and foremost to reduce the number of quangos and cut unnecessary regulation (it is of note that there will be an estimated annual reduction in burdens on registered providers of over £200k per year). The driver for regulatory reform was not simply one of cost saving, although again it is worth noting that these reforms will reduce taxpayer costs by nearly £90m over the period, with a budget reduction of over 30 per cent by the end of the Spending Review.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Option 1 – Do Minimum (status quo plus some efficiency savings);

Option 2 - Refocus the role of the regulator on proactive economic regulation and reactive consumer regulation; and transfer these functions to a new statutory Regulation Committee to be established within the Homes and Communities Agency (HCA) (preferred option);

Option 3 - Refocus the role of the regulator on proactive economic regulation and reactive consumer regulation; but retain a free-standing regulator.

**Option 2** is the preferred option as it is the only one that would achieve all of the Government's policy objectives for the review. The IA sets out the costs as far as they are known for abolishing the TSA and transferring functions to the HCA. It makes clear that savings will be made in the long-term, noting that retaining the TSA but scaling back its regulatory functions might conceivably deliver a higher net monetised benefit in the short term, it would not realise ministers' overarching ambition of reducing the number of quangos. Important elements of the costs, particularly future pension deficit repayments, will not be established for some time. It should be noted however that pension costs were likely to increase irrespective of the changes proposed as a result of standard revaluation. Moreover, even if additional pension costs are substantial, Option 2 will deliver a higher net benefit over the longer-term due to back-office savings, and it also encompasses important non-monetised benefits arising from the synergies between investment and regulation. The review conclusions are, in summary:

- In line with government's commitment to reduce the number of quangos, the TSA should be abolished and its economic regulation and backstop consumer regulation functions transferred to the Homes and Communities Agency, generating efficiency savings in back-office functions and exploiting synergies across investment and regulation.
- In order to ensure the continued independence of regulation, these functions should be vested in a statutory committee within the Homes and Communities Agency, legally separated from the Homes and Communities Agency's investment functions and with its membership appointed by the Secretary of State.
- The role of consumer regulation should be refocused on setting clear service standards for social landlords and addressing *serious* failures against those standards.
- This solution to resolution of tenants' problems harnesses skills and capacity at the local level. Local mechanisms should be used to address routine problems, with an enhanced role for elected Councillors, MPs and tenant panels in the complaints process. This will enable tenants to hold their landlord to account more effectively and press for better services.
- Inspection of social landlords should only be used where there are grounds to suspect a serious failure against the standards, but the regulator should be free to commission inspections from the open market.

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

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed April 2013
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister: Grant Shapps..... Date: January 2011 .....

## Summary: Analysis and Evidence

## Policy Option 2

Description: Implement efficiency savings; refocus the role of the regulator on proactive economic regulation and reactive consumer regulation; and transfer these functions to a new statutory Regulation Committee to be established within the Homes and Communities Agency

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: [see*]	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
Best Estimate	5		[see*]		<b>[see*]</b>	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
We estimate that this option will give rise to redundancy and other transitional costs of around £5m						
<b>Other key non-monetised costs by 'main affected groups'</b>						
*There are likely to be additional costs over time arising from the recalculation of pension deficit liabilities as a result of organisational change, though it should be noted that pension costs were expected to rise irrespectively as a result of standard revaluation. Costs are subject to ongoing negotiations with the pensions providers and cannot be estimated until after Royal Assent, when we will have a fuller understanding of which staff will transfer and which staff will be made redundant. We are however doing what we can now to mitigate the impact, providing a co-ordinated approach to engagement with HCA/TSA pensions providers. Another potential non-monetised cost arises from the introduction of a filter for social housing complaints – this could result in a higher workload for local councillors and MPs, although this is likely to be negligible (see p.13 for further details).						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
Best Estimate	0		10		<b>89</b>	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
We estimate that refocusing regulation on proactive economic regulation and reactive consumer regulation will result in an approximate £200k pa reduction in burdens on registered providers of social housing over the period. The cost of regulation to the taxpayer is expected to reduce by around £87m (net present value), reflecting the back-office savings from transferring regulation to the Homes and Communities Agency, efficiency savings and the impact of refocusing the role of the regulator. However, these figures are subject to change, as a result of post-Spending Review policy development work.						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
This option would result in a reduction in the number of quangos.						
Co-locating investment and regulation in the Homes and Communities Agency could result in improved synergy between these functions (although regulatory decisions will continue to be taken independently).						
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>	3.5

We assume that our recommendation to set clearer regulatory standards for social landlords on accountability to tenants will not result in material additional costs to the sector, given that we do not intend to be prescriptive about how this standard should be achieved, and many landlords will already be delivering sufficient involvement and accountability pursuant to TSA's existing Involvement and Empowerment standard.

We will refocus the regulator's consumer protection role on setting clear regulatory standards and addressing serious failures against those standards. We assume that this will not result in additional risk to tenants, on the basis that tenants will still be able to secure redress for lower-level service problems via the complaints process, and that routine scrutiny of landlord performance will be applied through effective landlord accountability to tenants.

The review concluded that, by retaining the existing framework for economic regulation and vesting regulatory powers and objectives in the proposed statutory Regulation Committee within the Homes and Communities Agency, lender confidence will be maintained.

