



## Housing and Regeneration Act – Impact Assessment

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## Executive Summary

It is the aim of the Government that everyone has access to a decent home, at a price they can afford, in a place where they want to live and work.

Good housing can help improve people's social, environmental and economic well-being, and can create better communities that attract investment and skilled workers – this is why housing is one of Government's top priorities.

Although current market conditions are challenging, it remains the case that there is strong pent-up demand in the housing market. Longer lives, changing lifestyles and a legacy of undersupply have led to considerable unmet need and made it difficult for people to get onto the housing ladder.

In the July 2007 Green Paper on Housing '*Homes for the Future: more affordable, more sustainable*', the Government announced a new drive to provide the homes urgently needed for this and future generations. This included plans for:

- more homes – backed by more ambitious building targets to achieve a rate of 240,000 new homes per year by 2016, increased investment and new ways of using land for development;
- more social housing – ensuring that a decent, affordable home is available for everyone;
- building homes more quickly – including unblocking the planning system and releasing land for development; and
- greener homes.

The Housing and Regeneration Act will implement provisions which:

- Help deliver our housing supply ambitions;
- Empower tenants; and
- Ensure affordable housing provision works and more effectively and efficiently

The Act consists of three main elements:

### **1) DELIVERING ON THE COMMITMENTS MADE IN THE HOUSING GREEN PAPER**

#### **Establishment of the Homes & Communities Agency**

The Act will support the delivery of new housing through the establishment of the new Homes & Communities Agency. This new agency will drive forward regeneration and the delivery of new social and affordable housing in sustainable, mixed tenure estates.

The Homes & Communities Agency will bring together the skills, expertise and investment programmes of the Housing Corporation and English Partnerships, as well as key housing and regeneration delivery functions which are currently undertaken by central government. It will focus on delivering more new and affordable homes across all tenures, in mixed and sustainable communities.

The Agency will support local partners to deliver the new homes and regeneration projects their communities need – providing advice and support for innovative new approaches to delivery, such as through new Local Housing Companies or Community Land Trusts, and helping to drive more effective joint working with the private sector partners.

Its objects and purposes will be wider than those of English Partnerships and the Housing Corporation. It will aim to:

- Increase the supply of housing to the extent that it and local communities consider appropriate and necessary to meet the present and future needs of communities in England; and
- Support the regeneration, development and maintenance of communities in England.

#### **Enable Local Authorities to Opt-out of the Housing Revenue Account Subsidy System**

This provision will enable certain local housing authorities, on application to the Secretary of State, to opt out of the Housing Revenue Account (HRA) Subsidy system. This will mean that such authorities will keep receipts from rents (instead of recycling any profit within the subsidy system), but will no longer receive support from central Government through the subsidy system. Authorities will – as far as housing is concerned – become self-financing, giving them greater freedom.

#### **Enable Local Housing Authorities to Keep Rental Income from the Supply of New Homes**

This provision will enable certain local housing authorities, on application to the Secretary of State, to keep rental income from new supply dwellings. Local housing authorities currently have to recycle rental income through the Housing Revenue Account (HRA) subsidy system. This acts as a disincentive to add dwellings to their supply.

The change will provide greater freedom for local housing authorities and a greater incentive to increase housing supply.

## **Make Rating against the Code for Sustainable Homes Mandatory for New Homes**

The Act will introduce a mandatory rating against the Code for Sustainable Homes for new homes, indicating whether the home had been assessed and, if it had, the performance of the home against the Code. It will not require every home to be assessed.

## **2) EMPOWERING TENANTS**

### **Reform of Social Housing Regulation**

The Act will implement recommendations of Professor Martin Cave as set out in his report: *'Every Tenant Matters: A Review of Social Housing Regulation'*. The aim of these provisions is to improve the regulation of social housing in England and to empower and protect tenants. These reforms will reduce the level of unnecessary regulation and bureaucracy on Registered Social Landlords.

### **Making Tenant Ballots Mandatory**

This provision will require the local authority to hold a statutory independent ballot to ascertain tenants' views before seeking consent from the Secretary of State to transfer its housing stock to a Registered Social Landlord.

### **Requiring Local Authorities to Allow Tenant-Led Stock Options to be Pursued**

This provision will give local authority tenants powers to consider the options for the future management of their housing stock and if they desire to effect a change of a landlord.

## **3) IMPROVING HOUSING SERVICES**

### **Gypsies & Travellers**

This will improve security of tenure for Gypsies and Travellers on local authority sites, to implement a European Court of Human Rights (ECHR) ruling that the current situation breaches article 8 of the Convention (the rights to respect for private, family and home life).

### **Ineligible persons from abroad: statutory disregards**

Following a declaration by the courts that section 185(4) of the Housing Act 1996 is incompatible with the European Convention on Human Rights, section 314 of the Act remedies the incompatibility while ensuring that a person who requires leave to enter or remain in the UK but does not have it, or has leave to enter or remain on condition of 'no recourse to public funds', cannot convey priority for, or entitlement to, social housing on another person.

### **Armed Forces**

In deciding who gets priority for social housing, the Housing Act 1996 allows local authorities to take into account whether someone has a local connection with

their district. This puts service personnel at a disadvantage as an individual cannot establish a local connection with an area through residence or employment there when serving in the Armed Forces.

This provision will amend legislation and ensure that service personnel are treated fairly and put on an equal footing with other people applying for social housing.

### **Building Regulations**

This provision will extend from six months to two years the time local authorities have to prosecute those who breach designated requirements of the Building Regulations.

### **Right to Buy (RTB)**

These provisions make a number of minor amendments to the way the Right to Buy (RTB) scheme works, in order to:

- Reduce regulation;
- Widen the range of options that landlords can offer to assist their leaseholders in meeting their service charge bills;
- Improve the administration of the Right to Buy scheme; and
- Clarify interpretation of the Right to Buy rules.

These changes do not significantly affect the terms under which social tenants can buy their homes.

### **Family Intervention Projects (FIPs)**

Family Intervention Projects (FIPs) work with households at risk of eviction due to serious ASB. They often involve moving a household from their home into specialist accommodation. The Act will provide for a form of tenancy provided by social landlords (local authority or RSL), which offers less security than either a secure or assured tenancy, thereby providing families with more of an incentive to co-operate with their support programme. Where the families do not co-operate, the landlord can seek eviction without proving Grounds in court. Current schemes cannot provide such tenancies.

### **Leasehold Enfranchisement**

Current legislation on leasehold enfranchisement is inconsistent in relation to shared ownership. In some cases, landlords risk shared owners circumventing the terms of their shared ownership lease by enfranchising (i.e. buying their freehold) before they have bought 100% of the property through shares. This can discourage private developers from providing houses on a shared ownership basis. Also, proposals being developed to allow restrictions to the full purchase



of a property in certain circumstances would make housing associations and LAs similarly vulnerable to early enfranchisement.

### **Tolerated Trespassers**

Creation by the courts of “tolerated trespassers” - occupants of social rented housing who have lost tenancy status following a possession order – causes serious problems for tenants (e.g. loss of rights around succession and repair) and landlords (issues around entitlement to rent, including rent increases, voting rights in stock transfer/tenant management ballots). Remedies exist to restore tenancy status individually to existing tolerated trespassers, but are costly and time consuming. Amendment to primary legislation required to deal effectively with the issues.

The main policy objective is to remove the problems which the tolerated trespasser doctrine has caused for landlords and tenants:

- by ensuring that tolerated trespassers are not created in future; and
- by restoring tenancy status to existing tolerated trespassers.

In addition, landlords should be protected from challenges arising from the change in the law.

### **Residential Leasehold Reform**

Service charge payers can be asked to hand over large sums of money to their landlord or manager (the payee) to pay for the upkeep of their property. Legislation provides some protection for this money including the right to ask for a summary of service charges and to see supporting documents, but regular information does not have to be provided unless the lease requires this of the landlord, making it easier for abuses to take place.

Information received from stakeholders to CLG and LEASE over a number of years has highlighted this as an area that needs addressing through regulation.

### **SUMMARY OF COSTS & BENEFITS**

*More detail on the breakdown of costs and benefits can be found in the individual assessments for each provision.*

DELIVERING ON THE COMMITMENTS MADE IN THE HOUSING GREEN PAPER		
Provision	Costs	Benefits
Establishment of the Homes & Communities Agency	<p><b>Total:</b> £22.1m</p> <p><b>Other non-monetised:</b> Day to day operations need to be maintained whilst in period of transition.</p>	<p><b>Total:</b> £1,168m</p> <p><b>Other non-monetised:</b> More streamlined working, simpler delivery chains, a more strategic approach to operations, a single identity of a national housing and regeneration agency, harnessing scarce skills ‘under one roof’ and increased negotiating leverage.</p>
HRA subsidy	<p><b>Total:</b> £180,000</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £81m</p> <p><b>Other non-monetised:</b> Self-financing business plans identify a range of benefits to residents, including environmental improvements, new build and reprovion, maximising the use of assets to transform estates and delivering more affordable housing.</p>
HRA new build	<p><b>Total:</b> £245,000</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Should incentivise more council house building, from under 300 across England each year for the last ten years to several thousand.</p>
Code for Sustainable Homes	<p><b>Total:</b> £317.7m</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £776.7m</p> <p><b>Other non-monetised:</b> Wider sustainability benefits, e.g. reduced impact from flooding, recycling, waste management, reduced water consumption/better management, etc.</p>

### EMPOWERING TENANTS

Provision	Costs	Benefits
New Social Housing regulator	<p><b>Total:</b> £9.3m</p> <p><b>Other non-monetised:</b> Business as usual – day to day operations need to be maintained.</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Major social benefits for many of the most vulnerable in society: better quality services more responsive to the needs of social tenants, tenant empowerment and involvement in shaping service, greater diversity of providers leading to greater innovation; more choice of high-quality homes; and better community facilities.</p>
Tenant Ballots	<p><b>Total:</b> £32,000</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> None</p>
Tenant Stock transfer	<p><b>Total:</b> £1.5m</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £22m</p> <p><b>Other non-monetised:</b> None</p>

### IMPROVING HOUSING SERVICES

Provision	Costs	Benefits
Gypsies & Travellers	<p><b>Total:</b> £1,310,975</p> <p><b>Other non-monetised:</b> LAs and courts: applications to terminate agreements.</p>	<p><b>Total:</b> £684,311</p> <p><b>Other non-monetised:</b> Gypsies and Travellers: improved rights and responsibilities on LA sites.</p> <p>LAs and the courts: reduction in challenges to possession actions on grounds of breach of Convention rights.</p>
Ineligible persons from abroad: statutory disregards	<p><b>Total:</b> £413,800</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Will avoid litigation for failing to remedy the incompatibility.</p>

<b>IMPROVING HOUSING SERVICES (continued)</b>		
<b>Provision</b>	<b>Costs</b>	<b>Benefits</b>
Armed Forces	<p><b>Total:</b> £155,000</p> <p><b>Other non-monetised:</b> Where former members of the Armed Forces applying for social housing are able to demonstrate a local connection, this may result in other housing applicants receiving less priority.</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Benefits to people leaving the Armed Forces who may receive greater priority for social housing.</p>
Building Regulations	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Marginal familiarisation costs for LAs will be outweighed by a more effective deterrent to non-compliance (which they have requested). No increase in prosecutions envisaged so costs should remain constant.</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Should enable LAs to plan and resource casework more effectively. Stronger deterrent should reduce non-compliance over time. That should bring fewer injuries, deaths and less ill health for persons in and around buildings. In terms of days work lost, there may be gains to the economy, but these are difficult to quantify.</p>
Right to Buy	<p><b>Total:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p> <p><b>Other non-monetised:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p>	<p><b>Total:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p> <p><b>Other non-monetised:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p>
Family Intervention Projects	<p><b>Total:</b> £591,000</p> <p><b>Other non-monetised:</b> The time it takes for officials to understand the provisions and mechanisms of the new FIT.</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Better compatibility with tenancy and allocation law, speeding up FIP entry processes, easier and cheaper eviction process, incentive for families to engage with FIPs.</p>

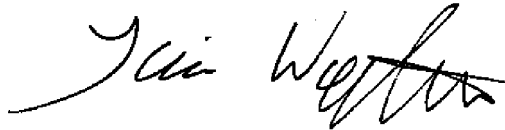
### IMPROVING HOUSING SERVICES (continued)

Provision	Costs	Benefits
Leasehold Enfranchisement Rules	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> None</p>	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> To allow all providers the opportunity to offer shared ownership leases for houses without the additional risk of early enfranchisement. To potentially enable affordable housing in areas where it is hard to replace to remain affordable in perpetuity. To potentially increase the supply of shared ownership houses.</p>
Tolerated Trespassers	<p><b>Total:</b> £0</p> <p><b>Other non-monetised:</b> Disrepair cases continue with costs for landlord, tenant and courts – but not quantified. Loss of opportunity to charge higher rent where this has occurred. Training for landlord staff to operate new provisions, but already require training to deal with complexity of tolerated trespassers – so not additional cost.</p>	<p><b>Total:</b> £97,065 – £357,750</p> <p><b>Other non-monetised:</b> Restoration of tenancy status and rights to existing and future tolerated trespassers. Simplified management systems for landlords and removal of challenge relating to voting rights in tenant ballots.</p>
Residential Leasehold Reform – statement of account (section 152)	<p><b>Total:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p> <p><b>Other non-monetised:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p>	<p><b>Total:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p> <p><b>Other non-monetised:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p>
Residential Leasehold Reform – statement of account (section 156)	<p><b>Total:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p> <p><b>Other non-monetised:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p>	<p><b>Total:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p> <p><b>Other non-monetised:</b> SEE INDIVIDUAL IMPACT ASSESSMENT</p>

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

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

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read "Jacqui Weyler". The signature is written in a cursive style with a long, sweeping underline.

**Date:** 6 October 2008

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Homes &amp; Communities Agency (previously known as new homes agency &amp; Communities England)</b>	
<b>Stage:</b> Final	<b>Version:</b> 2	<b>Date:</b> August 2008
<b>Related Publications:</b> Delivering Housing and Regeneration: Communities England and the future of social housing regulation		

### Available to view or download at:

<http://www.communities.gov.uk>

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

The Government has set demanding targets for housing and regeneration delivery. Ministers have decided that establishing the Homes and Communities Agency (HCA) by bringing together English Partnerships, investment functions of the Housing Corporation and key delivery functions from CLG would be the most effective solution to meet these challenging objectives.

Establishing HCA is not about reviewing the Government's housing and regeneration strategies and policies, rather it is to ensure there is a robust delivery chain for delivering Government's objectives and future policies.

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

To create a modern, streamlined delivery chain that makes the best use of private investment, public subsidy, land, assets and skills, whilst achieving increased outputs for the same amount of investment. It will also provide local authorities with an expert partner to help them in their place-shaping role.

### What policy options have been considered? Please justify any preferred option.

Modernisation of existing structures; and creation of a new homes agency – justification for adopting this approach is given in the evidence base below.

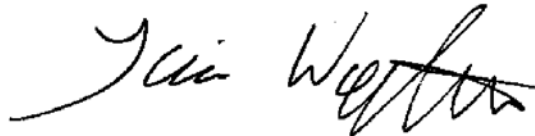
### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We are currently working with the HCA Set-up to determine how it can best demonstrate its success to the Department and what that success in the delivery of benefits will look like at key stages. We expect to see the delivery of those benefits by 2010.

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

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

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Wray', is written over a horizontal line.

**Date:** 6 October 2008



## Summary: Analysis & Evidence

<b>Policy Option:</b> Modernise structures	<b>Description:</b> This option covers the 'do nothing' rationale i.e. continue modernising structures
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Costs will continue as if business continued as normal.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£0		
<b>Total Cost (PV)</b>			<b>£0</b>
Other <b>key non-monetised costs</b> by 'main affected groups' the bodies not being able to meet house building targets if.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The benefits will continue but there is a danger that they may not continue at the rate required, the current rate of delivery could slip.
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£0		
<b>Total Benefit (PV)</b>			<b>£0</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			

Key Assumptions/Sensitivities/Risks			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £0	<b>NET BENEFIT (NPV Best estimate)</b> £0

What is the geographic coverage of the policy/option?		England			
On what date will the policy be implemented?		continue as normal			
Which organisation(s) will enforce the policy?		CLG sponsorship			
What is the total annual cost of enforcement for these organisations?		£0			
Does enforcement comply with Hampton principles?		No			
Will implementation go beyond minimum EU requirements?		Yes			
What is the value of the proposed offsetting measure per year?		£0			
What is the value of changes in greenhouse gas emissions?		£0			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	



<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> <b>£854-£1,700million</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£1,146million</b>	
What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		1 Dec 08 – April 2009		
Which organisation(s) will enforce the policy?		CLG sponsorship		
What is the total annual cost of enforcement for these organisations?		£0		
Does enforcement comply with Hampton principles?		Yes/No		
Will implementation go beyond minimum EU requirements?		Yes		
What is the value of the proposed offsetting measure per year?		£0		
What is the value of changes in greenhouse gas emissions?		£0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of £0		Decrease of £12m/4yrs		<b>Net Impact £</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Purpose and Intended Effect of Measure

This cost benefit model sets out the reference case under modernisation and summarises programme spending for EP and HC. It also identifies the main Departmental programmes that will transfer to the Homes and Communities Agency.

### Objective

To build a modern and streamlined delivery chain for housing and regeneration that makes the best use of private investment, public subsidy, land, assets and skills.

### Background

The Housing Corporation (HC) is the Non-Departmental Public Body that funds new affordable housing and regulates housing associations in England. English Partnerships (EP) is an operating name for the partnership that is the Commission for New Towns (CNT) and the Urban Regeneration Agency (URA). EP is the national regeneration agency, helping the Government to support high quality sustainable growth in England. Communities and Local Government is also directly responsible for a range of housing and regeneration roles. Please note, as the regulation and investment functions of HC are to be separated with the investment functions transferring to HCA, there will be a separate Impact Assessment for the regulation functions previously administered by HC.

Since 1997 the Government and its delivery agencies have made real progress – 77 per cent of new homes being built on brownfield land compared to just 56 per cent in 1997, English Partnerships has reclaimed over 6,000 hectares of land and has levered in £5.5 billion of private sector investment into regeneration projects and between 2006-08 the Housing Corporation is building 33 per cent more homes for only 15 per cent more resources<sup>1</sup>. But, it is important to build on these successes in order to meet the high expectations that communities rightly have.

A modern and streamlined delivery chain is required, that makes the best use of private investment, public subsidy, land, assets and skills, so we can deliver even more houses and mixed communities.

In April 2006 a Housing and Regeneration Review was undertaken for Ministers to appraise the institutional structures for delivering the Government's housing and regeneration objectives, and make recommendations for improvement. The

<sup>1</sup> Figures from the following: 1996-2006 Land Use table at: <http://www.communities.gov.uk/publications/planningandbuilding/landusestats>, English Partnerships Annual Report at: [www.englishpartnerships.co.uk](http://www.englishpartnerships.co.uk) and the partial Regulatory Impact Assessment at Annex C of the consultation document: 'Delivering Housing and Regeneration: Communities England and the future of social housing reform' available at: <http://www.communities.gov.uk/publications/housing/deliveringhousingregeneration>

review found strong evidence of potential overlaps, where combined funding should reduce fragmentation and co-ordination failures. Across the Housing Corporation, English Partnerships and those Departmental programmes that we plan to transfer to the Homes and Communities Agency (HCA), around two thirds of current spending is on common objectives – estate regeneration, mixed use regeneration, strategic growth and low cost home ownership.

### **Rationale for Government Intervention**

The rationale for reviewing the Government's housing and regeneration delivery chain is to deliver a step change in housing provision, mixed sustainable communities, and social mobility. Specifically:

- across England, raise the housing target for 2016 from 200,000 to 240,000 per year, and by 2020 have built 3million new homes;
- helping over 100,000 people into home ownership by 2010;
- expecting all social landlords to be working towards delivering Decent Homes for tenants by 2010, except in those cases where achieving the standard by a slightly later date would bring benefits;
- looking at how social housing can help to create mixed communities of different incomes and tenures – where decisions on investment in improving social housing are taken alongside decisions on the other investment necessary to deliver sustainable mixed communities;
- a radical, devolutionary Local Government White Paper, and at all levels of governance, a switch to “presumed autonomy” – i.e. empowering others, not taking power at the centre; and
- a long-term ambition to move towards low carbon and then carbon-neutral developments.

### **Consultation**

#### ***Within Government***

The Department's economic modelling was subject to rigorous scrutiny by HM Treasury and we have consulted with colleagues across Government on our plans.

#### ***Public Consultation***

Stakeholders were invited to submit views to the Department's review of housing and regeneration. The responses, from a range of organisations and individuals, informed the review and helped to focus attention on specific issues (for example, how the new agency would work with local and regional partners).

An external Sounding Board with representatives from the Registered Social Landlord sector, developers, lenders, house builders and local authority staff was established during the review to feed into and examine the work of the review.

A public consultation was launched on 19 June with the document "Delivering Housing and Regeneration: Communities England and the future of social housing regulation" (available to view at: <http://www.communities.gov.uk/publications/housing/deliveringhousingregeneration>). The document was launched at the Chartered Institute of Housing annual conference by the Secretary of State. In line with Cabinet Office guidance, the consultation period was for a full twelve week period; ending on 10 September 2007.

The general response to the consultation's partial impact assessment was positive. Concerns were raised about the initial costs of establishing HCA (£23m over 4yrs), however, when compared to the savings (£193m per year) this appears to be an acceptable cost to incur. A comment was also made regarding £3m per annum administration savings versus the £23m set up costs. Whilst there will be savings on administrations work the main savings will be as a result of a more strategic programme spend; this will result in the £193m per annum savings.

The partial impact assessment in the consultation only considered the impact of racial equality when establishing the new agency. However, the Department is firmly committed to meeting its statutory equalities duties in respect of race, disability and gender for all of its policies and functions and to ensure that there is no adverse impact on any group of individuals.

As a result of the consultation exercise and due to the level of agreement therein we have agreed that the delivery functions referred to in the consultation document will transfer to HCA. We note that stakeholders are concerned about how the new agency will work with different levels of existing governance. We will explore this further with our partners and are currently planning a series of stakeholder events. We will also examine the views of stakeholders with regards to the proposed investment strategy so that we can ensure that there is a robust framework for further testing at these stakeholder events. Finally, due to considerable support in the consultation we have decided that the Academy for Sustainable Communities should be part of the new agency rather than a stand alone body.

### Options

HC and EP both recognise the scale of the challenge contained in the Government's response to the Barker Review of Housing Supply, and that together with the need to provide more effective targeted support to local authorities, there is a need to reform the way housing and regeneration objectives are delivered.

On this basis it is not feasible that EP and HC would do nothing to meet these new challenges. The Department’s review of housing and regeneration concluded that a modernisation of the existing structures should be the base case. This option and the “Do Nothing” option has been combined so that there are two proposals ‘do nothing & modernise’, and establish a ‘new agency’.

### ***Option 1 - Modernisation of Existing Structures***

EP and HC are already successful organisations that meet their Public Service Agreement (PSA) targets. Both recognise the need for further modernisation:

Over the last five years, EP has undergone a significant transformation, with increased innovation and the development of more strategic and market-based approaches to investment. EP has pioneered more efficient ways of utilising public sector land assets and “tipping” projects into private sector viability, e.g. where previous attempts to unlock the project had taken some years.

Over the last two years, HC has started to move away from the old culture of purely grant based funding and has delivered significant improvements in efficiency. The programme for 2006/08 will deliver 33 per cent more homes with only 15 per cent more resource than 2004/06. The introduction of grants to non-RSLs has increased competition and has started to push down grant rates for social housing. On the basis of the plans set out in the HC’s September 2006 publication *Future Investment Approaches - discussion paper*, we have already offered to maintain unit costs for social housing at flat cash. It is essential we get the best value for money from subsidy to social housing to help deliver a step change in housing provision.

While modernisation of EP and HC is welcome, and some important gains could be made by amending the tasking frameworks of the two agencies, the Review found that many important improvements could not practically be delivered through two separate bodies. While previous attempts to work more collaboratively (cross-membership of Boards, previous joint ventures) have delivered benefits, there is scope for further gains. Most notably, the separation of roles leads to:

- Difficulty exploiting strategic synergies between land, housing and planning;
- Difficulty in effectively marshalling scarce skills and expertise, which are spread too thinly across EP, HC and Communities and Local Government;
- Less value for money: EP and the HC are remitted to view projects from a partial perspective, and contribute funding at different points in the project cycle. EP, HC and Communities and Local Government are each remitted



to focus on a discrete set of outputs, rather than the overall outcome/transforming a place. This reduces both the effectiveness of interventions and the scope to develop market-led solutions.

- EP and the HC have some conflicting objectives, most notably, EP is tasked with promoting land value uplift, while HC needs access to the lowest cost land for housing.

### *Costs associated with Option 1*

In the event that the existing organisations (Housing Corporation, English Partnerships and some CLG delivery functions) continued ‘business as usual’, any modernisation of existing structures would be expected as a result of their progression. As a result, intervention would not be required and there would be no additional costs associated with this option.

### *Option 2 – Homes & Communities Agency*

Over time, the evolution of Communities and Local Government’s programmes and the addition of new initiatives have resulted in fragmentation, reducing the scope for effective co-ordination of investment and achieving best value for money. Typically, investment in a locality or project involves several housing and regeneration funding sources (from Communities and Local Government sources directly as well as through EP and HC). Key players come to projects at different points in time, they face different assessment criteria for decisions over funding, and no-one is responsible for offering local government rounded advice on the opportunities to improve a “place”, or to assess what is the minimum public intervention needed to “tip” a project into private sector viability.

In considering the case for a new agency, the review has drawn on the common themes that emerged from the first four Departmental Capability Reviews, notably: the need for shorter, clearer delivery chains, with central headquarters focusing on high-level strategy and policy setting. The review has also benefited from studying the approaches taken by other departments, for example, the Financial Services Authority model used by the Treasury to separate public policy making from day-to-day administration, and the Home Office’s decision to separate-off the Immigration and Nationality Directorate as a new executive agency.

The review found that creating a new agency offered the potential to deliver the most significant benefits, by:

Providing a strong one-stop delivery partner for local government:

1. Building local authority capacity and skills, for example, offering expert support in planning negotiations, including planning obligations;

2. Helping local authorities to assess and unlock their strategic land portfolios;
3. Providing a staircase of support, depending on the needs of a local authority (ranging from advice or master planning, to being a partner in a project, through to undertaking direct delivery on behalf of a local authority, if requested); and
4. Supporting and enabling sub-regional working aligned to housing / employment markets (especially in Growth and Pathfinder Areas).

Improve value for money:

5. Reducing complexity and fragmentation that leads to confusion, increased transaction costs and project delays. The greater the agency's discretion to move money (subject of course to meeting its outcome targets and financial controls), the greater will be its ability to exploit potential synergies and deliver increased gains.
6. Better aligning existing objectives and funding (currently spread through HC, EP and the Department) to allow rounded approaches to a "place", to better address market failures and to maximise the impact of investment.
7. Capturing part of the value of uplift from public investment to recycle for future investment.
8. Moving from a position where we fund social housing directly to a more market sensitive approach that asks what investment is needed to open up a site, increasing private sector leverage and driving down costs.
9. Increased procurement efficiencies associated with better economies of scale and the agency's negotiating power as an important regional operator.

***Improving the sustainability of interventions.***

By taking a holistic approach and emphasising the importance of understanding the underlying problem in an area, the agency will deliver solutions that last. Otherwise, we risk projects requiring reinvestment sooner, leading to lower value for money and fewer lasting benefits for the community.

***Devolving delivery and administrative roles.***

This would help to build a new strategic and policy focused Department. Devolving core Departmental delivery roles to the agency would allow Ministers to focus on setting the strategic framework, and ensure that where they do need to become involved in detailed decisions, advice is delivery focused and grounded in a fuller understanding of regional and local priorities.

The new agency would have a more coherent regional presence than under the current arrangements, because it would combine the existing EP and HC regional presence, giving coverage in all the Government Office regions and with an enhanced critical mass. It would be tasked with supporting the Regional Assemblies and Regional Development Agencies, by helping to develop and deliver more integrated and aligned strategies for economic development, land and housing. The new agency would help to marshal resources to deliver regional priorities, for example, by helping to unlock strategic sites, be they infrastructure or housing growth areas.

Creating a more strategic and coherent organisation provides a more effective basis for implementing the Lyons agenda.

There are other non-quantifiable benefits such as:

1. net job creation through the development of housing and social facilities – e.g. businesses will be attracted to areas where there is an employment pool, and consequently residents will be attracted to areas where there is work. In areas such as these we would anticipate employment growth.
2. Other non-quantifiable benefits include the improvement in health e.g. community design could provide walkways, cycle paths, parks etc that encourage walking, running and cycling. With better designed environments that aim to ‘design in health measures’ residents general levels of health should not be adversely affected.

### ***Benefits and costs associated with Option 2***

Detailed modelling of the potential operating costs for the new agency has been undertaken, based on: an examination of the existing cost base of HC and EP; an identification of spare accommodation within the two organisations; an assessment of the potential range of staff numbers currently engaged in Departmental delivery; and a consideration of the scope for ‘back office’ savings. The work found that the upfront costs for establishing the new agency are around £23m (NPV is 22.1 based on a 0.035 discount), and this is expected to be spread £3/13/6m over the CSR period.

Cost reductions of £2.5m-£3m should be achievable over time through rationalisation (in back-office efficiencies) and that this coupled with revenue generation should mean that the average annual costs of the Homes and Communities Agency should be around £17m.

The average annual benefits anticipated for the Agency between the period 07/08 – 2013/14 (7 years) is a present value total of £1,368m. This consists of programme financial benefits of £1,356m (detailed on page 3) plus, admin

savings of a total of £12m (see below). The present value total benefit of £1,356m has been calculated as £1,168m.

The admin savings identified, consists of £3m per year (across the combined budgets) in running costs, primarily through back-office efficiencies which would come on stream between 2010/11 to 2014 (£12m). Although not in the review, these administration savings consist of:

1. £1.1m in office accommodation costs (which will be realisable in full from 2010/11 on); and
2. £1.9m from back-office support staff costs (which will be realisable from 2010/11).

The total net benefit (best estimate of) is calculated from programme financial benefits of £1,356m minus net operating cost/savings of £11m, the total of which is £1,146m.

However the state of the housing market has changed markedly since the options appraisal was conducted in 2006. As a result, there are likely to be significant downside risks to the estimates in the benefits model.

A summary of the benefits rationale can be found at annex A.

### **Policy option taken forward**

It was not feasible for the Housing Corporation and English Partnerships to continue in their current form if the Government's challenging targets were to be achieved. A new approach was required to avoid a significant risk that both organisations would be unable to maintain the levels of current delivery let alone increase outputs in line with Government commitments. Given these findings and justifications and the support within the responses to the consultation document the decision has been taken to proceed with option three, forming the Homes & Communities Agency.

### ***HCA Governance Arrangements***

Schedule 1 of the Housing and Regeneration Act 2008<sup>2</sup> sets out the constitution of the HCA, and includes provisions about its status, membership, procedure, delegation, appointment of its chief executive and other employees, pay and pensions, accounts and annual reports. The consent of the Secretary of State is required for certain key decisions of the HCA in relation to appointments and finances.

<sup>2</sup> The Housing & Regeneration Act 2008 is available to download at: [http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga\\_20080017\\_en.pdf](http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080017_en.pdf)

In addition, all Government Agencies are subject to Cabinet Office<sup>3</sup> guidance and HM Treasury provides a code of practice<sup>4</sup> which provides an overview of the processes and responsibilities within Government Departments and their agencies.

