



Homes &  
Communities  
Agency

# CHARGING FEES FOR SOCIAL HOUSING REGULATION

A discussion paper

February 2014

## Contents

<b>Foreword</b> .....	<b>2</b>
<b>About this discussion document</b> .....	<b>3</b>
<b>1: Introduction</b> .....	<b>4</b>
Purpose .....	4
Background .....	4
The Regulator's statutory regime .....	5
<b>2: Approach to developing a fee structure</b> .....	<b>6</b>
Regulatory costs .....	6
Developing the principles.....	8
<b>3: Initial registration fees</b> .....	<b>10</b>
Option 1 – Direct attribution .....	10
Option 2 – Fee based on size of organisation .....	11
Option 3 – Flat fee .....	11
Proposed option – flat fee .....	11
Registration fee level .....	11
<b>4: Annual fee</b> .....	<b>12</b>
Option 1 – Direct attribution .....	12
Option 2 – Flat fee .....	12
Option 3 – Risk-based .....	12
Option 4 – Fee based on provider size .....	13
Proposed option – Fee based on provider size .....	13
<b>5: Other issues relating to an annual fee</b> .....	<b>14</b>
Local authorities.....	14
Minimum fee levels .....	14
Banding .....	15
Approach to groups .....	15
Impact of timing of registration and de-registration on annual fee .....	16
<b>6: Further information</b> .....	<b>16</b>
Transparency of fee charges and increased accountability of the Regulator .....	16
Implementation .....	17
Impact assessment.....	17
<b>7: Consultation questions</b> .....	<b>18</b>

## **Foreword**

The Housing and Regeneration Act 2008 gave the Regulator the power to charge fees to cover the costs of our work. So far we haven't used this power – we are currently funded via grant-in-aid from the Department for Communities and Local Government. Yet it is common practice amongst regulators for regulated bodies to pay for the cost of regulation. This approach makes sense given that registered providers benefit from being part of a regulated sector in a number of ways including lower borrowing costs and access to HCA and GLA grant.

There are other reasons for looking at fees introduction now. In our recent consultation on developing the Regulatory Framework we set out how the sector is becoming more diverse and complex. Given this context, we need to ensure we have the right skills and capacity to enable effective regulation to continue into the future.

The publication of this discussion paper marks the start of a conversation about the potential for switching from the current grant-in-aid arrangement to a system where the Regulator recovers part or all of the cost of regulation through fees.

Any fees scheme introduced will need to be in line with our specific powers and our statutory objectives. Once fully developed, the principles on which fees would be set must be approved by the Secretary of State. In line with our powers, our initial view is that any fees system should comprise two elements. Firstly, a one-off fee for registration with the Regulator. Secondly, an annual fee to providers to cover the costs of on-going regulation.

The introduction of fees is expected to increase accountability to the sector. As providers will be paying for regulation we will expect greater challenge on areas where we can be more efficient and effective. However, at the same time providers will recognise that the Regulator must be operationally independent.

The earliest that fees could be introduced is April 2015. To achieve this we would need to undertake a statutory consultation later this year. We would also need to set out our final proposals and the relevant fee amount for each provider in October 2014 so providers could plan for this in their budgets.

We know the current economic environment means constrained budgets for most providers and the prospect of fees may be viewed as an additional burden. We will work with you in developing our thinking to ensure that as far as possible, fees are proportionate to costs and reasonable, as well as to mitigate any potential impacts. It is nevertheless important to get the right funding mechanism for social housing regulation. This is central to maintaining effective regulation into the future and therefore an essential consideration for the sector.



