



Homes &
Communities
Agency

Consultation on introducing fees for social housing regulation



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Annexes

- 1. Business engagement assessment**
- 2. Analysis of discussion paper responses**

Scope of the consultation

Topic of this consultation:	The regulator is proposing to introduce fees for regulating private registered providers of social housing in England from April 2017 in accordance with our statutory powers under the Housing and Regeneration Act 2008. This includes a one-off fixed fee for all successful applications for initial registration and ongoing annual fee to fund the majority of costs of social housing regulation with the remainder funded by government grant.
Scope of this consultation:	This consultation is an opportunity to influence how the regulator will introduce fees for registered providers. Alongside the publication of this consultation document, the regulator will engage in discussions with stakeholders, including through its sounding board and advisory panels comprising providers and sector advisors respectively.
Geographical scope:	These proposals relate to England only.
Impact assessment:	Impacts are considered in our business engagement assessment (Annex 1).

Basic information

To:	Registered providers, tenants, lenders and other stakeholders who have an interest in the social housing sector.
Body responsible for the consultation:	Home and Communities Agency – the social housing regulator.
Duration:	This consultation will last for 6 weeks from 25th November 2016. The closing date is 9th January 2017.
Enquiries:	For any enquiries about the consultation please contact our Referrals and Regulatory Enquiries Team on 0300 1234 500 (option 2) who will be pleased to help.
How to respond:	You may respond online via SurveyMonkey If for any reason you are unable to complete a response on Survey Monkey you can email your response to the questions in this consultation to consultation@hca.gsi.gov.uk . However, please avoid making responses via both SurveyMonkey <u>and</u> by email.

If you are responding in writing, please make it clear which questions you are responding to.

Written responses can also be sent to:

Regulatory Referrals & Enquiries Team
Homes and Communities Agency - the social housing regulator
1st Floor
Lateral House
8 City Walk
Leeds
LS11 9AT

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post code),
- an email address, and
- a contact telephone number

We intend to publish an analysis of all formal responses after the closing date of this consultation.

Foreword

In February 2014 we published a discussion document which set out our provisional thinking on a fee charging regime for the social housing sector. The majority of responses to the discussion document were supportive of our overall approach. There have been a number of changes in the sector and the wider operating environment since then.

We are clear about the value of an independent, strong and credible social housing regulator which maintains the confidence of lenders and other stakeholders. Introducing fee charging will enable the regulator to ensure that this remains the case. It will also help the regulator maintain an adequate level of resource, so that we can continue to meet our statutory objectives and ensure a well governed and financially viable sector delivering value for money.

We see the ability of the regulator to charge fees, starting in April 2017, as a vital building block in delivering an effective independent regulator and welcome feedback on this consultation in that context.

A handwritten signature in black ink, appearing to read 'Julian Ashby', enclosed in a thin black rectangular border.

Julian Ashby
Chair, HCA Regulation Committee

1. Executive summary

The rationale for introducing fees

1. The Housing and Regeneration Act 2008 ('the Act') allows the regulator to charge fees for initial registration and an annual fee for continued registration. In early February 2014, we published a discussion paper setting out our initial proposals for introducing fees for social housing regulation in line with our statutory powers. This statutory consultation sets out how we have built on the feedback received from that document, as well as taking account of changes in the operating environment, for a final proposal on charging fees for social housing regulation.
2. As the social housing sector becomes more diverse and complex it is essential the regulator maintains the right level of skills and capacity to deliver effective regulation into the future. The social housing regulator is currently funded through government grant (known as grant-in-aid). However, in this rapidly changing environment, and to ensure the regulator has sufficient resources to be effective, it is timely to consider whether grant-in-aid remains the most appropriate way to fund social housing regulation.
3. Fee charging is a common feature of most regulated sectors and we believe it is reasonable to ask providers to contribute towards the costs of an independent regulator. There are a number of benefits of being part of a regulated sector, including lower borrowing costs and better capital weighting of debt issued to registered providers as well as the comfort stakeholders take from doing business with a regulated organisation.

The five principles

4. The Act sets out our fee charging powers. The proposed principles have been developed in line with this statute. In assessing the reasonableness of possible options, we have taken into account a number of factors. These include the simplicity of the fee charging approach and whether the information for fee setting is easily verifiable. We also considered whether the approach would lead to sufficiently reliable fee levels to enable providers to budget effectively. In addition, we considered potential impacts on the sector as well as the benefits of regulation for different types of provider.
5. The core elements of the regulator's proposed principles are a one-off fixed rate fee for initial registration and an annual fee thereafter based on the number of social housing units owned. The vast majority of responses to our earlier fees discussion paper were supportive of the draft principles which the regulator has developed. Given this support, our proposed principles set out below remain broadly the same with two exceptions. Principle 3 now proposes a fixed annual fee for all providers owning fewer than 1,000 units. This is because our risk-based approach means that the costs to regulate

providers owning fewer than 1,000 units are more uniform. The only other change is that principle 4 now clarifies that the annual fee should only be set at group level where the parent is registered. The five principles below would be reviewed periodically and any material proposed changes would be subject to consultation and Secretary of State approval.