The code is guidance on good practice, building on existing constitutional and statutory practice. Departments should apply its principles flexibly in the context of their own circumstances. As set out in the code the board of each department should give a clear account of how far it has complied with key aspects of the code, including an explanation of why any alternative approaches have been chosen, such as, overriding legal constraints. A report on the each department's corporate governance should form part of the material accompanying its annual resource accounts.

### **Specific Impact Tests**

#### **Economic**

#### ***Competition Assessment***

*Will the proposal have a significant impact on competition?*

The proposal to create HCA should have little or no impact on competition. The agency is being established as a means to delivering, or facilitating the provision of, Government's commitments to deliver greater numbers of housing (mainly social and affordable) and also to carry out regeneration across England. Whilst the agency will have the powers to be a direct provider of housing (affordable and private) it is expected that it would only do so where the market is failing to deliver the housing levels needed for that area. If the delivery of housing in an area is sufficient for that area, HCA would have no reason to involve itself in the delivery of housing. However, if housing delivery is not sufficient (market failure) HCA could intervene but the impact on competition should be negligible as there is no or insufficient market involvement, indeed, in such areas the development of private housing is much more attractive to developers than affordable housing and it is affordable housing that HCA would be expected to provide or facilitate the provision of. We therefore expect that HCA's effect on competition would be minimal.

Whilst we expect HCA to work in areas where there is market failure it cannot be presumed that there will be no provision of private or affordable housing. However, should the scenario arise whereby HCA is providing market (rather than affordable) housing it is expected that there will be competitive neutrality, that is, a level playing field between public and private developers. However, the rules

<sup>3</sup> Cabinet Office guidance on the creation of non departmental bodies can be found at: <http://www.civilservice.gov.uk/about/public/bodies.asp>

<sup>4</sup> Corporate Governance in Central Government Departments: Code of Practice at: [http://www.hm-treasury.gov.uk/documents/public\\_spending\\_reporting/governance\\_risk/psr\\_governance\\_corporate.cfm](http://www.hm-treasury.gov.uk/documents/public_spending_reporting/governance_risk/psr_governance_corporate.cfm)

governing the register of surplus sector land will remain whereby surplus public sector land will be entered on the register and remain there for 40 days to allow public bodies/ agencies to suggest alternative uses for that land. If, after 40 days, the land has not been sold at market value to a public body/ agency it will be put to the open market. This is a continuation of current working practices and so the formation of HCA will not create any new or different impact in this regard.

The establishment of HCA is not expected to either directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers ability to compete vigorously. Indeed, it should assist suppliers by providing more land for development of housing thereby encouraging work in this area and the ability to compete will be more streamlined as HCA will be a 'one stop shop', where as previously developers may have needed to liaise with both EP & HC.

No responses were received from the consultation exercise that indicated that the formation of HCA will impact on competition.

#### ***Small Firms Impact Test***

*Will the proposal impact upon small businesses?*

We do not believe the proposals will significantly impact on small firms working in housing as they do not change the way the housing market works nor do they regulate to change building standards. The Office of Fair Trading launched a study on 22 June 2007 into the UKs house building market which will focus on the potential competition and consumer concerns within the market, and will look at barriers to entry into the market. Our proposal should help to ease these barriers through the provision of more affordable housing.

The creation of HCA should not have an impact on small businesses either. The new agency is to be created by merging two already established government agencies and certain Departmental delivery functions. It will carry out a broadly similar role to that of the current individual parts but will do so more economically and efficiently. Indeed, the work carried out by the new agency will be more geared towards unlocking large sites, providing funding for the delivery of housing and facilitating in the regeneration of areas where the market will not intervene due to disproportionate costs, thereby operating at a level above that which small firms would be operating.

No responses were received through the partial impact assessment consultation exercise that indicated that small business would be affected by the creation of HCA.

***Legal Aid Impact test***

There is no impact upon legal aid issues under HCA proposals.

***Other Economic issues:***

*Will the proposal bring receipts or savings to Government?*

The Department's economic modelling suggests that creating HCA gives a potential net present value of over £1 billion to 2013/14 based on recovery and recycling of efficiency savings throughout the period. It is expected that any savings made in this manner will be reinvested in the new agency.

*Will it impact on costs, quality or availability of goods and services?*

One of the core functions of HCA is the provision of housing, mainly affordable and supported housing. The new agency will therefore have a positive impact on the cost, quality and availability of housing. This will be due to a greater choice and the cost of housing will at least not rise as fast as in recent times – in the Government's response to the Barker review it is anticipated that by 2026 only three out of ten of today's (as at 2005) will be able to afford to buy a home when they have families of their own if we maintain current (again, as at 2005) building rates – the quality should be of at least decent homes standards with a view to all new housing post 2016 being carbon neutral thereby achieving or going beyond a Government set minimum standard. HCA should also assist in delivering local government services through the proposals contained in the Local Government White Paper. Overall, HCA should have a positive impact on the costs, quality and availability of goods and services.

*Will it impact on the public sector, the third sector, consumer?*

There will be positive impacts on the public sector, the third sector and the consumer through the greater provision of housing and the regeneration of communities. HCA will also assist in capacity building in local government in support of the Local Government White Paper.

*Will the proposal result in new technologies?*

The establishment of HCA will be a key player in discovering, establishing, creating new methods in housing construction to comply with the carbon neutral exercise of new developments which comes into effect in 2016.

*Will the proposal result in a change in the investment behaviour both in the UK and UK firms overseas and into particular industries?*

We do not consider this to be an issue for the establishment of HCA.

## Environmental

### *Carbon assessment*

*Will the policy option lead to a change in the emission of greenhouse gases?*

In itself, the creation of a new agency, replacing two already existing agencies, should not lead to an increase in the emission of greenhouses gases.

The *policies* that HCA will deliver may increase the level of greenhouse gas emissions:

- HCA exists to increase, or produce a “step change” in the provision of housing and regeneration. More homes built to house increasing numbers of single-person households may contribute to an increase in emissions. However, CLG has made commitments that all new homes built after 2016 will be zero-carbon, and as intermediate targets by 2010 new homes will emit 20% less than they currently do, and by 2013, 44% less. The document *Building a Greener Future* provides more detail on the target and the strategy for achieving this. Also, the document *The Future of the Code for Sustainable Homes* gives details on how we are committed to making homes more energy efficient. Both documents can be found on the Department’s website <http://www.communities.gov.uk/publications/planningandbuilding/futuretowardszerocarbon> and <http://www.communities.gov.uk/publications/planningandbuilding/futurecodeconsultation> respectively.
- The location of new communities and homes could increase car use unless or until they are serviced by adequate public transport or until work opportunities are located close enough to peoples’ homes to encourage people not to drive to work.
- The construction techniques used to build the extra new homes and physically regenerate communities will temporarily produce increased levels of emissions.
- A new agency HQ, or a reduction in the number of offices used by the agency, may help reduce its contribution to greenhouse gas emissions (compared to the bodies it will replace). However, no final decision has yet been taken on the placement of offices for the new agency.
- The *policies* due to be delivered by HCA may help to reduce carbon emissions by:
  - Replacing old and inefficient homes and other community buildings.
  - People moving from inefficient properties into new, more environmentally sustainable housing.
  - Ensuring that reduction of carbon emissions is built into plans for homes, and communities.



### *Other environmental*

*Will the policy option be vulnerable to the predicted effects of climate change?*

The policies due to be delivered by HCA may be affected by climate change:

- The potential for flooding, for example, may affect decisions on sites for new communities and housing. Although, the planning system has an important role to play in this regard by ensuring that only appropriate developments are constructed in the appropriate places. In December 2006 CLG published *Planning Policy Statement 25: Development and Flood Risk (PPS25)* which will inform future house building siting and development.
- The construction of housing and creation of communities may require more expensive materials to mitigate the impact of more extreme weather conditions.

These scenarios would have been relevant regardless of the existence of HCA. The agency as an entity would not be any more vulnerable to the effects of climate change than the bodies it is replacing.

The agency's delivery could be more exposed to the effects of climate change than the bodies it replaces because it will be operating in more locations, building more homes and communities.

*Will the policy option lead to a change in financial costs or the environmental health impacts of waste management?*

The new agency as a body should not lead to a change in financial costs or the environmental impacts of waste management.

The policies delivered by the agency, i.e. increased house-building activity, could shift increased waste management costs onto particular communities or regions. However, waste management should be part of the regional plan-making processes that are carried out for each region.

*Will the policy option impact significantly on air quality?*

The agency as an entity will not have a significant impact on air quality.

Replacement of old housing will not impact significantly on air quality.

The location of communities delivered by the new homes agency may impact on air quality if their location and layout encourage increased car usage, although transport policies and location of work places close to homes should help to make this a temporary impact.

*Will the policy option involve any material change to the appearance of the landscape or townscape?*

Delivery by the agency of new communities and housing (at an increased level) will materially change the appearance of the landscape or townscape. However, improved design standards should help to alleviate any appearance to the landscape and, in most cases, help to make the appearance more attractive, useable and appealing to its community.

*Will the proposal change 1) the degree of water pollution, 2) levels of abstraction of water or 3) exposure to flood risk?*

The increased number of new homes the agency will deliver will increase the levels of abstraction of water. However, the levels of water usage is a consideration when formulating regional planning documents.

The policy delivered by HCA should not increase the level of water pollution. Clean-up of brownfield sites earmarked for new communities may reduce water pollution in those places.

Increased building of homes on flood plains may increase exposure to flood risk, but improvements in flood defences as part of a community or regional plan should guard against this.

*Will the policy option disturb or enhance habitat or wildlife?*

Increased numbers of new homes and new communities, even if built on brownfield sites, will inevitably disturb some wildlife or habitat although protected species are subject to special protection rights.

*Will the policy option affect the number of people exposed to noise or the levels to which they are exposed?*

Delivery of policy by the agency may temporarily expose people to increased levels of noise during construction and redevelopment of homes and communities but given that a majority of development is expected to take place on brownfield land which, by its nature, is not generally located in residential areas this issue should not greatly impact on residential areas.

## **Social**

### ***Health Impact Assessment***

We have answered the three screening questions for the health impact assessment and our responses are as follows:

*Will your policy have a significant impact on human health by virtue of its effects on the following wider determinants of health?*

e.g. Income, Crime, Environment, Transport, Housing, Education, Employment, Agriculture, Social cohesion

Research carried out by Shelter has clearly shown that poor housing has a detrimental affect on health. For example, in their study, *Chance of A Lifetime – The Impact of Bad Housing on Children’s Lives*, Shelter found that a child living in overcrowded housing is up to 10 times more likely to contract meningitis, and that bad housing increases the risk of a child suffering severe ill health and disability by up to 25%. The report also found that children living in damp homes are between one and a half and three times more prone to coughing and wheezing – symptoms of asthma and other respiratory conditions – than children living in dry homes.

We recognise the important role that housing and regeneration policy can play in improving public health and expect that the development of HCA will contribute to improving public health by providing a greater supply of decent homes.

*Will there be a significant impact on any of the following lifestyle related variables?*

e.g. Physical activity, Diet, Smoking, drugs, or alcohol use, Sexual behaviour, Accidents and stress at home or work

There is no significant impact on these lifestyle related variables.

*Is there likely to be a significant demand on any of the following health and social care services?*

There is no significant impact on health and social care services from these policies, other than the need for the provision of infrastructure to support new housing growth. This will be addressed as part of wider work with the Department of Health on infrastructure provision.

Also, the powers of HCA provide that should it see fit it could provide, or facilitate the provision of, infrastructure, this could include health, social, recreational and educational facilities and they also have the powers to prevent or reduce anti-social behaviour and crime or the fear of them both. These powers could help to have a positive impact on health matters.

A full Health Impact Assessment is therefore not required.

### *Race Equality*

HCA aims to meet its responsibilities under the race equality duty: by promoting good relations between groups; by developing mixed communities and estate regeneration, and furthering strong and safe existing communities.

Poor quality housing and overcrowding are real issues for Black and Minority Ethnic (BME) communities in some parts of the country. BME communities are concentrated in certain areas, London has the highest proportion. Other regions with high concentrations of BME communities are the West Midlands, Yorkshire and Humberside, and the North-West (Housing and BME Communities: Review of the evidence base [2001]). In London 12.8% BME communities live in overcrowded housing of all tenures compared to 4.1% for White. The percentages for all of England are 10.4% and 1.8% respectively (figures are averaged over three years 2003/4 to 2005/6 DCLG Survey of Housing) HCA will lead in providing large family homes of a decent standard in these areas.

The 2001 Census (ONS) showed that Black African and Bangladeshi communities were more likely to live in social rented housing. HCA will have a positive impact on groups, living in social housing, by improving the supply and quality of social housing. HCA recognises the need for sensitive and well-tuned policies to support minority ethnic households wishing to move to non-traditional areas within the social rented sector but also to widen housing options within groups for those who wish to stay.

HCA recognises the need to provide shared ownership and low cost ownership to groups that wish to own their own home. It intends to expand the provision of affordable homes, which will further the Government's goal; to ensure fair housing for all.

Through the promotion of social cohesion and the Respect Agenda, HCA will have a positive impact on the elimination of discrimination.

HCA realise that race equality must be addressed through considering regeneration strategies. Through housing and environmental upgrading, living conditions will improve, but will also combat the stigma associated with the negative labelling of areas, and the effects of this on the low-esteem on young people in particular. It will widen housing options within established ethnic groups, for example, through the introduction of mixed tenures and housing types to satisfy the housing demands of different generations, social classes and family types within a preferred neighbourhood. It will consult with, and involve, local communities.

Housing is said to be 'one of the best service sectors in terms of minority ethnic employment' (Cabinet Office, 2000). However, it is recognised that more needs to be done to see BME staff finding employment in senior management positions in mainstream organisations (Somerville, Sodhi and Steele 2000). Employment practices and patterns will be monitored further, across the range of housing sectors and types of organisations where feasible.

The formation of HCA will not have an adverse impact on race equality. Where relevant housing and regeneration projects are developed, for example in the improvement of community facilities, they will be monitored to ensure that there will be no negative impact, in accordance with, the Race Relations Act as amended (2001).

### *Gender equality*

The work that HCA will be tasked with will expect to enhance gender equality through the provision of a greater supply of single person homes and through the development of supported housing, some of which will be used to house women (e.g. fleeing domestic violence or female ex-offenders).

### *Disability*

The impact of the new homes agency on people with disabilities is expected to be positive.

HCA is committed to striving for equal opportunities and social justice for disabled people. It is committed to setting standards for, and providing better homes and neighbourhoods in which disabled people can live a full and active life.

HCA recognises the high level of people with a disability living in social rented accommodation compared to the private sector. A recent survey revealed that 624,000 individuals, reported to have a medical condition or disability that required specially adapted accommodation, lived in social rented housing compared to 84,000 who lived in private housing. This is taken from a total of 1,368,000 individuals (Survey of English Housing, Office of Deputy Prime Minister 2003/4). 76% of individuals lived in social housing that they considered to be 'suitable', compared to 67% in private rented housing.

A third of all households living in non-decent homes include someone with a long-term illness or disability. HCA wants to change that.

On 4th December 2006, CLG published its Disability Equality Scheme – Improving Outcomes. The scheme includes an Action Plan of what the Department will do over the next three years to carry out improved results for disabled people.

A series of events were held to involve disabled people who were experts in Departmental policy, programmes and functional areas. The Disability Rights Commission provided contacts for disabled people with a strong interest in housing issues and the department invited those individuals as well as additional contacts to a housing policy event. Those unable to attend were interviewed by phone. One of the overall priorities was improving housing opportunities. The most common barriers identified were unsuitable accommodation, difficulty in finding alternative properties within the housing market and an adaptation process that can be complex. HCA will ensure that an increasing numbers of disabled people will live in more accessible homes. This will be achieved by HCA's objective, to increase the percentage of social housing built to the Lifetime Homes Standard (LTH), and ensure that most new build schemes, will adopt the LTH standard from 2010. The Equalities Programme Executive in CLG will monitor progress towards disability equality, including the Lifetime Homes Standard, and will report on progress made against actions in the 2006 Scheme.

HCA is committed to the recruitment, retention and development of disabled employees.

HCA intends to work to the spirit as well as the letter of the Disability Discrimination Act 2005, and will work to ensure that it fulfils its commitment to taking disability equality, beyond rights and policies, and making it a reality in people's everyday lives.

### *Human Rights*

HCA will have powers at least as wide as the Urban Regeneration Agency and the Commission for the New Towns. It will also take on investment functions from the Housing Corporation, as well as some existing functions of the Secretary of State. Those powers will include powers in relation to compulsory purchase and planning. We consider that these proposed powers may engage Articles 6 and 8 and Article 1 of the First Protocol of the European Convention on Human Rights. However, in framing the legislation, the Department will ensure that the powers given to the HCA will be in compliance with the ECHR requirements.

### *Rural proofing*

The delivery of increased housing supply has a clear spatial dimension and ensuring that we clearly recognise the specific housing challenges in rural areas is crucial in delivering that new supply. A high local income / house price ratio is a feature of many rural housing markets, exacerbated by a more limited supply of suitable land. 19% of England's population live in rural settlements and many rural areas face a significant shortage of affordable housing. While there are regional differences, more than 50% of local authorities with the highest house price to income ratio are in rural areas. Only 11% of homes in rural areas are social

housing for rent, compared to 21% in urban settlements. Whilst on average, rural incomes are higher than urban incomes, nevertheless 21% of households in rural settlements have incomes of less than 60% of the national median (compared to 26% of urban households).

In 2005 we set up the Affordable Rural Housing Commission to inquire into the scale, nature and implications of the shortage of affordable housing for rural communities in England. The Commission recognised that, in population terms rural districts were receiving a proportionate share of affordable housing investment, but nonetheless identified continuing barriers to delivery, especially in smaller settlements. Its work was invaluable in helping our objective to improve access to decent accommodation at an affordable price for those living and working in rural areas.

Following the Commission's report, we established a Rural Housing Advisory Group within the Housing Corporation to consider further innovative and efficient ways of delivering more rural affordable housing. The Group is looking at how we can better meet the particular challenges faced by rural communities and is identifying new schemes to increase rural housing supply and finance affordable housing. As part of this, seven pilot Community Land Trusts are being established in rural areas.

### **Other**

*Could the proposals have a different impact on children and young people? Older people? Income groups? Devolved countries & particular regions of the UK?*

Aside from the provision of greater housing numbers HCA will also be involved in regeneration issues. Both of these aspects will impact upon the different groups of people noted above in a positive way as the new homes and surrounding communal areas such as parks, walkways and social amenities such as healthcare and educational facilities will help to bring greater choice and accessibility to residents of those and surrounding areas. HCA will have powers to provide or facilitate the provision of facilities and amenities for the groups noted above should it see fit or if a particular development requires the provision of such facilities. HCA will therefore have a positive social impact upon children, young people, old people and different income groups.

The powers of HCA will only be exercisable in England, therefore it will have no social impact upon the devolved administrations. Historically, the agencies that make up HCA had little involvement with the devolved administrations (English Partnerships retained covenant and clawback rights of a specific area of land in Wales which it is hoped will be relinquished) and therefore this involvement will not impact those administrations.

The work that HCA is tasked to carry out will have a positive impact upon those issues detailed above. Homes will be built so as to minimise carbon emissions; communities will be designed and developed to design in health measures including the provision of the appropriate amenities and also reducing or preventing the fear of anti-social behaviour and crime. Economic considerations will be taken into account as the new agency has the powers to contribute to or encourage economic development by developing or encouraging new businesses and providing employment and training opportunities. HCA could provide guidance or advice for promoting good governance under its power to provide support or advice if it considered it necessary. The use of science responsibly would be a matter of good operating practice, although we envisage that the use of scientific procedures would mainly be in the developing or regenerating of land and the construction of carbon efficient housing. To enforce the issue of sustainable development it is one of the objects that HCA will operate by.

### Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No



## Annexes

### **ANNEX A – Baseline Benefits Model (Options Appraisal 2006)**

A 2006 options appraisal made a strong case for improved delivery whilst generating additional financial resources which could be reinvested in the HCA to deliver a greater number of outputs.

As part of the options appraisal, a detailed benefits review was performed to identify the potential financial benefits of the HCA and the anticipated impact on outputs. This included the identification of potential efficiencies across current programmes and potential additional recoveries, which could be used for reinvestment to increase output delivery.

Key assumptions underpinning the original review include:

- Programmes to be transferred to the HCA were assumed to be Housing Corporation's National Affordable Housing Programme (NAHP), all English Partnership programmes and several CLG programmes – Decent Homes Programme (ALMO, Housing PFI, LSVT), Growth, HMRP and Mixed Communities;
- Budgets were based upon estimates as at November 2006;
- 'Commitment' levels were based on estimates as at November 2006 and were not generated from the financial systems of the HC, EP and CLG;
- Anticipated efficiencies/benefits were considered on a workstream by workstream basis – the
- workstreams related to key activities undertaken by the HC, EP and CLG and included estate based regeneration, mixed use regeneration, strategic growth, affordable housing infill, affordable housing S106, Homebuy/First Time Buyers Initiative (FTBI), Supported housing and rural. Individual efficiency assumptions were identified on a workstream by workstream basis;
- Efficiencies/benefits assumptions were applied to 'uncommitted' expenditure only to reflect existing legal obligations and a reduced ability to change delivery/procurement models for 'committed' programmes; and
- Programmes would be delivered on a national basis with long term non-ring fencing of resources beyond current CSR to provide maximum flexibility re investment decisions.

As part of the 2006 review, a range of benefits/efficiencies expected to be generated by the HCA were identified including:

- Reduction in frictional costs – by removing duplication of activities and bringing together professional teams;
- More effective forms of investment – applying a holistic approach to project appraisal resulting in a more efficient use of public sector resources and powers to achieve desired outcomes, including sustainable regeneration;
- Application of better professional skills to existing programmes – by applying different skill sets of all
- organisations to a combined set of activities, especially s106 schemes and leveraging public sector land; and
- Increased negotiating power with developers and suppliers.

In terms of housing outputs, the revised financial benefits of approximately £1 billion is equivalent to approximately **15,000 new homes** within the first five years of the HCA. Of the approximately £1 billion benefits, this is forecast to be primarily delivered by:

#### **S106 workstream – in the region of £409 million**

This programme refers to the application of minimum grant aid to enable affordable housing (social rented and new build low cost home ownership (LCHO) requirements to be met. This is currently delivered by HC through payment of Social Housing Grant (SHG) to Registered Social Landlords (RSLs) and non-RSL developers with funding on Section 106 sites (sites where the local authority requires developers to provide affordable housing as part of a planning consent). The benefits model showed the nature of investment changing over time – Section 106 outputs switching, in part, away from grant aided social rent/LCHO products towards shared equity/first time buyer schemes, provided solely by the private sector (and which they could afford without grant). At the same time, grant-aided outputs would switch to increased strategic site/public land opportunities generated by the Agency. Achieving greater private sector contribution to s106 affordable housing requires clear signals to the market which can be more easily given by a new agency because of its scale of involvement in the market.

To achieve this increased efficiency will require robust s106 negotiations, so the new agency would also work closely with local authorities to enhance their skills and resources when dealing with developers and help create more consistent national practices. This would be achieved by the regional and area teams of the new agency and through specialist support teams and extending the use of development appraisal toolkits.

**Strategic growth workstream – in the region of £248 million**

Increased flexibilities in how programmes can be used to meet local needs, including targeting the earliest stages of project development (site assembly, decant, etc), or infrastructure where public sector is best placed to take risk. Greater opportunities for risk sharing and more potential for sharing returns. Increased capacity to level in additional private finance based on major infrastructure and surplus public sector land portfolio opportunities.

**Mixed use regeneration – in the region of £273 million**

Increased flexibilities in how programmes can be used to meet local needs, including targeting the earliest stages of project development (site assembly, decant, etc) where public sector is best placed to take risk. Greater opportunities for risk sharing and more potential for sharing returns.

**Estate regeneration – in the region of £146 million**

Moving from a subsidy to investment approach to estate regeneration requires an estate by estate appraisal of potential to increase densities, introduce open market sale housing and benefit from latent land value uplifts and increases housing outputs.

The balance of the financial benefits is in the following work streams:

- Affordable Housing (brownfield) – in the range of £42 million approx
- Homebuy/FTBI – in the range of £16 million approx

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Exempting some Local Authorities from the HRA subsidy system</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 4 October 2007
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Stephen Edwards

**Telephone:** 020-7944-3566

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

Self-financing is intended to offer an alternative to the current system of redistributing revenues through the Housing Revenue Account subsidy system. Evidence suggests that the current system, based on annual determinations, may inhibit long term planning, active asset management and development of an optimally efficient cycle of repairs and maintenance.

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

We set up a project to investigate the potential benefits of self-financing, working with a small group of high performing LAs and ALMOs and other experts from the housing sector. Six local authorities – three with ALMOs and three without ALMOs – were asked to develop model business plans to show the costs and benefits of operating outside the Housing Revenue Account subsidy system and to compare these with delivery within the system. Our intention now is to take powers to allow us to run live pilots with a number of councils before deciding whether to offer others this option.

**What policy options have been considered? Please justify any preferred option.**

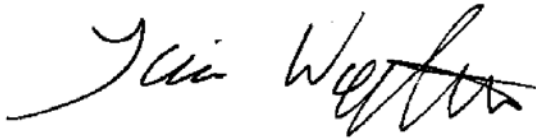
The project considered whether the benefits of self-financing could be secured by changes within the HRA subsidy system, for example by making it more predictable. But the benefits identified in the model business plans depend on operating outside the system, having control over income streams and freedom to make investment decisions. The incentives which this provides to better and more active asset management cannot be replicated to any significant degree by changes to the rules within a redistributive system.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Authorities would be invited to apply for pilot status, starting at the earliest in spring 2009. We expect evidence to be gathered in negotiating the terms of the pilots and in implementation.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options..***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Wray', is written over a horizontal line.

**Date:** 6 October 2008

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: Self-financing</b>		<b>Description: Allowing a local authority to operate outside the Housing Revenue Account subsidy system</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Local authorities would apply to become self-financing. The process would involve producing a business plan (£20k) consulting with tenants/residents (£60k) and a stock condition survey (£100k). There are no additional ongoing costs. A self-financing settlement set at the NPV of subsidy has no costs to Government.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£180k	1	
	<b>Average Annual Cost</b> (excluding one-off)		
	£0		
		<b>Total Cost (PV)</b>	<b>£180k</b>
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p> <p>There are no other significant non-monetised costs. The process involves a change in the financing system for housing services. This would not have a direct cost impact on any external groups.</p>			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  The project has identified two sources of additional investment from self-financing. i) Proceeds from sales of houses on the open market and for shared ownership in new build and redevelopment schemes (avg NPV £52m); and ii) efficiency savings (avg NPV £29m).
	<b>One-off</b>	<b>Yrs</b>	
	£0	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£8.6m		
		<b>Total Benefit (PV)</b>	<b>£81m</b>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'</p> <p>Self-financing business plans identify a range of benefits to residents, including environmental improvements, new build and reprovion, maximising the use of assets to transform estates and delivering more affordable housing.</p>			
<p><b>Key Assumptions/Sensitivities/Risks</b> A large range of assumptions, sensitivities and risks are identified in the project. Changes to HRA subsidy levels, rent levels, interest rates, and inflation would all impact on the 30 year self-financing business plan.</p>			

<b>Price Base Year</b> 2006	<b>Time Period Years</b> 30	<b>Net Benefit Range (NPV)</b> <b>£N/A</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£81m</b>			
What is the geographic coverage of the policy/option?			England			
On what date will the policy be implemented?			Spring 2009			
Which organisation(s) will enforce the policy?			CLG/HCA			
What is the total annual cost of enforcement for these organisations?			£0			
Does enforcement comply with Hampton principles?			Yes			
Will implementation go beyond minimum EU requirements?			No			
What is the value of the proposed offsetting measure per year?			£0			
What is the value of changes in greenhouse gas emissions?			£0			
Will the proposal have a significant impact on competition?			No			
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large	
Are any of these organisations exempt?		No	No	N/A	N/A	
<b>Impact on Admin Burdens Baseline (2005 Prices)</b>			<b>(Increase – Decrease)</b>			
Increase of £0		Decrease of £0		<b>Net Impact £0</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>		

## Evidence Base (for summary sheets)

The powers being proposed in the Housing & Regeneration Bill would enable local authorities to apply to the Secretary of State to opt out of the Housing Revenue Account subsidy system. The HRA subsidy system redistributes surpluses between local housing authorities, based on notional rental incomes and notional spending needs of each housing authority with HRA stock.

An agreement between the authority and the Secretary of State would set out the conditions for leaving the HRA subsidy system. Both sides would need to agree these; if there was no agreement, the authority would remain within the current system.

Communities and Local Government will consult further on the process and conditions for self-financing. An 18 month project involving six local authorities who have modelled self-financing has examined costs, benefits and technical and practical issues. A report of the findings of the group will be published. This impact assessment draws on material from the group.

The principle of self-financing is fiscal neutrality with the current HRA subsidy system. Self-financing local authorities would have a one-off adjustment to their HRA debt, based on the net present value of anticipated future payments into or out of the HRA subsidy system. For those authorities that make annual deficits when their notional income is compared with their notional spending needs (as determined by the HRAS formula) the subsidy payments from government would be replaced by a one-off reduction in their current debt. Those authorities that make surpluses, and who are therefore net contributors to the HRAS, would make a lump sum payment to government.

On this NPV basis, the financial impact to Government of self-financing is neutral. In addition, the initial adjustment would involve reducing debt in one part of the public sector with an equivalent increase in another.

### **Basis for the costs and benefits in this impact assessment**

This impact assessment assumes that a self-financing deal between a local authority and central government is struck at this 'neutral' NPV settlement level. The benefits are therefore those created by the nature of self-financing, not as a result of extra resources from Government. They arise from the ability to plan longer term and to improve local asset management, generating more investment capacity from local assets and using this more efficiently. And as a result there are no 'costs' arising from a transfer of resources from one body to another.



Government's spending plans are typically set out over a three year spending review period. However, as the self-financing settlement would be a one off adjustment for the long term, assumptions towards the future treatment of housing subsidy have been made over a 30 year period.

The assumptions used in the NPV calculation are consistent with the medium term planning targets set within the Comprehensive Spending Review 2007 for public expenditure totals from 2008 to 2011. The assumptions beyond 2011 reflect an assumed continuation of the policy to allow guideline rents to converge to formula rents by 2012, for formula rents to increase in real terms by 0.5% per annum and for expenditure allowances to increase in line with inflation.

The discount factor for the calculation of the Net Present Value is a compounded sum of:

- The Treasury Test Discount Rate: 3.5% – the real return expected for all project appraisals within Government
- The long term inflation rate: 2.7%, the GDP deflator representing the Government's long term target for economic growth.

The factor in use is 6.3%.

It should be noted that, based on the modelling work done by the six authorities, a settlement at this NPV would not be viable for most councils. This settlement would create an opening debt level within those councils higher than could be supported by their income. This position would change if there were changes to the key variables in the NPV calculation – including assumptions about future rent levels, HRA allowances, interest rates, inflation etc.

The position would also change if Government included an additional sum in self-financing settlements to reflect a transfer of risk from central government to the local authority. But government is not currently proposing to provide additional resources for self-financing, so this impact assessment does not set out the costs and benefits of such an approach.