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>	<b>In scope</b>
<b>New AB: 0</b>	<b>AB savings: 0.2</b>	<b>Net: -0.2</b>	<b>Policy cost savings:</b>	<b>Yes/No</b>



## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/04/2012				
Which organisation(s) will enforce the policy?	DCLG				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 100%		Benefits: 100%		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium	Large 0
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	15
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	15
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	15
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	15
Wider environmental issues	No	15
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	15
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	15
Justice system <a href="#">Justice Impact Test guidance</a>	No	15
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	15
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	15

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

# Summary: Analysis and Evidence

# Policy Option 3

**Description:** Implement efficiency savings; refocus the role of the regulator on proactive economic regulation and reactive consumer regulation; but retain a free-standing regulator

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 51

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	3	0	3

**Description and scale of key monetised costs by 'main affected groups'**

We estimate that this option will give rise to transitional costs to Government of around £3m.

**Other key non-monetised costs by 'main affected groups'**

A potential non-monetised cost arises from the introduction of a filter for social housing complaints – this could result in a higher workload for local councillors and MPs although this is likely to be negligible (see p.13 for further details).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	6	54

**Description and scale of key monetised benefits by 'main affected groups'**

We estimate that refocusing regulation on proactive economic regulation and reactive consumer regulation will result in an approximate £200k per annum reduction in burdens on registered providers of social housing over the period (discounted figures). The cost of regulation to the taxpayer is expected to fall by around £52m (net present value), reflecting efficiency savings and reduced regulatory activity. (Under this option, there would be no reduction in back-office costs arising from the transfer of functions to HCA).

**Other key non-monetised benefits by 'main affected groups' None**

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
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We assume that our recommendation to set clearer regulatory standards for social landlords on accountability to tenants will not result in material additional costs to the sector, given that we do not intend to be prescriptive about how this standard should be achieved, and many landlords will already be delivering sufficient involvement and accountability pursuant to TSA's existing Involvement and Empowerment standard.

We will refocus the regulator's role on consumer protection; on setting clear regulatory standards and addressing serious failures against those standards. We assume that this will not result in additional risk to tenants, on the basis that tenants will still be able to secure redress for lower-level service problems via the complaints process, and that routine scrutiny of landlord performance will be applied through effective landlord accountability to tenants.

<b>Impact on admin burden (AB) (£m):</b>	<b>Impact on policy cost savings (£m):</b>	<b>In scope</b>
New AB: 0   AB savings: 0.2   Net: -0.2	Policy cost savings:	Yes/No

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	TSA Review Report <a href="http://www.communities.gov.uk/publications/housing/socialhousingregulation">http://www.communities.gov.uk/publications/housing/socialhousingregulation</a>
2	Terms of Reference for the TSA Review <a href="http://www.communities.gov.uk/archived/general-content/housing/tsareview/">http://www.communities.gov.uk/archived/general-content/housing/tsareview/</a>
3	Housing and Regeneration Act 2008 <a href="http://www.legislation.gov.uk/ukpga/2008/17/contents">http://www.legislation.gov.uk/ukpga/2008/17/contents</a>
4	Every Tenant Matters: A Review of Social Housing Regulation (Cave Review) <a href="http://www.communities.gov.uk/documents/housing/pdf/320365.pdf">http://www.communities.gov.uk/documents/housing/pdf/320365.pdf</a>

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits for Option 2 - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	5	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]
<b>Total annual costs</b>	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]	[see*]
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	10	10	10	10	10	10	10	10	10	10
<b>Total annual benefits</b>	10	10	10	10	10	10	10	10	10	10

\* There are likely to be additional costs over time arising from the recalculation of pension deficit liabilities as a result of organisational change, though it should be noted that pension costs were expected to rise irrespectively, as a result of standard revaluation. Costs are subject to ongoing negotiations with the pensions providers and cannot be estimated until after Royal Assent, when we will have a fuller understanding of which staff will transfer and which staff will be made redundant. We are however doing what we can now to mitigate the impact, providing a co-ordinated approach to engagement with HCA/TSA pensions providers. Another potential non-monetised cost arises from the introduction of a filter for social housing complaints – this could result in a higher workload for local councillors and MPs, although this is likely to be negligible (see p.13 for further details).

# Evidence Base (for summary sheets)

## ***Problem under consideration***

The Cave Review (June 2007) recommended the establishment of a new cross-domain regulatory system for social housing in England and the creation of a stand-alone social housing regulator. The Cave Review recommended the creation of a stand-alone regulator (rather than the other organisational options it considered) on the basis that “*such a newly created body would be able to make a fresh start at implementing a new approach. It would also be wholly focused on social housing regulation.*”<sup>2</sup> These recommendations were implemented via the Housing and Regeneration Act 2008 (the 2008 Act). The Tenant Services Authority (TSA) was established as the social housing regulator in December 2008, inheriting the regulatory powers that had previously been exercised by the Housing Corporation. The new regulatory system provided by the 2008 Act came into effect on 1 April 2010.

There are now several important drivers for change:

- The Government’s localism agenda, which aims to enhance power and accountability at the local level, while refocusing the role of central government on those issues where it is best placed to act
- The imperative to make significant financial savings across government, in order to reduce the fiscal deficit
- The Government’s policy objective to reduce the number of quangos.