Proposed fees principles

1. A one-off fixed fee should apply to all successful applications for initial registration.
2. The annual fee payable by a registered provider should be set by reference to the number of social housing units owned by that provider.
3. A fixed annual fee should apply to all providers owning fewer than 1,000 units.
4. For groups where the parent is registered, the annual fee should be set at group level rather than for each individual entity on the register.
5. Providers should pay the full cost of the annual fee for the year that they are on the register when they register or de-register.

6. In relation to the fee levels, our proposal is that the initial registration fee is set at £2,500. We are also proposing that the fixed annual fee for providers owning fewer than 1,000 units be set at £300. For providers owning 1,000 units or more we propose a per-unit fee. For illustrative purposes, on the basis of an indicative budget of £15 million for 2017/18, the amount due to be funded from fees would be £12.5 million and we estimate the per-unit annual fee level would be £5. Setting the fee income at this level will help us maintain an appropriate level of resource.
7. We propose that the annual fee for individual providers is based on the number of social housing units owned as at the previous March. As an example for the 2017/18 financial year the per-unit fee will be calculated based on the number of social housing units owned at March 2016 (i.e. the latest set of figures we have assuming fees are introduced in April 2017). For the remainder of the Spending Review period until April 2020, the regulation budget would be reviewed annually, to ensure it kept in step with the costs of providing the service up to a maximum of 1% annual increases, from a base of £12.5 million in 2017/18.
8. Setting the fee income at this level would help us maintain an appropriate level of resource over the Spending Review period as well as helping providers plan for the level of fees payable over the next three years. It would also help ensure that we are controlling costs and being efficient in the way we deliver regulation. We also propose to fix the rate for both the initial registration fee and annual fee for smaller providers to the end of the Spending Review period. Proposals to fix fees, or limit increases for the Spending Review period are new and based on the desire for simplicity and certainty in our fees approach. These proposals were not suggested in our fees discussion paper in February 2014.

Accountability, transparency and practical arrangements

9. Existing stakeholder arrangements would allow us to engage effectively on issues in relation to fee charging. In addition, we are proposing that we publish an annual fee statement. This would include:
 - a) An overview of our regulatory priorities for the financial year ahead commencing in the following April. This includes information on how we are prioritising use of resources and are working to ensure our regulatory approach is as effective as possible. Given the need to be responsive to changes in the operating environment this would be subject to review as we move through the year and we would publish updates as necessary
 - b) Details of our regulatory budget for the financial year ahead including a breakdown of budgeted costs and the amounts to be funded through grant-in-aid
 - c) Confirmation of the fee level for each individual registered provider allowing providers to budget for the fee

10. As there may be some variation in costs from year to year (e.g. due to staff vacancies) it is possible that excess income might be collected from charges in any one year. Our intention is that this would be refunded to private registered providers once the year end accounts had been finalised, to ensure that any identified overpayments are returned in parallel with the following year's charges. It is anticipated that we will publish details of the final fee scheme by early 2017 with a view to charging fees to private registered providers from 1st April 2017.

2. Background to consultation

Context

11. The 2007 Cave review of social housing regulation prompted legal changes in relation to enabling the regulator to charge fees. Following this, the Housing and Regeneration Act 2008 gave the social housing regulator the power to charge fees to registered providers and applicants for registration.
12. Fee charging enables regulators to be self-sufficient and sustainable, as well as helping to secure accountability for efficiency. The regulated sector is also becoming more complex and diverse and faces higher levels of financial risk, whilst there is growing pressure on public finances. Against this backdrop, the regulator must maintain the right level of financial resources to meet our statutory objectives to maintain effective regulation of governance, financial viability and value for money.
13. We believe it is reasonable to ask providers to contribute towards the costs of regulation. We estimate that the financial impact of the proposed fees regime would be equivalent to adding 2.5 basis points (0.025%) to the interest rate on providers' long term debt. This is considerably less than the value of the lower borrowing costs providers benefit from as a result of lenders taking comfort from regulation.
14. Our discussion paper in 2014 explored the potential for charging fees for social housing regulation. Since then we have considered the responses and, following last year's general election and the 2015 Spending Review, this consultation now sets out our proposals. Feedback from the discussion paper responses is considered in more detail in the remainder of this paper and Annex 2.

Statutory powers

15. The Act sets out the statutory framework for all of the regulator's functions. Section 117 of the Act sets out the regulator's statutory powers in relation to charging fees. The regulator is able to charge fees for initial registration and an annual fee for continued registration ('the annual fee'). The statute says that:
 - a) fees have to be set in accordance with principles which must be approved by the Secretary of State;
 - b) the principles have to be designed, so far as is reasonably practicable, to ensure that:
 - fee income matches expenditure on the performance of the regulator's functions;
 - each fee is reasonable and proportionate to the costs to which it relates;

- actual or potential providers can see the relationship between the amount of a fee and the costs to which it relates; and
- c) in preparing (or subsequently revising) the principles, the regulator has to consult persons who appear to represent the interests of fee payers.
16. In addition, Section 92K of the Act says that the regulator must perform its functions with a view to achieving (so far as is possible) its fundamental objectives. This is considered further in section 4.
17. The regulator can charge for giving advice, conducting research or providing other services (Section 100 of the Act), and can charge for inspections (Section 202 of the Act). The fee regime proposed in this paper does not cover these charges and we have no plans to introduce such charges at present.