### **Impact on public sector borrowing and spending**

The net present value methodology for calculating a self-financing settlement is intended to provide a local authority with a level of resources that is broadly equivalent to the resources it would have received under the subsidy system. The settlement would not incorporate extra funding to deliver outputs which are not funded through the subsidy system. Along with all other authorities however, self-financing councils would have opportunities to secure any additional funding support which is made available outside the subsidy system.

Self-financing would give councils a more predictable income stream, which could enable them to borrow more. Council borrowing is governed by the prudential borrowing code, based on affordability, with reserve powers if overall levels threaten national policies. This would extend to self-financing activities.

In addition, the modelling work has produced options for predicting and controlling borrowing levels by self-financing councils over the period of the business plans. These would be agreed with central Government and reviewed at regular intervals. A decision to pilot self-financing will be subject to securing satisfactory controls on public borrowing that safeguard national finance policies as well as ensuring local affordability.

### **Benefits from self-financing**

The modelling work has suggested that self financing has the potential to deliver efficiencies, deliver better asset management, lever in private investment, and create opportunities for LAs to add to new supply.

The model business plans identify potential to deliver additional outputs and help meet longer term objectives of creating mixed, sustainable communities. These would include major remodelling and renovation work, improvements to the areas outside the homes and additional and replacement homes. The plans would roughly double the projected levels of capital investment through a mix of private finance, additional borrowing and additional rents from new build and re-provision.

The modelling authorities were asked to identify and quantify the benefits which could only be delivered by changing from annual subsidy to self-financing. These include:

- efficiencies of 10% – 20% from better planning of investment and repairs – for example, by moving from annual piecemeal work to a planned cycle of major and minor repairs.
- a direct link between what people pay in rents and charges and what they receive in services – enabling future decisions to reflect local choices and increasing local accountability.
- more strategic asset management, including replacements, disposals, and major remodelling schemes to meet changing local needs.
- increased investment – doubling projected levels of capital investment over 30 years through private finance, additional borrowing, and additional rents from new build and re-provision.

## **Evidence Base**

In spring 2006 a project was established to test the costs and benefits of self-financing. Six high performing local authorities reflecting a wide range of local circumstances were invited to work up detailed model business plans on a self-financing basis. The detailed modelling work by the six authorities was based on updated stock condition surveys. It tests a range of assumptions and sensitivities.

Their work was scrutinised and supported by a group of representatives from a range of housing bodies and other experts in the field, meeting regularly as a 'contact group'.

Issues and risks were identified and examined by the modelling authorities and the contact group. A series of papers were produced covering these issues. Material in this impact assessment is drawn from this detailed modelling work. A summary of the findings of the project group will be published in due course.

## **Benefits from self-financing**

The following table shows the annual benefits which the modelling work by the six local authorities has identified. This represents the additional local investment in housing which self-financing could secure, compared to operating within the HRA subsidy system.

It assumes that the self-financing settlement itself does not increase the share of national housing resources, ie it assumes that the settlement 'price' for leaving the HRA subsidy system is the net present value of the subsidies or surpluses that would otherwise have been paid into or out by Government.

This extra investment comes from two sources:

- i) sales proceeds levered in from new build and redevelopment schemes which include market sales, shared equity and social rental units; and
- ii) efficiencies in procurement programmes, mainly for capital works to council dwellings, as a result of an optimum cycle of repairs and replacements planned over 30 years.

<b>Sales proceeds levered in (£'000s)</b>	<b>Total for 30 years</b>	<b>Year One</b>
LA 1	226,760	12,279
LA 2	45,794	1,029
LA 3	12,998	12,998
LA 4	167,473	3,317
LA 5	349,520	0
LA 6	43,016	774
<b>Total</b>	<b>845,562</b>	<b>30,397</b>
<b>NPV</b>	<b>313,782</b>	
<b>One sixth</b>	<b>52,297</b>	<b>5,066</b>
<b>Efficiencies from the procurement programme (£'000s)</b>		
LA 1	35,361	1,244
LA 2	16,031	354
LA 3	28,382	1,654
LA 4	116,633	4,958
LA 5	160,519	13,105
LA 6	24,996	508
<b>Total</b>	<b>381,922</b>	<b>21,824</b>
<b>NPV</b>	<b>174,755</b>	
<b>One sixth</b>	<b>29,126</b>	<b>3,637</b>

### Specific Impacts on policy areas

The self-financing policy proposal would simply change the financing structure for some local housing authorities. This would have no direct impact on any of the areas of policy set out below. National and local housing policies would remain in place. Self-financing authorities would continue to be subject to any national policies and would continue to be free as at present to set local policies and priorities.

For this reason, no specific impact assessments have been conducted on the areas listed below. However, as self-financing is intended to secure more investment in social housing, those groups who disproportionately depend on social housing would benefit disproportionately. These include some **ethnic minorities**.

Poor housing is generally identified as having a significant impact on **health and well-being**, as well as educational and future life prospects. The policy will increase the supply of good quality housing for those in need.

Investment in council stock has improved the **energy efficiency** of the stock. If, as intended, self-financing levers in additional investment, this would increase the pace and scale of investment in energy-efficient improvements.

The modelling work has included several **rural authorities**. Rural authorities are as likely to be able to opt for self-financing, and to benefit from it, as urban authorities.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

None.

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Exempting some New Supply from the HRA subsidy system</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 4 October 2007
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Stephen Edwards

**Telephone:** 020-7944-3566

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

In order to contribute to an increase in the supply of affordable housing, we want to remove disincentives to the provision of new affordable housing by local authorities. Local authorities currently build fewer than 300 new council homes each year. Part of the reason is the treatment of the rental income from those properties in the Housing Revenue Account subsidy system. No central capital subsidy is provided for new build by councils, yet if an LA invests its own resources in new properties, on average around 25% of the rent is redistributed nationally through the HRA subsidy system.

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

The provisions should incentivise the release of more local authority land for development as affordable housing. This is intended to be additional to, rather than a replacement for, development by Registered Social Landlords (RSLs) on land provided by local authorities. We would expect most of the local authority new build to be on sites not suitable for RSL development, such as infill within a council's existing stock, other small parcels of land, and places where new supply is linked to council-led renovation and regeneration schemes.



**What policy options have been considered? Please justify any preferred option.**

We considered three options: (the first is the one we prefer and are pursuing)

Enabling new affordable housing provided by local authorities to be held outside the HRA subsidy system. This would allow a local authority to retain the full income return from its capital investment.

Creating a new build allowance within the HRA subsidy system. This could achieve a similar outcome but would add further complexity to a complex system.

Do nothing: this would retain the disincentives to new supply of affordable housing within the HRA. We would not expect any increase in the outputs.

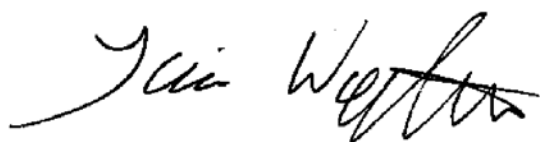
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The policy will be formally reviewed after two years.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option:</b>		<b>Description: Enable new affordable housing provided by local authorities to be held outside the HRA subsidy system</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  The cost is a transfer of resources between central and local government. Surplus rental income from up to 300 additional HRA properties each year would be retained locally instead of being redistributed nationally through the HRA subsidy system.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost (excluding one-off)</b>		
	£245,000		<b>Total Cost (PV)</b> £245,000
Other <b>key non-monetised costs</b> by 'main affected groups' None			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£0	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		<b>Total Benefit (PV)</b> £0
Other <b>key non-monetised benefits</b> by 'main affected groups'  The changes should incentivise more council house building, from under 300 across England each year for the last ten years to several thousand.			
<b>Key Assumptions/Sensitivities/Risks</b> Levels of council house building are assumed to continue on current trajectories if the policy changes are not made, and allowances are assumed to continue at current real levels.			
<b>Price Base Year</b> 2006	<b>Time Period Years</b> 1	<b>Net Benefit Range (NPV)</b> £N/A	<b>NET BENEFIT (NPV Best estimate)</b> £N/A

What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	On Bill's enactment			
Which organisation(s) will enforce the policy?	CLG			
What is the total annual cost of enforcement for these organisations?	£0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£0			
What is the value of changes in greenhouse gas emissions?	£0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £0		Decrease of £0		<b>Net Impact £0</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>

## Evidence Base (for summary sheets)

### The need for intervention

The Government has a target to increase the supply of affordable housing in England to at least 70,000 a year by 2010-11. This is to include at least 45,000 social homes, a 50% increase over 3 years and more than doubling the level of housing in six years. To help meet this ambition, we want to give local authorities a greater role in the direct provision of social housing and thereby incentivise the release of more local authority land for development.

Local authorities are not precluded from building council housing. However, the vast majority of new social housing is built by Registered Social Landlords (RSLs), with councils building less than 300 homes in total each year. RSLs are able to build more homes for the same amount of public investment because they can lever in extra private sector borrowing. For this reason, Government direct investment will continue to be directed towards organisations which can mix public grant and private borrowing. But the pressing need for affordable housing means there is a need to examine all opportunities to build more housing. We therefore wish to remove disincentives to local authorities who are prepared to invest their own resources, including land and grant, to deliver more council housing.

### Policy objectives and intended effect

We intend that the extra council housing delivered through these policy changes should be additional to, rather than a replacement for, development by Registered Social Landlords (RSLs). Where it is more efficient to work with an RSL partner, councils should continue to support that model of development. Some potential developments may not be suitable for RSL development, such as infill within a council's existing stock, other small parcels of land, and new supply linked to council-led renovation and regeneration schemes. Some councils may also be more willing to support new development with land and grants if they retain a stake in the new properties.

No targets have been set for the increase in new build within the HRA from the proposed changes. But we expect the policies to increase LA new build from a few hundred a year to several thousand, including a mix of social rent, low cost home ownership and market sale.

### The rationale for the proposed changes

Local authorities have in total across England built fewer than 300 social rented homes within the HRA each year since 1997. The local authority housing finance system has two key disincentives to new build within the HRA which appear likely to be major factors in this low level of new council house building, related to capital and revenue funding:

- i) the Government has directed its capital subsidy for new social housing (social housing grant – SHG) at RSL developers, because they bring in private borrowing to supplement public investment. No capital support is provided by Government for new council housing within the HRA, either as re-provision or additional supply (with the exception of the Housing Private Finance Initiative (PFI) programme);
- ii) through the HRA subsidy system, the notional operating surpluses of new supply HRA homes (after allowances are made for the notional costs of managing and maintaining the homes) are taken from an authority and recycled through the HRAS system. No provision is made within these allowances for the cost of financing capital debt where the local housing authority has borrowed to provide the new housing. So if a council provides an additional new social home, its notional rental income would exceed the allowances received by way of management, maintenance and major repairs. On average, allowances are 74% of rents at present.

Government provides grants to bodies for the provision of new affordable housing through bidding programmes. These programmes assess schemes for value for money and calculate the need for additional Government subsidy. Changes to the policies for allocating capital subsidy are not addressed here. Government has opened up bidding this year to local authorities who wish to develop through Arms' Length Management Organisations (ALMOs) and Special Venture Vehicles (SPVs), but not to local authorities who wish to build within the HRA (i.e. not to those properties which would benefit from the policy proposal covered by this impact assessment.)

The intention of the current policy proposal is to enable local authorities to assess the local business case for new build schemes, given the ability to retain locally the full returns (i.e. rents) from their investment. As social rent levels are not high enough to generate operating surpluses sufficient to cover the costs of schemes, authorities will normally need to provide additional resources to subsidise schemes. This may be in the form of local authority grants or land, or from cross-subsidy from capital receipts from sales of some related market housing.

### **Policy options**

The policy intention is to in effect make new supply dwellings invisible to the HRA subsidy system – allowing authorities to retain the actual rents from new supply properties within the HRA, rather than providing allowances for these properties through the HRA subsidy system and recycling any notional surpluses nationally. This would allow local authorities to use the surplus (that is the amount left over once the costs of management, maintenance and repairs have been deducted from the rent received) to service the debt or to provide a return on capital.

The alternative would be to create an allowance which achieves the same effect. This would however be administratively complex, requiring annual calculations on the guideline rents for the new homes and the allowances which those specific properties are attracting within the HRA subsidy system, so that a new allowance could be paid.

A simpler form of allowance might be one related to the investment need rather than the annually varying relationship between rents and subsidies. But this would undermine the principle of the policy, which is to make the investment decision to build a local one, based on the actual returns from a local investment.

The intention is that this 'new supply' should be dwellings built, acquired and possibly also properties brought back into use by the authority after a certain date. We would however need to ensure that the provisions did not allow authorities to move properties out of the HRA subsidy regime simply in order to increase their income. The properties subject to the new rules should represent a significant local investment and an addition to the housing stock.

### **The value of the proposed changes to a local authority and the cost to Government**

The HRA subsidy system makes assumptions about housing income (mostly rent) and need to spend (such as management and maintenance) on housing stock owned by each local authority. Allowances are made for the assumed need to spend on housing by each local authority. The amount of assumed income remaining after need to spend has been deducted is considered to be an operating surplus. This notional surplus is taken from the local authority and is recycled nationally to subsidise those authorities where assumed need to spend is greater than assumed income. One of the elements of subsidy is an allowance to support housing borrowing. This supported borrowing does not however include any costs incurred in providing new homes (except for housing PFI schemes). In general, the net effect for a council which builds a new council house is that its net income increases by an amount smaller than the value of the rent on that property because the dwelling is generating an assumed operating surplus.

On average in 2007-08 the notional operating surpluses of HRA dwellings equated to 26% of the notional rental income. The average guideline rent was £3,137. So the average dwelling was producing a notional operating surplus of £816. This is the part of the rent taken from the local authority and redistributed within the HRA subsidy system. If the proposed changes were made, none of the notional surplus on any new supply by a local authority would be recycled nationally. Instead, the full rent from new properties would be retained locally, and any surplus after actual spending on management, repairs and maintenance could be used to support the capital costs of development.

Fewer than 300 new homes have been built within the HRA across the whole of England in any of the last 10 years. Without the proposed changes to the HRA subsidy system, we would expect new build within the HRA to continue at these low rates. The policy changes would therefore mean foregoing notional rental operating surpluses to the HRA subsidy system from those 300 homes.

$£816 \times 300 = £245,000$ . This represents around 0.015% of the nearly £1.7bn of operating surpluses currently redistributed through the HRA subsidy system from the 2m homes.

After 10 years, the number would have been expected to rise to 3000 ( $10 \times 300$ ) and the annual loss of surpluses to the HRA subsidy system would rise to £2.45m ( $£816 \times 3000$ ). This would represent around 0.15% of total stock and surpluses.

Any future increases in the numbers of homes built in the HRA would be driven by the policy changes we are proposing here. So the rental surpluses from this increase would not otherwise have been generated and should not be considered as losses to the HRA subsidy system.

### **Potential impact on public borrowing**

The changes would incentivise more new build by councils. This would be financed in part from additional borrowing by local authorities. A typical RSL scheme, with a capital cost of £150,000, includes around £54,000 of borrowing to add to grant, discounted land and other landlord contributions.

A local authority scheme is likely to lever in a similar level of borrowing, using the rental surpluses to support this. This borrowing would be done within local government prudential borrowing rules, but it would still impact on national policies and targets. Each additional unit built by an authority above the current 300 per year would, on this basis, increase public borrowing by £54k.

Government has not set targets for the increase in council house building which it expects from this policy change. Responses from individual local authorities and representative bodies suggest that it could lead to a significant increase on current low levels, in percentage terms, but that in absolute terms it would not be large. This new build would not be eligible for capital subsidy from Government (i.e. social housing grant), and social rents alone are not sufficient to finance new build. So each local authority scheme would depend on the provision of discounted land and/or other receipts from the council to supplement borrowing.

For indicative purposes, an increase from 300 units a year to 2,500 would increase public borrowing by  $(2,500 - 300) \times £54k = £119m$ .

As each local authority would have to apply to the Secretary of State for an exclusion from the HRA subsidy system for its new build scheme proposals, Government could, if needed, manage the impact on national public borrowing policies by restricting the numbers approved.

### **Specific Impacts on policy areas**

The policy proposal would simply change the financing structure for some local housing authorities who were considering building more social housing. This would have no direct impact on any of the areas of policy set out below. National and local housing policies would remain in place. The new council homes would continue to be subject to any national policies on allocations, rent levels etc.

For this reason, no specific impact assessments have been conducted on the areas listed below. However, as the policy is intended to increase the supply of social housing, those groups who disproportionately depend on social housing would benefit disproportionately. These include some **ethnic minorities**.

Poor housing is generally identified as having a significant impact on **health and well-being**, as well as educational and future life prospects. The policy will increase the supply of good quality housing for those in need.

**Rural authorities** will have the same opportunities as urban authorities to benefit from the changes.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

None.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Mandatory Rating against the Code</b>	
<b>Stage:</b> Introduction	<b>Version:</b> 6 November 2007	<b>Date:</b> 6 November 2007
<b>Related Publications:</b> The future of the Code for Sustainable Homes – consultation response		

### Available to view or download at:

<http://www.communities.gov.uk/thecode>

**Contact for enquiries:** Jeannette Henderson

**Telephone:** 020-7944-5752

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

New homes make a significant contribution to carbon dioxide emissions and climate change. They also have a wide range of other environmental impacts, for example, through the materials used to construct them and the water used by the occupants. There are potential market failures because the externalities of a home's sustainability impacts are not taken into account by home builders, and because there is often a lack of information available – buyers are often unable to judge the sustainability of a new home. Intervention is necessary to tackle this.

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

The Code builds on Energy Performance Certificates by providing a national framework within which house builders can improve the overall sustainability of new build homes. It provides a mechanism by which builders can be recognised for going beyond the Building Regulations for energy and other aspects of sustainability. Making a rating against the Code mandatory will ensure that information is available on all new homes to allow purchasers to make more informed choices. This should encourage home builders to take account of environmental externalities in the design and construction of new homes.

**What policy options have been considered? Please justify any preferred option.**

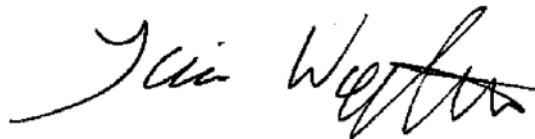
Two options were considered: do nothing (keep the Code as a voluntary standard); and introduce a mandatory rating against the Code. The do-nothing option will not have as substantial an impact on information provision as mandatory rating. The scenarios under which mandatory rating is cost effective are considered realistic. Mandatory assessment was also considered, but this would force those developers who choose not to meet Code standards (which would incur an additional cost and exceed Building Regulations standards) to spend money on an assessment to be told what they already know.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 2010**

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>		<b>Description:</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Capital costs of construction (assuming 2% annual reduction) and admin. cost of assessment/non-assessment, borne by developers/land owners and (where consumers are willing to pay) buyers – see Table 2 in main body of IA.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£21.18m		<b>Total Cost (PV)</b> <b>£317.7m</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Present value of economic and environmental benefits assuming 20% improvement in market efficiency (see Table 2 in main body of the IA).
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£51.78m		<b>Total Benefit (PV)</b> <b>£776.7m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'  Wider sustainability benefits e.g. reduced impact from flooding, recycling, waste management, reduced water consumption/better management etc.			
<b>Key Assumptions/Sensitivities/Risks</b> Results are sensitive to (a) speed of cost reduction over time, (b) level of administration cost, (c) lifetime in which benefits accrue, (d) market efficiency improvement achieved (i.e. percentage of developers choosing to build to higher standards because of better information).			
<b>Price Base Year</b> 2008	<b>Time Period Years</b> 15	<b>Net Benefit Range (NPV)</b> £-0.65m to £615.5m	<b>NET BENEFIT (NPV Best estimate)</b> £

What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		April 2008		
Which organisation(s) will enforce the policy?		BRE/TSOs		
What is the total annual cost of enforcement for these organisations?		£0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£72m (4.80m/yr)		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £0.65m		Decrease of £0		<b>Net Impact £0.65m</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

1. Assessing the costs and benefits of making a rating against the Code for Sustainable Homes mandatory from April 2008 for all new homes built in England.

### Purpose and Intended Effect of Measure

#### Objective

2. This proposal builds on the mandatory provision of Energy Performance Certificates by providing a national framework within which home builders can work to improve the sustainability performance and impact on the environment of new build homes.
3. The Code was introduced in April 2007 as a voluntary national standard. The proposal explored in this paper is to make it mandatory for all new homes to have a rating against the Code from April 2008, by making a Code certificate a compulsory document in the Home Information Pack (HIP). Where a home builder does not wish to have their home(s) assessed against the Code they will simply need to download a standard 'zero star' certificate (for inclusion in the HIP), therefore minimising the administrative burden of providing the rating.
4. This will ensure that prospective buyers of new build homes are given information about how the home they are considering buying performs against the Code. It will also allow home builders to differentiate the performance of their homes from the performance of others.
5. It is anticipated that this proposal to ensure that new homes have such a rating will increase consumer demand for more sustainable homes and encourage industry to build more sustainable homes, because consumers will place a value on improved sustainability.
6. The Code is currently applicable only in England and a mandatory rating against the Code will probably apply only in England. The powers sought in the Housing and Regeneration Bill to establish a sustainability rating (ie the Code) in law, that will be exercised by the National Assembly of Wales in the future, will be subject to a separate Impact Assessment as part of the normal consultation process.

## Background

7. From April 2008, Energy Performance Certificates for new homes will ensure that every purchaser is given information about the energy efficiency of their home and practical suggestions for making it more efficient as part of the HIP. The Code builds on this by providing a framework for home builders to gain recognition for going beyond current Building Regulations on energy efficiency, and also sets standards for many other aspects of sustainability such as water, materials and ecology.
8. Since all new homes already perform very well on the EPC scale, big improvements on top of current Building Regulations do not register significantly. Conversely, the energy element of the Code is based on percentage improvements over Building Regulations so big improvements will be clearly visible to consumers.
9. The Code also provides a means of assessing the wider sustainability of a home. In addition to carbon emissions, the housing sector also creates a range of other environmental impacts, for example through inefficient use of water (which also has an indirect impact on carbon emissions used to supply, heat and treat it), generation of waste, and use of polluting materials.
10. Although great progress has been made in improving the sustainability of buildings through a range of initiatives in recent years, there is increasing recognition of the need to take more action.
11. The Building Regulations set mandatory minimum standards for building design and construction, which include health, safety and environmental considerations. These are updated regularly (approximately every five years, although energy efficiency/carbon dioxide emissions updates have been more frequent) to reflect changes in required standards and developments in technology. On their own, however, they do not cover all aspects of sustainability. They also offer no incentive for exceeding the minimum standards, no information on when minimum standards have been exceeded, no stimulus to innovate, and no mechanism through which we can increase consumer awareness and demand for more sustainable housing.
12. Homes built to the minimum standards in the Code will have and/or will provide the facilities to encourage:
  - improved energy efficiency (and therefore lower carbon emissions)
  - reduced consumption of potable water
  - reduced surface water runoff



- reduced environmental impact of materials
- improved site waste management and adequate space for accessible waste storage.

13. They may also have, and/or provide the facilities to encourage:

- improved waste recycling provision
- improved consideration of flood risk during siting and design
- more responsibly sourced materials
- reduced pollution impact
- design features which support the health and well-being of occupants
- design features which assist in more sustainable management of the home, including amenities for disabled people
- more positive impacts on the ecological value of the site
- reduced waste from the construction process
- consideration of the surrounding community during construction
- reduced environmental impacts during construction.

14. Code levels 1-6 are represented by star ratings. Homes built to higher levels of the Code must perform progressively better across a range of criteria. Each Code level has minimum performance standards for energy and water, and all levels of the Code have fixed minimum requirements for waste and surface water run-off. All remaining credits are flexible.

15. The introduction of the Code has given the home building industry more certainty over the likely direction of travel for integrating sustainability into new homes through regulation over time. Home builders will be better able to factor sustainability measures into land purchase prices.

16. The development of the Code, which is based on EcoHomes, was overseen by a Senior Steering Group which included representatives from the home building industry and environment groups. The initial proposal to make a rating against the Code mandatory was consulted on by Government as part of the *Building a Greener Future: Towards Zero Carbon Development* consultation in December 2006. The majority of respondents (61 per cent) were in favour of introducing a mandatory rating, whilst only 8 per cent disagreed. We carried out a further consultation in July 2007 and 69% were in favour of introducing a mandatory rating against the Code.

### Rationale for Government intervention

17. The recent Stern Review maintains that global warming could shrink the global economy by 20 per cent.<sup>5</sup> It states, however, that if we take action now, it could cost just 1 per cent of global gross domestic product. The construction and occupancy of our homes generates a significant proportion of the UK's carbon dioxide emissions (27 per cent in 2004), therefore failure to act now in the new homes sector will contribute to greater costs of damage from climate change in the longer term. Whilst new build homes are a relatively small proportion of the total housing stock, if we build the homes we need, then by 2050 as much as one-third of the total housing stock will have been built between now and then.
18. However, it is vital that we also take action on other sustainability issues. Other key objectives include:
- reducing potable water consumption
  - specifying greener and more responsibly sourced construction materials
  - providing enhanced recycling facilities
  - protecting and enhancing the ecological value of sites and building on sites of low ecological value

The Code takes issues such as these into account.

19. The Code seeks to address market failures in the sustainability of new housing. Market failure means that there is an inefficient allocation of resources. Presently, homes produce more than the socially-optimal level of carbon emissions.
20. This is due in part to informational problems in the market: households do not have sufficient information to make adequate judgement about the full costs and benefits of certain home features. Therefore by demonstrating a home has a certain environmental performance, developers will be able to command a price premium from consumers aware of energy and other savings they will make over the course of their tenure. If purchasers believe that they will also be able to command a premium upon resale, then a privately-optimal level of environmentally sustainable features will be achieved.

<sup>5</sup> [www.hm-treasury.gov.uk/independent\\_reviews/stern\\_review\\_economics\\_climate\\_change/sternreview\\_index.cfm](http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/sternreview_index.cfm)

21. The voluntary Code rating partially achieves this. By being transparent and easy to understand, it enables consumers to take into account the sustainability performance of new homes and is helping consumers develop the market for more sustainable homes. The Code rating also enables developers to distinguish their product in sustainability terms. By making the Code mandatory, awareness of the potential to access this information is raised, stimulating further demand amongst home-buyers.
22. There are also wider costs of a home's environmental impact: households only take account of the private costs of their consumption, not the additional social cost of producing carbon emissions.
23. By providing information about a home's environmental performance, the Code can help overcome cultural barriers in public acceptability, which has been an issue for some renewable technologies, such as wind<sup>6</sup>. With more information about the wider implications of their actions, it will encourage people to make more responsible choices when purchasing a home, which may begin to address negative externalities.

## Consultation

### Within Government

24. When developing the Code for Sustainable Homes, consultation within Government on the proposed Code was undertaken by the former ODPM and continued under Communities and Local Government. Other Government departments (and agencies), including the Department for Environment, Food and Rural Affairs, Department of Trade and Industry, the Office of Government Commerce and the Environment Agency, were also represented on the Code's Senior Steering Group (SSG).
25. During the development of the Code it was agreed that a rating against the Code should be made mandatory from April 2008, depending on the outcome of consultation as part of *Building a Greener Future*, and a further more detailed consultation (of which this IA forms a part).
26. When developing this IA, other Government departments and the SSG were invited to input and all Government departments have been consulted on the proposals.

<sup>6</sup> The Stern Review highlights the role of information policies in improving public acceptability, with examples in wind, nuclear, and hydrogen vehicles.

### Public consultation

27. Likewise, when developing the Code for Sustainable Homes, public consultation was undertaken, including with the Senior Steering Group.
28. In *Building a Greener Future: Towards Zero Carbon Development* we asked whether all new homes should be required to have a mandatory Code rating, indicating whether they have been assessed and the performance of the home against the Code. The majority of respondents (61 per cent) agreed that a rating against the Code should be made mandatory, with only 8 per cent disagreeing.
29. This was followed in July 2007 by a more detailed consultation that set out how we intended to deliver a mandatory rating against the Code. There was strong support for the proposals overall with 69 per cent of respondents agreeing that we should make a rating mandatory. 57 per cent of respondents supported the inclusion of the Code Certificate in the Home Information Pack (HIP) with 4 per cent disagreeing. 45 per cent of respondents agreed that it is necessary to have legislative powers to ensure that both design stage and post-construction certificates are given to homebuyers, while only 10 per cent disagreed. In addition, during the preparation of this Impact Assessment, Cyril Sweett undertook a survey of developers to improve our understanding of likely take-up of the Code and to improve the financial model used in this IA.

### Options

30. Two options have been identified:

A) Do nothing (retain the Code as a purely voluntary standard)

B) Introduce a mandatory rating against the Code for Sustainable Homes

#### *Option A – Do nothing*

31. The do nothing option is the baseline against which Option B is measured. It represents 'business as usual'. This means that if you choose to have a Code assessment then you pay for this assessment, but that if you do not choose to have an assessment no costs are incurred.

#### *Option B – Mandatory Rating against the Code*

32. Option B involves the introduction of a mandatory rating against the Code. This does not mean that a home builder has to pay for a Code assessment on every new home built; but that if they choose not to undertake an assessment they will have to make a rating available to a potential buyer, in the form of a zero star certificate. Obtaining a zero star certificate would

result in a small administrative cost being incurred, for the time taken to produce this certificate. The worst case scenario estimate is £0.65m per annum, and is essentially the additional cost to society of making Code rating mandatory. This figure is derived from an estimated £5 administration cost for each of the 130,000 private sector homes not built to the Code/Ecohomes standards in 2006/2007.

33. The same sensitivities on cost reductions have been applied as in the 'do nothing' option, and the same principle that some home builders will adopt higher standards where there is a net benefit per dwelling (in terms of additional construction cost against ongoing benefits from lower utility bills). These assumptions are shown in the table below.

<b>Costs of achieving Code level to home builder</b>	<b>Benefits to occupier over 20 years</b>	<b>Net Present Value (Benefits – Costs) Overall and (£m)</b>	<b>Outcome</b>
A	less than A	Negative (overall cost over time)	0% of homes built adopt Code standard
B	B	Neutral	An additional 20% of homes built adopt Code standard
C	more than C	Positive (overall saving over time)	An additional 20% of homes built adopt Code standard

The key difference in this scenario is that the proportion of home builders following this behaviour is assumed to increase over and above the 'do nothing' case, as awareness of the Code will increase and buyers are able to make more informed, responsible choices and developers are better able to respond.

34. The analysis therefore does not represent what we hope or expect uptake of the Code to be when rating is mandatory, but looks instead at what scenarios are needed to justify the administration cost, and what the risks are.

#### Alternative options considered

35. An alternative option would be to make assessment against the Code mandatory. Home builders would pay for a Code assessment for every new home built, even if they only intended to build to minimum Building Regulations standards. This would mean that instead of downloading a zero

star certificate for free, home builders would have to pay for an assessment before receiving a zero star certificate. This would include homes on single and smaller sites (where the assessment costs per home are likely to be higher per plot) as well as larger sites. Based on our projections of future house building, the cost of assessment would be as much as around £56 million per year if a full assessment were undertaken, or £836 million over the whole period in present value. However, this £56 million figure could be lower if full assessments were not undertaken; for example, having determined that the mandatory energy credits cannot be achieved, the assessor does not complete the remainder of the assessment, and a 'fail' certificate is issued at a reduced cost compared with a full assessment fee.

36. Mandatory assessments are unlikely to lead to any greater market efficiency than a mandatory rating as the visible result to the consumer (i.e. a Code rating of whichever level) is the same to the consumer. Therefore adoption of a mandatory assessment would incur significant further cost with no measurable benefits.