These drivers for change have implications for the future function and form of social housing regulation. In particular, they require us to consider:

- The appropriate role of the state in regulating social housing provision, and whether there is scope for greater onus to be placed on more local, non-state mechanisms
- How the cost of regulation – both on providers and taxpayers – can be reduced
- The future role of regulation in safeguarding – and maximising the value for money from – public investment in social housing
- Whether responsibility for regulation can be transferred elsewhere in order to achieve a reduction in the number of quangos.

## ***Rationale for intervention***

The rationale for regulating the provision of social housing largely rests on:

- The lack of competitive pressures towards good, efficient service provision. Owing to the excess of demand for social housing over supply, tenants have little choice of landlord and limited scope to switch to a different provider if they receive a poor service. This gives rise to elements of monopoly.
- The presence of substantial public subsidy. There is some £37bn of grant investment in housing associations and over £90bn of public value in local authority homes. Around two-

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<sup>2</sup> Every Tenant Matters: A Review of Social Housing Regulation, June 2007 (p.23). A summary of the Cave Review’s findings is included at annex 2.

thirds of social rents are paid by taxpayers through the Housing Benefit bill. There is a clear public interest in securing maximum value for money from that investment (particularly in terms of housing supply outputs) and guarding against the loss of publicly-funded assets.

The rationale for reviewing the existing regulatory system is set out in the previous section.

### ***Policy objective***

In light of the drivers for change listed above, the new Government decided to review the role and purpose of TSA and the framework for social housing regulation. The TSA Review began in June and concluded in September. The Review's objectives, as set out in its Terms of Reference, were as follows:

- Reducing the number and cost of quangos
- Reducing administration costs and ensuring value for money of public investment
- Cutting unnecessary regulation and inspection
- Ensuring that there is a robust, transparent and independent framework of economic regulation for social housing
- Ensuring that there is a regulatory environment that ensures housing associations continue to command the confidence of lenders and can continue to attract investment at competitive rates
- Supporting a supply of affordable housing
- Social housing tenants being adequately protected and empowered.

### ***Description of options considered (including do nothing)***

The TSA Review considered a wide range of options, summarised in this Impact Assessment as follows:

#### Option 1 ('do minimum' case)

The counterfactual for this analysis is the *status quo* plus some efficiency savings (as it is assumed that efficiency savings would be implemented even if neither of the above options were enacted). In other words, under the counterfactual, some efficiency savings would be made, but there would be no changes to regulatory functions or to the location of regulation. A free-standing regulator would be retained, operating the existing regulatory system provided by the 2008 Act.

#### Option 2

Option 2 involves refocusing the role of the regulator on proactive economic regulation and consumer regulation only where it is presented with evidence of serious failure; and transferring these functions to a new statutory Regulation Committee to be established within the Homes and Communities Agency. Further details are outlined below.

#### *Refocusing the role of the regulator*

In light of the review's terms of reference, the review concluded that a reformed system should be designed to achieve the following outcomes:

In terms of consumer protection:

- (a) social housing is well managed and of appropriate quality

- (b) social housing tenants have an appropriate degree of choice and protection and that they have the opportunity to be involved in the management of their homes and can hold landlords to account
- (c) social housing provision make a contribution to the social and economic well-being of the areas in which it takes place, including (for example) to broader environmental objectives.

And in terms of economic outcomes:

- (a) taxpayers are protected – landlords operate efficiently, value for money is obtained from public investment in social housing, public investment is safeguarded and not misused, and unreasonable burdens are not imposed on public funds
- (b) social housing supply – private sector investment in social housing is retained and expanded, housing associations remain financially viable and properly managed (consistent with their independent status).

The principal regulatory tool in the current regulatory system is standards. There are currently six largely outcome-focused standards, which landlords are obliged to meet, covering both consumer and economic issues. Standards are set by the regulator, subject to any policy directions from government. Landlords are also required to negotiate more specific local offers with their tenants on certain issues, such as repairs and maintenance.

The regulator has a range of monitoring powers which it can use, at its own discretion, to assess landlords' performance against the standards. It can, for example, commission inspections and require landlords to supply performance information. In more serious cases, where the regulator suspects mismanagement by a landlord, it can hold a statutory inquiry.

Where a landlord breaches one or more of the standards, the regulator can use its enforcement powers. These range from issuing an enforcement notice to (*in extremis*) requiring the landlord to transfer the management of its homes to another provider. The regulator is required to ensure that any interventions are proportionate to the materiality and frequency of breaches. There is no distinction between when the regulator can act on consumer or economic regulation matters.

The review's central conclusion on functions is that achieving the consumer protection and economic outcomes requires substantially differing levels of regulatory activity.

In terms of consumer protection, the review recommends that the role of the regulator can be restricted to setting clear service standards and investigating and addressing *serious* failures against those standards. The review considers that the two other consumer protection activities that are currently performed by the regulator – (a) proactively monitoring landlords' compliance with service standards; and (b) scrutinising landlord performance and driving service improvement generally – can be delivered locally, by putting more onus on landlords to provide their tenants with the means by which they can be held to account, and by strengthening the complaints process through greater involvement of locally elected representatives.