Developing the principles

18. In our fees discussion paper in February 2014, we set out the regulator’s approach to developing the fees principles in line with our statutory powers as set out above. The approach in that paper was supported by 65% of respondents. Table 1 below summarises our approach to developing the principles in line with the legislative requirements.

Table 1: Legislative requirements and our approach

Legislative requirement	Our proposed approach
<i>So far as is reasonably practicable, fee income has to match expenditure on the performance of the regulator’s functions</i>	The total amount received from fees would match the cost of the regulation function in so far as is reasonably practicable, having taken account of income such as grant-in-aid. Registered providers would be able to see how this has been done through the accountability and transparency arrangements outlined in section 6.
<i>So far as is reasonably practicable, each fee is reasonable and proportionate to the costs to which it relates</i>	The option of charging fees directly proportionate to costs was first considered taking into account the reasonableness of such an approach (set out in paragraph 19 below). Following this we determined the most appropriate fees model option now proposed.
<i>Providers can see the relationship between the amount of a fee and the costs to which it relates</i>	This can be achieved through the accountability and transparency arrangements outlined in section 6. These arrangements will allow registered providers to see how their fee is calculated from the total costs of the regulator.

<i>Regulator's fundamental objectives</i>	We have also considered how our proposed approach fits with our fundamental objectives as mentioned in paragraph 16 above.
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19. Of particular note in Table 1 is the approach we have taken to developing the principles so that *as far as is reasonably practicable... each fee is reasonable and proportionate to the costs to which it relates*. In the fees discussion paper, we considered the options for an initial registration fee and annual fee. As a starting point we considered the consequences of charging fees directly proportionate to costs. Then the reasonableness of this and other approaches was considered taking into account the following factors:

- **reliability** – on the level of fee as this will provide greater stability enabling registered providers to budget effectively;
- **simplicity** – in calculating and charging fees so as to keep the costs of operating the scheme at a reasonable level;
- **ease of verification** – ensuring the information required for setting fees is easily verified to minimise the likelihood of dispute;
- **impact on fee payers** – the likely impact on registered providers and potential providers; and
- **benefits of regulation** – the level of benefit that registered providers receive from being part of a regulated sector.

20. Following this development work, we set out our proposed principles in the fees discussion paper. The core elements of the principles were that the regulator would charge a fixed fee in relation to all successful applications for initial registration. In addition, the regulator would charge private registered providers an annual fee based on the number of social housing units owned.

3. Approach to overall funding of regulation costs

Fees and grant-in-aid

21. In the fees discussion document, we asked whether some regulatory costs should continue to be funded via grant-in-aid if fees were introduced. A majority of responses (62%) felt that some elements of regulatory costs should continue to be funded in this way. Whilst a number of responses argued that fees should not simply replace grant-in-aid, the context has moved on since then. Given the changed operating environment and the importance of moving to a more sustainable model, charging fees for social housing regulation is considered appropriate at this time to ensure that the regulator is adequately resourced, as well as helping to increase accountability for efficiency.
22. The areas that feedback identified should continue to be covered by grant-in-aid were similar to those highlighted in the discussion paper. These were non-routine regulation including consumer regulation and any registration costs not covered by the initial registration fee¹. There were also some suggestions that grant-in-aid should be used to keep down the cost of the initial registration fee to minimise barriers to entry. This is considered in more detail in section 4.
23. There was also some concern about the operational independence from fee payers of the regulator if fees covered 100% of costs. The benefits received by the taxpayer of regulation were also cited as a reason why some costs should continue to be met by grant-in-aid.
24. Under deregulation proposals taken forward through the Housing and Planning Act, the requirement for registered providers to obtain constitutional and disposal consents will cease. However, the legislation introduces a new notification scheme and changes to registration requirements. This is taken account of in our fee proposals in this consultation document.
25. We remain of the opinion that non-routine regulation, including consumer regulation, should continue to be covered by grant-in-aid. For registration, it is proposed that some of the cost would be covered by the initial registration fee but the rest of the cost of that function including unsuccessful applications, would be covered by grant-in-aid. Further details are provided in section 4.

¹ A description of each regulatory cost element is provided in Table 2 on page 16.

26. The key reason for non-routine regulation being funded by grant-in-aid is this only relates to a relatively small subset of providers at any particular time. Therefore, to recover such costs from all providers may not be considered to be reasonable. However, given non-routine regulation is often linked to problems with financial viability to recover the costs from providers who are subject to it could make their financial position worse.
27. The remaining functions apply to all organisations registered with the HCA and so it is proposed these should be covered by the annual fee. On the basis of the 2017/18 indicative budget, this would result in a split of the regulator's costs of 83% funded by fees and 17% by grant-in-aid.