#### **Assumptions and Uncertainties**

37. The rate of construction of new build homes aligns with our previous home building aspirations, increasing to 240,000 net annual additions by 2016.
38. 15 years of additional home building has been modelled to calculate the total net present costs and benefits. This 15-year period was chosen to provide sufficient time to reflect potential market changes whilst reducing uncertainties of forecasting too far into the future.
39. A period of 20 years has been used as the basis for the lifetime of benefits for each home built to Code standards. This figure was chosen to reflect the average lifetime of the technologies needed to meet the Code levels before they need to be replaced. Future costs and benefits have been discounted at an annual rate of 3.5 per cent.
40. All new Government-funded homes and homes built on land owned by English Partnerships are required to achieve Code level 3 from April 2007, and the Housing Corporation will be building to Code level 3 from the 2008-10 bid round. Consequently, the costs and benefits presented relate only to private new build, as the only part of the new build market to experience potential additional impacts as a result of the mandatory rating.
41. The baseline rate of assessments has been assumed to follow current assessment rates under EcoHomes:

- Public sector – 24,000/yr; and
  - Private sector – 3,000/yr (equivalent to 2 per cent of private new build).
42. A shortcoming of the earlier Partial Impact Assessment was that it was unclear what the home builder response to achieving a Code rating would be. Following consultation with a number of home builders, it is now evident that adoption of Code standards will vary significantly and that a common response is unlikely. Consequently, no further robust behavioural patterns could be determined during consultation. This analysis therefore mirrors the experience to date of the voluntary uptake of EcoHomes in the private sector. This is equivalent in our modelling, to two per cent of the market working efficiently, i.e. home builders construct to a standard that has optimum whole life performance. In this analysis this is a positive net benefit, taking into account construction costs and operational benefits.
43. A common response from home builders surveyed was that they did not believe that consumers currently value the performance of either an EcoHomes or Code property, thus demonstrating the need for greater market transparency and the need to make a rating mandatory. The impact of greater transparency in home performance is difficult to quantify and has conservatively been estimated at increasing market efficiencies by 20 per cent. Therefore, the projected impact of making a rating mandatory is that greater consumer awareness of the long-term benefits of the Code will result in an increase in market efficiency such that home builders construct 25 per cent of new homes to the Code standard that offers greatest Net Present Value.
44. The assumption of 2 per cent 'market efficiency' is low to reflect experience to date, but also our understanding that the benefits from lower utility bills do not flow to the home builder through prices, as prices are determined mostly by the second-hand market and are only likely to be influenced by developers if buyers are willing to pay a premium for more sustainable homes.
45. The model does not assume that home builders consider the social benefit of reduced carbon emissions in assessing Net Present Value, as it is unlikely that they will be compensated for this.
46. The model is sensitive to the level of administrative costs of assessment and rating against the Code. An average assessment fee of £218 is assumed, based on an average cost excluding single sites, for example, built by self-builders, from whom we do not expect uptake of the Code to be high, partly due to the higher cost of assessment.

47. It is noted that BRE review its fee scales on an annual basis, and these numbers are likely to change in January 2008. Revised figures are not yet available for use in this IA and are unlikely to be available until December 2007.
48. Two man days (at a value of £280) has been assumed for gathering information by developers to feed into an assessment. Information gathering is required for each different home design specification within a development.
49. The zero star certificate will be freely available and will only have a cost in terms of the time taken to print and to make it available to a potential buyer. The conservative assumption has been made that this takes fifteen minutes for each dwelling at a cost of £20 per hour (i.e. £5 for each dwelling).
50. In monetising the carbon savings we have assumed the shadow price (social cost) of carbon dioxide to be £25 per tonne in 2007 prices.<sup>7</sup>
51. We have used a standard flat rate for energy prices over time.
52. The policy costs (costs of achieving different Code levels) are based on two reports commissioned by Communities and Local Government quantifying the costs of building to different Code standards, both overall, and focussing on achieving the energy requirements.<sup>8,9</sup> These two studies built on the work undertaken by Cyril Sweett for English Partnerships and the Housing Corporation in 2006 'Cost Review of the Draft Code for Sustainable Homes' and were updated to take into account the April 2007 Technical Guidance which underpins the Code.
53. The costs of meeting each Code level are compared to the costs of a baseline home (a Building Regulations compliant home). Costs are presented on a per dwelling basis.
54. The analysis represents an estimate of the total costs to a contractor, including materials, plant and labour, preliminaries, overheads, contingencies, profit, and design fees. The models relate to the construction of the dwellings only. Detailed exclusions can be found within the Cyril Sweett report.

<sup>7</sup> Defra, *How to use the shadow price of carbon in policy appraisal*, August 2007

<sup>8</sup> Communities and Local Government, *Refined and Updated Cost analysis of The Code for Sustainable Homes*, Cyril Sweett, November 2007

<sup>9</sup> Communities and Local Government, *The costs and benefits of the Government's proposals to reduce the carbon footprint of new housing development*, Cyril Sweett, Faber Maunsell & Europe Economics, November 2007



55. The costings are based on a home builder with a trading turnover of 5,000 to 10,000 dwellings per annum. It should be noted that policy costs vary according to the size of the home builder (which affects purchasing power), and the size of developments undertaken (larger developments bring economies of scale).
56. Achieving Code standards, particularly higher levels of the Code, requires the adoption of emerging sustainable technologies. As demand for these technologies increases and their markets mature, it is likely that increased competition and opportunity to take advantage of economies of scale will cause the costs of these technologies to drop. Innovation may also cause policy costs to decrease in the future, as highlighted by international experience.
57. This IA therefore includes analysis of the potential costs using a number of different scenarios for reduction in the cost of technology. As a base case it assumes no fall in costs of meeting the Code over time. However, this scenario is considered to be highly unrealistic given our understanding of technology markets as outlined above. Other scenarios tested assume cost reductions of 2 per cent, 5 per cent, and 10 per cent a year.
58. The costs and benefits associated with energy efficiency improvements arising from Part L of Building Regulations revisions in 2010, 2013 and 2016 have been attributed to the *Building a Greener Future: Towards Zero Carbon Development*<sup>10</sup> Impact Assessment and are therefore included in the 'do nothing' base case. Similarly, costs and benefits associated with HM Treasury's policy of allowing stamp duty and land tax exemption for zero carbon homes are not included here.
59. The benefits predominantly relate to utility bill and carbon savings for energy and water. A limited number of other benefits from other categories in the Code have also been valued where there is a robust basis for doing so.
61. We are aware that this proposal will create some additional burdens for home builders, and will look to identify compensatory simplifications prior to implementation. If you have any proposals for simplification please notify them through the Better Regulation Executive's simplification portal at <http://www.betterregulation.gov.uk>.

<sup>10</sup> [www.communities.gov.uk](http://www.communities.gov.uk)

62. The model does not address the potential impact of Local Authorities mandating Code compliance within local planning policy as this is not a direct outcome of this policy, which requires a mandatory Code rating (rather than Code compliance). Likewise, this IA does not consider the costs and benefits attributable to the HIP, which were assessed in the HIP Regulatory Impact Assessment.

### **Costs and Benefits**

#### **Sectors and groups affected**

63. Many sectors of the construction industry will be affected by the introduction of a mandatory rating against the Code. In particular, it will affect large and small home builders, manufacturers of sustainable technologies/products, landowners and homebuyers. To a lesser extent it will affect estate agents.

#### **Home Builders**

64. Home builders can choose whether to assess their developments against the Code and are also able to choose which Code level they aim for; therefore they decide if they are prepared to incur the associated 'administrative' costs (costs associated with assessment) and the 'policy costs' (costs associated with building more sustainably) they incur.
65. A Code assessment will still be voluntary. However, home builders will have to provide the homebuyer with a clear statement (a zero star certificate) at an appropriate point in the home buying process.
66. The policy costs of this would still be controlled by the home builder. They decide whether to build to the Code standards. There will be a minimal administration cost associated with producing the zero-star certificate. This standard document would be available from an appropriate website and the home builder will download and print a copy for each home they sell. It is envisaged that in the short term, the majority of developers will take this option rather than building to the higher sustainability standards of the Code and paying for an assessment.
67. In a world where consumers are becoming increasingly environmentally conscious, and demanding higher sustainability performance in their goods and services, home builders may benefit in terms of competitive differentiation by marketing their performance against the Code. Recent research by the Sponge Sustainability Network suggested that there is a correlation between beliefs about the efficacy of sustainable homes in combating climate change and beliefs about the financial pay-off of sustainable features.<sup>11</sup> However, the evidence here is not robust enough to have made assumptions about the financial premium for sustainable homes.

<sup>11</sup> [www.spongenet.org/lifestyle/index.php?page=news&news\\_id=101](http://www.spongenet.org/lifestyle/index.php?page=news&news_id=101)

**Race equality impact assessment**

68. A mandatory rating against the Code for Sustainable Homes should not have any impact on race equality.

**Human Rights impact assessment**

69. The Code does not have any impact on Human Rights.

**Disability impact assessment**

70. The Code encourages the incorporation of Lifetime Homes standards into a home and provides for a number of other accessibility features, such as providing waste storage Code standards should, over the long term, have some positive effects on residents' health but these are not likely to be large or quantifiable.

**Gender Impact Assessment**

71. The Code does not have any impact on Gender.

**Health impact assessment**

72. Building homes to Code standards should, over the long term, have some positive effects on residents' health but these are not likely to be large or quantifiable.

**Rural considerations**

73. There should not be any specific rural considerations associated with this policy.

**Breakdown of costs and benefits**

74. The policy and administration costs are predominantly consistent for both Option A and Option B. These are described in detail in Annex A.

75. The key differences for Options A and B are:

- Under Option B, where home builders choose not to be assessed against the Code they will incur an estimated administration cost of £5 per home due to the time taken to make a zero star certificate/statement of non-assessment available to a potential buyer.
- The assumed levels of market efficiency vary – Option A is 2 per cent, and Option B is 22 per cent.

## Option A – Do nothing

### Summary

76. A number of scenarios are analysed, based on how costs of building to the Code fall over time. The model simulates a proportion of home builders basing their decisions on achieving a positive Net Present Value, i.e. constructing homes to that level of the Code that presents the optimal Net Present Value. Under a voluntary rating system this proportion is assumed to be 2 per cent, which is consistent with the level and standard of take-up seen under EcoHomes.
77. Under the scenarios where there is a cost reduction each year, the overall benefits increase, partly as a result of reduced construction costs and also because these reduced costs enable them to build to progressively higher Code levels whilst still achieving a net benefit. The overall net benefit to society is therefore a product of how many homes are built to different Code levels and the relative net unit costs and benefits of building to the Code. The table below summarises this:

**Table 1:** Summary costs and benefits of Option A over period 2008-2022: assuming 2 per cent 'market efficiency'

Cost reduction scenario	Increased number of assessments Overall and (per annum)	Present Value Admin Costs (£m)	Present Value Policy Costs (£m)	Present Value Economic Benefits (£m)	Present Value Environmental Benefits (£m)	Net Present Value (Benefits – Costs) Overall and (per annum) (£m)
<b>Flat costs over time</b>	42,640 (2,843 p.a.)	7.6	19.4	54.6	5.6	<b>33.2 (2.2 p.a.)</b>
<b>2% reduction a year</b>	42,640 (2,843 p.a.)	7.6	16.4	54.6	5.6	<b>36.2 (2.4 p.a.)</b>
<b>5% reduction a year</b>	42,640 (2,843 p.a.)	7.6	17.1	58.7	6.6	<b>40.6 (2.7 p.a.)</b>
<b>10% reduction a year</b>	42,640 (2,843 p.a.)	7.6	16.3	64.8	7.4	<b>48.3 (3.2 p.a.)</b>

78. The level of take up under a voluntary system, as illustrated above (at 2,800 each year on average), is consistent with Ecohomes uptake, representing about 2 per cent of private new homes built each year. The net impact is a positive benefit to the economy of around £33m over the period to 2022. This net benefit increases up to a maximum of £48m if different assumptions are made about how quickly costs fall over time.

### Option B – Introducing a mandatory rating against the Code

#### Summary

79. A number of scenarios are analysed, based on how costs of building to the Code fall over time. The model simulates a 22 per cent market efficiency, reflecting the impact of the mandatory Code rating on consumer awareness, and therefore home builder responsiveness. The table below summarises the net present value illustrated under different cost reduction scenarios:

**Table 2:** Summary costs and benefits of Option B over period 2008-2022 (net of Option A): assuming 20 per cent improvement in 'market efficiency'

Cost reduction scenario	Increased number of assessments Overall and (per annum)	Present Value Admin Costs (£m)	Present Value Policy Costs (£m)	Present Value Economic Benefits (£m)	Present Value Environmental Benefits (£m)	Net Present Value (Benefits – Costs) Overall and (per annum) (£m)
<b>Flat costs over time</b>	550,194 (36,680 p.a.)	106.2	250.4	704.6	72.0	<b>420.0 (28.0 p.a.)</b>
<b>2% reduction a year</b>	550,194 (36,680 p.a.)	106.2	211.4	704.6	72.0	<b>459.0 (30.6 p.a.)</b>
<b>5% reduction a year</b>	550,194 (36,680 p.a.)	106.2	220.2	757.0	84.7	<b>515.2 (34.3 p.a.)</b>
<b>10% reduction a year</b>	550,194 (36,680 p.a.)	106.2	210.8	836.6	95.9	<b>615.5 (41.0 p.a.)</b>

80. The level of take-up under a mandatory Code rating system, (approximately 37,000 homes each year on average), represents 22 per cent of private new homes built each year. The net impact is a positive benefit to the economy of around £420m over the period to 2022. This net benefit increases up to a maximum of £616m if different assumptions are made about how quickly costs fall over time.

81. This demonstrates that the greater the market efficiency that can be achieved in relation to uptake of the Code, the greater the overall societal benefits. Therefore investment in measures to raise awareness in consumers and other key groups in the house building market (e.g. suppliers) is of societal benefit and should therefore be pursued.
82. The administration cost estimate per dwelling for homes that are zero-rated has not been tested in practice. It is possible that developers could find efficiencies with this process, particularly for larger developments.
83. Overall, a net benefit is maximised if (a) the market works more efficiently, (b) costs fall faster than we expect over time, or (c) the Code is successful as a strong signal to buyers to value sustainability. The sensitivity analysis we have performed demonstrates the effect of (a) and (b), but the effect of (c) is not currently quantifiable and as such may be underestimated in the modelling.

#### Small Firms' Impact Test (SFIT)

84. A survey of small businesses was undertaken by the trade association *House Builders Association* on behalf of Communities and Local Government in early 2007 to assess the impact of making a rating against the Code for Sustainable Homes mandatory.
85. The *House Builders Association* identified a number of small firms to take part in the survey. The small firms confirmed that the proposal to make a rating against the Code mandatory will cause no additional burden to business processes and that the costs are negligible.

#### Competition Assessment

86. The main market affected by the introduction of a mandatory rating against the Code for Sustainable Homes will be the home building and home buying markets.
87. Increasing information in the market to raise awareness of sustainability and to compare standards across new buildings should help stimulate a more competitive market. In combination with Energy Performance Certificates it should improve transparency and awareness of wider sustainability issues and energy and water costs in buying decisions. The more that on-going costs and benefits to households can be built into buying decisions, and therefore house prices, the more developers will be incentivised to respond by building to higher efficiency and sustainability standards. Developers will build more sustainably to the point where they believe they will get an additional private return from it ie where there is a demand, or if there is a risk of losing value if they do not meet minimum standards demanded by consumers.

88. At present the only assessor certification and certification body for the Code is the Building Research Establishment (BRE). BRE provides these services, on a concessionary basis, under contract to Communities and Local Government. This arrangement lasts for 5 years from date of implementation and was entered into in recognition of the fact that BRE owns Intellectual Property in the Code, which it has granted Communities and Local Government the right to use.
89. As part of this arrangement, BRE is required to sub-license other organisations to provide any or all of the Code services which they provide, and to do so on fair commercial terms. Other organisations that want to become licensed to accredit Code assessors or to offer a certification service need to inform Communities and Local Government first and then discuss with BRE the opportunities for entering into such an arrangement. It should be noted that the July consultation document on making rating against the Code mandatory for new homes talked about the need to organisations to 'seek approval' from Communities and Local Government before talking to BRE. Communities and Local Government's sole aim in this was to ensure that it was aware of approaches being made to BRE and it never intended to apply an approval process of its own. This has been clarified in the summary of consultation responses and final policy response.
90. We are aware that some organisations are not satisfied with the arrangement between Communities and Local Government and BRE because of the perceived conflict of interest in relation to BRE's role as developer and maintainer of the Code, which could give BRE an unfair advantage in the provision of other Code services over any competitors. There were also concerns about BRE's current monopoly in relation to assessor certification and certification services.
91. Communities and Local Government believes the current contract with BRE fairly reflects BRE's input into developing the Code. We do, however, recognise the concerns of organisations interested in offering Code services. As such, Communities and Local Government and BRE have put in place a number of mechanisms to mitigate the possibility of a conflict of interest arising and BRE acting anti-competitively. Firstly, as mentioned above, under the terms of our contract, BRE is required to enter into any sub-contract or sub-license on fair commercial terms. We have been working with BRE to ensure it provides sufficient material about the process and terms of sub-licensing to demonstrate that they will be complying with the requirement. Secondly, BRE is UKAS accredited for the work they carry out on the Code and the wider BREEAM family. Under the terms of this accreditation, it is required to have in place measures to ensure there is no potential for conflict

of interest. Thirdly, whilst developing the processes for sub-licensing Code services, BRE is actively looking at ways to avoid conflicts of interest. For example, it is required to ensure that any sub-licensee is fully competent to offer Code services. However, to avoid it gaining knowledge of competitors systems and approaches that might give it an unfair advantage, it is happy to arrange for an independent organisation such as UKAS to undertake audits and use techniques such as mystery shopping to test for compliance of systems. BRE will also ensure that any information arising from the development and maintenance process is disseminated on an equal basis to all assessors, either those certified by BRE or other organisations.

92. The Department takes very seriously the perception of conflict of interest and anti-competitive behaviour and will monitor the situation very carefully. As part of the Housing and Regeneration Bill we are also seeking powers to establish, in due course, an accreditation scheme for the Code.

#### Legal Aid

93. The Code does not have any impact on Legal Aid.

#### Enforcement, Sanctions and Monitoring

94. At present there is no requirement to have an enforcement mechanism or sanctions in place as adoption of the Code is voluntary. Code assessments are carried out by independent assessors who may be drawn from any relevant profession, so long as they are appropriately qualified and trained. Assessors will need to be registered with a body licensed to accredit Code assessors. Accrediting bodies will quality check assessments and enforce against their members, ultimately through the sanction of cancelling their membership.
95. However, if a mandatory rating is implemented then an enforcement and sanctions regime will need to be introduced. This would be subject to legislation. Our proposals are to include the Code certificate or zero star certificate in the HIP. In our view, the most appropriate time to provide this information to potential homebuyers is early in the home buying process, when they may be making choices between different properties. This would coincide with when they are entitled to receive a copy of a Home Information Pack (HIP). The enforcement and sanctions regime will align with that for the HIP. The HIP is enforced by Trading Standards Officers based in local authorities who generally act on a complaints-only basis; they consider the presence or absence and the validity of a pack document; they are not expected to assess Code standards. This complies with the Hampton principles of risk-based enforcement.



96. In addition, if the powers sought in this Bill are enacted, there would be additional enforcement required to cover instances when a new home is sold off-plan and marketing stops before a final Code certificate is issued. In these circumstances the enforcement arrangement in place would again be a complaints-only basis and complies with the Hampton principles. We will work closely with Trading Standards Officers and their representative body, LACORs to monitor the impacts of this policy for both rates of non-compliance and costs associated with enforcement and whether this imposes any additional burden on local government.
97. We will be monitoring uptake against the Code as part of data collected by the BRE during the assessment process. We will review the policy in light of data on uptake of the Code and in light of changes to Building Regulations.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

### Explanation of the modelling of costs and benefits

#### Basis of model

1. The model is based on the principles of market efficiency in response to Net Present Value. Net Present Value (NPV) is the summation of initial costs incurred during construction, and operational costs and benefits incurred and discounted over 20 years.
2. The market is deemed to be operating efficiently when home builders construct homes to a Code level that maximises the NPV of the home. The model simulates different levels of market efficiency, reflecting the impact of making a Code rating mandatory on market transparency. The model assumes that the proportion that chooses to do this when the Code rating is mandatory is 20 per cent higher than when it is voluntary, as additional information improves market efficiency.
3. The model examines different scenarios based only on whether the market operates more efficiently due to increased information availability and awareness of sustainability. The true potential impact of a mandatory Code rating will be greater, if buyers also value the broader range of sustainability benefits arising from the Code, although this has not been factored into the analysis.
4. A number of scenarios are presented that analyse the impacts of construction costs decreasing over time by variable rates. This approach is consistent with economic principles of learning curves and reflects international and national experience in delivering housing at increasingly high standards.
5. The model factors in some (but not all) of the external benefits arising from Code compliance. Benefits are described later in this Annex.
6. The model utilises predictive house building numbers through to 2022, house types are segregated into detached and terraced houses and apartments. Costs and benefits have been allocated against each of these housetypes independently.
7. The model assumes that developers will continually evaluate and understand the relative costs and benefits of different options. In practice, such analysis may be undertaken on an infrequent or case/site specific basis.

### Administrative Costs

8. The key administrative costs are as follows:
  - Costs to developers of obtaining an assessment (assessor fee and time taken to prepare/provide input information to the assessment); or
  - Costs to scheme operators in running the scheme. The assessment fee borne by developers incorporates (and enables the scheme operators to recoup) all of their costs by e.g. development and delivery of training to assessors, preparation of internal assessment/QA systems, resource used to undertake the assessment itself, lodgement of Code certificates.
  
9. Assessment costs are incurred by each type of house in a development, with a cost ranging from £160 for each home (in a development of 100 homes with 10 home types) to £1680 for an assessment of a single home on a site. It is not anticipated that at developers of single homes sites (often self-build) will bear the costs of assessment. We have therefore excluded them from the calculation and taken an average of £218 per home. In addition to this cost, we have added an assumed £19 per dwelling to account for time taken by developers to prepare information for the assessment. This cost assumes two man days (at a value of £280) for information gathering for a development to feed into an assessment. Information gathering is required for each different home design specification within a development.
  
10. Administrative costs for each assessment are identical in both Option A and Option B; however uptake is higher in Option B, therefore the total administration cost of assessment increases.
  
11. The zero-star certificate is assumed to incur an additional £5 administration cost. This assumes that it will take an average of about fifteen minutes of someone's time for each home.

### Policy Costs and Benefits

#### *Economic Costs*

12. The key economic costs for both options are additional capital costs of building to different levels of the Code. The costs of energy, water and other elements of the Code (both mandatory and flexible) are presented in Table 3. These are average costs and will vary depending on the dwelling type and development scenario.

**Table 3:** Average additional construction costs per dwelling of Code levels 1-6 (2008 costs)

Code Level	Energy	Water	Other (mandatory plus flexible credits)*	Total
1	£275	£0	£330	£615
2	£1,648	£0	£405	£2,206
3	£3,410	£125	£538	£4,313
4	£7,345	£125	£1,036	£9,094
5	£13,149	£2,018	£1,476	£17,734
6	£25,390	£2,018	£1,926	£30,605

\*these are indicative for flexible elements

More detailed Code compliance costs can be found in *Refined and Updated Cost Analysis of The Code for Sustainable Homes*, Cyril Sweett, November 2007.

### Benefits

13. The main quantifiable economic benefits are the financial savings for households associated with reduced energy and water bills as a result of the improvements. Typical household savings range between £56-£281 per year.
14. In monetising the carbon savings we have assumed the shadow price (social cost) of carbon dioxide to be £25 per tonne in 2007 prices.<sup>12</sup>

### Energy

15. The Stern report highlighted the economic case for taking action to reduce the threat from climate change, through reducing our greenhouse gas emissions to the environment. The Code for Sustainable Homes generates carbon savings from energy efficiency, renewable energy and from the associated reduction in energy used in water processing as a result of reduced water consumption. Annual carbon savings from energy improvements range between 0.3 tonnes of CO<sub>2</sub> at Level 3 and 2.7 tonnes at Level 6. These CO<sub>2</sub> savings are generated by improvements in building performance only, further potential savings generated by e.g. fixtures and fittings are listed below. Further savings from water range between about 12 and 74 kg CO<sub>2</sub> per year. In the 2 per cent cost reduction scenario in Table 1 (page 79), this equates to a total saving of around 20,000 tonnes of CO<sub>2</sub> in the period to 2022.

<sup>12</sup> Defra, *How to use the shadow price of carbon in policy appraisal*, August 2007

16. Building to the improved sustainability standards advocated within the Code will generate extensive environmental benefits in addition to reducing greenhouse gas emissions. These range from reducing waste going into landfill (through improved recycling facilities and the reduction of construction waste by introduction of site waste management plans) to more sustainable materials being used in construction (for instance sustainably sourced wood). Taking account of the ecological value of the site (for instance biodiversity) is also a key non-quantifiable benefit. Benefits are explained in more detail below.
17. In addition to the mandatory energy credit areas that require incremental improvements on Part L (i.e. improved building performance); there are a number of credits within the Code that aim to influence occupant behaviour and further reduce operational energy consumption (and consequently, greenhouse gas emissions). These behavioural credit areas include:
- provision of facilities to dry clothes naturally
  - provision of energy efficient white goods
  - provision of secure bicycle storage
  - provision of home working facilities
  - provision of low energy internal and external lighting
18. The drying space credit encourages natural clothes drying rather than use of a tumble dryer. It has become common practice in new home building to include a place for a tumble dryer without providing a space for natural clothes drying. The average tumble dryer uses 365kWh per year<sup>13</sup>. The provision of a drying space may reduce some of this energy consumption which will help to reduce the greenhouse gas emissions arising from energy use and also reduce the occupier's energy bill.
19. The energy efficient white goods credits encourage provision by the homebuilder or purchase by the occupier of energy efficient white goods, thus reducing the energy and water consumption (and associated CO<sub>2</sub> emissions) of a home. Therefore the use of energy efficient appliances benefits both the environment and the occupier's finances.

<sup>13</sup> Oxford University Centre for the Environment, [www.eci.ox.ac.uk/research/energy/downloads/40house/chapter06.pdf](http://www.eci.ox.ac.uk/research/energy/downloads/40house/chapter06.pdf)

20. Over the past 30 years, lighting and appliance energy usage has increased at around 2% per annum<sup>14</sup>. For a typical new (Part L 2006) semi-detached home, the CO<sub>2</sub> emissions from lights and appliances comprise approximately 43% of total CO<sub>2</sub> emissions. Emissions from lights and appliances (including cookers) are now higher than both space and water heating emissions (space heating accounts for 26% of CO<sub>2</sub> emissions, water heating 22% and cooking 9%)<sup>15</sup>. Choice of appliances therefore plays an important role in reducing total CO<sub>2</sub> emissions. Where energy efficient appliances are not supplied by homebuilders, the Code also rewards the provision of information which helps the occupier select the most energy efficient and cost effective white goods.
21. Table 4 below shows typical CO<sub>2</sub> and monetary savings incurred following the replacement of an average appliance purchased new in 1995 with an Energy Saving Recommended model of similar size and an electricity cost of 10p/kWh<sup>16</sup>.

<b>Table 4</b>		
<b>Traditional Appliance</b>	<b>CO<sub>2</sub> saved per year</b>	<b>£ saved per year</b>
fridge freezer	190 kg	37
washing machine	42 kg	8
dishwasher	85 kg	16

22. The majority of all car journeys are less than five miles; there is therefore an opportunity to reduce car use by encouraging cycling<sup>17</sup>. The Code encourages homebuilders to provide secure bicycle storage space, thus making cycling more convenient. Replacing a proportion of car journeys and encouraging additional recreational cycle usage would have a number of environmental, social and economic benefits. Where improved cycle storage encourages replacement of local car journeys with cycling; the environmental benefits of reduced car use include reduced consumption of fossil fuels (i.e. fuel) and associated reductions in greenhouse gas emissions, improved air quality and reduced noise pollution.

<sup>14</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

<sup>15</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

<sup>16</sup> [www.energysavingtrust.org.uk/energy\\_saving\\_assumptions](http://www.energysavingtrust.org.uk/energy_saving_assumptions)

<sup>17</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

23. When provided with adequate cycle storage, occupiers are more likely to choose to cycle to work and therefore save on public and/or private transport costs. Evidence shows that 37% of adults feel that many of the short journeys they make by car could easily be undertaken by bicycle if they had one. Furthermore three in 10 car users say they would reduce their car use 'if there were more cycle tracks away from roads' (31%), 'if there were more cycle lanes on roads' (27%) or 'better parking facilities for cycles' (30%)<sup>18</sup>.
24. The Code also requires that bicycle storage is secure. Bicycle thieves cost the UK £113 million<sup>19</sup> a year and over 400,000<sup>20</sup> of the UK's 20 million bicycles are stolen annually. In 2005, 52% of all bicycles were taken from outside the home, for example from a garage or a shed<sup>21</sup>. These figures highlight the need for dedicated and secure cycle storage, as encouraged by the Code.
25. Another key economic benefit that could potentially be derived from the provision of additional secure bicycle storage is increased physical activity. Physical inactivity was directly responsible for 3 per cent of all deaths and illness in 2002. The direct cost of physical inactivity to the NHS, including inpatient stays, outpatient appointments, drugs, community care, and visits to primary care practitioners reached £1.06bn<sup>22</sup> in 2007.
26. Government health targets are that by 2020, 70% of the UK population will be doing 30 minutes of exercise a day, five days a week (150 minutes per week). Research has shown people that meet these guidelines take fewer sick days than those that don't<sup>23</sup>. Further investigation has shown that if 70% of the population exercised for 150 minutes or more each week, there would be 2.78m fewer sick days. This would save the economy £487m each year<sup>24</sup>. Facilitating increased cycling could significantly contribute to this target.
27. Lastly, increased cycling could further benefit the UK economy by reducing reliance on imported fossil fuels for transport within the UK.
28. There are a number of recognised social benefits associated with increased cycling (as facilitated by additional provision of secure bicycle storage); most notably, these include:

<sup>18</sup> Department for Transport 2007 [www.dft.gov.uk/pgr/statistics/datatablespublications/personal/factsheets/2005/cyclefactsheet.pdf](http://www.dft.gov.uk/pgr/statistics/datatablespublications/personal/factsheets/2005/cyclefactsheet.pdf)

<sup>19</sup> [www.homeoffice.gov.uk/rds/pdfs05/hosb1105chap2.xls](http://www.homeoffice.gov.uk/rds/pdfs05/hosb1105chap2.xls)

<sup>20</sup> [www.lancs.ac.uk/socs/lucan/issues.htm](http://www.lancs.ac.uk/socs/lucan/issues.htm)

<sup>21</sup> [www.homeoffice.gov.uk/rds/pdfs05/personal\\_theft\\_0405.xls](http://www.homeoffice.gov.uk/rds/pdfs05/personal_theft_0405.xls)

<sup>22</sup> The burden of physical activity-related ill health in the UK Allender et al. *J Epidemiol Community Health*. 2007; 61: 344-348

<sup>23</sup> Deloitte and TARP, Health of the Nation report, Published 29/3/06

<sup>24</sup> Deloitte and TARP, Health of the Nation report, Published 29/3/06



- improved health and therefore ability to live a better quality of life for longer
- reduced fear of crime arising from reduced bike theft
- reduced vehicular traffic, thus improving residents' local environment and encourage others within a community to cycle.
- increased support for local shopping facilities rather than larger retail facilities typically only accessible by car

29. The Code also aims to reduce the need to commute to work by encouraging homebuilders to provide an appropriate space for residents to work from home. Providing home occupiers with the option to work at home has a number of recognised environmental, social and economic benefits. The environmental benefits of increased home working are similar to those documented above, i.e. less congested private and public transport and reduced air and noise pollution.