To drive this behaviour change shift to local challenge and scrutiny, the review proposes that the Secretary of State should direct the regulator to issue a new standard on tenant involvement. This standard would require landlords to ensure that tenants are given the opportunity to form tenant panels (or other equivalent mechanisms) that will enable them to hold landlords to account and scrutinise service delivery. In order to support effective scrutiny by tenants, the standard would require landlords to seek agreement from their tenants for the provision of timely, useful information about their performance and ensure that this information is made available to all tenants. The review recommends that tenants and landlords should be free to decide how best to organise local accountability without diktats from the centre on the precise form this should take. Our direction would also encourage tenant involvement in complaint handling.

The review recommends that complaints relating the provision of social housing should be subject to a 'filter.' This would mean that a tenant, having already exhausted his/her landlord's complaints process, would no longer be able to raise the complaint directly with the Housing Ombudsman (for private registered providers) or the Local Government Ombudsman (for local authority providers). He/she would instead need to approach a local councillor, MP or tenant panel to have the case referred to the relevant ombudsman. This model is similar to the filter that applies to complaints to the Parliamentary Ombudsman. This is expected to have the benefit, over time, of councillors, MPs and panels becoming more expert at using their influence to stop complaints arising and resolving those that do at an earlier stage. As a result we anticipate that the majority of tenant complaints will be resolved at the local level.

The review makes clear that the regulator's role is to deal with serious failures against consumer standards. The review sets out that a range of individuals and groups (but particularly tenants themselves, councillors and MPs) may have a role in detecting potential serious failures. The regulator may accept evidence of potential serious failures from anyone and must have regards to evidence from specified groups who have a particular interest in the performance of social landlords. It will be for the regulator to demonstrate that there are reasonable grounds to believe that there is or will be a serious failure against the standard before using its other powers. This reinforces the role of local groups in taking responsibility for detecting failure but gives a route to resolve those failures where they are serious.

In light of the emphasis on local information flows and local detection and resolution of failures, the review recommends that the regulator's power to commission inspections should be retained but it should be circumscribed to be used only in circumstances where there is grounds to suspect a serious failure against the standards, rather than left open-ended as it now. This model implies only a very small number of inspections each year. In order to increase efficiency and flexibility, and in light of the decision to disband the Audit Commission, we recommend that the regulator should be able to procure inspections from the open market instead.

In order to maintain lender confidence and protect taxpayers, the review concluded that the regulator should continue to take a proactive stance on the economic regulation of housing associations. This involves ensuring that landlords are financially viable and well-governed, and that publicly-funded assets are safeguarded. Although tenants may have relevant views on these aspects of regulation, we cannot expect tenants to carry out this function. The review therefore recommended continuity of function, with sufficient resource to achieve the statutory objectives for economic regulation.

The review recommends that the regulator should not engage in activities that are not linked to its core role of proactive economic regulation and reactive consumer protection. For example, TSA's best practice work should cease as this can be entirely sector-led in future. Also, in order to bear down on costs, the review recommended that the regulator should be under a statutory duty to regulate in a matter that minimises interference.

### *Transferring functions to the Homes and Communities Agency*

Under Option 2, TSA's remaining regulatory functions (in light of the changes to functions outlined above) would be transferred to the Homes and Communities Agency.

In order to meet the objective of the review to reduce the number of quangos, we explored a range of potential locations for the remaining regulatory functions following abolition of the TSA. The review focused on existing regulators/inspectorates and bodies with a specialist knowledge of social housing. Many options were ruled out at an early stage as clearly unfeasible and/or undesirable.

The Homes and Communities Agency emerged as the one that offered best value for money. This is on the basis that it fulfilled all of the following criteria:

- **Expertise:** a significant part of the Homes and Communities Agency's role is focused on social housing provision. Locating regulation in a body that already has significant expertise in the field will help to retain lender confidence.
- **Status:** the Homes and Communities Agency is a non departmental public body and (with appropriate protections – see below) is capable of delivering independent regulation.
- **Capacity:** the Homes and Communities Agency is already a relatively large non departmental public body and will be better able to absorb a major new function than some of the other location options we examined.
- **Synergy:** there are potential synergies between the regulation and investment functions, particularly in the area of seeking to ensure value for money from investment whilst maintaining the stability of the sector. However, regulatory independence will be maintained (see below).

A range of partners are particularly concerned that the regulator maintains independence from government in order to preserve the private sector status of housing associations. Lenders to the social housing sector in particular value independence of regulation from investment, to ensure that issues relating to the financial viability and governance of housing associations are not unduly subordinated to questions of investment in new supply, which in turn impacts on their confidence to lend into the sector. Given the need to maintain the independence of regulation from government and the need to be able to demonstrate that the regulator will have a strong independent voice (particularly on questions of financial viability), the transfer would be made by establishing a statutory Regulation Committee as part of the Homes and Communities Agency. Under this proposal, the Regulation Committee – not the Homes and Communities Agency proper – would be designated as the regulator of social housing, taking on what remains of TSA's regulatory powers. All decisions on regulatory matters would be the responsibility of the Regulation Committee. For organisational purposes, the Regulation Committee would be part of the Homes and Communities Agency. It would be supported by the staff of the Homes and Communities Agency and resourced through the Homes and Communities Agency's budget. We propose that the Regulation Committee's membership should be entirely non-executive. Its members would be appointed by the Secretary of State, with the intention that a minority would also be members of the main Homes and Communities Agency Board. This approach would address the disadvantages of co-locating regulatory and investment functions that were identified in the Cave Review.