Julian Ashby  
**Chair, HCA Regulation Committee**

## About this discussion document

<b>Please respond by</b>	5pm, 21 March 2014
<b>Please respond to</b>	<p>Tim Sullivan  Regulatory Framework Manager  Homes and Communities Agency  The Social Housing Regulator  Maple House  149 Tottenham Court Road  London  W1T 7BN  Email: <a href="mailto:consultation@hca.gsi.gov.uk">consultation@hca.gsi.gov.uk</a></p> <p>If you would like to discuss any issue raised in this document before sending your response, please contact our Referrals and Regulatory Enquiries Team – on 0300 1234 500 (option 2) – who will be pleased to help.</p>
<b>Who this is relevant to</b>	This consultation will primarily be of interest to providers or potential providers of social housing. It may also be of interest to lenders, local authorities and social housing tenants.
<b>How we are capturing your views</b>	Alongside the publication of this discussion document we will continue to engage in discussions with stakeholders.
<b>How we will take account of your views and next steps</b>	We will provide a summary of responses alongside, or in advance of, the statutory consultation. The final decisions on fees introduction will only be taken after the statutory consultation has concluded.
<b>Publication of responses</b>	All formal written responses will be published at the same time as the summary of responses (unless you specifically ask us not to and subject to provisions within the Freedom of Information Act (FOIA) 2000).
<b>Freedom of information</b>	The information provided in response to this discussion document (including personal information) may be published in accordance with the FOIA and the Environmental Information Regulations 2004. If you want the information that you provide in response to this discussion document to be treated as confidential, please tell us (marking written responses accordingly) but be aware that, under FOIA, we cannot guarantee confidentiality. If you are replying as an individual, the HCA will process your personal data in accordance with the Data Protection Act 1998 and this means that if you request confidentiality your personal information will not be disclosed to third parties. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be binding on the HCA.

## 1: Introduction

### Purpose

1. The purpose of this discussion paper is to seek initial views of the sector and wider stakeholders on the potential for a fee charging scheme for social housing regulation. The paper sets out our provisional thinking on how a fee charging scheme might work. The responses we receive to this discussion paper will help to inform a subsequent statutory consultation document which is planned for later in 2014. Depending on the outcome of statutory consultation, the earliest a fee charging regime might be introduced is April 2015.

### Background

2. The Housing and Regeneration Act 2008 (as amended by the Localism Act) (“the Act”) permits the social housing regulator<sup>1</sup> to raise fees from registered providers and from applicants for registration to cover the costs of its work. To date, the Regulator, and its predecessors, has been funded by government grant (known as grant-in-aid) from the Department for Communities and Local Government (DCLG).
3. Through this discussion document we are seeking views from the sector about the possibility of switching from the current grant-in-aid arrangement to a system where the Regulator recovers all or part of the cost of regulation through fees.
4. The usual regulatory model in other sectors is for the regulated bodies to fund all or most of the cost of their regulation through fees, so that it is the relevant industry and not the taxpayer who pays for the regulator. This model was envisaged for the social housing sector when the Act was introduced but fees have so far not been charged.
5. A key argument for asking providers to contribute to the costs of regulation is that providers receive a number of benefits from being part of a regulated sector. These include lower borrowing costs, because lenders take comfort from the fact that providers are part of a regulated sector. Regulation also helps to protect the sector’s reputation, for example by addressing concerns about poor governance, and gives providers access to HCA and GLA grant. However, the introduction of fees would of course represent an additional cost to providers. Whilst we would want to keep the costs to an absolute minimum, this would mean providers would have less resources to deliver their objectives.
6. If fees are introduced, we would work with providers and other stakeholders to establish the right level of resources and the right corporate priorities for the Regulator whilst recognising that introducing fees in itself does not give a green light to increase costs. In addition, through appropriate transparency arrangements (see paragraphs 52-54) we would improve the accountability of the Regulator.

Q1. Do you think that there is an in-principle case to charge fees for regulation?

<sup>1</sup> The social housing regulator in England is the HCA acting through the HCA’s Regulation Committee.

## The Regulator's statutory regime

7. The Act sets out the statutory framework for all of the Regulator's functions including its powers in relation to charging fees. 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 (see table 1).

### Table 1: The Regulator's fundamental objectives

The economic regulation objective is:

- a) to ensure that registered providers of social housing are financially viable and properly managed, and perform their functions efficiently and economically;
- b) to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing);
- c) to ensure that value for money is obtained from public investment in social housing;
- d) to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds; and
- e) to guard against the misuse of public funds.

The consumer regulation objective is:

- a) to support the provision of social housing that is well managed and of appropriate quality;
- b) to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection;
- c) to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account; and
- d) to encourage registered providers of social housing to contribute to the environmental, social and economic wellbeing of the areas in which the housing is situated.

Further, the Regulator must exercise its functions in a way that:

- a) minimises interference; and
- b) (so far as is possible) is proportionate, consistent, transparent and accountable.