30. A number of the economic and social benefits associated with home working are similar to those arising from increased cycling, i.e. less congested roads, greater support for local services and facilities such as local retail, and better community integration that may in turn result a more cared for local environment and an improved quality of life. Additional benefits include reduced occurrence of and reduced costs/damages associated with daytime burglaries and savings arising from reduced expenditure on public/private commuter transport. A dedicated home office space could also be used by children for schoolwork. A potential negative impact of increased home working would be the extra cost and energy required to heat the home all day during the winter months. The net heating requirement is lessened where people work together in a traditional communal office space.

31. Installing energy efficient internal lighting generates CO<sub>2</sub> savings and a reduced electricity bill. When modelled in SAP 2005, this amounts to £15/year per home and 71 kg CO<sub>2</sub> saving per year. Energy-efficient external lighting presents further savings.

#### *Water*

32. The Code has mandatory and flexible water credits that each aim to reduce potable water use within the home. This is achieved through encouraging the use of low-water-use WCs, showers, taps and appliances, as well as wastewater recycling and rainwater harvesting.

33. The UK water industry is responsible for approximately 4 million tonnes of greenhouse gas emissions (CO<sub>2</sub> equivalent) every year; this is nearly 1 percent of the UK's total CO<sub>2</sub> emissions<sup>25</sup>. Therefore reducing national water consumption will reduce the UK's impact on global warming.
34. In addition, much of the UK suffers from severe year-round water scarcity; this is due to high population densities in areas of low surface water availability. Around London and the South East, groundwater accounts for 70% of the total water supply. Conversely, nationally two-thirds of the UK's water comes from surface sources and a third from groundwater<sup>26</sup>. Over-abstraction from ground and surface water is unsustainable; it has a severe impact on the surface ecosystems and can permanently damage aquifer quality. Forecast population growth will further increase potable water demand. For example, London will have an estimated 800,000 new citizens by 2015<sup>27</sup>, therefore encouraging water efficiency in new homes is vital.
35. Improving potable water usage efficiency will also help to alleviate the burden placed on Victorian combined (stormwater and foulwater) sewage systems that operate in many UK towns and cities. In some areas, population growth has led to overburdening of the existing infrastructure; therefore reducing the per capita volume discharge will help to reduce the frequency of combined sewerage overflows into water courses.
36. The most notable direct economic benefit to occupants will be a reduced water bill. On average in the UK, we use 150 litres of water per person per day<sup>28</sup>. The Code advocates provision of water efficient fixtures and fittings such that daily personal consumption should not amount to more than 125 litres, representing a minimum 17% water bill saving. At Code Level 3, the daily consumption volume drops again to 105 litres, presenting a water bill saving of 30%. Occupants will also benefit from lower energy bills as they will use less hot water.
37. The economy as a whole will also benefit from increased water efficiency as the water industry is energy and chemical intensive and consumes about three percent of total energy used in the UK<sup>29</sup>. Reducing water consumption would also reduce the per capita water and sewerage treatment infrastructure required.

<sup>25</sup> Water UK (<http://www.water.org.uk/home/policy/climate-change/briefing-paper>)

<sup>26</sup> <http://www.water.org.uk/home/resources-and-links/waterfacts/resources>

<sup>27</sup> <http://www.water.org.uk/home/resources-and-links/waterfacts/resources>

<sup>28</sup> <http://www.water.org.uk/home/resources-and-links/waterfacts/resources> (Source: Ofwat)

<sup>29</sup> Water UK (<http://www.water.org.uk/home/policy/climate-change/briefing-paper>)

38. The social benefits of reducing potable water consumption will be accrued through the direct economic benefit of lower energy and water bills (and hence a higher disposable income) and improved water quality in recreational areas.

#### *Materials*

39. The production, use and disposal of building materials accounts for significant energy and resource use, both internationally and in the UK. Consequently, the Code advocates specification of materials that have a reduced environmental impact. The Green Guide to Specification, one of the Code supporting tools, provides a simple aid that enables consideration for the environmental implications of materials specifications. The Green Guide ratings are based on life-cycle assessment (LCA); an approach which measures and assesses a range of environmental impacts from 'cradle to grave'. Construction details are compared on a like-for-like basis, as specifications that fulfil similar functions are compared over a 60-year study period<sup>30</sup>.
40. The Green Guide to Specification provides an environmental profile of the major components in home building construction specifications. The environmental profile is measured throughout a product's life, i.e. in manufacture (including impacts from virgin and recycled inputs); in use in a building (over a typical building life, including maintenance and replacement) and in demolition (the waste produced, allowing for recycling and reuse)<sup>31</sup>. The following six criteria are assessed:
- Climate change from CO<sub>2</sub> and other greenhouse gases associated with energy use
  - Ozone depletion – from gases affecting the ozone layer
  - Acidification – contribution to the formation of acid rain
  - Consumption of minerals and water
  - Emission of pollutants to air and water, including toxicity to humans and ecosystems
  - Quantity of waste sent to disposal<sup>32</sup>

<sup>30</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

<sup>31</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

<sup>32</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

41. Consequently, the benefits of specifying products that score more highly in the Green Guide to Specification are numerous and cover a broad range of wider societal environmental benefits.
42. The Code has the long-term effect of creating a market for construction specifications that have a lower impact on the environment. As a result, these better performing specifications generally become more economically viable, more widely available and eventually become mainstream and tried and trusted by the construction industry and occupiers.
43. The immediate social impacts of improving the selection of low environmental impact materials may not be apparent to the homeowner. Some of the issues addressed may improve the homeowner's health and some may improve the state of the environment for future generations of a community. For example, reducing the use of materials that during their manufacturing process emit pollutants into the environment may perceptibly reduce respiratory or other illness rates, whereas reducing CO<sub>2</sub> outputs may benefit future generation, by alleviating global warming.
44. The Code encourages responsible sourcing of materials. It rewards developers who source their materials from suppliers who can prove an audit trail, through a Chain of Certification (CoC) or Environmental Management System (EMS), to an environmentally sound forestry or extraction and manufacturing process. The environmental benefits to the home occupier are negligible; however, the societal environmental gains are substantial. These are broadly similar to those listed above.
45. As with the environmental impact of materials credits, the responsible sourcing credit has the effect of improving the market for responsibly sourced materials. As a result, these responsibly sourced materials generally become more economically viable, more widely available and eventually become standard at no extra cost to the developer and home buyer.
46. The occupier is unlikely to recognise any immediate social benefit from responsibly sourced construction materials. However they may redeem some value from knowing that their home's construction materials have been sourced responsibly (e.g. timber is responsibly sourced and FSC certified, which therefore did not contribute to the destruction of the rainforest; or ISO14001 certified concrete came from an environmentally audited processing and extraction site). Occupiers may also gain some social value knowing that their children's environment may be better off as a result of the responsible sourcing.

*Surface water run-off*

47. The aim of the Surface Water Runoff credits is to delay water run-off from hard surfaces within housing developments to public sewers and watercourses. Excessive surface run-off can cause significant flash flooding problems to natural watercourses, rivers and municipal systems, and sewer flooding is a major cause of pollution in urban areas. The environmental benefits of these credits include reducing the risk of localised flooding and watercourse pollution.
48. Floods are now on average nearly twice as frequent as they were 100 years ago; and over 7 percent of the land area of England and Wales is at risk from flood and around 5 million people, (i.e. 2 million homes) live in flood risk areas in England and Wales<sup>33</sup>. The Code encourages development in areas with low risk of flooding or where developments are to be situated in areas with a medium risk of flooding, the Code ensures that appropriate measures are taken to reduce the impact in an eventual case of flooding.
49. Flooding and flood management costs the UK around £2.2 billion each year; we currently spend around £800 million per annum on flood and coastal defences and even with the present flood defences, we experience an average of £1,400 million of damage<sup>34</sup>. Research undertaken by Foresight<sup>35</sup> found that if flood-management policies and protection expenditure remain unchanged, annual losses will increase by the 2080s. There is also the economic cost to the UK economy that results from time taken off work by home occupiers while dealing with flood damage. Although usually temporary, flooding can have a major effect on local ecosystems. Habitats can be destroyed and fauna and flora killed.
50. Flooding has a significant impact on quality of life. During flood events the elderly and infirm are at immediate risk. As was seen in the UK in the summer of 2007, as floods subside, health issues caused by sewage overflows and contamination of drinking water can become a serious concern. Flood damage can result in whole communities being forced out of their homes for long periods of time. Therefore the Code benefits home owners by rewarding developments that are at low flood risk, due to natural location, construction methods or flood barriers.

<sup>33</sup> Communities and Local Government, The Code for Sustainable Homes Technical guidance, September 2007

<sup>34</sup> [www.foresight.gov.uk/Previous\\_Projects/Flood\\_and\\_Coastal\\_Defence/Reports\\_and\\_Publications/Executive\\_Summary/executive\\_summary.pdf](http://www.foresight.gov.uk/Previous_Projects/Flood_and_Coastal_Defence/Reports_and_Publications/Executive_Summary/executive_summary.pdf)

<sup>35</sup> [www.foresight.gov.uk/Previous\\_Projects/Flood\\_and\\_Coastal\\_Defence/Reports\\_and\\_Publications/Executive\\_Summary/executive\\_summary.pdf](http://www.foresight.gov.uk/Previous_Projects/Flood_and_Coastal_Defence/Reports_and_Publications/Executive_Summary/executive_summary.pdf)

## Waste

51. Provision of appropriate waste storage facilities is a key contributor to encouraging increased household waste recycling rates. Consequently, the Code rewards the provision of internal and external household waste recycling storage space. Recycling generates many environmental benefits, notably reduced use of virgin resources. Increased recycling also reduces the per capita volumes of waste sent to landfill, and consequently, reduces the land area allocated to landfill, which is a key concern in the more densely populated areas of the UK. The provision of dedicated refuse storage areas is also likely to reduce the occurrence of street litter.
52. At present, UK law prohibits local authorities from introducing financial incentive schemes to promote recycling and reduction of waste. DEFRA is currently consulting on a strategy to lift this ban to allow local authorities to decide whether or not they wish to introduce a financial incentive recycling schemes for their area<sup>36</sup>.
53. At a national level the UK will be penalised if EU landfill diversion targets are missed. The National Audit Office estimated penalties of up to £40 million in 2010 and £205 million in 2013. The Local Government Association estimates that the latter fine would equate to around £220 per household<sup>37</sup>.
54. Increasing the proportion of household waste recycled in the UK will have the effect of making recycling more economically effective and will reduce the price of recycled raw materials.
55. The Code also specifically rewards the provision of home composting facilities in homes with gardens or where local authority kitchen waste collection or community composting services are available. An average household that composts all their food, garden and cardboard waste prevents emissions of 13kg of methane per year, equivalent to 280kg of carbon dioxide per year (just over one quarter of a tonne of carbon dioxide)<sup>38</sup>. In addition, encouraging composting may:
  - stimulate increased consumer preference for low packaging products
  - reduce the amount of methane and other gases produced by landfills
  - reduce leachate from landfill
  - reduce transport-related pollution associated with waste
  - encourage people to grow their own fruit and vegetables

<sup>36</sup> [www.defra.gov.uk/environment/waste/strategy/factsheets/incentives.htm](http://www.defra.gov.uk/environment/waste/strategy/factsheets/incentives.htm)

<sup>37</sup> [www.publications.parliament.uk/pa/cm200607/cmselect/cmcomloc/536/536i.pdf](http://www.publications.parliament.uk/pa/cm200607/cmselect/cmcomloc/536/536i.pdf)

<sup>38</sup> [www.cat.org.uk/information/catinfo.tmpl?command=search&db=catinfo.db&eqSKUdataarq=InfoSheet\\_CompostingForClimate](http://www.cat.org.uk/information/catinfo.tmpl?command=search&db=catinfo.db&eqSKUdataarq=InfoSheet_CompostingForClimate)

56. Homeowners have the potential to benefit financially if local authorities are given the power to introduce financially-incentivising recycling schemes (as mentioned above). A further financial benefit is the generation of compost that would otherwise need to be purchased.
57. The Code also aims to promote improved resource efficiency during construction and demolition, and to promote the reduction in and effective management of site waste. It should be noted that Site Waste Management Plans will become a legal requirement for all construction projects over £200,000 in 2008. Over 100 million tonnes of construction and demolition waste are generated in the UK every year and an estimated 13 million tonnes of this is completely unused building materials. The introduction of compulsory Site Waste Management Plans should generate major improvements in waste management within the industry,<sup>39</sup> reducing land area allocated to landfill and reducing demand on virgin resources. Site Waste Management Plans also have the benefit of reducing the litter associated with construction sites. However, on-site waste management can have the disadvantage of requiring on-site sorting machinery or crushers/grinders and also increases the number of vehicle movements associated with a site.
58. Housing construction projects provide excellent opportunities to optimise material resource use, and recycle and reuse waste arising on site. On average, between 60-80% of waste generated can be reused or recycled representing a value of up to 5% of a project's cost. Typically between 5-15% of materials brought onto site are never used<sup>40</sup>.

### **Pollution**

59. The Code advocates specification of lower polluting products, in particular, insulants with no/low Global Warming Potential (GWP) and boilers with low nitrogen oxides (NO<sub>x</sub>) emissions. The aim of these credits is to reduce global warming from blowing agent emissions (arising from the manufacture, installation, use and disposal of foamed thermal and acoustic insulating materials) and to reduce the emission of NO<sub>x</sub> into the atmosphere from domestic boilers. NO<sub>x</sub> are emitted from the burning of fossil fuels and contribute to both acid rain and to global warming in the upper atmosphere<sup>41</sup>. In 1999 four percent of the UK's NO<sub>x</sub> emissions came from domestic boilers<sup>42</sup>. Therefore the Code pollution credits are unlikely to directly affect the well-being of an occupant. However, reducing UK GWP and NO<sub>x</sub> emissions will benefit future generations by reducing the impact of climate change.

<sup>39</sup> The Code for Sustainable Homes Technical guidance March 2007 Department for Communities and Local Government

<sup>40</sup> [www.wrap.org.uk/downloads/Housing\\_newsletter\\_Hi\\_res\\_080307.41566f35.pdf](http://www.wrap.org.uk/downloads/Housing_newsletter_Hi_res_080307.41566f35.pdf)

<sup>41</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

<sup>42</sup> [www.aeat.co.uk/netcen/airqual/naei/annreport/chap5\\_2.html](http://www.aeat.co.uk/netcen/airqual/naei/annreport/chap5_2.html)

60. These pollution credits were also included within EcoHomes; they effectively discourage the purchase of insulants with high GWP and inefficient boilers that produce significant NOx levels. As a result low GWP insulants and low NOx boilers have become standard in the market at little or no extra cost. An additional financial benefit of low NOx boilers to the homeowner is better boiler fuel efficiency and therefore reduced fuel bills.

*Health and wellbeing*

61. There are a number of Code credits that aim to improve quality of life in the home through provision of good daylighting, and also to reduce the need to use energy to light the home. The eyes and brain function better in natural light therefore concentration improves. In addition to aiding eye and brain function, improved daylight also helps to reduce the occurrence of Seasonal Affective Disorder (SAD).

62. Glazed areas also produce passive solar gain, which can reduce energy costs, and reduce the need for artificial lighting<sup>43</sup>.

63. Code credits are also awarded where party walls and floors achieve higher standards of sound insulation than required by Approved Document E of the Building Regulations. Environmental Health Officers in England and Wales received nearly 6000 noise complaints per million people in 2003/2004 from domestic premises<sup>44</sup>. This accounts for 75% of all noise complaints received. Improved sound insulation means that occupants will be disturbed less by neighbours and will therefore have a better quality of life.

64. The economic benefits arising from improved sound insulation are significant, notably:

- people with a better quality of life are more likely to be more economically active, therefore occupants are more likely to be better off financially
- less police/public sector/environmental health time and resources spent investigating and resolving neighbour noise disputes.

Reduced occurrence of sound disturbances is also likely to improve social interaction with neighbours.

65. The Code rewards developments that provide occupants with a partially private outdoor space. The benefits associated with provision of outdoor space are extensive. The key benefit is social; outdoor space provides people with a space in which they can socialise and entertain which leads to better

<sup>43</sup> [www.narm.org.uk/home/lightforlife.html](http://www.narm.org.uk/home/lightforlife.html)

<sup>44</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007



social interaction within a community. People who spend time outside also tend to be healthier and have a better quality of life; therefore the NHS and the individual occupier will benefit financially from the provision of outside space within developments. The UK economy is also likely to benefit because occupants are generally in better health and more economically active.

66. Additional (partially) private outdoor space is also likely to be supportive of improved biodiversity through the provision of additional habitat. Open space within developments, especially within urban areas, also plays an important part in the dispersion and dilution of airborne pollutants and therefore improves air quality and reduces air pollution related health risks.
67. The Code strongly encourages the construction of homes that are accessible to everybody and can be adapted to fit the needs of future occupants. Lifetime Homes (LTH) are designed to be suitable for older people and for the vast majority of disabled people, as well as non-disabled people. The benefits associated with designing to LTH are predominantly socio-economic. However the notable environmental benefit of the LTH initiative is that because homes do not require major adaptation to accommodate an elderly or disabled person; construction waste and use of materials arising from refurbishment can be significantly reduced.
68. LTH are designed to be suitable for most disabled and older people; this means that as families grow older or a member becomes disabled, the individual and/or family is able to continue living in the same home. This strengthens the family unit and gives people, especially those who are disabled, a better quality of life. In the event that an occupier becomes less able a LTH can be adapted at much less expense than a normal home. Over £350 million a year is currently spent in England alone on adapting the homes of people who become disabled; 60 per cent of this from public funds. This figure is expected to rise significantly during the next half century as the elderly population increases.
69. A cost-benefit analysis by Pinda<sup>45</sup> has shown that the immediate costs of building all homes to LTH standards over the next 30 years would be offset against long-term savings averaging £250 per property. The adoption of the LTH standard would also reduce the burden put on the NHS, as old and disabled people are less likely to become injured because their home is adapted to facilitate their needs. The load on the NHS would also be reduced because more old and disabled people will be able to live in their own homes for longer without the need for home care or to move out for specialist care.

<sup>45</sup> [www.jrf.org.uk/pressroom/releases/240297.asp](http://www.jrf.org.uk/pressroom/releases/240297.asp)

70. The presence of more elderly and disabled people within regular (rather than residential/care/nursing homes) developments will lead to more diverse communities and better social acceptance of the elderly and disabled. Families will also be able to live in the same home for longer and will therefore form stronger relationships with the community.
71. The Management section of the Code encourages a range of best practice processes and activities; including the provision of guidance to enable homeowners/occupiers to understand and operate their home efficiently and to make the best use of local facilities.
72. Without the provision of adequate information and guidance it is likely that the home may be used inappropriately, leading to the dissatisfaction of occupants and the waste of resources. Provision of a Home User Guide may lead to a more environmentally informed population. A more informed population may purchase and operate appliances in a more environmentally-conscious way, ultimately leading to reducing environmental impacts arising from household occupancy.
73. Provision of a Home User Guide should save occupants money as the guide gives information on:
- energy and water use – this information may help the users save on utility bills
  - recycling and waste – this could save the occupier money if Local Authorities are allowed to apply incentive schemes for recycling
74. To recognise and encourage environmentally and socially responsible construction site management; the Code promotes home builder registration with the Considerate Constructors Scheme (CCS). The benefits of the CCS include:
- minimised disturbance/negative impact (in terms of noise, dirt and inconvenience) caused to the immediate neighbour
  - eradicated offensive behaviour and language
  - improved company procedures in dealing proactively with neighbourhood and environmental issues
  - recognises and rewards the constructor’s commitment to raise standards of site management, safety and environmental awareness beyond statutory duties
  - enforces the code of considerate practice
  - deals with complaints<sup>46</sup>

<sup>46</sup> [www.lga.gov.uk/lga/planning/constructors.pdf](http://www.lga.gov.uk/lga/planning/constructors.pdf)

75. The Code also aims to recognise and encourage active environmental management of construction site impacts. For example, in the UK during 2004 there were 180 water pollution incidents from construction and demolition sites. Environmental benefits of active site management included reduced CO<sub>2</sub> emissions, dust pollution and water usage. Improved site management also makes the immediate area a better environment to live in the short term.
76. Many aspects of environmental site management relate to resource efficiency. Consequently, where site management actively monitors and minimises site resource consumption (e.g. reduced transport to site, reduced site energy/water usage) the home builder/contractor will save on site bills.
77. The Code aims to encourage developments where people feel safe and secure; where crime and disorder, or the fear of crime, does not undermine quality of life or community cohesion<sup>47</sup>. There are two safety and security elements to the Code; the first is to provide secure window and door locks; the second is to design in line with the Secure by Design Award. These factors reduce anti social behaviour and crime.
78. A report released by the Association of British Insurers<sup>48</sup> states that ensuring that all new homes achieve a Secure by Design Certificate would cost £630 per home and would yield benefits of over £1,170 per household. Over 20 years the policy would generate more than £3.2bn of savings to the economy as a whole.
79. Lastly, the Code supports ecologically beneficial development; the primary aims being to encourage development on land that is low in ecological value, to promote the protection and enhancement of ecological features, and to reward sites that improve overall ecological value. Particular value is given to promoting native floral species diversity. Adequate native floral species diversity is integral to diverse and robust ecosystems. Diverse ecosystems are better at withstanding physical and biological stress; as a result populations remain more stable.
80. Homes that are located in an attractive setting are inherently more valuable and provision of planted areas and soft landscaped features is known to improve the quality of life of occupants. The Code also presents long-term social benefits to future generations as it promotes preservation of areas and features of ecological worth.

<sup>47</sup> Communities and Local Government, *The Code for Sustainable Homes Technical guidance*, September 2007

<sup>48</sup> Association of British Insurers July 2006: *Securing the Nation – the Case for Safer Homes*, [www.abi.org.uk/BookShop/ResearchReports/Securing%20the%20Nation%20July%202006.pdf](http://www.abi.org.uk/BookShop/ResearchReports/Securing%20the%20Nation%20July%202006.pdf)

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Implementation of Cave Review of Social Housing Regulation</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 2	<b>Date:</b> July 2008
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Elizabeth Knapp

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

Regulation of social rented housing is necessary to protect tenants. Their choice and ability to exit is limited, as rents are submarket, so a regulator is needed to set and enforce standards for tenants. In addition, the provision of social housing usually requires public money, and this investment must be safeguarded.

The current system of social housing regulation in England was introduced in 1974 and has since seen relatively little change. But the social housing sector and broader policy environment has changed, and we need regulation to be fit for purpose now and in the future.

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

The objective is to improve the regulation of social housing (social rented and low cost home ownership) in England, to empower and protect tenants, giving them greater role, and a stronger emphasis on what matters to them – core housing services. The intention is also to reduce the level of unnecessary regulation and bureaucracy for good providers.

Professor Cave’s independent review of social housing regulation, published in June, made recommendations on how best to achieve these objectives. Following consultation we wish to implement changes.

**What policy options have been considered? Please justify any preferred option.**

- 1) Do nothing
- 2) Make the regulator of Registered Social Landlords (RSLs) a standalone body – the Tenant Services Authority. We consulted on this as part of the Housing and Regeneration consultation. A majority of responses favoured a new standalone body, as the most likely to give continuity and certainty to regulation, and confidence to lenders to the RSL sector. We also set up an independently chaired advisory group to consider how to bring LAs into the regulator's remit, ensuring compatibility with the new local government performance framework.

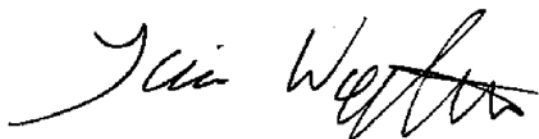
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Within 3 years of implementation.

**Ministerial Sign-off** For select stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b> <b>Do nothing</b>	<b>Description:</b> <b>status quo</b>
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COSTS	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition) <b>Yrs</b>		
	£0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£0	<b>Total Cost (PV)</b>	<b>£0</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Contributors to the Cave review and consultation would be affected, including tenants, RSLs and local authorities – for example, tenants would not be given more say in the service they receive, and this would not ensure that RSLs engaged with local authorities in their place-shaping function.			

BENEFITS	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b> <b>Yrs</b>		
	£0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£0	<b>Total Benefit (PV)</b>	<b>£0</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Initially less cost and risk than from transition to a new system.			

### Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
0	N/A	£0	£0
What is the geographic coverage of the policy/option?			England
On what date will the policy be implemented?			N/A
Which organisation(s) will enforce the policy?			CLG, Housing Corp
What is the total annual cost of enforcement for these organisations?			£20m

Does enforcement comply with Hampton principles?		No			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£0			
What is the value of changes in greenhouse gas emissions?		£0			
Will the proposal have a significant impact on competition?		Yes/No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £0		Decrease of £0		<b>Net Impact £0</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: Standalone Regulator</b>		<b>Description:</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Average annual cost and total cost reflects the additional cost of the standalone regulator, compared to the do nothing option, over the period 07/08 to 11/12.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost (excluding one-off)</b>		
	£3.2m		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Business as usual – day to day operations need to be maintained whilst in this period of flux.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Major social benefits for many of the most vulnerable in society: better quality services more responsive to the needs of social tenants, tenant empowerment and involvement in shaping service, greater diversity of providers leading to greater innovation; more choice of high quality homes, and better community facilities.			
<b>Key Assumptions/Sensitivities/Risks</b> Assumptions – creation of new regulator will not be delayed. Risks – loss of key staff, transitional change to structures.			
<b>Price Base Year</b> 2007	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £



What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	2009			
Which organisation(s) will enforce the policy?	CLG/regulator			
What is the total annual cost of enforcement for these organisations?	£20m			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£0			
What is the value of changes in greenhouse gas emissions?	£0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Purpose and intended effect of measure

The objective is to improve the regulation of social housing (social rented and low cost home ownership) in England, to empower and protect tenants, ensure continued provision of high quality social housing, and expand the availability of choice between suppliers. The intention is to reduce the level of unnecessary regulation and bureaucracy.

### Objective

To make the regulation of social housing in England more risk-based, focusing on empowering and protecting tenants, ensuring continued provision of high quality social housing, and expanding the availability of choice between suppliers. The intention is to reduce the level of unnecessary regulation and bureaucracy.

It is proposed that the investment functions of the Housing Corporation move to the Homes and Communities Agency, so its regulation functions need to move to a separate regulatory body. This regulatory body will be known as the Tenant Services Authority. The regulator will have new objectives, powers, and independence from Government to operate the new regulatory system.

The new system will cover Registered Social Landlords (RSLs) and any currently non-registered bodies who apply voluntarily for registration. Following amendment in the House of Lords, Part 2 of the Housing and Regeneration Act will contain an enabling power. This would enable the registration of local authorities by the regulator and the amendment and modification of the Act and other legislation as necessary or desirable to enable their regulation. We are committed to a full public consultation on any regulations made under the power. Consultation would include an impact assessment on the impacts of extending the Tenant Services Authority across the domain.

### Background

The Housing Corporation, a Non-Departmental Public Body responsible to the Secretary of State for Communities and Local Government, is currently the statutory regulator of housing associations, which, on registration as registered social landlords (RSLs), become subject to its guidance and statutory powers. These currently are, inter alia, to ensure RSLs remain viable organisations with suitable governance, are capable of fulfilling their objective of providing social rented housing at sub-market rents to those in need, and that standards and conditions are met on the social rented housing they own and manage.

There have been several recent changes in the Housing Corporation's functions. Inspection of RSLs was transferred to the Audit Commission in 2003. The Housing Act 2004 introduced the ability of the Housing Corporation to grant fund non registered bodies, such as for-profit developers, for the provision of affordable housing. And the Housing Corporation has recently implemented reforms to deliver a risk-based regulation system to minimise burdens on good performers, following the Elton Review<sup>45</sup>.

Performance of local authority social housing provision – either direct or through Arms Length Management Organisations (ALMOs) – has a different regulatory regime. ALMOs who receive additional funding are subject to regular inspection from the Audit Commission. Local authorities who directly manage their housing are subject to the local authority performance management system under Best Value legislation. This includes a duty to deliver best value, including undertaking reviews, reporting on Best Value Performance Indicators, and being subject to inspection and assessment by the Audit Commission – both through individual housing inspection events and through the Comprehensive Performance Assessment (CPA). *The Local Government White Paper – Strong & Prosperous Communities*<sup>46</sup>, published in October 2006, committed to a new performance framework for outcomes secured by local authorities working alone or in partnership. This framework is being developed and implemented within the next 2 years, as part of the White Paper commitments to rebalancing accountabilities between Government, local authorities and citizens and to reducing unnecessary burdens on deliverers.

In December 2006, the Government invited Professor Martin Cave to head an independent Review of Social Housing Regulation. His remit was to consider options for reform of the regulatory system including fundamental changes, and make recommendations to Government. He was asked to consider regulation in the light of recent policy and institutional change, in particular the Hills Review of Social Housing (*Ends and Means: The Future Roles of Social Housing in England*, published on 20 February 2007), and the announcement of the intention to set up the Homes and Communities Agency. In developing recommendations, he took account of the views of stakeholders through a Call for Evidence and through ongoing engagement. Stakeholders included RSLs, local authorities (in both strategic and landlord capacities), tenants and Government (including the Housing Corporation and the Audit Commission).

Professor Cave's report, *Every Tenant Matters*, was published on 19 June 2007. The consultation on his recommendations (part of the Housing and Regeneration consultation) ran from 19 June to 10 September 2007.

<sup>45</sup> *The Elton Review of Regulatory and Compliance Requirements for Registered Social Landlords*, Department for Communities & Local Government, April 2006

<sup>46</sup> *The Local Government White Paper – Strong and Prosperous Communities*, Department for Communities & Local Government, October 2006.

## **Rationale for Government intervention**

The rationale for Government intervention in social housing, by enabling bodies to build and manage homes, has long been established. Many people cannot afford to buy a decent home or would find it difficult to rent one in the private sector. The recent Hills Review confirmed that social housing provides security and stability for nearly four million of the most vulnerable households in England. The management of these homes needs to be regulated to ensure high quality service standards.

Martin Cave, in his review of social housing regulation, set out three reasons supporting the continued need for a social housing regulator. These are:

- Delivering social housing at below market prices means that tenants have limited market power, and providers have limited pressures to provide good service and choice. This is unlike a normal market where consumers can choose where to spend their money, and regulation is therefore less likely to be needed.
- There are externalities for neighbourhoods of having good quality social housing. Achieving the positive externalities is a rationale for intervention.
- Given the significant public sector spending on social housing, regulation is required to ensure that the public interest is met.

## **Consultation**

### *Within Government*

During Professor Cave's independent review, he discussed his recommendations with Communities and Local Government Ministers and officials, and officials at Cabinet Office, HM Treasury and the Department of Work and Pensions. He also engaged with the Housing Corporation and the Audit Commission, as Government Non-Departmental Public Bodies with a key role and knowledge of the subject.

### *Public Consultation*

In December 2006, the Cave Review invited stakeholders to submit evidence by 15 February 2007. This was not a Government consultation and so was not in full accordance with Cabinet Office guidelines. The Review asked for evidence and suggestions, not comments on his specific proposals.