### Option 3

In common with Option 2, Option 3 involves refocusing the role of the regulator on proactive economic regulation and reactive consumer regulation (the proposals for this would be identical to those outlined for Option 2 above).

However, unlike Option 2, functions would not be transferred to the Homes and Communities Agency and a free-standing social housing regulator would be retained. The functions and powers of the regulator would be reformed and regulation would be delivered more efficiently (as in Option 2), but regulation would continue to be located in a separate non-departmental public body.

## ***Costs and benefits of options***

### Option 1 (Do Minimum case)



The counterfactual takes the status quo and builds in some efficiency savings (and related redundancy costs).

## Option 2

### *Benefits*

We estimate that Option 2 will generate some **£89m** in monetised benefits over 10 years (net present value):

- Refocusing the role of the regulator: approximately £54m (of which around £20m is estimated to come from reduced staff and operational costs, around £32m from reduced inspection and programme costs, and the remaining £2m from reduced compliance costs on the part of registered providers). There may need to be subsequent revisions to these figures as a result of post spending review work.
- Transferring functions to the Homes and Communities Agency: approximately £35m in savings from reduced staff and operational costs.

We also expect Option 2 to deliver the following non-monetised benefits:

- A reduction in the number of quangos, thereby responding to the Government's clear policy commitment in section 9 of the Coalition Agreement.
- Potential benefits from synergies between social housing investment and regulation. There is a clear synergy between the allocation of social housing grant and the regulator's objective to secure value for money from public investment. Similarly, in extreme cases, access to investment funds can be helpful in resolving regulatory problems and safeguarding the interests of tenants and taxpayers. Locating investment and regulation in a single body puts us in a better position to exploit these synergies and deliver greater public value, while at the same time ensuring that regulatory decisions continue to be taken on an independent basis.

### *Costs*

In order to deliver the benefits outlined above, Government will need to incur some additional up-front costs, in terms of redundancy payments and breaking contractual commitments. We estimate that Option 2 will give rise to around **£5m** in such transitional costs (of which three-fifths comes from refocusing the role of the regulator, and the remaining two-fifths from transferring functions to the Homes and Communities Agency). However, in addition to these transitional costs, we estimate that there will be substantial additional costs over time arising from the recalculation of pension deficit liabilities. These cannot be estimated at present, as they are subject to ongoing negotiations.

Another potential (currently non-monetised) cost is as follows:

- Introducing a filter for social housing complaints could result in an increase in the workload of local councillors and MPs, although it is anticipated that many of the complaints would in the normal course of events form a part of their case work. Each year, approximately 1 in 250 social households make a complaint relating to social housing provision to either the Housing Ombudsman or Local Government Ombudsman. For illustrative purposes, we have applied this ratio to the London Borough of Southwark, a borough with a particularly large number of social housing units – 55,000. Applying the 1 in 250 ratio implies that 220 complaints are made to the ombudsmen per year from this borough. There are 21 wards in Southwark, each electing three councillors (63 in total).

Even if we assume that all 220 complaints were routed through councillors rather than MPs, this would imply that – on average – each councillor would receive 3-4 complaints per year. In order to demonstrate the potential impact on MPs, we use the Camberwell and Peckham constituency as a case study (as it is largely in Southwark). It includes nine wards, so assuming that there are 10 complaints per ward per year (based on the assumptions above), the MP could receive 90 cases per year. If we assume that half of these cases go to local councillors, the MP would receive 45 cases per year. This is likely to represent a relatively small percentage of an MP's annual post bag. For the purposes of a national average, we believe this to be an upper estimate – given that the case study area contains a particularly dense concentration of social housing.

### Option 3

#### *Benefits*

We estimate that Option 3 will generate some **£54m** in monetised benefits over 10 years (net present value):

- Refocusing the role of the regulator: approximately £54m (of which around £20m is estimated to come from reduced staff and operational costs, around £32m from reduced inspection and programme costs, and the remaining £2m from reduced compliance costs on the part of registered providers).

#### *Costs*

In order to deliver the benefits outlined above, Government will need to incur some additional upfront costs, in terms of redundancy payments and breaking contractual commitments. We estimate that Option 3 will give rise to around **£3m** in such transitional costs.

Another potential (currently non-monetised) cost is as follows:

- Introducing a filter for social housing complaints could result in a material increase in the workload of local councillors and MPs (see analysis above under Option 2).

#### **Risks**

##### *Refocusing the role of the regulator*

There is a residual risk that tenants will not be as well protected as they are theoretically at present. Where a landlord does not engage well in involving tenants, e.g. by not providing relevant or timely information and thus not subjecting itself to tenant scrutiny, it will potentially be able to free itself from bottom-up pressure. The regulator will have limited scope to monitor the situation or take action because of the raised threshold for involvement in consumer protection.