8. In relation to fees in particular, Section 117 of the Act sets out the parameters of a fee regime for social housing regulation. The Regulator is able to charge fees for initial registration and an annual fee for continued registration (the 'annual fee'). In either case, initial or continued registration may be made conditional upon payment of the fee (except in the case of local authorities). The Regulator can also set different fees, and make different provision, for different cases or circumstances.
9. The statute says that the Regulator must do certain things including the following:

- a) Fees have to be set in accordance with principles (although those principles are not effective until they have been 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, we have to consult persons who appear to represent the interests of fee-payers.

We set out below our initial thoughts for a fees regime developed in accordance with the statutory requirements.

10. It should be noted that there are certain other statutory provisions which allow the Regulator to make charges. For example, 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 fees regime discussed in this paper does not cover these charges, and we have no plans to introduce such charges at present. However, the Regulator will retain its statutory ability to make those charges even after a fees regime has commenced.

## 2: Approach to developing a fee structure

11. In developing initial proposals for a fee regime we have considered the features of other regulatory fee regimes and taken preliminary soundings from key sector stakeholders. Alongside the statutory requirements detailed above this has provided the context for the Regulator to develop fees proposals.

### Regulatory costs

12. Revenue collected through fees could only be spent on regulatory activities and associated support functions. Table 2 summarises the different activities of the Regulator and is set out to provide context for the discussion that follows in this paper. More detail on how we regulate in practice is contained in our publication [‘Regulating the Standards.’](#)

**Table 2: Activities of the Regulator**

Routine regulation	This is principally seeking assurance on governance, viability and value for money through baseline routine activities and concluding on the provider’s compliance with the economic standards.
Reactive regulation	This activity relates to the regulatory action taken where there is evidence of a breach, or potential breach of our standards,

	including the use of statutory powers.
Consumer regulation	This is reactive regulatory engagement in relation to the consumer standards in response to specific information received (e.g. through whistleblowing or complaints).
Consents	This activity includes the assessment and processing of both constitutional and disposal consents.
Registration and de-registration	This is the assessment of applications for registration/de-registration against the relevant criteria.
Maintaining the register	This is a range of activities to ensure that the register of providers is accurate and up to date.
Strategy and management	This relates to strategic and managerial functions including keeping the Regulatory Framework fit for purpose.
Assurance and analysis	This is carrying out assurance on the judgements delivered through routine regulation, and sector wide analysis to assist with routine regulation.
Support functions	These include functions such as HR, Facilities, Finance and IT.

13. At this stage, it is not clear what the total cost recovered through fees would be for the first possible year of fees (2015/16) but further information on this will be available in the statutory consultation document which is planned for later in 2014. For illustrative purposes, however, the total cost of the Regulator, including corporate overheads attributable to the regulation function, is in the region of £12.5m for the current financial year (2013/14).
14. At present, the Regulator is fully funded by the Government. One of the issues which we are discussing with the DCLG is the balance between fees and government funding assuming fees are introduced. The issue is whether there are activities which it would be more appropriate for the Government to continue funding through grant-in-aid to the HCA.
15. One consideration is whether it would be reasonable to charge individual providers for all of the activities set out in the table above. For instance, if we were to charge the full cost of assessing each application for registration, it could serve to discourage applications (see paragraphs 20 & 28). An alternative approach would be to charge a set fee that would cover some of the cost and for the remainder to be covered by grant-in-aid. Additionally, the reactive and consumer regulation we carry out is activity that only ever applies to a limited number of providers. Although this could be considered to be at least an indirect benefit to all providers, it could also be argued that the cost should not be covered by all providers.



Q2. Do you think fees should cover the full cost of the Regulator or that some elements of regulatory costs should continue to be funded through grant-in-aid?

### Developing the principles

16. The Regulator must establish what the principles for the fees regime should be in line with the legislative requirements (see paragraphs 7-10 above). These include specific legislative requirements in relation to fees and our fundamental objectives. We outline in table 3 below our approach to developing the principles in line with the key legislative requirements.