The Review involved confidential discussions with key stakeholders, including tenants and groups representing them, and representatives of the RSL, local government, ALMO, for-profit (developer) and lender sectors. Their views were reflected in the Review.

Professor Cave's report, *Every Tenant Matters* was published on 19 June 2007:  
<http://www.communities.gov.uk/publications/housing/everytenantmatters>

The Government consulted on Professor Cave's recommendations as part of the Housing and Regeneration consultation:  
<http://www.communities.gov.uk/publications/housing/deliveringhousingregeneration>

## Options

### Option 1 – Do nothing

This option would keep the old system virtually intact, and would reject the majority of Professor Cave's recommendations. The Government and Housing Corporation are already implementing minor reforms in the RSL sector, including those agreed following the Elton Review, which may lead to reduction of over 10 per cent in the regulatory burden on RSLs. These do not envisage major change to the statutory powers or objectives of the Housing Corporation.

The impact of no change would be that momentum on reform would be lost. Contributors to the Review would be disappointed, including tenants, RSLs and local authorities – for example, tenants would not be given more say in the service they receive, and this would not ensure that RSLs engaged with local authorities in their place-shaping function. It is less likely that housing management would improve significantly. However, the Government would incur less cost and risk from transition to a new system.

### Costs and benefits

Economic: economic benefits from minor reform are minimal. The current system arguably imposes too high a regulatory burden on providers, does not attract enough competition from other sectors to encourage efficiency or innovation, and leaves some tenants dissatisfied with the service received. At best, these could be marginally addressed, leading to some cost savings.

Environmental: there are no specific environmental costs or benefits from Option 1.

Social: The Government does not consider there to be any social benefits or costs from Option 1.

### Option 2 – Make the regulator of RSLs an independent, standalone body

*Professor Cave's full recommendations are at **Annex A**. His key recommendations, which the Government immediately accepted, are as follows:*

- Social housing regulation should be separated from investment to give it more focus, but the two should co-operate closely

- Regulator is statutorily independent of Secretary of State, though Secretary of State has the power for strategic directions on service standards and rent levels
- Regulator will consult on the 'core housing standard' (what is regulated) – this can be amended over time
- Providers have a duty to engage constructively with Local Authorities in their place-shaping function
- Regulator will require limited performance information, but can demand more if needed; tenants and Local Authorities get information allowing local comparison of service levels
- New right for tenants, Local Authorities and others to trigger intervention by regulator, by providing evidence of problems in service standards, viability, or engagement with Local Authority
- Wider range of powers allows more flexible and effective intervention to meet tenants' needs
- For good (RSL) performers, level of regulation and information should decrease
- Regulator has the objective to support tenant empowerment, and help enable voluntary Tenant Management Organisation route for RSLs
- National tenant voice to be set up as an advocate for tenants, to Government and regulator (perhaps within National Consumer Council)
- Bodies other than housing associations are allowed to register for 1st time (but this would be less intrusive than for RSLs – no need to ensure they stay viable as organisations)
- Regulator can vary rent levels minimally (subject to Secretary of State direction) to encourage better standards
- Encourage but not require separation of management and ownership to bring in better managers

**We consulted on Cave's proposals to:**

***Regulate Local Authorities as well as RSLs***

The Cave review recommended that the regulator's responsibilities should be cross domain (i.e. cover all social housing providers – Registered Social Landlords, Local Authorities, Arms Length Management Organisations (ALMOs) and private sector). Government was clear in its response to Cave that tenants should be able to expect the same minimum standards of service and have similar opportunities for empowerment, to influence delivery and to seek redress regardless of their social housing provider. However we also recognised that the funding, governance and accountability arrangements vary significantly between providers, and we were mindful of our commitments in the Local Government White Paper to implement a new, single, performance framework for outcomes

secured by Local Authorities working alone or in partnership. We therefore invited views on this issue through consultation.

Respondents to the consultation were overwhelmingly in favour of bringing Local Authority landlords into the scope of the regulator in principle. But a large number of them also highlighted the importance of recognising the significantly different governance and finance arrangements between the different sectors, and making arrangements which were consistent with the single performance framework for local authorities.

Our priority is to establish regulation that works effectively, both for landlords and tenants. It is better that we take the time necessary to get it right for Local Authority tenants. Therefore the regulator will initially regulate only Housing Associations. However Ministers announced the intention to bring local authority social housing into its scope as soon as is practicable.

There is clearly a strong case for having regulation that applies across the whole social housing domain as this offers the best deal for tenants and landlords. The Government therefore appointed Professor Ian Cole to Chair an independent advisory panel of key stakeholders and tasked it to make recommendations to Government. The group met between January and June 2008 and Professor Cole's report has now been submitted to Government and will be published in due course.

Following amendment in the Lords Part 2 of the Housing and Regeneration Act contains an enabling power which would enable the registration of local authorities by the regulator and the amendment and modification of the Act and other legislation as necessary or desirable to enable their regulation. We are committed to a full public consultation on any regulations made under the power. Consultation would include an impact assessment on the impacts of extending the Tenant Services Authority across the domain.

#### ***Give regulation to a new standalone body rather than the Audit Commission***

The Cave review recommended that there should be a separation of investment and regulation functions – both currently carried out by the Housing Corporation. He said that the new regulator could be established as part of the Audit Commission, but that he would prefer a new standalone regulator.

Locating the regulatory functions in the Audit Commission would build on its existing strengths and consumer focus, and it could be implemented quickly. However our consultation document also recognised the benefits of a standalone regulator. In particular it would avoid housing regulation being led by an organisation primarily focused on the public sector, and as such, may be better

at commanding the confidence of those who provide private finance for social housing. Building on the Housing Corporation's regulatory functions would enable a smooth transition. Given this balance of arguments, we consulted openly on this issue.

Although there was some support amongst consultation responses for making the Audit Commission the regulator, a majority of responses favoured a new standalone body, as the most likely to give continuity and certainty to regulation, and confidence to lenders to the RSL sector. Also those tenant bodies which took a view (some remained neutral) favoured a standalone regulator, because of the opportunity for a fresh start, and a clear focus on consumers. Our decision is **therefore to establish the new regulator as a standalone body.**

*Combine the RSL and Local Authority ombudsmen functions under a single body.*

Given that we are not for the time being going to incorporate Local Authorities into the same regulatory system as RSLs, it would be sensible to revisit this at a later date.

### **Costs and Benefits**

Economic: the economic benefit of major reform is that the cost of regulation overall should fall, or at least be better value for money. A system which is more transparent in the burdens placed on providers should allow better forward planning. Professor Cave argued that his proposals should result in less regulation and associated costs for RSLs, including reduced information requirements. **Annex B** of this impact assessment – comprising Annexes 4 and 5a from Professor Cave's report – illustrates this, showing the impact of the Cave recommendations on intensity of regulation (annex 4), and the regulatory framework and associated administrative burdens – currently and following regulatory reform (Annex 5a). The annexes illustrate the effects in respect of the full range of recommendations that Cave report makes. Some of these are contingent on specific decisions on policy and practice that need to be taken in developing the regime to ensure that it is effective, whilst maintaining a Hampton-compliant focus and culture

In addition the Housing Corporation commissioned the study Exploring the costs and benefits of regulatory compliance, by Frontier economics, published in September 2005. The study concluded that the administrative and running costs of its regulatory regime were significantly counterbalanced by beneficial impacts on the costs of borrowing for Registered Social Landlords. We have taken account of this in our consultation on the options for the new regulatory arrangement so as to ensure that, as far as possible, these beneficial impacts on funding costs are maintained, whilst also looking to minimise the administrative costs of the new/proposed regulatory system.



The objectives of the social housing regulator will incorporate duties that will require the regulator to meet the requirements of ss.21 and 22 of the Legislative and Regulatory Reform Act 2006, and the associated Regulators' Compliance Code.

Having a new regulator, whether based in the Audit Commission or as a stand alone body (based on the regulatory function of the Housing Corporation), will result in transition costs to Government.

Costs to regulated bodies will comprise two elements: staff and other costs within the body, and a payment to meet the ongoing costs of the regulator. If the level of regulation is lower, staff costs on complying with the regulator may also be lower, though better management may carry costs. Costs sited on page 3 are the transition costs regarding staff, IT systems and communications, and have been formulated and agreed with the Housing Corporation.

The Housing Corporation currently spends around £20m pa on regulating RSLs. In moving to the new regulatory regime a stand alone Regulator will need to adapt its approach and skill mix. On the basis of the existing cost of regulation this is estimated at an additional £2.8m, and would deliver cost savings in the long term.

Assuming the cost of regulation remained at around £20m total, and there were 2 million RSL-owned homes (as at present), the annual cost to RSLs could be about £10 per home owned.

*Social and environmental costs and benefits – see **sustainable development** section below.*

## **Devolution**

These provisions apply only to England.

## **Sectors and Groups Affected**

Reforms to the regulation of social housing will have direct impact on two groups:

- Owners and managers of social housing (including those currently registered or those who could be registered in future) will be encouraged to manage stock better, if needed, and engage more with tenants
- Tenants of those landlords will benefit from improving the management of social housing and increasing their say in the regulatory system

There will be an important secondary impact on several other groups:

- Local authorities (in their strategic function) will have more input into regulation, and providers will be under a duty to engage constructively with them
- For-profit developers can currently apply to develop, own or manage social housing under contract, but a clearer regulatory system may encourage more to be involved
- Lenders will wish to ensure that the new system provides certainty as regards RSL borrowing
- Potential social housing tenants may benefit from an increased supply of new social rented and low cost housing, which good regulation should encourage.

### **Monitoring & Review**

The impact and costs and benefits of this policy will be reviewed within 3 years of implementation of the new regulatory system, which we would anticipate to be in late 2012-early 2013.

Review should gauge progress towards meeting those of Cave's recommendations which we accepted, and the cost of this. It could be in the format of an independent assessment of the impact of the regulator over that period on tenants, providers, lenders and other stakeholders such as the Homes and Communities Agency. It may be appropriate to combine this with 3 year reviews of other Housing and Regeneration Bill impact assessments.

Monitoring of the new system would be through Tenant Services Authority annual reports, links with Communities and Local Government and compliance with the TSA framework document. These would be consistent with the TSA's statutory independence from Government.

### **Implementation & Delivery Plan**

These proposals form part of the Housing and Regeneration Act. The Bill was introduced into Parliament in November 2007. It received Royal Assent in July 2008.

### **Summary & Recommendation**

We are implementing Professor Cave's recommendations, in particular to establish a standalone regulator, as part of the Housing and Regeneration Act.

Following amendment in the Lords Part 2 of the Housing and Regeneration Act contains an enabling power which would enable the registration of local authorities by the regulator and the amendment and modification of the Act

and other legislation as necessary or desirable to enable their regulation. We are committed to a full public consultation on any regulations made under the power. Consultation would include an impact assessment on the impacts of extending the Tenant Services Authority across the domain.

## **Specific Impact Tests**

### **Competition Assessment**

These proposals should have a positive impact on competition, by allowing for-profit bodies to register with the Regulator, and by improving the provision of information about performance.

### **Small Firms' Impact Analysis**

The proposals are unlikely to affect small for-profit firms. The emphasis on less, but more effective, regulation, to ensure standards for tenants and viability, means that the burden on most well performing RSLs should decrease. Some small RSLs may be permitted to be deregulated, so long as tenants' rights are maintained by membership of the ombudsman service.

### **Legal Aid**

No extra cost or benefit envisaged.

### **Sustainable Development**

*Social:* If regulatory reform encourages landlords to manage better, engage with tenants more, and at least continuing their current level of voluntary involvement in neighbourhood activities such as work training programmes, then Option 2 could involve major social benefits for many of the most vulnerable in society (2 million households at present, and probably more in future, as the level of RSL social housing ownership is increasing).

RSLs themselves also have an important part to play in working with local authorities to secure local wellbeing.

*There are no anticipated social costs.*

*Environmental and economic:* there are no specific environmental costs, or economic costs other than those detailed above.

### **Carbon Assessment**

No new costs or benefits envisaged.

### **Other Environment**

No new costs or benefits envisaged.

### **Health Impact Assessment**

There is evidence that suggests the quality of housing can have an impact on the health of residents. Good quality social housing is important in bringing health benefits to tenants in deprived areas, and reducing health inequalities. Improved regulation helps ensure good management and maintenance of homes, and promote social integration to ensure positive health and mental health benefits.

### **Race Equality Assessment**

It is likely that regulatory reform will have a positive impact on ETHNIC MINORITIES groups.

The Government recognises that people from many ethnic minority groups are more likely than average to live in social rented homes (in 2001, especially Black African and Bangladeshi households). They are also more likely to be potential tenants. It is therefore likely that improving the management of social housing and increasing tenants' say in the regulatory system will benefit ethnic minority groups disproportionately. However, the aim is to empower people of all races in their capacity as social housing tenants, not specifically as ethnic minority people.

The regulator (under all options) will continue to seek to promote community cohesion and tenant empowerment, helping to encourage more choice of high quality homes, better community facilities and more economic opportunities.

### **Disability Equality**

The CORE (COntinuous REcording) database states that in 2005/06, 17% of incoming tenants considered that a household member had a disability. The actual figure for disabled tenants is likely to be higher as some may have developed disabilities after their lettings were made. 2001 Census data show that 18 per cent of people said that they have a long-term illness, health problem or disability which limits their daily activities or the work they could do.

This suggests that disabled people will not be disproportionately affected by changes to the regulatory system. However the aim is to empower all social tenants.

### **Gender Equality**

CORE data from 2005/6 shows that 52% of lettings were made to female 'heads of household'. However this figure does not account for likely variations in who tenants consider to be head of their household.

In any case this suggests that women will not be disproportionately affected by our proposed changes. As stated above, the aim is to promote community cohesion and tenant empowerment, helping to encourage more choice of high

quality homes, better community facilities and more economic opportunities for all RSL tenants.

### **Human Rights**

We believe the provisions to be compatible with ECHR. Powers to transfer registered providers' land, and management of it, involve interference with Protocol 1 Article 1 of the European Convention on Human Rights. However this is justified.

### **Rural Proofing**

The Government does not believe these proposals will have any negative effects on rural businesses or the communities associated with them.

### **Chief Economist statement**

This Impact Assessment has been read by the Chief Economist who has said that given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the policy.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

### Annex A

#### **Cave Review recommendations**

##### **To the Secretary of State**

1. A regulatory body should be established in statute, independent from Government, as the primary regulator of the ownership and management of social housing across the whole domain of social housing.
2. The regulator should have three principal duties:
  - To ensure the continuing provision and development of high quality social housing;
  - To empower and protect consumers; and
  - To expand the availability of choice among suppliers at all levels of the provision of social housing.

These should form the basis of the statutory definition of the regulator's powers, which would extend across the whole domain of social housing.

3. The regulator should:
  - apply common principles, where practicable, across the whole social housing domain and
  - reduce and manage the burden of regulation
4. Government should be entitled to issue directions to the regulator in relation to rents and the standards of housing provision. It should be for the regulator to transpose these into the regulatory framework. Therefore it is recommended that the regulator be given the statutory power to set rent levels across the domain.
5. The regulator should maintain and update a clear statement of provider obligations.
6. All parts of the domain should have a statutory duty to cooperate with the convening and place-shaping role of local authorities. This obligation will be strongest where a provider has a significant number of homes in an area. This cooperation will require providers to engage constructively with local authorities and will often include a variety of local agreements and partnerships. Their terms are subject to agreement between the parties.

7. The regulator will implement a framework for the ownership and management of social housing, where the provider is regulated. Where long term ownership and management arrangements are integrated into supply contracts, the regulator must satisfy itself that the contract terms are in the long-term interests of tenants.
8. Restrictions on disposals and changes of use should remain, as should arrangements to prevent the leakage of subsidy for purposes that have not been approved. In future, there should be a note of the regulator's interest in grant on the land registry to ensure that disposals are correctly handled. Otherwise the new arrangements need to be more flexible and easier to administer.
9. Registration with the regulator should be open to 'for profit' organisations and subsidiaries of other organisations as owners or managers or both. The registration process must be proportionate to the scale of activity proposed by the new provider and would be analogous to the pre-qualification criteria for development bidding. Registration would entail a range of explicit obligations that would bring the registered organisation within the new style of regulation.
10. The regulator should have a duty to promote ways in which tenants can be empowered and have more choices.
11. The voluntary TMO scheme being developed within CLG should be taken forward and available to all providers. Provided no conflict of interest is apparent, the regulator should take over, and be funded by the Government for this work.
12. A national tenant voice should be established to give tenants both a voice and expertise at national level.
13. Work on a standard form of tenancy should be brought to a conclusion so that tenancy terms can be explicit, understandable and easier to enforce for both parties. In principle, choice of tenure is supported although this must not reduce the protection that current tenants enjoy. It is therefore envisaged that substantial areas of tenancy agreements will be in common but that there will be defined areas that can be different.
14. There should be a single Housing Ombudsman for the whole domain. Further consultation of interested parties should be held to examine how the domain-wide Housing Ombudsman role should be organised.



15. The application of the Government's rent direction to providers across the domain should be a matter for the regulator. Within the direction, the regulator should have the power to cap annual increase in individual rents to protect tenants.
16. Where the difference between market rents and target rents in an area is less than 10%, it should be within the regulator's authority to de-regulate rents (which would continue to be constrained by Housing Benefit rent limits).
17. The regulator should retain merger approval powers but these should be exercised solely on grounds of consumer protection and competition.
18. The regulator should have a general power over the domain to gather information but this should be subject to the twin tests of being 'used and useful'.
19. The regulator should have the statutory powers to apply a wide range of remedial and enforcement measures including:
  - Right to obtain information
  - Inspection
  - Improvement notice
  - Enforcement notice
  - Fines
  - Compensation
  - Rent increase cap
  - Appointment of additional board members
  - Tendering the housing management function
  - Appointment of independent manager
  - 28 day moratorium
  - Transfer of ownership and/or management
20. Almshouses with less than 100 homes should be de-regulated and revert to the Charity Commission as the primary regulator. Consultation should take place with Abbeyfields Societies through their national body with a view to the de-regulation of the smallest ones that have had no recent input of grant. In both cases, continued membership of the Housing Ombudsman service should be required as a continuing measure of protection for their tenants.

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

#### To the regulator

1. The system for regulating social housing providers should be ‘co-regulatory’ in approach. Therefore many of the activities necessary to achieve the regulatory objectives will be undertaken by regulated social housing providers rather than directly by the regulator. The regulatory framework will, according to the nature of the objectives, require, permit or facilitate their delivery.
2. The social housing regulator should avoid duplicating the work of other regulators. In order to give effect to this, the regulator should enter into protocols with each abutting or overlapping regulator. These arrangements will need to be subject to periodic review.
3. Subject to any Government Direction on housing standards, the regulator should publish a clear definition of what constitutes the core housing service for the domain, in terms of both the quality of homes and of the management service provided. It is therefore proposed that there should be consultation on the core standards for social housing and that this should be an early focus for the new national tenant voice. The performance of service providers will be judged against the standards that are developed.
4. The regulator will have the authority to require all providers to deliver these core standards of service. As far as possible, this should be achieved by common ownership of the standards, self improvement mechanisms, regular tenant-led and other independent reality checks on progress and a continuous sharing of good practice. Responsibility to meet the standards falls on providers.
5. The regulator should encourage a plurality of mechanisms to be used by providers to drive them to achieve better outcomes for tenants. It is expected that empowered tenants would play a key role in assessing performance and

holding landlords to account for weaknesses in performance. To these ends, it is recommended that all providers should establish formal arrangements to:

- enable tenants to make periodic assessments of the quality of services provided
  - share benchmarking information about their performance and costs with other providers and publish this information to tenants and more widely
  - include an independent element in their performance assessment so that there is effective external challenge.
6. The regulator should remain in direct contact with the impact of services on tenants and with the range of practice on the ground, by commissioning or undertaking inspections, or otherwise.
  7. The regulator should support the supply of new social housing by:
    - Establishing a regulatory framework that recognises the separate roles of owner and manager and reducing barriers to entry for development and ownership and management
    - Opening registered status as an option for private owners/managers
    - Encouraging the continued supply of private lending and capital for development and ownership by effective systems for monitoring viability and performance and, if necessary, by intervention
    - Encouraging a wider choice of public and private sector ownership options
    - Unlocking development capacity
    - Co-operating closely with Communities England on all matters of common interest
  8. The regulator should monitor organisational viability (which will encompass both financial viability and governance) and intervene appropriately to protect the interests of tenants and taxpayers.
  9. The regulator should introduce measures that stimulate competition for the management of social housing services across the domain. This should be designed to give tenants choice and improve service delivery.
  10. Opening access to new providers and models of provision should be encouraged. The regulator should ensure that regulatory mechanisms are proportionate and equivalent as between those applied by virtue of registered status and those enforced by contract.

11. The regulator should develop and implement a strategy for managing information requirements on providers across the social housing domain. It is envisaged that this will cover data on financial viability and service performance in particular. Furthermore, the regulator should publish the top level of performance information that it receives from all providers on its website, in a fashion which makes possible local comparisons. The publication of such information will be in the interests of consumers, a reward for good performers and a wake up call to poor providers.
12. The regulator should develop a range of ways of triggering interventions in consultation with providers, local authorities and the national tenant voice.
13. The programme of de-registration should be accelerated so that the smallest are freed of all regulation. A very light system of regulation should be applied to those with up to 1,000 homes – but on the basis of a risk assessment rather than on size alone.

## Annex B

On the following pages are extracts from *Every Tenant Matters*, showing:

- *Impacts of the Cave recommendations on intensity of regulation* (Annex 4)
- *The regulatory framework and associated administrative burdens – currently and following regulatory reform* (Annex 5a)

## ANNEX 4

### Impact of recommendations on intensity of regulation

Ref	Recommendation	Impact on policy costs	Impact on admin costs
51-3, 521, 523	Independent regulator with duties in statute, inc. principle that the regulator should reduce and manage the burden of regulation	n/a	Clearly defined responsibility for oversight and monitoring/ reporting on administrative burdens would have an overall deregulatory impact for all providers
54	Directions to the regulator by Government	Transparency over the imposition of policy requirements and mechanisms for controlling changes	Consequent limits on changes to monitoring and reporting requirements would have an overall deregulatory impact across the domain
55	Statement of provider obligations	Clarity of statement of scope and standards of regulatory requirements limits regulator creep	Consequent limits on monitoring and reporting requirements
56	Statutory duty to co-operate with local authorities	Formalises and incorporates requirement for providers to act cooperatively and proportionately with local authorities where they work	Intention that information provision requirements noted below form the core information provision to assist local authorities. This may increase the overall regulatory burden particularly for larger housing associations
57	Regulator to have primacy in determining long term arrangements for ownership and management of new supply	Transparency in obligations attaching to new supply	n/a
58	Greater flexibility in restriction on disposals of assets	Increased scope to manage social housing stock to reflect operating environment and deliver wider 'tenant offer', but within specified constraints to protect embedded taxpayer investment	Less burdensome administrative requirements, with a deregulatory impact principally in respect of housing associations

Ref	Recommendation	Impact on policy costs	Impact on admin costs
59	Revision and refinement to registration requirements	Reduced barriers to entry with requirements tailored to proposed provider activities. The deregulatory impact will principally benefit new housing associations and 'for profit' providers	Less onerous information requirements for registration, tailored to nature of activities carried out
510, 511	Promotion of tenant empowerment and choice, including facilitation of voluntary establishment of tenant management organisations	Objective over time is to enable tenants to engage with providers on a more equal footing, reducing need for formal state regulation, but there may be short term impacts on providers to adapt to this change	n/a
512, 522	Establishment of national tenant voice	Objective is to enable tenants' views to be articulated effectively to influence development of social housing policy. This should have no impact directly on burdens on providers	n/a
513	Single Housing Ombudsman	Purpose is to provide clearer access for tenants to independent complaint and dispute resolution service	In the short term, providers will need to revise the information provided to tenants about their access to the Ombudsman
514, 515	Regulator to manage national rent policy	Greater clarity over regulatory remit established in statute with deregulatory powers under specified conditions. Incorporates mandate for rents to allow for greater range of individual and collective tenant choice. Deregulatory overall	Relevant information requirements are required in this area for regulator to enforce effectively, and impact on costs determined by regulator's approach
516	Merger approval powers	Specifies basis for exercise of approval on the basis of competition and consumer protection concerns	Consequent reduction in information requirements compared with present, but subject to effective resident consultation and involvement. Deregulatory mainly in respect of housing associations

Ref	Recommendation	Impact on policy costs	Impact on admin costs
517, R11	Regulator's information gathering and publication role	Develops the use of relevant performance information and its wide accessibility to residents and other stakeholders as a core component of the regulatory framework. Defined role will have overall deregulatory effect	Regulator to consolidate, manage and be accountable for information requirements for regulatory purposes. Fundamental review of current requirements, but continued requirement for high quality information in specified areas capable of disaggregation to LA level
518, 519, R12	Regulator's remedial and enforcement powers	Better range of powers enables more effective and economic intervention capability with externalised benefits to good providers and to affected residents. Enables measures to reduce barriers to entry to new providers by reducing risks of costly or extended intervention processes where there is provider failure	Greater burdens overall on failing providers but the costs of specified intervention measures can be lower than present enforcement measures
520	Deregulation of specified classes of organisation	Maintain broad current level of deregistration requirements	Reporting and monitoring requirements substantially eliminated as at present
R1	Co-regulatory approach	Less paternalistic regulatory culture and approach which shifts emphasis of responsibility for compliance to Governing Bodies. Requires precept of forbearance from engagement for complaint providers. Overall deregulatory effect	n/a
R2	Co-operation with other regulators	Reinforces existing move to clearer definition of responsibilities so as to reduce and eliminate duplicative or conflicting regulatory requirements	Consequent reduction in reporting requirements
R3	Definition of regulatory requirements for core housing services	Clear statement of scope of regulated activities enhances focus on consumers and mitigates against regulatory creep	Consequent limits on scope of monitoring and reporting requirements R4. R5

Ref	Recommendation	Impact on policy costs	Impact on admin costs
R4, R5	Testing of standards in delivery of regulated activities through range of mechanisms	Greater scope for reliance on organisations' own performance management frameworks with greater emphasis on interests, views and involvement of residents	Scope for reduced or simplified reporting requirements where mechanisms are robust. Reduced use and costs of inspection. Overall deregulatory effect
R6	Incorporate inspection function into the regulator	Limit regulatory creep through reduction of scope for duplicative, divergent or conflicting requirements. More targeted and proportionate use of inspection within tailored regulatory approach	n/a
R7	Unbundling of provider roles of development, ownership and management	Purpose is to tailor regulatory requirements more precisely to range of activities carried out, and to encourage greater competition	Potential to limit information requirements so that these relate directly to the range of activities carried out. More proportionate and tailored approach will have overall deregulatory effect, particularly for housing associations
R8	Monitoring organisational viability (financial viability and governance)	More effective scope for intervention and remediation (above) allows for better management of risk and costs associated with failing organisations	Tailored approach to reflect overall risk, and activities for which providers are registered. Current levels of financial information for HAs will broadly continue. Potential to reduce requirements for governance through statutory code of practice in place of schedule 1 requirements for HAs. Overall deregulatory effect, principally in relation to housing associations
R9, R10	Stimulate competition, opening access and reducing barriers to entry for new providers	Over time, reduction of reliance on regulatory intervention to secure required outcomes for tenants and taxpayer	n/a



R13	Increase scope of deregulation and regulatory framework for small organisations	n/a	Maintain present direction of travel to reduce regulatory and reporting requirements for low risk organisations
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## ANNEX 5A

The regulatory framework for housing associations (HAs) and associated administrative burdens – currently and following regulatory reform

Regulatory requirement	HAs (now)	HAs (following reform)
Registration	Set out in Registration Criteria, including organisation attributes and information provision obligations	Similar framework, but with more limited requirements. Retention of information provision obligation
Information provision		
– Financial	Financial projections proportionate to regulatory risk assessment, and submission of financial statements by all	As now, but subject to regulator maintaining ongoing scrutiny of requirements to minimise burdens
– Stock data	Regulatory and Statistical Return (RSR) long form submitted by HAs with more than 1000 homes, otherwise short form	Potential for National Register of Social Housing (NROSH) to substantially replace RSR requirements, subject to review of extent of NROSH data requirements and minimisation of administrative burdens
– Performance indicators (PIs)	For 2007/08, a set of 11 PIs are collected annually, of which 2 are voluntary, and 2 relate specifically to shared ownership	Only key performance data to be collected and published by regulator; with data to be provided to show performance at local authority level, and with regulator’s ongoing scrutiny to minimise administrative burdens
– Lettings	Continuous Recording of Lettings (CORE)	CORE – subject to regulator’s ongoing scrutiny of requirements to minimise administrative burdens
– Compliance and efficiency reports	Provision of Self Assessment Compliance Statement (SACS) (annual) and Annual Efficiency Statement (AES) for association with more than 1000 homes	Discontinue SACS and AES HAs required to report regulatory non-compliance by exception
Control over disposals	Housing Corporation consent required, either by General Consent or consents for individual transactions	Some controls still needed but potential for greater flexibility
Constitutional matters	Approval to changes to governing instruments	As now, but with more limited information provision requirements in respect of merger and group structure changes

<b>Regulatory requirement</b>	<b>HAs (now)</b>	<b>HAs (following reform)</b>
Governance – payments and benefits	Relevant provisions of Schedule 1 of Housing Act 1995 impose constraints on payments and benefits except with consent of Housing Corporation	Potential for repeal of relevant provisions of Schedule 1 and replacement with a Statutory Code of Practice
Performance assessment	Housing Corporation Assessment (HCA) for all larger associations, not regulated under RASA (Regulatory Arrangements for Small Associations) regime	Discontinue HCA. Publication of Performance indicator information as determined by regulator
Audit	External audit to provide financial statements	As now
Inspection	Service wide inspections for all associations with more than 1000 homes prioritised on a risk basis	More limited statutory inspection function, with greater role for external accreditation of service quality
Intervention	Housing Corporation supervision regime, with limited range of statutory powers, including appointment of board members and establishing a statutory inquiry	Wider, more graduated range of statutory powers to take remedial intervention and enforcement action

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Mandatory Tenant Ballots prior to Stock Transfer</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 19 October 2007
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Stephen Biddulph

**Telephone:** 020-7944-0060

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

Before a local authority can transfer its stock to a Registered Social Landlord it has to ensure that the majority of affected tenants do not oppose the transfer. The fact that local authorities are free to determine themselves tenant opinion (including how, when and if any ballot is conducted) and the fact that tenants are able to make representations during the whole process has brought the system into disrepute.

Legislation is necessary to ensure a consistent, independent ballot and focused period in which tenants can (and are aware) they can make representations.

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

The policy objective is to achieve a fairer and more transparent process, which gives tenants greater comfort. The effect should be greater tenant satisfaction.

**What policy options have been considered? Please justify any preferred option.**

“Do nothing” would not stop further claims that the current system is flawed and the possibility of challenge in the Courts

Our favoured option is to legislate to make ballots compulsory and to set a fixed period in which tenants can make representations.

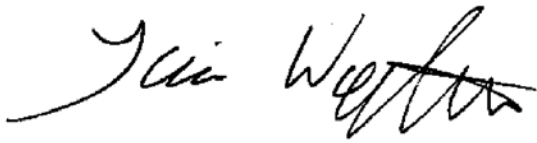
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The policy will be formally reviewed after three years.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Weyler', written in a cursive style.