Cost of the regulator

28. We set out in Table 2 a breakdown of budgeted costs in relation to the different areas of regulation for 2017/18. This also explains which elements of regulation are proposed to be covered by fees, grant-in-aid or a mixture of both. This budget reflects an increase over recent years as a number of changes were made to strengthen our capacity to ensure we are better equipped to regulate an increasingly complex sector.
29. In interpreting the table below, the following should be noted:
 - the costs elements include overheads – these have been apportioned between the different regulatory functions on the basis of the percentage of regulation staff costs in relation to each cost element;
 - overheads include office accommodation costs, IT, learning and development, travel and subsistence, human resources, legal and finance;
 - the majority of registration costs would be covered by grant-in-aid as the initial registration fee would not cover the entire cost of successful registration or the cost of registration applications from bodies which do not achieve registration.
30. We will work to ensure that regulatory costs are kept to a minimum but sufficient to carry out our role effectively. As outlined in section 6, we propose to publish regular information on costs and what we are doing to control them and ensure efficiency as part of our proposed fee approach. In line with this our initial proposal is that total fees charged for 2017/18 are fixed at £12.5 million with a maximum increase of 1% per annum for the Spending Review period which runs to the end of the 2019/20 financial year. This level of maximum increase is in line with the public sector pay rise cap.

Table 2: Breakdown of costs of regulation

Cost element	Description	Paid for by	Budget 2017/18 £m
Routine regulation	Seeking assurance on governance, viability and value for money and assessing the provider's compliance with the economic standards. For example, on viability, this would include reviewing financial data for all registered providers.	Fees	7.9
Non-routine regulation	Regulatory action taken where there is a breach, or potential breach of our economic standards which potentially could involve the use of statutory powers. This also includes engagement in relation to the consumer standards in response to specific information received (e.g. through whistleblowing or complaints).	Grant-in-aid	1.5
Registration and notifications ²	Assessment of applications to register against the eligibility and registration criteria along with the new notifications regime.	Fees ³ & Grant-in-aid	1.0
Strategy and Management	Strategic and managerial functions including keeping the regulatory framework up to date to ensure that it remains fit for purpose. Management of the Regulation Directorate and governance of the regulation function including servicing the Regulation Committee are also covered under this heading.	Fees	2.0
Analysis	Ensuring the regulator has a timely understanding of the financial and other risks affecting the provision of social housing. This includes collecting financial data for the whole sector to assist in our routine regulation.	Fees	1.2
Assurance	Ensuring the regulator has robust guidance and quality assurance processes to verify that it has sufficient assurance that its economic standards are being met.	Fees	1.4
		Total	15.0

² The change to a notifications regime is subject to enactment of the relevant provisions in the Housing and Planning Act 2016

³ From successful applications for registration

Consultation questions

Q1. Do you agree with our proposals for those regulatory costs which apply to all providers to be funded by fees?

Q2. Do you agree with our proposed commitments to limiting annual increases in fees overall?

Q3. Do you agree with our proposal to keep regulatory costs to a minimum? What further steps can/should be taken to avoid fee inflation?

4. Initial registration fee

Initial registration fee approach

31. In our fees discussion paper, we identified three options for determining the initial registration fee. These were a fee based on direct attribution of costs, a fee based on the size of an organisation and a fixed fee. Each of these options was assessed against the legislative requirements as set out in section 2. The regulator's preferred approach for initial registration remains for a fixed fee. This option is the simplest and would provide applicants with certainty over the amount they would need to pay.
32. There are two stages to initial registration. Stage 1 is an assessment of eligibility for registration against the statutory requirements. Stage 2 is a detailed assessment against the registration criteria set by the regulator. In line with the requirements of the legislation, a fee would only be charged for those who successfully complete both stages of the process and achieve registration with the regulator. Any organisation which did not successfully complete both stages would not be charged any fee. Therefore, it is proposed that the costs for any applications that do not progress to registration are covered by grant-in-aid as we consider that it would be unreasonable for this cost to be met by successful applicants or existing registered providers.
33. It is proposed that the initial registration fee would be payable by those who are registered by the regulator as a provider or intending provider of social housing but not local authorities who are subject to compulsory registration and therefore no assessment is undertaken. It is also proposed that providers already registered with the regulator at the date fees were introduced would not be required to pay an initial registration fee. It would also not apply to registrations resulting from amalgamations, or transfers of engagement involving existing registered providers ("new bodies").
34. Of the responses to the fees discussion paper, 59% were supportive of this proposed approach to initial registration fees and 25% were unresponsive. Many responses commented that a fixed fee was a reasonable and practical approach. However, a key concern of others was that if an initial registration fee were set too high, it could act to deter applications from smaller providers. This point is addressed below.
35. In addition to the proposals set out in the fees discussion paper, as a result of deregulation measures in the Housing and Planning Act (once commenced), the regulator is addressing the requirement that when organisations convert, amalgamate or transfer engagements⁴, they will now need to be registered with the regulator⁵. To reflect this

⁴ See sections in the Act providing for registration of a new body created or arising from, a registered provider which has converted into a registered society pursuant to the section 115 of the Co-operative and Community Benefit Societies Act 2014, an amalgamated or re-construction pursuant to sections 109 (amalgamation of societies), 110 (transfer of engagements between societies) and 112

change, we propose that in such cases we will not charge a registration fee. This is because these bodies are already on the register and will already have paid fees for their continued registration. These bodies are also largely known to the regulator already and the registration criteria applying to such bodies are more limited in their scope than those applying to new entrants. In addition, the registration process for such bodies is simpler than for new entrants, being a single stage process. The amount of time the regulator will spend on these registrations is therefore much less.