**Table 3: Legislative requirements and our approach**

<b>Legislative requirement</b>	<b>Our proposed approach</b>
<i>So far as is reasonably practicable, fee income has to match expenditure on the performance of the Regulator's functions</i>	We would ensure that the total amount received from fees matches the cost of the regulation function in so far as is reasonably practicable, having taken account of income such as grant-in-aid.
<i>So far as is reasonably practicable, each fee is reasonable and proportionate to the costs to which it relates</i>	In considering the options for a fees model, we have looked initially at what the result would be were we to charge fees directly proportionate to costs. We have then considered the reasonableness of such an approach. We have taken into account a range of factors with regard to reasonableness.
<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 transparency arrangements outlined in paragraphs 52 - 54. These arrangements will allow providers to see how their fee is calculated from the total costs of the regulator.
<i>Regulator's fundamental objectives</i>	When looking at the structure of a fees model we will take all of the factors detailed in this section into account, and will also consider whether any individual option helps us meet, or not meet, our fundamental objectives as set out in table 1 above.

17. As set out in table 3 above, in developing the fees principles including the options for a fees model, we have looked initially at what the result would be were we to charge fees directly proportionate to costs. We have then considered the reasonableness of

such an approach. Following our review of other regulatory fee regimes and our initial conversations with key stakeholders, we have identified a number of factors that are likely to be of particular relevance when considering reasonableness. These include the following:

- **Reliability** – on the level of fee as this will provide greater stability enabling providers to effectively budget;
- **Simplicity** – in terms of the practicalities of calculating and charging fees and to keep the costs of operating the scheme at a reasonable level;
- **Easily verifiable** – ensuring the information required for setting fees is easily verified will minimise the likelihood of dispute;
- **Impact on fee payers** – taking into account the likely impact on providers and potential providers; and
- **Benefits of regulation** – to take into account the level of benefit that providers receive from being part of a regulated sector.

Q3. Do you agree we are taking the right approach to developing the principles?

18. We have considered a range of options for the fees model in line with the legislation above. Each option is set out in the sections below alongside our initial view in relation to our preferred approach. The provisional fees principles which partly flow from our preliminary view on options are also set out in this paper for the purposes of discussion and are summarised in table 4 below. However, this list is not exhaustive and the principles may also be expressed in more detail when we undertake a statutory consultation on fees.

**Table 4: Proposed fees principles summary**

1. A 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. The annual fee should not apply to local authorities.
4. The annual fee should be subject to a minimum amount which would be payable by all private registered providers, regardless of size.
5. For groups the annual fee should be set at group level rather than for each individual entity on the register.
6. 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.

### 3: Initial registration fees

#### Background

19. The Act enables us to charge a fee for initial registration. Our preliminary view is that this fee will be paid by those who are registered by the Regulator as a provider or intending provider of social housing. This will exclude local authorities as they are subject to compulsory registration if they provide social housing and so do not go through an application process. It would also not apply to new registrations resulting from amalgamations, mergers or transfers of engagement from or between existing registered providers.<sup>2</sup> Providers already registered with the Regulator will not be required to pay an initial registration fee.
20. In addition to ensuring we meet the requirements of the Act in relation to fees, our preliminary view is that consideration of the fee level for initial registration should also take account of the Regulation Committee's fundamental objective to support the provision of social housing sufficient to meet reasonable demands, including by encouraging and promoting private investment in social housing. If the fee level was set so high that it becomes a barrier to entry there would be a tension with this fundamental objective.
21. For context, there are two distinct stages to the registration process. Stage 1 involves assessing eligibility for registration and stage 2 is the detailed assessment against the registration criteria. On average just over 40% of registration applications at stage 1 go on to the second stage where the vast majority of the work takes place. Time spent on the registration process, particularly at stage 2, varies considerably according to the quality and complexity of the application.
22. We have identified three options for setting initial registration fees:
  - i. Direct attribution
  - ii. Fee based on size of organisation
  - iii. Flat fee

#### Option 1 – Direct attribution

23. One approach could be to move to direct cost attribution. This option would be the most proportionate to costs. However, there are a number of weaknesses with this approach. Firstly, it would mean we would be unable to advise applicants in advance how much their application fee would be. This might impact on the likelihood of organisations applying to register because of the uncertainty over fees levels and the difficulty this creates in making an informed decision. Secondly, the fee level would be more complex to calculate as it would be based on time records and this methodology could increase the potential for disputes.
24. Finally, it is often the case that the first time a new type of provider presents for registration or a new issue arises the costs incurred in dealing with that registration are much higher than for a more straightforward application. Thus, complex applications often involve novel issues and those are often about new approaches for the sector as a whole. An approach involving direct attribution of costs could discourage the development of new approaches. This approach, therefore, could create a barrier to entry and to innovation which could make it more difficult to deliver