**Date:** 6 October 2008

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: Self-financing</b>		<b>Description: Legislate to make ballots compulsory and to set a fixed period in which tenants can make representations.</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Local housing authorities
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£0	1	
	<b>Average Annual Cost</b> (excluding one-off)		
	£32,000		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£0	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£0		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b> The above costs assume approximately 2 failed ballots a year at a cost of £16k: ie 2 x £16K = £32k			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV) £</b>	<b>NET BENEFIT (NPV Best estimate) £</b>

What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	Summer 2008			
Which organisation(s) will enforce the policy?	the courts			
What is the total annual cost of enforcement for these organisations?	£ cannot calculate			
Does enforcement comply with Hampton principles?	Yes/No			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£0			
What is the value of changes in greenhouse gas emissions?	£0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £0		Decrease of £0		<b>Net Impact £0</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>

## Evidence Base (for summary sheets)

1. It is Government policy to encourage local authorities to consider options for the management and ownership of their housing stock. Where it is seen to be a viable option and the majority of affected tenants do not oppose, the Government supports local authorities who wish to transfer ownership of their stock to a Registered Social Landlord.
2. Before transfer can take place the local authority must obtain the consent of the Secretary of State under sections 32-34 and/or section 43 of the Housing Act 1985. The Secretary of State cannot grant consent unless she is satisfied that the affected tenants have been properly consulted and the local authority has demonstrated to her satisfaction that a majority of them are not opposed to the transfer
3. Approximately 830,000 transfers have taken place since 1997. In some cases local authorities have transferred their entire stock, in other cases individual estates or small groups of houses. In the majority of cases the local authority has conducted a ballot of tenants as the only satisfactory means of determining tenant opinion but where there are small disposals of stock of between 10 and 20 homes and it is more cost effective for the authority they will determine tenant support by letter. Although guidance from central Government (the Housing Transfer Manual) recommends holding a ballot, there is no statutory requirement to hold one. Furthermore tenants are able to make their views known (either in support or opposition) throughout the entire transfer process rather than during a fixed consultation period (although there is a statutory period of 28 days for tenants to make representations to the Secretary of State once the authority has served notice of its intention to proceed with the transfer and to determine tenants support for it via a ballot).
4. In early 2007 a secure tenant of the London Borough of Tower Hamlets challenged the Secretary of State's decision to consent to a transfer of housing stock in Parkside Estates from the London Borough of Tower Hamlets to the Old Ford Housing Association. As part of the consultation process, the local authority balloted tenants on the proposal to transfer their stock: the result was a majority of seven tenants in favour of the transfer, on a low turnout (45.7% of those eligible to vote). Subsequently, through an organised campaign over a long period, tenants and leaseholders wrote individual letters to the Secretary of State and the local authority alleging ballot irregularities, and petitions were received from both tenants and leaseholders objecting to the transfer. By the time of the local authority's



application for consent to the transfer, the number of signatures received making representations against the transfer (at least 44% of those eligible to vote) exceeded the number of those who had voted in the ballot in favour of the transfer.

5. The Department was concerned that notwithstanding the endorsement of the transfer through a positive ballot result the large number of representations subsequently made against the transfer would put a decision to consent to the transfer at risk. Specifically, the Department was concerned to verify that a majority of tenants had not made representations opposing the transfer; as, in such circumstances, the Secretary of State would be prohibited by the legislation from consenting to the transfer. Even if a majority of tenants had not expressed their opposition, it was considered that a decision by the Secretary of State not to exercise her discretion to require further consultation might be vulnerable in circumstances in which the ballot result was so close, and had taken place a considerable time before the application for consent to the transfer.
6. Making a ballot mandatory and setting a fixed period in which tenants are able to make representations would avoid this situation (and challenge on these grounds in the courts) occurring again (notwithstanding the fact that the courts found in favour of the Secretary of State).

### **Costs and Benefits**

#### **Sectors and groups affected**

7. The primary groups most affected by the proposal are:
  - unitary and district local authorities responsible for housing services
  - local authority tenants and tenant groups

#### ***Race equality assessment***

8. Our housing policies positively encourage inclusion of every citizen regardless of ethnicity or religious beliefs. Annex E of the Housing Transfer Manual provides good practice guidance to local authorities on meeting the needs of Black and Minority Ethnic communities. This is unaffected by these proposals.

#### ***Health impact assessment***

9. We do not believe there to be any direct impacts on health.

*Rural considerations*

10. The proposals would not have any disproportionate affect on people living in rural communities, although stock transfers are more likely to take place in urban areas (where there are greater concentrations of social housing).

**Breakdown of costs and benefits**

*Do nothing*

*Economic*

11. There are no economic benefits from the status quo.

*Environmental*

12. There are no environmental benefits from keeping the current arrangements nor are there any environmental costs.

*Social*

13. There are social costs maintaining the status quo insomuch that there is some dissatisfaction with it.

*Our Proposal*

*Economic*

14. There are no economic benefits to be gained from our proposal.
15. There will possibly be some very minor administrative time saved in handling representations during a fixed time period rather than continually over the life of the transfer process.
16. There may be some very minor savings to the Court Service as the number of future challenges could be reduced.
17. Making the ballot mandatory will technically represent an additional burden on local government, but the costs of the ballot are always covered in the cost of transfer. An additional burden would therefore fall on the local authority only in those situations where the ballot failed – an additional burden that the local authority would look to central Government to meet. There are approx. 15 ballots a year at an individual cost of approx. £16,000, of which 2 fail. So a cost to central Government of £32,000 a year, although no effect on the overall public purse.

*Environmental*

18. There are no environmental benefits.

*Social*

19. The social benefits of making changes will be an increase in tenant confidence in the process. However it is impossible to quantify this.

**Small Firms' Impact Test (SFIT)**

20. Not applicable

**Competition Assessment**

21. This proposal will have no negative impact on competition.

**Enforcement, Sanctions and Monitoring**

22. Local authorities can be taken to court if they fail to meet their statutory duties. In reality, no local authority would commit resource to a process it knew it could not complete because the Secretary of State would not grant consent to transfer if they had failed to hold a ballot in line with legislation.
23. We will review the benefits three years after introduction.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	Yes	No

## Annexes

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of tenant led stock options</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 19 October 2007
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Stephen Biddulph

**Telephone:** 020-7944-0060

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

Central Government is keen to empower local authority tenants to effect a change of landlord or management where to do so is a viable option and has the support of the majority of tenants.

However such transfers are at present at the discretion of the local authority, some of which have (possibly for ideological reasons) blocked such transfers.

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

It is Government policy that local authority tenants be given greater say over how their homes are managed, including who their landlord should be.

The intended effect of the proposal is to ensure that local authorities cannot block or unnecessarily impede the wishes of tenants where they have identified (and wish to see) a viable alternative landlord or manager of their homes.

We estimate this will affect approximately 3 local authorities a year, and approximately 2,200 homes.

**What policy options have been considered? Please justify any preferred option.**

“Do nothing” would not have achieved the policy objectives.

Instead Government proposes imposing a conditional duty on the local authority to effect the transfer process (once the other already existing conditions relating to tenant led stock options had been met). The duty would be on condition that transfer of the stock would not have a negative effect on the local authority’s finances and therefore subsequently their ability to perform a satisfactory landlord role to other local authority tenants.

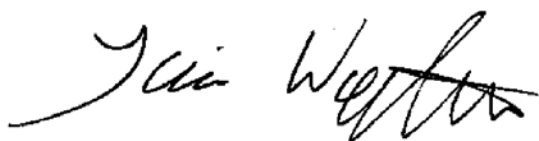
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

We will consider a full evaluation of the new procedures within three years of the legislation coming into force.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: Tenant Led Stock Options</b>		<b>Description: To increase the opportunities for tenants to undertake tenant led stock options, including transfer of ownership</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  We estimate approx 3 local authorities a year will be affected by this proposal.  £1.5m = the cost of the transfer process x 3.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	£1,500,000		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  We estimate approx 2,200 homes each year will transfer to the RSL sector as a result of this proposal.  £22m = additional investment of approx £10k in each home.
	<b>One-off</b>	<b>Yrs</b>	
	£0	0	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£22,000,000		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £



What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	Summer 2008			
Which organisation(s) will enforce the policy?	The courts			
What is the total annual cost of enforcement for these organisations?	£ not calculable			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	Yes	Yes	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

1. The Department for Communities and Local Government's commitment to the wider Government agenda for encouraging community empowerment and neighbourhood-focused renewal is reflected in the tenant empowerment programme. This provides a wide range of opportunities for local authority tenants' groups to explore how they might become more involved in the management of their homes, including support for pursuing the option for the statutory Right to Manage and Tenant Led Stock Options.
2. The Department wishes to encourage and support Tenant Led Stock Options where local authority tenants take the lead in looking at the future options for the management and/or ownership of their homes and, if feasible, take forward a preferred option. For a Tenant Led Stock Option the properties will need to have a geographical coherence and relate to an existing community. A likely outcome is a tenant led stock transfer to a Registered Social Landlord, an Arms Length Management Organisation, or a development programme in conjunction with commercial developers.
3. A separate block of funding has been allocated within the Tenant Empowerment Programme to enable local authority tenant groups to explore stock options and develop the preferred option in partnership with the local authority.

### *The current Tenant Led Stock Option process*

4. The current process is broken down into 3 stages:
  - the **initial stage** is not always necessary but funding can be given for tenant groups to learn about the process and what their role will be;
  - the second **feasibility stage** is where the options for management and/or ownership are explored and their feasibility assessed;
  - the third **development stage** is where preparations are made up to and including the stock transfer ballot
5. The Department's guidance defines Tenant Led Stock Options and sets out the framework for the process of exploring and implementing these. It looks particularly at how and where Tenant Led Stock Option grant will be available for the Feasibility and Development stages. The guidance is primarily for tenant groups, local authorities and Approved Persons under the Housing (Right to Manage) Regulations 94.

### Rationale for govt intervention

6. Stock options can be explored effectively only in partnership with the local authority. In line with Government stated objectives LAs are expected to provide this support. All applications for funding must be accompanied by a letter of support from the local authority in order to be considered. However, we accept that the local authority may have grounds not to give this support (where, eg, developing a specific stock option for the tenants group's area could significantly undermine the local authority's own approach to the future of the rest of its housing stock).
7. A number of tenants groups have been able to work co-operatively with their local authority to enable them to take forward a Feasibility study and to move into the Development stage. However, the Department has received representations stating that obtaining the support of the local authority has proved in some cases to be a hurdle both for tenant groups wanting to undertake a stock options study but also in taking forward their preferred stock option. Two recent examples where tenants groups have suggested their Councils rejected their stock transfer proposals related to 650 and 870 homes respectively, which could have received additional private sector investment had transfer proceeded.
8. We want to ensure that all local authority tenants have the same opportunity to explore the options for the future management of their homes.

### *Do Nothing*

9. We could do nothing, other than issue further guidance encouraging local authorities to support Tenant Led Stock Option processes. However, even with further guidance there would be no legal compulsion for a local authority to co-operate. It would still be possible for a local authority to withhold support leaving tenants unable to explore options for the future management of their homes or later in the process so tenants could not take their preferred stock option forward. This option would not ensure that every local authority tenant had the same opportunity to participate in the Tenant Led Stock Option process.

### *Our Proposal*

10. Instead we propose placing a duty on local authorities to enable tenants to pursue their desire to look at stock options or to transfer their homes to an existing Registered Social Landlord or to an organisation that the tenants themselves wish to set up.

11. However the duty would be conditional insomuch that the local authority would not be obliged to comply where it could demonstrate to the satisfaction of the Secretary of State (or the proposed social housing regulator if his remit extends to the local authority sector) that the transfer would have a negative financial impact on its remaining housing stock (and therefore its landlord service to its remaining tenants). The collective benefits must take priority.
12. However in order to ensure that the local authority is not required to complete nugatory work tenants would need to demonstrate through an independent assessment that there was overall support amongst tenants for taking the process forward.

### **Costs and Benefits**

#### **Sectors and groups affected**

13. The primary groups most affected by the proposal are:
  - unitary and district local authorities responsible for housing services
  - local authority tenants and tenant groups
  - Tenant Management Organisations
  - Housing Associations
  - approved agencies

#### ***Race equality assessment***

14. Our housing policies positively encourage inclusion of every citizen regardless of ethnicity or religious beliefs and highlight the requirement to ensure the inclusion of hard to reach groups. A housing service provider has to adopt a constitution that ensures that the organisation will not discriminate on the grounds of racial origin, gender, sexuality, disability or religion.
15. We will ensure that any new guidance documents contain advice about providing information in languages other than English and guidance on adopting methods of inclusion and ensuring consideration is given to factors that may affect individuals' ability to be involved.

#### ***Health impact assessment***

16. We do not believe there to be any direct impacts on health. It might however be argued the sense of well being derived from people having influence and input into decisions that affect their homes and neighbourhoods and the increase in social interaction tenant participation brings has a positive impact overall although this is not quantifiable.

***Rural considerations***

17. Concentrations of social housing tend to be found in more urban areas and therefore active tenant groups are more common in urban areas. It may be that because of the scale of the housing service the transfer of housing stock is more likely to negatively impact on the finances of the local authority – further assessment will be made in readiness for the next formal impact assessment.

**Breakdown of costs and benefits*****Do nothing****Economic*

18. There are no economic benefits from the status quo. We currently fund tenants groups to undertake an options appraisal. If this work cannot be taken forward at the end of the process because it is blocked by the local authority one could argue that this results in unnecessary costs. The current funding is £400k pa so this could be the maximum cost but not all work will be nugatory.

*Environmental*

19. There are no environmental benefits from keeping the current arrangements nor are there any environmental costs.

*Social*

20. There are potentially significant social costs in not making any changes to the current arrangements. Tenant groups that have undertaken a stock options process are extremely disillusioned when their work results in no change or progress. This disillusionment has a significant local impact but through tenant networks also has a wider effect. It undermines the Government's commitment to ensure greater tenant participation.

***Our Proposal****Economic*

21. There are economic benefits through increased investment in housing and local environment and additional job opportunities post-transfer. Since 1997 £8.76bn has been levered in through private sector borrowing by housing associations following transfer of 831,291 homes (October 2007 figures). This calculates at approximately £10,000 a home.
22. In the last year two tenant led stock transfers involving 1,500 homes have been blocked by local authorities. If we assume that the legislation might encourage at least one other of a similar size to come forward each year, then 2,200 homes a year might transfer as a result of this legislation,

meaning additional investment benefits of £22 million.

23. There are costs for tenants developing the stock options studies, currently around £60 – £80k. These are currently met by Tenant Empowerment Programme grant (75%) and the local authority (25%). However these are costs that would be borne anyway and are not directly relevant to this proposal.
24. There will be some administrative costs if the local authority decides to make a case to the Secretary of State (or in future possibly the regulator) to prevent the transfer of housing stock and to the Secretary of State (or regulator) for assessing case against transfer.
25. Costs will also be incurred by the local authority in taking a transfer through to ballot and then to consent. For estate based transfers these are around £500,000. If, however, the ballot failed there may be a case for reimbursing the local authority as they were required to go ahead with the process. However failure is an unlikely scenario as tenants would have to demonstrate support before the local authority embarked on any formal process.
26. It is possible for political reasons that the Secretary of State will direct a local authority to proceed with a transfer of stock even where this had a negative financial effect on the local authority. In such cases the Secretary of State would be obliged to compensate the local authority which, in a worst case scenario, could be as high as £30 million per annum.

*The worst case scenario*

27. A local authority would suffer a financial loss if it were to transfer out of its ownership homes from which rental income exceeded costs of repair and maintenance. There are dwellings in the London Borough of Harrow where the net receipt to the local authority is in excess of £2,000 per annum. The largest estate based stock transfer is likely to consist of around 5,000 dwellings. We are aware in the last year of 2 tenant led stock transfers being blocked by the local authority. This legislation might encourage others to come forward, so we estimate possibly 3 a year. So a worst case scenario would be £2,000 x 5,000 x 3 : ie £30 million.

*Environmental*

28. There will be environmental benefits that arise from the greater borrowing power of the housing association that takes on the stock. This could include greater investment in improving the energy efficiency of homes and wider estate improvements. If the worst housing stock transfers from the local authority then this will improve the local authority's overall Housing Revenue

Account position as high cost stock has been removed but the reduction of allowances is based on average costs. This would increase at the margins the local authority's spending power for the rest of its stock.

29. The converse of that is that if the best housing stock leaves the Housing Revenue Account it is probable that the local authority's finances will be negatively impacted and there will be less resource to invest in the remaining housing stock.

#### *Social*

30. The social benefits of making changes will be the increase in tenant empowerment. Our proposal balances the competing pressure of specific tenants groups and with the interest of wider local authority tenants. However it is impossible to quantify these benefits.

#### **Small Firms' Impact Test (SFIT)**

31. Not applicable

#### **Competition Assessment**

32. This proposal will have no negative impact on competition.

#### **Enforcement, Sanctions and Monitoring**

##### **Enforcement**

33. The Secretary of State will have powers to direct the local authority.

##### **Sanctions**

34. The Cave report proposes that a social housing regulator should be responsible for enabling tenants to seek better management of the homes they live in. If the regulator does cover all social housing then in this context the proposed regulator could assume responsibility for imposing penalties through its role in performance assessment if local authorities fail to comply with the duty to provide information.
35. The regulator might also determine that the tenants' group demonstrates that the outcome of the options study has the support of tenants in the homes covered by the proposal. However, we do not propose to impose specific penalties for tenant groups that fail to comply with any of the processes; groups that fail to comply will simply be prevented from moving to the next stage.
36. We have strong relationships with both stakeholders and practitioners in the field. We will monitor the progress and effectiveness of the legislation in partnership with the new regulator. We will consider a full evaluation of the new procedures within three years of the Act coming into force.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No



## Annexes

None.

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of improvements to security of tenure on local authority Gypsy and Traveller sites</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 12 October 2007
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Katie Burton

**Telephone:** 020-7944-8769

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

The European Court of Human Rights (ECtHR) ruled in 2004 in the case of *Connors v United Kingdom* that the lack of procedural safeguards to the eviction of Gypsies and Travellers from local authority (LA) sites breached article 8 of the European Convention on Human Rights (the right to respect for a person’s private, family and home life).

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

To provide the same procedural safeguards, and other rights and responsibilities, to Gypsies and Travellers on LA sites as Gypsies and Travellers on private sites, and occupants of other types of residential caravan sites, such as park home sites.

**What policy options have been considered? Please justify any preferred option.**

- A. Do nothing. This will perpetuate current problems and inevitably lead to an increase in the number of challenges to possession actions, and associated costs.
- B. Amending the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites. This will give residents on these sites the same rights and responsibilities as Gypsies and Travellers on private sites, and occupants of other types of residential caravan sites such as park home sites, which are already covered by the 1983 Act.

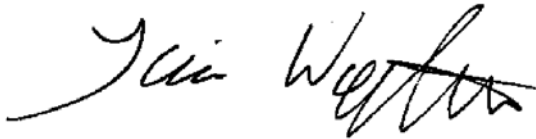
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Three years from implementation.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Wray', written in a cursive style.

**Date:** 6 October 2008

Summary: Analysis & Evidence			
Policy Option: <b>A</b>		Description: <b>Do nothing</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  No monetised costs identified
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost (excluding one-off)</b>		
	£0		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Gypsies and Travellers, LAs, courts, Government: perpetuation of problem and inevitable increase in challenges to possession actions and associated costs.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  No monetised benefits identified
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b> NA	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		Current situation		
Which organisation(s) will enforce the policy?		–		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		No		
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: B</b>		<b>Description: Amend Mobile Homes Act 1983 to include LA Gypsy and Traveller sites</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' LAs: one off – transitional arrangements (6 days of LA officer time per site); ongoing – consultation on site improvements (5.5 days of LA officer time for 50% of sites every 3 years); dealing with matters arising under the 1983 Act (10 days of LA officer time for 24 cases per year). G&T: ongoing – payment of commission.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£180,880	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	£131,289		
		<b>Total Cost (PV)</b>	<b>£1,310,975</b>
Other <b>key non-monetised costs</b> by 'main affected groups' LAs and courts: applications to terminate agreements.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' LAs: ongoing – commission on assignment.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£79,500		
		<b>Total Benefit (PV)</b>	<b>£684,311</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Gypsies and Travellers: improved rights and responsibilities on LA sites. LAs and the courts: reduction in challenges to possession actions on grounds of breach of Convention rights.			
<b>Key Assumptions/Sensitivities/Risks</b> Net Present Value has been calculated over a period of 10 years and discount rate of 3.5%			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £–	<b>NET BENEFIT (NPV Best estimate)</b> <b>£-626,664</b>

What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	2008/9			
Which organisation(s) will enforce the policy?	The courts			
What is the total annual cost of enforcement for these organisations?	£ See evidence			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Introduction

1. The rights and responsibilities of Gypsies and Travellers on local authority (LA) sites are currently covered by the Caravan Sites Act 1968. This provides limited protection from eviction and harassment. In particular, in order to evict a resident a LA need only give a minimum of 28 days notice to terminate the licence and obtain a court order for possession. The caravan counts undertaken in England and Wales in January 2007 show that there were 304 LA sites across England and Wales, providing 5,270 pitches and accommodating 7,113 caravans.
2. The European Court of Human Rights (ECtHR) ruled in 2004 in the case of *Connors v United Kingdom* that this lack of procedural safeguard to eviction breached article 8 of the European Convention on Human Rights (the right to respect for a person's private, family and home life).
3. The Housing Act 2004 provided additional protection, enabling the court to suspend the enforcement of a possession order against a Gypsy or Traveller on a LA site for up to 12 months. The Government is committed to improving the security of tenure of Gypsies and travellers on LA sites. Doing nothing further perpetuate current problems and inevitably lead to an increase in challenges by Gypsies and Travellers to possession action taken against them by LAs on the grounds that their Convention rights are being breached, and the costs associated with these actions. The Government would come under increasing pressure, including from the Joint Committee on Human Rights and European Commission, to take action.
4. The Mobile Homes Act 1983 provides further protection to Gypsies and Travellers on private sites, and occupants on other types of residential caravan sites, such as park home sites. It places certain requirements on site owners and residents, and gives the courts jurisdiction to determine questions and entertain proceedings under it.
5. Amending the 1983 Act to include LA Gypsy and Traveller sites may therefore have costs and benefits for Gypsies and Travellers, LAs, and the courts.
6. Gypsies and Travellers on LA sites will benefit from:
  - the requirement for a LA to apply to the court and prove grounds and reasonableness to terminate their agreement to occupy the pitch;



- the right for a member of a resident's family living with them to succeed their agreement if they die;
  - the ability to sell or gift their caravan, and assign their agreement;
  - the requirement for a LA to provide certain information on request;
  - the requirement for a LA to make certain repairs to the pitch and maintain the common areas of the site;
  - the requirement for a LA to consult on improvements;
  - the ability for the court to consider various matters arising under the 1983 Act.
7. Costs may arise to Gypsies and Travellers on LA sites as a result of the requirement to pay up to 10% commission if they sell their caravan and assign their agreement.
8. Costs may arise to LAs from the requirements to:
- provide a written statement of the terms of the agreement under which a caravan is stationed on a pitch;
  - apply to the court if they wish to terminate the agreement and prove grounds and reasonableness;
  - consider requests from residents for approval of a person to whom they wish to sell or gift their caravan and assign their agreement (although see options C and D);
  - provide certain information if requested by the resident, for example on the pitch and fees or other charges;
  - repair and maintain parts of the pitch and common areas;
  - consult on improvements to the site; and
  - review the pitch fee annually – changes are subject to certain requirements.

In many cases these requirements should not result in additional costs arising to LAs as they will already be following them or have procedures in place to deal with them.

9. Costs may also arise to both LAs and the courts from the courts dealing with matters arising under the 1983 Act for LA Gypsy and Traveller sites as well as the other types of site already covered by the Act.

10. LAs will benefit from the requirement on residents on their sites to pay up to 10% commission if they sell their caravan and assign their agreement.
11. These potential costs and benefits are considered in further detail below.
12. Communities and Local Government is consulting on implementation of the Mobile Homes Act 1983 on LA Gypsy and Traveller sites. This impact assessment will be revised as necessary to reflect the proposals in the consultation.

## **COSTS AND BENEFITS OF EACH OPTION**

### **Option A – Do nothing**

13. There are no benefits arising from Option A. However, doing nothing will perpetuate the problem, and will inevitably lead to an increase in challenges to possession actions against Gypsies and Travellers on local authority sites. This would have costs for Gypsies and Travellers, local authorities, the courts and the Government.

### **Option B – Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites.**

#### **ANNUAL COSTS**

#### **ONE-OFF COSTS (TRANSITION)**

##### **To LAs**

#### **Arrangements for applying the Mobile Homes Act 1983 to existing residents of LA sites.**

14. Under the Mobile Homes Act 1983 an agreement to station a caravan on a site will include certain terms implied by that Act, and any additional express terms. Site owners are required to provide a written statement including these terms and details specific to the agreement such as the parties to it, date, and particulars of the pitch. The form of the statement and implied terms is set out in regulations and authorities will need to add express terms and the details specific to the agreement.
15. Gypsies and Travellers on LA sites will currently have licences under the Caravan Sites Act 1968 which set out the terms under which they occupy their pitch. There will be terms in current licences which are not covered by the implied terms of agreements under the 1983 Act, and which LAs will want to include as express terms, for example relating to behaviour on site or short term absence from the site.
  - The transitional arrangements for existing residents of sites will be dealt with by statutory instrument when the amendment to the 1983 Act is commenced. Communities and Local Government will consult

stakeholders on its proposals for transitional arrangements. However, the Government's preferred option is to require LAs to make agreements with existing residents that include the implied terms of the 1983 Act, terms of current licences that do not conflict with them as express terms, and the details specific to the agreement, which in some cases may need to be gathered. This option would require additional work for LAs and we therefore provide here an estimate of this cost. We are establishing a working group of local authority officials and residents on their Gypsy and Traveller sites to prepare a model agreement, which may reduce the cost of this option.

17. In calculating these costs for LAs we have assumed that:

- there will be one agreement per pitch;
- there are currently 304 local authority Gypsy and Traveller sites in England and Wales (285 in England and 19 in Wales);
- There are 260 working days per year;
- average annual salaries of local authority employees dealing with Gypsy and Traveller site management are as follows:
  - LA officer – £25,000. One day's work = £96
  - LA administrative support officer – £20,000. One day's work = £77
  - LA Lawyer – £30,000. One day's work = £115
- all existing licences for the same site will contain the same terms. Many LAs will own more than one site, and terms may be the same across all their sites;
- it could take 2 days for an LA officer dealing with Gypsy and Traveller site management issues to prepare an agreement for a site: £96 per day, 2 days, 304 sites = £58,368
- It could take 2 days for an LA lawyer to prepare an agreement for a site: £115 per day, 2 days, 304 sites = £69,920
- It could take 1 day of an LA officer's time to gather the pitch details required for the agreement for each site: £96 per day, 304 sites = £29,184;
- it could take 1 day of an LA Administrative Officer's time to insert the specific details for each pitch into the agreements for a site and distribute them to residents. £77 per day, 304 sites = £23,408.

**We therefore estimate that the one off (transition) cost to LAs of arrangements for applying the 1983 Act to existing residents will be around £180,880.**

## **AVERAGE ANNUAL COST (EXCLUDING ONE-OFF)**

### **To LAs**

#### *Agreements for new residents*

18. Under the 1983 Act, LAs will be required to make agreements with new residents and provide a written statement of the terms 28 days before hand, as set out in paragraph 14 above. As explained in paragraph 17 above, the express terms of agreements for the same site are likely to be the same.
19. LAs already provide new residents of their sites with a licence under the Caravan Sites Act 1968 which will cover its terms and details specific to the licence. **This requirement should not therefore impose any additional costs on LAs.**

#### *Sale or gift of caravan and assignment of agreement*

20. Under the 1983 Act residents will be able to sell or gift their caravan, and assign their agreement to occupy the pitch, with the approval of the LA for the person to whom they wish to sell or gift and assign. LAs will need to respond to requests for approval within 28 days.
21. For park homes, to which the 1983 Act already applies, the re-assignment rate has been estimated at around 6% per year (*Economics of the Park Home Industry, ODPM, 2002*). However, current practice suggests that Gypsies and Travellers will be more likely to move their caravan/s to a different site, rather than sell or gift their caravan/s, assign their agreement to occupy the pitch, and buy or rent another caravan/s on a different site.
22. LAs will already be assessing applications for vacant pitches as they arise on sites, for example through seeking references, and should therefore have procedures in place to deal with the approval of a person to whom a current resident may wish to sell or gift their caravan and assign their agreement. Given the current practice mentioned in paragraph 21, the ability to sell or gift their caravan and assign the agreement is more likely to be another option available to those Gypsies and Travellers who may be seeking to move, rather than a stimulus encouraging more Gypsies and Travellers to move. **This requirement should not therefore impose any additional costs on LAs.**

#### *Provision of information*

23. Under the 1983 Act, if requested by a resident, a LA will need to provide details about the pitch and base, including its size and location within the site. However, LAs will be able to charge up to £30 for these details. **This requirement should not therefore impose any additional costs on LAs.**

24. If requested by a resident, a LA must provide evidence in support or explanation of a new pitch fee, and charges for services or other costs or expenses payable under the agreement, free of charge. LAs will already be required by the 1983 Act to set out proposals for any change to pitch fees prior to the review date (see paragraph 30). Evidence such as bills, invoices or other documentation, should be readily available in relation to changes to pitch fees and charges for services. **Any costs associated with this requirement should therefore be nominal.**
25. LAs must inform residents, and any qualifying residents association, of an address in England and Wales at which notices can be served on them. However, the regulations covering the form of the written statement will require an address for the LA to be included in the statement provided to residents, and so **this requirement should not therefore impose any additional costs on LAs above those estimated for the provision of these statements.**

#### *Repairs and maintenance*

26. Under the 1983 Act LAs will be responsible for making certain repairs to pitches, and maintaining any services supplied by them to it, for example, utilities, and will also be required to maintain the common areas of the site. LAs are already responsible for repairs and maintenance on their sites, and this should be covered by pitch fees. However, we are aware that the way that housing benefit is paid to county council sites may mean that this is not the case on all sites, and this is considered further in paragraph 34. Where repairs are more substantial, they may be included in bids for refurbishment work under the Gypsy and Traveller Site Grant provided by Communities and Local Government, or the Gypsy and Traveller Site Refurbishment Grant provided by the Welsh Assembly Government. £97 million has been made available for the Grant in England between 2008-11, and £3 million in Wales between 2007-10.

#### *Consultation*

27. Under the 1983 Act LAs will be required to consult residents about improvements to the site, and any qualifying residents association about matters relating to the operation and management of the site.
28. LAs should already be consulting residents of their sites about improvements and operation and management as a matter of good practice. LAs applying for the Gypsy and Traveller Site Grant in England or the Gypsy and Traveller Site Refurbishment Grant in Wales, to assist them in making improvements to their sites, are required to provide evidence of consultation with residents as part of their application. However, not all LAs will necessarily apply for

grant to assist them with making improvements and since this will be a requirement we have estimated the cost of the process outlined in the 1983 Act.