Proposed principle 1: A one-off fixed fee should apply to all successful applications for initial registration.

Initial registration fee level

36. As set out in the fees discussion paper, the fee level for initial registration should also take account of the regulator's fundamental objective to support the provision of social housing, including by encouraging and promoting private investment in social housing. If the fee level was set so high that it deterred organisations from registering, there would be a tension with this fundamental objective. The cost of registrations varies depending on the application but it is estimated that the average cost of processing applications for registration is in the region of £10,000.
37. In the fees discussion paper, we expressed concerns that an initial registration fee set at £10,000 may act as a barrier to entry. A significant number of responses also expressed concerns that smaller providers such as community led housing developers and smaller niche providers may be deterred from entry. The regulator recognises the importance of such providers to local communities and in the fees discussion paper we sought views on an appropriate level of initial registration fee which would not discourage such entrants.
38. Some responses suggested that initial registration fees should not be charged at all, particularly in light of the deterrent effect as discussed above. Others argued that the full costs should be recovered. Further responses suggested a specific figure ranging from £300 - £5,000.
39. The regulator considers that it is reasonable to make a charge for registration. When organisations choose to register with the regulator they do so with knowledge of the costs and benefits of registration. However, if the full costs of initial registration were recovered through initial registration fees, we do have concerns over the potential for creating a barrier to entry.

(conversion of society or amalgamation of society into a company) of the Co-operative and Community Benefit Societies Act 2014

⁵ See [Registration Criteria and Use of Powers consultation](#)

40. Therefore, our proposal is for a one-off fixed registration fee of £2,500 with the remainder of the costs of the registration function to be covered through grant-in-aid. In the light of the responses to the fees discussion paper, we consider that this is a reasonable level of registration fee.
41. It is proposed that the level of the initial registration fee would be subject to periodic review. However, it is proposed that the initial registration fee would not be increased over the Spending Review period which runs until the end of the 2019/20 financial year.

Consultation questions

Q4. Do you agree with our proposal for a one-off fixed initial registration fee with part of the costs of registration, including unsuccessful applications, funded through grant-in-aid?

Q5. Do you agree with the proposed initial registration fee level of £2,500?

5. Annual fee

Fee based on provider size

42. In our fees discussion paper, the regulator identified four broad options for determining the annual fee. These were a fee based on direct attribution of costs, a fixed fee, a risk-based fee and a fee based on provider size. The regulator also set out how the options were assessed against the legislative requirements as set out in section 2. We concluded that our preferred approach was a fee based on provider size.
43. Feedback from the discussion paper was positive with 67% of responses expressing support for our proposals. Some responses commented that, as regulatory activity is not necessarily linked to size, an activity-based or risk-based fee would be better. However, there were no strong arguments which countered the considerable drawbacks of these alternative approaches as outlined in our discussion paper. Many responses commented that our proposals were a sensible and pragmatic approach.
44. A fee based on provider size remains our preferred option. This is principally because the cost of carrying out regulation broadly increases with size as larger organisations tend to be more complex and undertake a more diverse range of activities.
45. Basing fees on provider size is also a simple approach which is straightforward to implement and would provide a level of stability in fee levels enabling providers to budget effectively. In addition, the larger providers generally derive the most benefit from being part of a regulated sector through lower borrowing costs.

Provider size determined by social housing units

46. Feedback from the discussion paper was that 61% of responses were supportive of our preferred approach for provider size to be based on social housing units (see below for definition). However, a further option discussed in a small number of responses was to base the fee level on the social housing rental income for each provider. An argument for doing this was that unit numbers do not take into account the average rent levels for different providers, for instance, between high and low value areas.
47. Our preferred option remains that provider size should be based on social housing units owned not on the rental income from social units. As stated above, the cost of regulation broadly increases with size and unit numbers provides a suitable basis for determining size. This option is a simple and transparent basis for fee calculation. Unit numbers are used elsewhere in the sector for determining fee levels (e.g. Housing Ombudsman and the National Housing Federation). The relevant information is collected annually from all providers through the Statistical Data Return (SDR) and so is readily available.

48. In addition, using unit number data provides more certainty for providers on the level of fee compared to other options. Our business engagement assessment (Annex 1) shows that fees based on unit numbers should be affordable for all providers.
49. One particular suggestion made was for a cap on fees for the largest providers. However, our proposed approach does not include such a cap. The principal reason for this is that, in general, the largest providers are the most complex and if one of the largest providers were to fail the wider impacts on the sector would be far reaching. As such, the largest providers take up higher levels of regulatory resources.