<sup>2</sup> These are covered in the Regulator's Guidance Note 1 - Guidance for Constitutional Consents (Sections 212-214), Restructuring and Dissolution (Sections 160-165) which can be found on the Regulator's website.

the fundamental objective of supporting provision of social housing. Given all of these weaknesses our preliminary view is that we should not take this option further.

### **Option 2 – Fee based on size of organisation**

25. A second option would be to charge based on the size of organisation. This would be consistent with our preferred approach to the annual fee. However, the relationship between size of organisation and cost of registration is much more limited than it is between size and cost of on-going regulation. For instance, very small organisations can cost significantly more to register than a larger applicant (e.g. if it is a novel type of applicant or novel issue). In addition, it is not uncommon for business plans of new applicants to feature significant growth aspirations subsequent to registration. Overall, size of organisation at the point of registration is not reasonably related to the amount of time to be incurred by the Regulator in dealing with that registration application. As such, our initial view is that this option would not be suitable.

### **Option 3 – Flat fee**

26. A third option is to have a single set fee for initial registration. Whilst this would not be the most proportionate to costs it would be the most reliable in terms of providing providers with certainty over the level of fee they would need to pay. It would also be the most simple and transparent. Our initial view is that it would be the most reasonable approach to take. In addition, it would act as less of a barrier to entry than option 1.

### **Proposed option – flat fee**

27. For the reasons set out above our preference is option 3, a flat fee for initial registration. Our initial view is that the initial registration fee would be applicable to all successful applications for registration, whether the organisation provides social housing at the point of registration or not. It would apply only to those seeking registration of a new organisation through the registration process under section 116 of the Act and not to those new registrations resulting from amalgamations, mergers or transfers of engagement as referred to in paragraph 19.

### **Proposed principle 1: A fixed fee should apply to all successful applications for initial registration**

Q4. Do you agree with the proposed approach to initial registration fees?

### **Registration fee level**

28. The average cost of processing applications for registration over the last two years is around £10,000, which reflects the increasing level of complexity in new applications. We have some concerns that setting the flat fee at this level may serve as a barrier to entry. Equally, if we set it any lower it means that some of the costs of registration will be met by either those already on the register (through recovery as part of the annual fee) or by grant-in-aid (as set out in paragraph 15). We would welcome views from the sector on the appropriate level of the initial registration fee.

Q5. What other factors should we consider in setting the initial registration fee? What level of initial registration fee would not discourage new entrants?

## 4: Annual fee

29. We have identified four broad options on which the annual fee structure could be based:
- i. Direct attribution of costs
  - ii. Flat fee
  - iii. Risk based
  - iv. Fee based on provider size

### Option 1 – Direct attribution

30. One option would be to directly attribute the costs of regulating each provider. A positive feature of this approach is that it would mean that the fee level would closely reflect the amount of regulatory time spent on each provider and so this would be the most proportionate to costs. However, a number of our activities which contribute to routine regulation (e.g. developing the Regulatory Framework) are not directly attributable to particular providers. In addition, such a system would be likely to be cumbersome and expensive for the Regulator to operate. Therefore, in terms of the reasonableness factors set out above, this option is not as simple and easily verifiable as other options.
31. A further drawback is that this approach would not be reliable; it would provide no certainty on an on-going basis to providers about the level of fees they might expect from year-to-year. For example, such an approach could mean that in certain enhanced regulation cases the financial viability of a provider would be made worse by the increased fee levels due to significant regulatory staff time being spent working with the provider to resolve the issues. In view of these weaknesses, our initial view is that we should not explore this option further at this time.

### Option 2 – Flat fee

32. Fees based on a flat fee would be calculated by taking the total of the costs to be recovered by the Regulator in a year and dividing these by the number of registered providers. Each provider would therefore pay the same amount.
33. This approach would be simple and transparent. However, the largest providers would pay the same amount as those with only a handful of units and this could cause considerable financial difficulty for smaller providers. Furthermore as we do less work with the very smallest providers our view is that a flat fee approach would fail to be proportionate to costs and to the benefits received from being part of a regulated sector. In light of all these drawbacks, our initial view is that we should not explore this option further at this stage.