The proposals on strengthening the tenant involvement and empowerment standard, local information provision, encouraging a more active role by locally elected representatives and tenants themselves and the very clear routes of escalation, mitigate against this risk and provide a localist approach to consumer protection. Further mitigation would require greater degrees of prescription, proactivity and/or cost by central or local government, with no certainty that better outcomes would be achieved.

## *Transferring functions to the Homes and Communities Agency*

The transfer of TSA functions to the Homes and Communities Agency may lead to higher pension deficit repayments. Negotiations around the costs involved, and a possible revised repayment plan, are currently underway.

The proposed institutional reorganisation could disrupt the core business of the regulator, giving rise to potential risks to the interests of tenants and taxpayers. The loss of key staff members would exacerbate this risk. We are working with TSA to mitigate this risk, by communicating the purpose of the review (including the clear statement in the Terms of Reference about the future of economic regulation).

### ***Administrative burden and policy savings calculations***

We assume a £0.2m annual reduction in annual compliance costs for registered providers. This is based on an assumption of reduced time spent interacting with the regulator on complaints and on consumer matters more generally, due to the shift from proactive to reactive consumer regulation. It also reflects a reduction in the cost of complying with inspections.

These savings are based on:

- A 100 per cent reduction in the costs of dealing with the regulator over individual complaints. In 2009/10, TSA engaged with providers on 59 individual complaints, at an estimated cost to providers of £450 each time. Total annual saving: £26,550.
- A 66 per cent reduction in the cost of being inspected, based on the assumption (noted earlier) that the number of inspections will decline by two-thirds. There were 50 inspections in 2009/10. We estimate that each one will have required preparation and follow-up work occupying 105 hours of staff time (five days x seven hours x three members of staff), estimated at an average of £27 per hour (the assumed pay rate of a middle manager within the provider). The total cost to the provider of each inspection is therefore estimated at £2,835 – an annual cost to the sector of £141,750. If this cost decreases by two thirds, this would represent a total annual saving of £94,500.
- A 66 per cent reduction in the costs of dealing with the regulation on inspection plans, again based on the assumption that the number of inspections will decline by two-thirds. In 2009/10, 50 inspection plans were formulated, at an estimated cost to providers of £1,450 each time (£72,500 overall). Total annual saving: £48,330.
- A 66 per cent reduction in the costs of roundtables with the regulator. These roundtables precede an inspection plan so again, we assume a two-thirds reduction. In 2009/10, there were 50 such roundtables at an estimated cost to providers of £1,100 each time (£55,000 overall). Total annual saving: £36,670.

This gives a total annual saving of £206,050 for providers (we have rounded this down to £200,000).

### ***Wider impacts***

None, as outlined below.

### **Equalities**

The Department has completed an initial screening process to assess whether a full equalities impact assessment is needed and have determined that it is not. The review is not proposing

changes to the obligations on social housing landlords to address equalities issues affecting their tenants – rather the proposals affect how landlords' delivery of their obligations is monitored and enforced.

### Economic

The retention of robust and independent economic regulation will avoid any material impact on affordable housing supply.

There is likely to be a positive impact on small firms – i.e. small non-profit providers of social housing (small housing associations) and any small profit-making providers that voluntarily register as social landlords. This positive impact arises from the estimated £200,000 annual sector-wide reduction in compliance costs.

There is no impact on competition – these proposals do not include changes to how social housing grant is allocated and no competitive advantages or disadvantages are created by reducing the burden of consumer regulation (which applies across the sector).

### Environmental

There will be no environmental impact, as the regulator will still be empowered to set standards for providers on the environmental performance of the social housing stock.

### Social

As regulation will continue to protect tenants from serious failures, and given the stronger emphasis on local mechanisms to resolve more routine problems, we envisage no impact on health and well-being.

There is no impact on the justice system or on human rights. (Proposals to empower the Housing Ombudsman and Local Government Ombudsman to enforce determinations are considered separately). There are no differential rural impacts.

### Sustainable development

These proposals do not have an impact on sustainable development – insofar as regulation supports affordable housing supply, we do not envisage any change.

## ***Summary and preferred option with description of implementation plan***

Based on the analysis above, our preferred option is Option 2 - Refocus the role of the regulator on proactive economic regulation and reactive consumer regulation; and transfer these functions to a new statutory Regulation Committee to be established within the Homes and Communities Agency. Although Option 3 is likely to deliver a higher net monetised benefit over 10 years, once possible additional pensions costs have been incorporated into Option 2, it fails to deliver the policy objective of a net reduction in the number of quangos. Moreover, even if additional pensions costs are substantial, Option 2 will deliver a higher net benefit over the longer-term due to back-office savings, and it also encompasses potential non-monetised benefits arising from the synergies between investment and regulation.

We propose to implement this option through the Localism Bill. The Bill will transfer functions from TSA to the Homes and Communities Agency and amend the regulatory framework for social housing, refocusing the regulator's role on proactive economic regulation and reactive consumer regulation. The proposed efficiency savings and the transfer of staff, assets and liabilities to the Homes and Communities Agency will be delivered administratively.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** There will be no statutory basis for post implementation review but there is a political commitment to undertaking one. The review will take place two years after full implementation of the review's recommendations in April 2013 and will look at the impact of a reduced, reformed regulatory landscape assessing the impact on landlords and delivery of services to tenants.