Proposed principle 2: The annual fee payable by a registered provider should be set by reference to the number of social housing units owned by that provider.

Units definition

50. For the purposes of fee calculation, it is proposed that units are defined as social housing where the private registered provider is the owner. The term social housing is defined in the Act (sections 68-77) and it should be noted that this definition includes low cost home ownership and affordable rent as well as certain other types of housing⁶. This follows the SDR definitions so should already be familiar to registered providers.
51. Relevant aspects of this definition (including 'ownership') are contained in the SDR guidance notes glossary which is available on the [NROSH+ website](#). It should be noted that this includes units which are owned and managed by the private registered provider and those owned by the provider but managed by others. It also includes units which are both occupied and vacant, and both non-self-contained and self-contained units. The HCA annually collects data on the number of social housing units each private registered provider owns as at the 31st March via parts 2 & 3 of the SDR return.

⁶ The Housing and Regeneration Act 2008 at s68 sets out the meaning of social housing, which is defined as:

- low cost rental accommodation;
- low cost home ownership accommodation;
- accommodation owned by a Private Registered Provider as previously defined in the Housing Act 1996, regardless of whether it falls within either of the above two categories.

Exceptions to this are at s77 of the Housing and Regeneration Act 2008:

- accommodation let on the open market;
- accommodation let only to full time students;
- care homes in which nursing care is provided;
- accommodation provided for asylum seekers (unless that accommodation was purchased, constructed or renovated by means of grant funding through housing association grant, social housing grant or financial assistance from HCA).

52. On the basis of the most recent SDR figures, we estimate there were 2.66 million social housing units owned by private registered providers at 31 March 2016. At group rather than entity level this relates to 243 large (owning 1,000 units or more) and 1,033 small private registered providers (owning fewer than 1,000 units). If fees are charged for 2017/18, they would be based on unit number data at 31 March 2016 as data for 2017 would not have been collected in time for invoicing in 2017. The total cost of the regulator to providers would be set at £12.5 million for 2017/18 with a maximum 1% per annum increase through to April 2020.

Local authorities

53. The regulator's role in relation to local authorities is limited to considering breaches of the regulator's consumer standards where there is actual or potential serious detriment to tenants. Consumer regulation is an area which will be funded by grant-in-aid so it is proposed that no fees are chargeable to any registered provider in relation to the costs of consumer regulation. As such, local authorities would not be charged an annual fee and accordingly an annual fee would only be chargeable for private registered providers.
54. The fees discussion paper responses in relation to our proposed approach to local authorities were mixed with 39% supportive, 29% neutral and 32% unsupportive. A key concern raised was the fairness of registered providers having to pay for consumer regulation if local authorities did not, particularly if this meant registered providers would then effectively pay the costs of regulating local authorities. However, as it is proposed that consumer regulation costs, which are relatively small, will be funded by grant-in-aid this should address the central concern raised here. Given this proposal, it follows that it would not be fair or reasonable to levy charges on local authorities.

Fixed fee for small providers

55. It is now proposed that there should be a fixed fee of £300 for all small providers (those owning fewer than 1,000 social housing units). This replaces the previous proposal for a minimum fee of £300 outlined in the fees discussion paper. This proposal responds to discussion paper feedback as a number of responses suggested that there should be a differential approach for providers under 1,000 units. This level of fee reflects the costs of maintenance of the register of providers of social housing, the health checks performed on all providers' financial statements and all other relevant costs and associated overheads.
56. Concerns were raised in the responses that £300 would be a significant amount for the very smallest providers such as almshouses with some suggesting there should be an exemption for the smallest providers. It is the regulator's view that it is reasonable to expect all providers to pay if they wish to receive the benefits of being part of a regulated sector.

57. The level of the fixed fee for small providers would be subject to periodic review and any material changes would be subject to consultation. However, it is proposed that the fee for small providers is fixed at £300 per annum for the Spending Review period which runs to the end of the 2019/20 financial year.

Proposed principle 3: A fixed fee should apply to all providers owning fewer than 1,000 units.

Approach to groups

58. Where providers are in group structures with a registered parent, it is proposed that we charge a single fee at the group parent level. Group structures owning 1,000 units or more in aggregate would be charged on a per-unit basis. As such, the number of units for each registered entity in the group would be aggregated to determine a single fee.
59. Our current view is that charging a fee at group level would be the simplest approach given the many group structures in the sector and also fits with our approach of gaining assurance at group level. However, where the group parent is unregistered, it is proposed that the fee would continue to be collected from each individual entity in the group as we do not gain assurance at group level.
60. In addition, it is proposed that those group structures, with a registered parent, owning fewer than 1,000 units would be charged the single fixed rate fee for small providers for each registered entity as we would carry out the basic checks on all of them.
61. Of the discussion paper responses, 67% were supportive of our proposed approach to groups with the vast majority of the remaining responses neutral.

Proposed principle 4: For groups where the parent is registered, the annual fee should be set at group level rather than for each individual entity on the register.