### Option 3 – Risk-based

34. A third option would be to frame a fee system around an assessment of the relative risk that different providers represent. As we have a risk-based approach to regulation there are some attractions in this model. It would mean that those registered providers where there is a higher risk (e.g. due to the complexity of financial arrangements) would pay a higher fee. A benefit of the approach is that a fee generated using this option is likely to be closer to the proportion of cost incurred by the Regulator in regulating such higher risk providers.

35. However, there are a number of weaknesses that apply to a risk-based model. Determining the level of risk is ultimately a subjective matter as different organisations will have different risk appetites and abilities to cope should risks crystallise. As such, a risk-based approach is likely to lead to challenges from providers about the levels of their fees, which in turn would increase costs for the Regulator. In addition, as the levels of risk of an individual provider can often change such an approach would not be simple to implement and it would be hard for providers to be able to budget effectively for fees. Finally, if a provider found itself at increased financial risk then increasing any fee it paid, without sufficient time to plan into budget cycles, could make the situation worse as well as jeopardising their ability to pay. As a result our initial view is that a risk based approach would not be reasonable and we do not propose this approach to setting annual fees.

#### **Option 4 – Fee based on provider size**

36. This is a commonly used basis for charging by other regulators. This would mean that larger providers pay more than smaller providers. Our initial view is that this is both proportionate and reasonable. Larger providers are more likely to be in a position to pay a larger fee than smaller providers and also derive the most benefit from being part of a regulated sector through reduced borrowing costs. Whilst it is true that enhanced regulatory activity can be required for any provider, problems are likely to be more complex and difficult to solve the larger the provider is.
37. We have considered whether size might be best determined by turnover, social housing unit numbers or both. Turnover is readily verifiable and is information that providers have for other purposes but we have some concerns about the reasonableness of using turnover figures in this way. Turnover is subject to annual variations so is a less reliable approach to take. In addition, some providers provide support to tenants that results in additional income but the cost of providing such support is also high.
38. Our initial view is that social housing unit numbers could be a better option. This is information that is readily verifiable, available to providers and to the Regulator and is less subject to annual variations than turnover. The basis could be the number of social housing units owned, so fees would not take into account any other types of housing that providers have. We collect information on social housing units owned from providers and this could form the basis of calculating the fee level for individual providers. This is both a transparent and a simple approach to setting fee levels.

#### **Proposed option – Fee based on provider size**

39. For the reasons set out above, our preference is option 4, a system of fees based on provider size. Our preliminary view is that we could implement this by charging a fee to each provider by reference to the number of social housing units owned by that provider.
40. The HCA annually collects this information from each private registered provider through the Statistical Data Return (SDR). Fees could be chargeable in relation to units of social housing (as defined by the Act) where the private registered provider is the landlord (described as ‘owner’ in the SDR) and therefore responsible for compliance with the standards established by the Regulator.

41. For contextual information, on the basis of the SDR we estimate there were 2.58 million social housing units owned by private registered providers at 31 March 2013<sup>3</sup>. This relates to 330 large and 1,237 small private registered providers.<sup>4</sup>

**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.**

Q6. Do you agree that provider size is a suitable basis for determining the level of the annual fee level? Do you agree that social housing units owned is a suitable measure of size?

## 5: Other issues relating to an annual fee

42. There are a number of other issues to be considered when designing an annual fee, which are set out below.

### Local authorities

43. Our initial view is that we should adopt a principle of a different approach for registered providers which are local authorities to that taken for private registered providers. The legislation allows the Regulator to set different fees, and to make different provision for different cases or circumstances. Our preliminary view is that local authorities present different circumstances from private registered providers. The Regulator's role in relation to local authorities is limited to considering breaches of the Regulator's consumer standards where there is, or is a risk of, serious detriment to tenants. Given this limited role, the per unit fee that could be charged to local authorities in relation to consumer regulation only is so low that it would not be economical to recover.
44. In addition, as set out in paragraph 15 it is possible that the cost of consumer regulation would continue to be funded through grant-in-aid in any case. Therefore, it is our initial view that, regardless of whether we charge providers for consumer regulation, no annual fees should be charged to local authorities. Our initial view is that this would be reasonable as it would keep the costs of operating the scheme at a reasonable level. Accordingly, the annual fee would relate to private registered providers only.