**Review objective:** The review will assess whether the policy objective – the reduction of the number of quangos and reducing the regulatory burden – has delivered the outcomes expected i.e. a more straightforward system of economic and consumer regulation, empowerment of tenants and local communities to hold landlords to account and shape their housing services.

**Review approach and rationale:** The post implementation review will take the same course as the initial review of social housing regulation. In depth analysis of the regulatory functions and overall costs to the public purse and landlords under the new model will be done and compared against the outcomes of the original analysis for the review. The same groups of external stakeholders (the Local Government Association, the National Housing Federation, the Council of Mortgage Lenders, the national tenant organisations etc.) will be consulted and their responses fed into the final report of the PIR.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

**Baseline:** The social housing regulator currently regulates the social housing sector independently and through a series of published and agreed regulatory standards (three of which on rents, physical standards, and tenant involvement are set under direction from the Secretary of State). The cost of the regulator is £33.4m pa (estimated to be around £36m in 2013 prices, based on Office of Budgetary Reform forecasts) and the cost to the sector of compliance is around £0.29m p.a. (estimated to be around £0.31m p.a. in 2013 prices, again based on Office of Budgetary Reform forecasts).

**Success criteria:** Success of the policy will be judged against the following criteria;

- has the number of quangos been reduced?
- Is social housing still effectively regulated with no detriment to the services received by tenants or the sound economic performance and viability of landlords?
- Has the Treasury achieved overall value for money by the introduction of the new policies?

If these have not been achieved then the Government will consider ways of revising the legislation to allow these to be achieved e.g. separate/reinforce the 'Chinese wall' between regulation of and investment in social housing; give the regulator greater powers to proactively monitor certain standards on, for example, tenant involvement.

**Monitoring information arrangements:** In respect of Economic regulation the regulator will continue to monitor landlord and sectoral performance through the Regulatory and Statistical Return, global accounts and quarterly surveys etc. These sources will allow assessment of the continued effectiveness of economic regulation.

In respect of the effects on services to tenants after the move to the Homes and Communities Agency the regulator will no longer collect monitoring information although it will be a requirement for landlords to provide information to their tenants in a locally agreed format. It may be possible (with landlord consent) to sample this data although comparability will be difficult to achieve. Separately TSA and DCLG are reviewing database requirements. This review is due to report in spring 2011. We are also looking to consolidate the datasets collated by central government.

In respect of burdens of regulation, these will need to be assessed in conjunction with the regulator, following the methodology of this impact assessment at the time of the review.

**Reasons for not planning a PIR:** N/A

## Annex 2: Cave Review recommendations

### To the Secretary of State

1. A regulatory body should be established in statute, independent from Government, as the primary regulator of the ownership and management of social housing across the whole domain of social housing.
2. The regulator should have three principal duties:
  - To ensure the continuing provision and development of high quality social housing;
  - To empower and protect consumers; and
  - To expand the availability of choice among suppliers at all levels of the provision of social housing.These should form the basis of the statutory definition of the regulator's powers, which would extend across the whole domain of social housing.
3. The regulator should:
  - apply common principles, where practicable, across the whole social housing domain and
  - reduce and manage the burden of regulation
4. Government should be entitled to issue directions to the regulator in relation to rents and the standards of housing provision. It should be for the regulator to transpose these into the regulatory framework. Therefore it is recommended that the regulator be given the statutory power to set rent levels across the domain.
5. The regulator should maintain and update a clear statement of provider obligations.
6. All parts of the domain should have a statutory duty to cooperate with the convening and place-shaping role of local authorities. This obligation will be strongest where a provider has a significant number of homes in an area. This cooperation will require providers to engage constructively with local authorities and will often include a variety of local agreements and partnerships. Their terms are subject to agreement between the parties.
7. The regulator will implement a framework for the ownership and management of social housing, where the provider is regulated. Where long term ownership and management arrangements are integrated into supply contracts, the regulator must satisfy itself that the contract terms are in the long-term interests of tenants.
8. Restrictions on disposals and changes of use should remain, as should arrangements to prevent the leakage of subsidy for purposes that have not been approved. In future, there should be a note of the regulator's interest in grant on the land registry to ensure that disposals are correctly handled. Otherwise the new arrangements need to be more flexible and easier to administer.
9. Registration with the regulator should be open to 'for profit' organisations and subsidiaries of other organisations as owners or managers or both. The registration process must be proportionate to the scale of activity proposed by the new provider and would be analogous to the pre-qualification criteria for development bidding. Registration would entail a range of explicit obligations that would bring the registered organisation within the new style of regulation.