Impact of timing of registration and de-registration on an annual fee

62. Our proposal is that providers should pay the full cost of the annual fee for the year in which they either register or de-register. This is a simple and pragmatic approach. Almost all de-registrations are due to restructurings and mergers. Where this is the case we would not make another annual fee charge for the newly registered or restructured entity.

63. It is proposed that the small minority who just de-register without a new registration would pay for the full year regardless of the timing of de-registration. Our current view is that this is reasonable given that we may have carried out all our regulatory activity in the part of the year for which they are registered. In relation to the fees discussion paper responses, 56% were supportive of our proposed approach with the vast majority of others neutral.

Proposed principle 5: Providers should pay the full cost of the annual fee for the year that they are on the register when they register or de-register.

Consultation questions

Q6. Do you agree it is appropriate that the annual fee should be based on social housing units owned?

Q7. Do you agree with the proposed definition of units as social housing where the private registered provider is the owner?

Q8. Do you agree with our proposals for a fixed fee for providers that own fewer than 1,000 units?

Q9. Do you agree with the proposed fixed fee level of £300?

Q10. Do you agree with our proposal to charge fees at the group parent level where the parent is registered?

Q11. Do you agree with our proposed approach to the annual fee when a provider is only on the register for a proportion of the year?

6. Accountability and transparency arrangements

Overview

64. Our fundamental objectives require us to exercise our regulatory functions in a transparent manner and this is an important priority for the regulator. In the fees discussion paper, we set out some initial proposals on accountability and transparency specifically in relation to fees. This included commitments to:
- publish regular information on costs;
 - consult providers and other stakeholders to provide input into the regulator's future work programme and priorities; and
 - publish fees principles which set out how our fees are calculated.
65. Feedback in relation to our initial proposals was positive with 73% of responses supportive. If fees are introduced, it is clear that providers and tenants will be concerned that resources are managed economically, effectively and efficiently to provide quality regulation. Below, we set out further details on our proposed arrangements.

Annual fees statement

66. We propose to publish an annual fees statement each October which includes the following:
- **Business planning priorities** – This would set out the headline regulatory priorities for the year ahead including information on how we are prioritising our work and how we are working to ensure our regulatory approach is as effective as possible. As an illustration, if fees are introduced in April 2017, the October 2017 statement would set out the priorities for 2018/19. This would allow providers to see how it is proposed that fees are intended to be utilised. The statement would be subject to review as we moved through the year to respond to any changes in the operating environment and we would publish updates as necessary.
 - **Regulatory budget** – This would set out the regulatory budget for the financial year commencing in the following April. This would include a breakdown of budgeted costs and the amount to be funded by grant-in-aid.
 - **Fee level** – The annual statement would include the per-unit fee level for the year ahead based on the regulatory budget. If fees were introduced in 2017/18 the overall level of fee income would be fixed at £12.5 million. There would be a maximum annual increase of 1% per annum for the rest of the Spending Review period, which would be reviewed annually to ensure fees kept in step with HCA costs of providing

the service. We would write individually to each provider with details of their individual fee.

67. Information on our expenditure is already publicly available through the [HCA's financial statements](#). Further information is published through our website, which details all [payments over £250](#) and [salary information for different regulatory roles](#). We expect to provide information on the costs of key functions, such as routine regulation and registration and the apportionment of key corporate support functions (such as IT, Finance and HR) in relation to the regulation function including how these are calculated.

Stakeholder arrangements

68. Whilst fees introduction may lead to greater sector interest in our activities, it is crucial that nothing is allowed to compromise the operational independence of the regulator. Nevertheless, stakeholders have a number of areas of interest in relation to regulation and make an important contribution including through our stakeholder engagement channels.
69. Currently, we have a wide range of channels of stakeholder engagement where we discuss regulatory strategy and operational matters. These include regular meetings with key sector stakeholders such as the National Housing Federation and the Council of Mortgage Lenders. We also meet with a broad cross-section of registered provider representatives and commercial/advisory organisations that provide services to registered providers. These arrangements allow us to engage effectively on a wide range of regulatory issues. Our view is that the existing arrangements are adequate to cover issues in relation to the introduction and ongoing operation of fee charging.
70. In the fees discussion paper responses, a small number of responses called for sector representation on the HCA Regulation Committee as part of fees introduction. However, other responses were concerned that registered providers could exert too much influence over the regulator as result of fees introduction. Regulation Committee members are appointed by the Secretary of State under the requirements of the Act. Any appointment of sector representatives on to our governing body would impact on regulatory independence and for this reason, we consider that such representation is not appropriate.

Impact assessment

71. An assessment of the impacts of fees introduction is provided in our draft business engagement assessment (Annex 1). This includes consideration of any implications of the proposals in relation to equality and diversity. The regulator is committed to a full consideration of potential impacts and comments on the draft business engagement assessment are sought. A final impact assessment will be published should the fees proposals go ahead.

Consultation questions

Q12. Do you agree with the proposed content for the annual fee statement?

Q13. Do you agree that existing stakeholder engagement activities are sufficient for once fees are introduced?

Q14. Do you have any comments on our business engagement assessment including in relation to equality and diversity?