**Proposed principle 3: The annual fee should not apply to local authorities.**

Q7. Do you agree with the proposed approach to local authority registered providers?

### Minimum fee levels

45. Our initial view is that there should be a minimum fee level for all providers regardless of the number of social housing units held. The exact level would be set to ensure that all fees are economical to recover and based on the costs incurred in maintaining each provider on the register, thus making them proportionate to the costs to which

<sup>3</sup> Units include both non self-contained housing bedspaces and self-contained units

<sup>4</sup> Size classification is based upon categorisation within NROSH+ system. Small providers own 999 units or less. Large providers own 1000 units or more.

they relate. Our preliminary view is that if providers wish to receive the benefits of being part of a regulated sector it is reasonable that they should pay the cost of doing so. It is anticipated that the cost of such a fee would be in the region of £300. This includes the costs of maintenance of the register and the health checks performed on all providers' financial statements.

**Proposed principle 4: The annual fee should be subject to a minimum amount which would be payable by all private registered providers, regardless of size.**

Q8. Do you agree with the principle set out for a minimum annual fee?

**Banding**

46. We have considered whether it is appropriate to introduce an element of banding to the annual fee. Potentially, banding could help ensure that fees are more proportionate to costs than solely basing fees on a per unit fee. In particular, we could charge all smaller providers with less than 1,000 social housing units a fixed fee or a lower per unit charge as generally speaking we do not regulate them as intensively as those with 1,000+ units and the level of regulation for each small provider tends to be more uniform.
47. However, our preliminary proposals are for fees to be determined on the basis of a fixed per unit charge underpinned by a minimum of fee in the region of £300. This approach aims to provide an appropriate balance between ensuring fees are sufficiently proportionate to costs while minimising the impacts on smaller providers. Overall, the introduction of banding would increase complexity of the fees scheme and runs counter to our preference to keep the fees scheme adopted as simple as possible. As such, our initial view is that we should not introduce an element of banding in any fee regime.

Q9. Do you think that we should introduce an element of banding in the fee regime and if so why?

**Approach to groups**

48. A number of providers are in group structures often having several different entities on the register. For these providers we have the choice of either charging a single fee at the group level or charging fees for each entity on the register. The effect of charging at group level would be to aggregate the per-unit fees for the individual providers within the group and just charge a single fee. Group structures result in some streamlining of regulatory activities as we gain our regulatory assurance for all registered group entities from engagement with the group parent. In addition, our initial view is that charging a fee at group level would be the simplest approach which recognises the commercial reality of the many group structures in the sector.
49. If we were to introduce such an approach to groups it would mean that there may be subsidiaries within a group with only a few social housing units which would not incur the minimum fee. However due to the streamlining of regulatory activity our initial view is that it would be reasonable for the annual fee to be charged at group level. This would mean that, apart from in relation to small subsidiaries as discussed above,



the level of fees collected would be the same as if fees were charged at an individual provider level.

**Proposed principle 5: For groups the fee should be set at group level rather than for each individual entity on the register.**

Q10. Do you agree with the proposal to charge the annual fee at group level?

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

50. In developing proposals for a fee regime we have considered the issue of a provider registering or de-registering part way through the financial year. Our initial view is that providers should pay the full cost of the annual fee for the year in which they either register or de-register. For new registrations, the vast majority are small organisations for whom the minimum fee would be greater than the per unit cost for the annual fee and so they would automatically be paying the full cost anyway. Furthermore, organisations take a business decision to join the register and if they chose to do so it would be with the knowledge of the level of fee they would have to pay.
51. Almost all de-registrations are due to restructurings and mergers. Where a de-registration relates to restructurings or mergers then there would be no part year refund but neither would we make another annual fee charge for the newly registered entity. However, to keep the system simple our preliminary view is that those (the small minority) who just de-register would not get a part year refund and would pay for the full year. Often we would have carried out all our regulatory activity in the part of the year for which they are registered. There is also a cost for assessing voluntary de-registrations which we wouldn't be charging for separately. Given this, our initial view is that this is the most reasonable approach to take.