10. The regulator should have a duty to promote ways in which tenants can be empowered and have more choices.
11. The voluntary TMO scheme being developed within DCLG should be taken forward and available to all providers. Provided no conflict of interest is apparent, the regulator should take over, and be funded by the Government for this work.
12. A national tenant voice should be established to give tenants both a voice and expertise at national level.
13. Work on a standard form of tenancy should be brought to a conclusion so that tenancy terms can be explicit, understandable and easier to enforce for both parties. In principle, choice of tenure is supported although this must not reduce the protection that current tenants enjoy. It is therefore envisaged that substantial areas of tenancy agreements will be in common but that there will be defined areas that can be different.
14. There should be a single Housing Ombudsman for the whole domain. Further consultation of interested parties should be held to examine how the domain-wide Housing Ombudsman role should be organised.
15. The application of the Government's rent direction to providers across the domain should be a matter for the regulator. Within the direction, the regulator should have the power to cap annual increase in individual rents to protect tenants.
16. Where the difference between market rents and target rents in an area is less than 10 per cent, it should be within the regulator's authority to de-regulate rents (which would continue to be constrained by Housing Benefit rent limits).
17. The regulator should retain merger approval powers but these should be exercised solely on grounds of consumer protection and competition.
18. The regulator should have a general power over the domain to gather information but this should be subject to the twin tests of being 'used and useful'.
19. The regulator should have the statutory powers to apply a wide range of remedial and enforcement measures including:
  - Right to obtain information
  - Inspection
  - Improvement notice
  - Enforcement notice
  - Fines
  - Compensation
  - Rent increase cap
  - Appointment of additional board members
  - Tendering the housing management function
  - Appointment of independent manager
  - 28 day moratorium
  - Transfer of ownership and/or management
20. Almshouses with less than 100 homes should be de-regulated and revert to the Charity Commission as the primary regulator. Consultation should take place with Abbeyfields Societies through their national body with a view to the de-regulation of the smallest ones that have had no recent input of grant. In both cases, continued membership of the Housing Ombudsman service should be required as a continuing measure of protection for their tenants.



21. A Social Housing Regulatory Authority should be created by Act of Parliament with statutory duties relating to the regulation of the ownership and management of social housing. The Authority should take over the Audit Commission's housing inspection role.
22. The national voice for tenants should be established with minimum delay and should start within the National Consumer Council but with a remit and funding for the building of a strong tenant representational base.
23. The regulator should have the resources to undertake research, gather statistics and to promote good practice on the scale necessary to discharge its duties.

## **To the regulator**

1. The system for regulating social housing providers should be 'co-regulatory' in approach. Therefore many of the activities necessary to achieve the regulatory objectives will be undertaken by regulated social housing providers rather than directly by the regulator. The regulatory framework will, according to the nature of the objectives, require, permit or facilitate their delivery.
2. The social housing regulator should avoid duplicating the work of other regulators. In order to give effect to this, the regulator should enter into protocols with each abutting or overlapping regulator. These arrangements will need to be subject to periodic review.
3. Subject to any Government Direction on housing standards, the regulator should publish a clear definition of what constitutes the core housing service for the domain, in terms of both the quality of homes and of the management service provided. It is therefore proposed that there should be consultation on the core standards for social housing and that this should be an early focus for the new national tenant voice. The performance of service providers will be judged against the standards that are developed.
4. The regulator will have the authority to require all providers to deliver these core standards of service. As far as possible, this should be achieved by common ownership of the standards, self improvement mechanisms, regular tenant-led and other independent reality checks on progress and a continuous sharing of good practice. Responsibility to meet the standards falls on providers.
5. The regulator should encourage a plurality of mechanisms to be used by providers to drive them to achieve better outcomes for tenants. It is expected that empowered tenants would play a key role in assessing performance and holding landlords to account for weaknesses in performance. To these ends, it is recommended that all providers should establish formal arrangements to:
  - enable tenants to make periodic assessments of the quality of services provided
  - share benchmarking information about their performance and costs with other providers and publish this information to tenants and more widely
  - include an independent element in their performance assessment so that there is effective external challenge.
6. The regulator should remain in direct contact with the impact of services on tenants and with the range of practice on the ground, by commissioning or undertaking inspections, or otherwise.
7. The regulator should support the supply of new social housing by:

- Establishing a regulatory framework that recognises the separate roles of owner and manager and reducing barriers to entry for development and ownership and management
  - Opening registered status as an option for private owners/managers
  - Encouraging the continued supply of private lending and capital for development and ownership by effective systems for monitoring viability and performance and, if necessary, by intervention
  - Encouraging a wider choice of public and private sector ownership options
  - Unlocking development capacity
  - Co-operating closely with Communities England on all matters of common interest
8. The regulator should monitor organisational viability (which will encompass both financial viability and governance) and intervene appropriately to protect the interests of tenants and taxpayers.
  9. The regulator should introduce measures that stimulate competition for the management of social housing services across the domain. This should be designed to give tenants choice and improve service delivery.
  10. Opening access to new providers and models of provision should be encouraged. The regulator should ensure that regulatory mechanisms are proportionate and equivalent as between those applied by virtue of registered status and those enforced by contract.
  11. The regulator should develop and implement a strategy for managing information requirements on providers across the social housing domain. It is envisaged that this will cover data on financial viability and service performance in particular. Furthermore, the regulator should publish the top level of performance information that it receives from all providers on its website, in a fashion which makes possible local comparisons. The publication of such information will be in the interests of consumers, a reward for good performers and a wake up call to poor providers.
  12. The regulator should develop a range of ways of triggering interventions in consultation with providers, local authorities and the national tenant voice.
  13. The programme of de-registration should be accelerated so that the smallest are freed of all regulation. A very light system of regulation should be applied to those with up to 1,000 homes – but on the basis of a risk assessment rather than on size alone.