7. Practical arrangements

Collection approach

72. In relation to the annual fee, it is proposed that the annual fee for individual providers will be based on the number of social housing units owned as at the previous March as submitted by providers through the SDR. As an example for the 2017/18 financial year the per-unit fee would be calculated based on the number of social housing units owned at March 2016 (i.e. the latest set of figures we have assuming fees are introduced in April 2017). Once the final fees scheme is confirmed providers would be written to with their fee level for 2017/18 financial year. Our intention is that an invoice based on this would be sent out in February/March 2017. For future years beyond this invoices would normally also be issued in February for the financial year ahead.
73. As there may be some variation in costs from year to year (e.g. due to staff vacancies) it is possible that excess income might be collected from charges in any one year. Our intention is that this would be refunded to private registered providers once the year end accounts had been finalised, to ensure that any identified overpayments are returned in parallel with the following year's charges.
74. It is proposed that annual fees are paid in a single payment annually within 30 days of issue of invoice although we will consider additional flexibility in the first year of operation reflecting the possible timing of an announcement to charge fees. However, it is proposed that smaller providers with limited cash flow may request to pay their annual fees in quarterly instalments. Initial registration fees would be invoiced in full following successful registration and would also come due for payment within 30 days of issue of invoice. It is proposed that registered providers would pay via bank transfer.

Non-payment of fees

75. In cases of non-payment of invoices, our usual approach is to send written reminders and to chase up outstanding invoices on the phone. It is anticipated that this would also be effective in relation to registered providers in the vast majority of cases. In cases of persistent non-payment, a warning letter would be sent before any other action is instigated.
76. Registered providers will be legally required to pay fees for social housing regulation. As such we do not expect significant instances of non-payment. If necessary, we propose that we adopt the following actions to be implemented at our discretion taking into account each individual situation:

- imposing a financial penalty of up to £5,000⁷;
- issuing an enforcement notice⁸;
- civil court action to recover the debt⁹;
- downgrading our published governance assessment.

It is not proposed to set out the circumstances in which we would take a particular action as this would depend upon a range of factors in relation to the registered provider's individual circumstances. This would allow us to select the most appropriate route for recovery relevant to the individual registered provider.

Fee calculation

77. Individual fees would be calculated on the basis of the number of social housing units owned as submitted to the regulator through the SDR (see paragraphs 42 – 52). It is anticipated that any invoicing errors brought to our attention would be resolved by the HCA's Finance Department. However, it is proposed that disputes in relation to fee charging would be considered in accordance with the regulator's appeals process.

Consultation questions

Q15. Do you agree with the proposed arrangements for invoicing and collection?

Q16. Do you agree with the proposed arrangements for addressing non-payment of fees?

Q17. Do you agree with the proposals for resolving issues on fees calculations?

Next steps

78. Once the statutory consultation has closed, the responses will be analysed and the final proposals will be developed. If the fees proposals are to be implemented, the principles will then be submitted to the Secretary of State for approval. It is anticipated that we would then publish details of the final fees scheme by early 2017, with a view to charging fees to providers for the first time in 2017/18. At this time, we would also expect to alert all registered providers of their estimated bill prior to invoicing each registered provider in February/March 2017.
79. It is intended that the scheme would be reviewed on an annual basis thereafter and any material changes would be subject to consultation.

⁷ Housing and Regeneration Act 2008 section 227(6)

⁸ Housing and Regeneration Act 2008 section 220(9)

⁹ Housing and Regeneration Act 2008 section 177(2)

8. Consultation questions

A full list of the consultation questions in this paper are provided below. When answering the questions please state reasons for your answer and where you disagree with the proposals, please make suggestions for alternative approaches.

1. Do you agree with our proposals for those regulatory costs which apply to all providers to be funded by fees?
2. Do you agree with our proposed commitments to limiting annual increases in fees overall?
3. Do you agree with our proposal to keep regulatory costs to a minimum? What further steps can/should be taken to avoid fee inflation?
4. Do you agree with our proposal for a one-off fixed initial registration fee with part of the costs of registration, including unsuccessful applications, funded through grant-in-aid?
5. Do you agree with the proposed initial registration fee level of £2,500?
6. Do you agree it is appropriate that the annual fee should be based on social housing units owned?
7. Do you agree with the proposed definition of units as social housing where the private registered provider is the owner?
8. Do you agree with our proposals for a fixed fee for providers that own fewer than 1,000 units?
9. Do you agree with the proposed fixed fee level of £300?
10. Do you agree with our proposal to charge fees at the group parent level where the parent is registered?
11. Do you agree with our proposed approach to the annual fee when a provider is only on the register for a proportion of the year?
12. Do you agree with the proposed content for the annual fees statement?
13. Do you agree that existing stakeholder engagement activities are sufficient for once fees are introduced?
14. Do you have any comments on our business engagement assessment including in relation to equality and diversity?
15. Do you agree with the proposed arrangements for invoicing and collection?
16. Do you agree with the proposed arrangements for addressing non-payment of fees?
17. Do you agree with the proposals for resolving issues on fees calculations?

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.)

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Agency.

The Homes and Communities Agency will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

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