**Proposed principle 6: 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**

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: Further information

### Transparency of fee charges and increased accountability of the Regulator

52. Should fees be introduced we would expect, and welcome, scrutiny to ensure that we are providing value for money. Whilst regulatory functions need to be resourced properly, we also understand that a key concern for the sector and other stakeholders is that the costs of regulation should be kept as low as possible. So we would publish a regular transparency statement about our costs and our approach to achieving value for money, to allow stakeholders to hold us to account. We would also consult providers and other stakeholders (including through our various existing stakeholder forums) in drawing up our business plan in order to provide input into the Regulator's future work programme and priorities.
53. The legislation requires us to ensure that, so far as reasonably practicable, providers can see the relationship between the amount of a fee and the costs to which it relates. In addition to transparency on costs as discussed above, we propose to

make clear exactly how the calculation of individual fees for providers will be carried out. This would be included in our published fees principles which would give full details about our fees approach. If we want to revise the fees principles we would consult on the changes as required by statute.

54. More detailed proposals on our arrangements for transparency will be set out at statutory consultation stage.

Q12. Do you agree with the proposed approach to transparency and accountability?

### **Implementation**

55. Our initial view is that the annual fee would be charged for the period from 1 April to 31<sup>st</sup> March each year with invoices sent out at the beginning of each financial year in April. However, views are sought from the stakeholders as to whether this would cause concern for any providers, particularly those whose financial year is different. The earliest fees could be implemented is April 2015. If this occurs we would confirm the relevant fee amount for each provider in October 2014 so providers can plan for this in their budgets. Further issues in relation to implementation, including how we would tackle non-payment of fees, will be set out at statutory consultation stage.

Q13. Do you think that invoicing on an annual basis towards the beginning of each financial year is an appropriate approach?

### **Impact assessment**

56. A full impact analysis will be drafted for publication alongside the planned statutory consultation. This will consider all potential impacts including those in relation to equality and diversity. In all cases where our analysis identifies adverse impacts on particular providers or housing types we will consider action to mitigate those impacts.
57. The Regulator remains committed to meeting its equality obligations as set out in the Equality Act 2010 and in assessing potential equalities impacts we will consider our statutory equality duties. We will also seek the views of the HCA's independent Equality and Diversity Board Advisory Group in assessing potential impacts.

Q14. Are you aware of any potential equality and diversity impacts in implementing fees? If so, what are they and how should we take them into account?

Q15. Are there any other potential impacts of charging fees on the sector that we have not considered in this paper? If so, what are they and how should we take them into account?

Q16. Do you have any further comments on the initial proposals set out in this discussion paper?

## **7: 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 think that there is an in-principle case to charge fees for regulation?
2. Do you think fees should cover the full cost of the Regulator or that some elements of regulatory costs should continue to be funded through grant-in-aid?
3. Do you agree we are taking the right approach to developing the principles?
4. Do you agree with the proposed approach to initial registration fees?
5. What other factors should we consider in setting the initial registration fee? What level of initial registration fee would not discourage new entrants?
6. Do you agree that provider size is a suitable basis for determining the level of the annual fee level? Do you agree that social housing units owned is a suitable measure of size?
7. Do you agree with the proposed approach to local authority registered providers?
8. Do you agree with the principle set out for a minimum annual fee?
9. Do you think that we should introduce an element of banding in the fee regime and if so why?
10. Do you agree with the proposal to charge the annual fee at group level?
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 approach to transparency and accountability?
13. Do you think that invoicing on an annual basis towards the beginning of each financial year is an appropriate approach?
14. Are you aware of any potential equality and diversity impacts in implementing fees? If so, what are they and how should we take them into account?
15. Are there any other potential impacts of charging fees on the sector that we have not considered in this paper? If so, what are they and how should we take them into account?
16. Do you have any further comments on the initial proposals set out in this discussion paper?

homesandcommunities.co.uk  
mail@homesandcommunities.co.uk  
0300 1234 500



Homes &  
Communities  
Agency

**Homes and Communities Agency**

7<sup>th</sup> Floor

Maple House

149 Tottenham Court Road

London W1T 7BN

consultation@hca.gsi.gov.uk

The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.