29. We have assumed that:

- LAs will not apply for grant for improvements to 50% of sites (152);
- improvements might be made to these sites on average once every 3 years (51 improvement schemes per year);
- it could take an average of 5 days of an LA officer's time to prepare a letter to residents explaining the proposals for improvement and consider their responses. £96 per day, for five days = £480;
- it could take half a day of an LA administrative support officer's time to distribute the letter: £77 per day for half a day = £39

**This could therefore lead to costs for LAs of £26,469 per year (£519 x 51).**

*Rent reviews and pitch fee changes*

30. Under the 1983 Act LAs will need to review the pitch fee annually and provide written details of proposals for any changes 28 days before the review date. The majority of LAs are likely to review their rent periodically and will need to inform residents of any changes, **and so this requirement should not impose any additional costs on LAs.**
31. A pitch fee can be changed if the resident agrees, or if the site owner or resident applies to the court, and the court considers it reasonable. The potential cost of this requirement for the courts and LAs is considered in paragraphs 43 – 47 below.
32. In determining the amount of a new pitch fee, the 1983 Act requires particular regard to be had to sums spent on improvements to (but not expansion of) to the site, any decrease in the amenity of a site; and the effect of any enactment that has come into force since the last review.
33. The 1983 Act also contains a presumption that the pitch fee will only increase or decrease by a percentage no more than any percentage increase or decrease in the RPI since the last review date, unless this would be unreasonable having regard to factors such as any sums spent on improvements since the last review.

34. Communities and Local Government is currently working with the Department for Work and Pensions to consider how an anomaly in the way housing benefit is paid between county council and other types of local authority site might best be resolved. Currently, housing benefit payments for local housing authority sites are made through a rent rebate, and for county council sites through a rent allowance. This means county council rents are referred to the local Rent Officer for a determination of whether they are reasonable, which may be determined by comparison to the local reference rent, which may not take account of the costs of managing Gypsy and Traveller sites. This means that currently some county council sites may not be covering their operating costs.
35. The Government would not want county councils to be unable to benefit from the resolution of this anomaly to ensure that their pitch fees better cover the costs of operating their sites because of the presumption in the implied terms about changes to pitch fees and the RPI. We will include proposals to deal with this issue as part of the transitional arrangements that we will consult stakeholders on.

## **To LAs and the courts**

### *Termination of agreements*

36. To terminate an agreement under the 1983 Act, a LA will need to apply to the court and satisfy it that one of the grounds set out in the Act is met, and that it is reasonable to terminate the agreement.
37. Currently, under the Caravan Site Act 1968, LAs need only give 28 days notice to terminate the agreement, and seek a possession order from the court if the resident does not leave. So the requirement to prove grounds and reasonableness may give rise to additional costs for both LAs and the courts.
38. However, in practice it is unlikely to be as straightforward as the 1968 Act suggests, to get a possession order, because:
- many Gypsies and Travellers are likely to challenge possession actions against them on the grounds that their Convention rights are being breached, and seek a declaration of incompatibility between the legislation and the Convention, which will involve additional work and costs for LAs, the courts and Government. The Secretary of State will usually also intervene in these cases to try to prevent a declaration of incompatibility being made, which will involve additional work and cost for the Government.

- some LAs may already be seeking to prevent challenge in this way by avoiding taking summary possession action, as advised in our draft site management guidance.
39. Communities and Local Government does not collect information on LA possession actions against Gypsies and Travellers on their sites. However, using information from a legal firm that specialises in Gypsy and Traveller cases, and deals with the majority of possession actions, we have estimated that 24 possession actions a year may go to court. There may be additional cases where Gypsies and Travellers have not engaged legal services.
40. Where possession action is challenged it will usually be transferred to the High Court because of the issues around Convention rights. Some cases will go on to the Court of Appeal and the House of Lords. Communities and local Government is currently involved in a number of cases in the higher courts.
41. The impact of LAs being required to apply to the court and prove grounds and reasonableness in order to terminate an agreement may be that:
- additional possession actions arise where LAs believe they can prove grounds and reasonableness against Gypsies and Travellers who may not currently seek legal advice and leave a site when they receive notice to terminate their licence;
  - fewer possession actions arise because LAs do not believe they can prove grounds and reasonableness against Gypsies and Travellers against whom they would currently not need to;
  - fewer possession actions will end up in the higher courts as a result of the fact that issues around Convention rights and requests for declarations of incompatibility in this respect should not arise.
42. **Taking all these factors into consideration, we believe that overall this requirement should not therefore impose additional costs on LAs. The Ministry of Justice has agreed that the amendment to the 1983 Act should not have a significant impact on the work of the courts and legal aid.**

*Other matters considered by the courts*

43. Under the 1983 Act, the courts are able to consider a number of other matters:
- applications by residents for a written statement from owners, where this has not been provided as required;
  - applications by owners or residents to vary or delete any express term of the agreement within 6 months of the date it is made;



- applications by residents to approve a person to whom a caravan is to be sold or gifted and the agreement assigned, where the owner has not responded within 28 days, or where conditions imposed or refusal to give consent is considered unreasonable;
- applications by owners to change the pitch fee where the resident does not agree with this;
- determination of any question arising under the Act or agreement to which it applies.

44. Additional costs may arise to LAs and the courts from having to deal with these matters for LA Gypsy and Traveller sites as well as sites to which the 1983 Act already applies.
45. Communities and Local Government has estimated that the courts will deal with around 160 cases relating to park homes every year, excepting cases relating to the termination of agreements, which are covered in paragraphs 36 – 42 above. There are an estimated 2,000 park home sites in England and Wales. This means that there will be cases relating to less than 1% (0.08%) of park home sites in court every year.
46. If we apply the estimate that 0.08% of park home sites will be involved in court cases under the 1983 Act every year to LA Gypsy and Traveller sites, then 24 additional court cases (0.08% of 304 LA sites) would result from including LA Gypsy and Traveller sites in the scope of the 1983 Act.
47. We have assumed that each case will take:
- one day in court for an LA officer and LA lawyer: using the salary costs outlined in paragraph 17 above  $£96 + £115 = £211$ ;
  - an average of 4 days of work by both an LA officer and a LA lawyer beforehand:  $£96$  for 4 days =  $£384$  and  $£115$  for four days =  $£460$ .

**These 24 additional court cases could therefore lead to additional costs of around £25,320 a year for LAs ( $£211 + £384 + £460 \times 24$ ). As set out in paragraph 42, the Ministry of Justice has agreed that the amendment to the 1983 Act should not have a significant impact on the work of the courts and legal aid.**

## To Gypsies and Travellers

### *Commission on assignment*

48. Under the 1983 Act LAs will be able to charge up to 10% commission if a Gypsy or Traveller on one of their sites sells their caravan and assigns the agreements to live on the pitch. As mentioned in paragraph 21 above, the re-assignment rate for park homes has been estimated at around 6% per year (around 5,000 park homes). An average of 89% of these re-assignments will be on sale, with the remaining 11% on gifting the park home to a family member, which does not attract commission. The average value of a park home on re-assignment is £35,000 (reflecting the sharp depreciation in value of mobile accommodation – the average value of a new park home is £62,000) (*Economics of the Park Homes Industry, OPDM, 2002*).
49. As set out in paragraph 21 above, current practice suggests that Gypsies and Travellers will be more likely to move their caravan/s to a different site, rather than sell or gift their caravan/s, assign their agreement to occupy the pitch and buy or rent another caravan/s on a different site. We have therefore assumed that the re-assignment rate for pitches on Gypsy and Traveller sites would be around 1% per year. We have used pitch rather than caravan numbers for the purposes of this estimate as, although there would normally be one park home per pitch, there is an average of 1.7 caravans per pitch on a Gypsy and Traveller site. There are currently 5270 pitches on LA sites in England and Wales. This means that there may be around 53 re-assignments every year (one pitch for around every 6 sites).
50. If we apply the same ratio of sales to gifts as for park homes 47 of these re-assignments may be on sale. If we assume the average value of a new 20 foot trailer is around £30,000, and the average value on re-sale may be around £15,000, then the average commission per sale would be £1,500. **Gypsies and Travellers may therefore pay around £79,500 in commission payments per year (£1,500 x 53 assignments).**
51. The cost of the additional court cases in paragraph 50 (£25,320), consultation in paragraph 32 (£26,469), and commission payable on assignment will bring **the average annual cost of Option B to £131,289.**

## ANNUAL BENEFITS

### AVERAGE ANNUAL BENEFIT (EXCLUDING ONE-OFF)

52. Gypsies and Travellers will benefit from the additional rights and responsibilities outlined in paragraph 7.

## **To LAs**

### *Commission on assignment*

53. Under the 1983 Act LAs will be able to charge up to 10% commission on the sale of a caravan and assignment of an agreement to occupy the pitch it is stationed on. The £70,500 cost to Gypsies and Travellers of this calculated in paragraph 50 above will be a benefit to LAs.

*Monitoring and enforcement*

54. The rights and responsibilities imposed by the Mobile Homes Act 1983 are enforced by the courts. Paragraphs 36 -42 and 43 – 47 explain that site owners and residents can ask the court to enforce specific rights and responsibilities under the Act, and that there is also a general power for them to ask the court to determine any question arising under the Act or an agreement to which it applies. They also consider the cost to the courts as the enforcement body.
  
55. CLG will monitor implementation of this policy through the National Association of Gypsy and Traveller Officers (NAGTO – the organisation for local authority officers working with Gypsies and Travellers who will be leading on implementation in their authorities) and through the Forum that we hold with representatives of the various Gypsy and Traveller groups that we hold three times a year. We will undertake an evaluation of the policy and review this impact assessment three years after implementation.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	Yes	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### COMPETITION ASSESSMENT

1. The proposal to amend the Mobile Homes Act 1983 to remove the specific exclusion for local authority Gypsy and Traveller sites will ensure that all Gypsies and Travellers have the same rights and responsibilities whether they live on a private or socially rented site. The shortage of accommodation for Gypsies and Travellers (caravan count data shows that around 25% of Gypsy and Traveller caravans do not have an authorised place to stop) means that turnover on sites is often low. There is not a “market” for site accommodation in the way that there is for conventional housing, The proposal does not raise any competition concerns.

### SMALL FIRMS IMPACT TEST

1. The proposal to amend the Mobile Homes Act 1983 will improve the rights and responsibilities of Gypsies and Travellers on local authority sites. The proposals will therefore not impose or reduce costs on small businesses.

### RACE EQUALITY

1. Gypsies and Travellers on local authority (LA) sites currently have only limited protection from eviction and harassment under the Caravan Sites Act 1968. The caravan counts undertaken in England and Wales in January 2007 show that there were 304 LA sites across England and Wales, providing 5,270 pitches and accommodating 7,113 caravans.
2. Gypsies and Travellers on private sites, and occupants of other types of residential caravan sites, such as park home sites, have further protection under the Mobile Homes Act 1983. The caravan counts undertaken in England and Wales in January 2007 show that there are 6,663 Gypsy and Traveller caravans on private sites, although many of these are likely to be family sites rather than commercial sites run by private organisations or individuals. It is also estimated that there are around 78,000 park homes on sites across England and Wales.
3. The proposal to amend the Mobile Homes Act 1983 to remove the specific exclusion for local authority Gypsy and Traveller sites, and provide the same rights and responsibilities as others living on residential caravan sites will therefore directly impact on Gypsies and Travellers on local authority sites.
4. These will include Romany Gypsies and Irish Travellers, which are recognised racial groups under race relations legislation, as well as other groups with a nomadic habit of life, as set out in the definition of the term Gypsies and

Travellers under section 225 of the Housing Act 2004 (see the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006, SI 2006/3190). The proposal will therefore have a disproportionate impact on Romany Gypsies and Irish Travellers.

5. This proposal will improve the rights and responsibilities of Romany Gypsies and Irish Travellers on LA sites, ensuring that all those living on residential caravan sites have the same rights and responsibilities, irrespective of their racial group.

### **DISABILITY EQUALITY**

1. The Disability Rights Commission suggests that a proposal is likely to require a full Disability Equality Impact Assessment if:
  - the policy is a major one in terms of scale or significance for an authority's activities;
  - although the policy is minor it is likely to have a major impact on disabled people in terms of the number affected or the seriousness of the likely impact or both.
2. The proposal will affect LA Gypsy and Traveller sites. The caravan counts undertaken in England and Wales in January 2007, showed that there were 304 LA sites, providing 5,270 pitches and accommodating 7,113 caravans. Gypsies and Travellers on LA sites will therefore make up a very small percentage of a LAs population, and consequently the proposal is unlikely to be a major one in terms of scale or significance for their activities.
3. Although Communities and Local Government does not have figures on the number of disabled Gypsies and Travellers, the Disability Rights Commission estimates that one in five adults will have a disability. Therefore, around 1,400 Gypsy and Traveller caravans on LA sites may include a disabled adult affected by this proposal.
4. The proposal will improve the rights and responsibilities of disabled Gypsies and Travellers on LA sites, ensuring they have the same rights and responsibilities as both disabled and non-disabled residents of other types of residential caravan site.

### **GENDER IMPACT**

1. Communities and Local Government does not have information on the number of men and women resident on LA Gypsy and Traveller sites. The Women and Equality Unit estimate that 51% of the population are female and 49% are male.

2. The proposal will apply equally to both male and female residents of LA Gypsy and Traveller sites, ensuring they have the same rights and responsibilities as both male and female residents of other types of residential caravan sites.

## HEALTH

1. Gypsies and Travellers have poor health outcomes compared to the settled population. For example:
  - the average life expectancy of Gypsies and Travellers is 12 years less for women and 10 years less than men for the settled population;
  - 41.9% of Gypsies and Travellers have reported a limiting long term illness – compared to 18.2% of the settled population;
  - 17.6% of Gypsy and Traveller mothers have experienced the death of a child – compared to 0.9% in the settled population.
2. Currently, the ability for LAs to evict Gypsies and Travellers from their sites quickly, by terminating the licence agreement with 28 days notice and seeking a possession order if they do not leave, may have a detrimental impact on Gypsies and Traveller's health, by making it difficult for them to maintain contact with health services, and increasing stress and related behaviours.
3. Improving security of tenure by requiring the LA to satisfy the court that one of a number of grounds for possession has been met, and that it is reasonable to terminate the agreement, may help to alleviate these difficulties and contribute to an improvement in health outcomes for Gypsies and Travellers.

## LEGAL AID

1. We have carried out a Legal Aid Impact Test and the Ministry of Justice has agreed that there should not be a significant impact on Legal Aid.

## HUMAN RIGHTS

1. This proposal responds to the European Court of Human Rights (ECtHR) judgment in the case of *Connors v United Kingdom* in 2004 that the lack of procedural safeguards to eviction on local authority Gypsy and Traveller sites breached article 8 of the Convention (right to respect for private, family and home life).

## RURAL PROOFING

1. The proposal will improve the rights and responsibilities of Gypsies and Travellers living on local authority sites whether they are in rural or urban areas. The proposal will not have a different impact on rural areas because of particular rural circumstances or needs.



## Summary: Intervention & Options

<b>Department /Agency:</b>	<b>Title:</b> <b>Impact Assessment of amendment to homelessness legislation to remedy an incompatibility with ECHR</b>	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> August 2008
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Alan Edwards

**Telephone:** 020-7944-3665

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

Section 185(4) of the Housing Act 1996 requires local housing authorities to disregard ineligible household members when determining whether applicants are homeless or have a priority need for accommodation (and would therefore be owed a duty to secure accommodation). The UK courts have declared that section 185(4) is incompatible with the European Convention on Human Rights to the extent that it requires authorities to disregard ineligible household members of applicants who are a British citizen. Primary legislation is necessary to remedy the incompatibility.

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

The policy aim is to remedy the incompatibility while ensuring that a person who requires leave to enter or remain in the UK but does not have it, or has leave to enter or remain on condition of 'no recourse to public funds', cannot convey priority for, or entitlement to, social housing on another person.

### What policy options have been considered? Please justify any preferred option.

The policy options considered are (1) do nothing and (2) remedy the incompatibility. The preferred option is to remedy the incompatibility because the Government is committed to ensuring that all UK legislation is compatible with the European Convention on Human Rights.

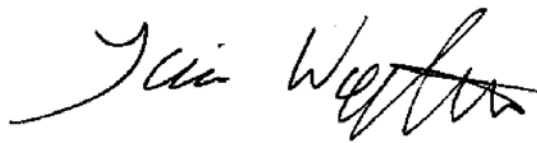
### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed within 3 years as part of the post-legislative scrutiny of the Housing and Regeneration Act.

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

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

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read "Jacqui Weyler". The signature is written in a cursive style with a long horizontal stroke at the end.

**Date:** 6 October 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>		<b>Description: Homelessness legislation: incompatibility with ECHR</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  The estimated net cost to local authorities of securing offers of accommodation in the private rented sector for approximately 400 households in England and proportionate numbers in the devolved administrations.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost (excluding one-off)</b>		
	£413.8k		<b>Total Cost (PV)</b> <b>£413.8k</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  None
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		<b>Total Benefit (PV)</b> <b>£0</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Will avoid litigation for failing to remedy the incompatibility.			
<b>Key Assumptions/Sensitivities/Risks</b> It is assumed that, given the small number of households affected, local authorities will be able to arrange an offer of accommodation in the private rented sector in all cases.			
<b>Price Base Year 2008</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> <b>£0</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£0</b>

What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		To be agreed		
Which organisation(s) will enforce the policy?		N/a		
What is the total annual cost of enforcement for these organisations?		£0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £ 0		Decrease of £ 0		<b>Net Impact £ 0</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Background

Under the homelessness legislation, local authorities must secure accommodation for applicants who are eligible for assistance, unintentionally homeless and fall within a priority need group. In England and Wales the duty to secure accommodation continues until a settled home can be offered and those owed the duty must be given reasonable preference for an allocation of social housing. In most cases, the homelessness duty is finally discharged with an offer of social housing. In Scotland, the main homelessness duty conveys an entitlement to social housing and in Northern Ireland the main homelessness duty is discharged in practice by making an offer of social housing.

Section 185(4) of the Housing Act 1996 is a provision of the homelessness legislation that applies to England and Wales. It requires local authorities to disregard any ineligible household members when determining whether an eligible applicant is homeless or has a priority need for accommodation (and would therefore be owed the main duty to secure accommodation under section 193(2) of the 1996 Act). The Court of Appeal declared that section 185(4) was incompatible with the ECHR to the extent that it requires authorities to disregard an ineligible dependant child when considering whether an eligible British citizen is homeless or has a priority need for accommodation. The High Court subsequently made a declaration that section 185(4) was also incompatible with the ECHR to the extent that it required authorities to disregard an ineligible pregnant partner of an eligible British citizen in similar circumstances.

The courts considered that section 185(4) discriminated, effectively, on the basis of nationality. In the Court's view, denying a person from abroad the right to be secured accommodation by a local authority would put pressure on that person to leave the country, and that this was unjustified where the person was a British citizen with a right of abode in the UK.

Section 119(1) of the Immigration and Asylum Act 1999 makes provision similar to 185(4) of the 1996 Act in respect of the homelessness legislation that applies in Scotland and in Northern Ireland. The Government has therefore taken the view that section 119(1) of the 1999 Act will also be incompatible with the ECHR and require remedying.

### Options

Two options were considered: (1) do nothing and (2) amend the incompatible legislation. Two sub-options were considered under Option 2: (i) repeal the incompatible legislation, and (ii) *amend* the incompatible legislation.

### **Option 1**

This option was not pursued because the Government has a general policy of ensuring that all UK legislation is compatible with the European Convention on Human Rights.

#### ***Costs & benefits***

The principal costs of doing nothing would be the costs of litigation incurred by local authorities and possibly, central Government, as a result of legal challenges mounted by individuals denied homelessness assistance as a consequence of the effect of section 185(4) of the Housing Act 1996 (the incompatible provision) and section 119(1) of the Immigration & Asylum Act 1999 (which makes similar provision in respect of Scotland and Northern Ireland). No estimate has been made of these potential costs.

No benefits of doing nothing have been identified.

### **Option 2 (i) – repeal the legislation**

This option has not been pursued because it would significantly undermine the Government's general policy of ensuring that persons from abroad who are ineligible for publicly funded housing assistance themselves cannot convey entitlement to assistance on another person. A particular concern was that in most cases entitlement to homelessness assistance leads to entitlement to an allocation of long term social housing, a scarce and valuable publicly-funded resource.

#### ***Costs & benefits***

The costs of option 2(i) (repealing the incompatible legislation) have not been estimated but they would exceed the costs of option 2(ii) (amending the legislation). This is because repeal would result in a greater number of applicants being owed a duty to secure accommodation than the amendments proposed under option 2(ii) – which extends only to those applicants who are a British citizen or EEA national.

Option 2(i) would benefit eligible applicants who were themselves subject to immigration control and who were relying on an ineligible household member in order to be owed a homelessness duty to secure accommodation. They would benefit from being provided with suitable accommodation under the homelessness legislation and given reasonable preference for an allocation of social housing. This group will not receive this benefit under option 2(ii).

### **Option 2 (ii) – amend the legislation**

In adopting this option the Government's aim is to remedy the incompatibility while maintaining a policy that, so far as possible, persons who are subject to

immigration control (broadly, non-EEA nationals and EEA nationals not exercising an EU Treaty right to reside in the UK) and not eligible for publicly funded housing assistance cannot confer entitlement to housing assistance on another person who is eligible but not entitled to assistance in his own right (e.g. because he would have a 'priority need' for accommodation only if he can rely on the presence in his household of a dependant child or pregnant spouse).

### **The Proposal – Option 2 (ii)**

Under this option, the proposed amendments to the legislation will remedy the ECHR incompatibility by ensuring that eligible applicants for housing assistance who have a right of abode in the UK (including British citizens) or a right to reside in the UK under EC law will have their ineligible household members taken into account when a local authority (or the Housing Executive in Northern Ireland) decides whether they are owed a homelessness duty.

However, in order to deliver the policy aim of ensuring that a person who requires immigration leave but does not have it, or has leave on condition of 'no recourse to public funds' (a 'restricted person'), cannot convey entitlement to, or priority for, social housing, the amendments will require that where a duty to secure accommodation is owed only as a result of the applicant being able to rely on such a restricted person, then local authorities (and the Housing Executive) must, so far as practicable, discharge that duty by arranging an offer of accommodation in the private rented sector.

The amendments will also ensure that acceptance of the main homelessness duty (to secure accommodation) will not of itself convey any priority for, or entitlement to, an allocation of social housing.

The amendments will not alter the position of eligible housing applicants who are themselves a person subject to immigration control. Sections 185(4) of the 1996 Act and section 119(1) will continue to require local authorities (and the Housing Executive) to disregard any ineligible household members when determining whether the applicant is homeless or has a priority need for accommodation.

### **Costs**

There are no firm data on the number of people whose application for housing assistance has been affected by section 185(4) of the 1996 Act or section 119(1) of the 1999 Act. Informal returns from local housing authorities in England suggest around 400 applicants may have been affected over a 12 month period (equivalent to around 0.3% of total decisions made by local authorities in England under the homelessness legislation during 2007/08 – 130,840). No data are available for Wales, Scotland and Northern Ireland, and there is no evidence of any cases within these administrative areas.

The estimated cost in respect of England is £342,000 per annum additional net expenditure falling to local housing authorities. This represents the estimated cost of securing offers of accommodation from private landlords for 400 applicants and their households who would not previously have been owed a duty to secure accommodation (80 in London, 320 in the rest of England). The costs are based on estimated average rates of local housing allowance (housing benefit) of £290 per week in London and £150 per week in the rest of England.

The principal assumptions are that, in order to secure offers that applicants can take up, local authorities will need to provide (1) a financial inducement to the private landlord to offer a tenancy, equivalent to 4 weeks rent, (2) 4 weeks rent in advance on behalf of the applicant, and (3) a security bond (against damage) up to the equivalent of 4 weeks rent. However, it is also assumed that 90% of the advance rent at (2) will be recoverable from the applicant, and that only 10% of the security guarantees will be drawn down at a cost to the authority.

It is assumed there will be no overall increase in housing benefit costs, since finding accommodation in the private rented sector for themselves would have been the main housing option available to this group of applicants as a consequence of not being entitled to accommodation under the homelessness legislation. In fact, the limited duty owed by the authority would have been to provide advice and assistance to help applicants secure accommodation for themselves. And some local authorities have indicated that the assistance they have been providing to these applicants has included help with rent deposits and guarantees to facilitate access to privately rented accommodation.

#### *Wales, Scotland and Northern Ireland*

Given the lack of data about applicants in Wales, Scotland and Northern Ireland who may have been affected by the restrictions imposed by section 185(4) of the 1996 Act and section 119(1) of the 1999 Act, the impact of the changes is estimated to lie between nil and £20.1k (Wales), nil and £40.2k (Scotland), and nil and £11.5k (Northern Ireland). The estimated figures represent a proportion of the estimated cost in England based broadly on the percentages applied under the Barnett formula for the purpose of distributing resources UK-wide.

#### **Benefits**

The principal benefit is remedying the ECHR incompatibility of the homelessness legislation and ensuring that eligible applicants who have an absolute right to live in the UK do not suffer unjustifiable discrimination on the basis of the immigration status of their household members.



**Competition assessment**

Competition will not be affected by these proposed changes.

**Small Firms Impact Assessment**

Small Firms will not be affected by these proposed changes.

**Legal Aid**

Given these proposed changes will place these housing applicants in a more favourable position regarding their entitlement to assistance under the homelessness legislation, we do not anticipate any impact on demand for legal aid.

**Sustainable development**

These proposals will have no impact on sustainable development.

**Carbon Assessment**

Carbon emissions will not be affected by these proposals.

**Other Environment**

We do not anticipate any other environmental impacts.

**Health Impact Assessment**

We do not anticipate any significant impact on health.

**Race Equality**

We do not anticipate any significant impact on race equality.

**Disability Equality**

We do not anticipate any impact on disability equality.

**Gender Equality**

We do not anticipate any impact on gender equality.

**Human Rights**

In 2005 the Court of Appeal declared that section 185(4) was incompatible with the ECHR to the extent that it requires authorities to disregard an ineligible dependant child when considering whether an eligible British citizen is homeless or has a priority need for accommodation. In a subsequent case the High Court made a declaration that section 185(4) was also incompatible with the ECHR to the extent that it required authorities to disregard an ineligible pregnant partner of an eligible British citizen in similar circumstances.

The Appeal Court held that the homelessness legislation falls within the ambit of article 8 (because one of the principal aims of the legislation is to ensure that homeless families are accommodated together) and that, therefore, by article 14, any rights provided under the legislation cannot be restricted in a discriminatory way, unless the discrimination is justifiable.

In the Court's view, denying a person from abroad the right to be secured accommodation by a local authority would put pressure on that person to leave the country, and that where the person was a British citizen with a right of abode in the UK that was unjustifiable.

The Government acknowledges that British citizens who are habitually resident here and who become unintentionally homeless should be entitled to be provided with accommodation to relieve their homelessness – even where their 'priority need' or 'homelessness' derives from ineligible dependants or other ineligible household members.

However, the Government considers it is justifiable that, so far as possible, a *restricted person* – that is, a person who requires leave to enter or remain in the UK but does not have it or has leave on condition of 'no recourse to public funds' – should not be able to convey entitlement or priority for long term social housing on another person, including an eligible British citizen. Consequently, where a duty to secure accommodation is owed to an eligible British citizen only through reliance on a *restricted person*, local authorities (and the Housing Executive in Northern Ireland) will be required to end the duty so far as practicable, by arranging an offer of accommodation in the private rented sector. The Government acknowledges that this will result in some difference of treatment as between eligible British citizen applicants, depending on the immigration status of their household members, but is satisfied that these differences of treatment are justifiable because of the policy considerations. This is because social housing is a scarce and expensive resource funded by the UK taxpayer which brings other valuable benefits such as the right to buy and right of succession.

These proposals will remedy the ECHR incompatibility by ensuring that British citizens and other eligible applicants who have right to live in the UK will now be able to rely on ineligible household members to convey entitlement to homelessness assistance. British citizens will no longer be denied accommodation as a result of the immigration status of their dependants. They will no longer be placed under pressure which could make them consider leaving the UK because they were unable to obtain accommodation when faced with homelessness.

The Government agrees with the Court of Appeal that a clear distinction needs to be made in the application of immigration control as between people who have a right to live in the UK and those who do not. People without such a right may be granted leave to enter or remain in the UK, but where leave is granted they continue to be subject to immigration control. The leave granted remains subject

to the possibility of withdrawal or loss, for example, if they leave the UK for a period of two years or more. It does not confer an unqualified 'right' to be here.

In the Government's view, persons subject to immigration control have a reduced claim to social housing compared to British citizens and others with a right of abode in the UK or a right to equal treatment under EU law. The Government therefore considers it is appropriate and justifiable for section 185(4) and section 119(1) to continue to apply in respect of eligible housing applicants who are themselves subject to immigration control.

Since section 185(4) has not been declared incompatible insofar as it applies to eligible applicants who are *subject to immigration* control and who do not have a right to be in the UK, the Government considers these proposals do not need to extend to this group. The Government considers there is strong policy justification why people who only have permission to be in the UK should not be able to rely on ineligible persons to convey entitlement to homelessness assistance or priority for long term social housing.

### **Rural Proofing**

We do not anticipate any impact on rural policy, circumstances or needs.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Local Connection Provisions</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 22 October 2007
<b>Related Publications:</b> Ministerial Statement to Parliament by Yvette Cooper MP on 21 June 2007		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Frances Walker

**Telephone:** 020-7944-3666

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

Under the Housing Act 1996, people serving in the armed forces are treated as not establishing a local connection with a district as a result of living or working there. This can put them at a disadvantage if they apply to the local authority in that district for social housing or, after leaving the armed forces, apply for homelessness assistance. People who do not have a local connection with a district may be given lower priority for social housing or, if they have a local connection elsewhere, referred to another local authority for homelessness assistance.

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

To ensure that members of the armed forces (and those who have recently left the forces) are treated fairly and put on an equal footing with civilians when they apply to a local authority for social housing or for assistance because they are homeless.

**What policy options have been considered? Please justify any preferred option.**

- (a) Retain the status quo
  - (b) Amend the Housing Act 1996
- Option (b) is the only option that will deliver the policy.

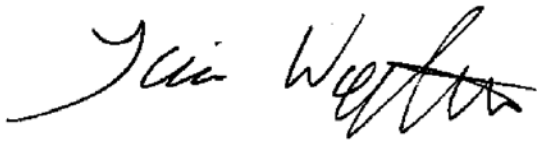
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

This policy does not have an end date. However, we will review the outcomes for servicemen accessing social housing after 3 years.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read "Jacqui Weyler". The signature is written in a cursive, flowing style.

**Date:** 6 October 2008

Summary: Analysis & Evidence			
Policy Option: A		Description: <b>Do nothing</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  No monetised costs identified
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost (excluding one-off)</b>		
	£0		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'  Service personnel and those leaving the Armed Forces may be unable to secure a local authority tenancy, or nomination to RSL accommodation.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  No monetised benefits identified
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'  Benefits for applicants who can demonstrate a local connection through employment or residence of choice.			
<b>Key Assumptions/Sensitivities/Risks</b> It is assumed that the majority of LAs frame their allocation schemes to take into account local connection.			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £0	<b>NET BENEFIT (NPV Best estimate)</b> £0



What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	In force			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £ Nil		Decrease of £ Nil		<b>Net Impact £ Nil</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option:</b>		<b>Description:</b> <b>Amend Local Connection in Relation to Allocations</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  One-off administrative costs in changing and consulting on changes to allocation scheme; and reassessing priority of some applicants.  No annual monetised costs identified.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£155,000	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	£0		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'  Where former members of the Armed Forces applying for social housing are able to demonstrate a local connection this may result in other housing applicants receiving less priority.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  No monetised benefits identified
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'  Benefits to people leaving the Armed Forces who may receive greater priority for social housing.			
<b>Key Assumptions/Sensitivities/Risks</b> It is assumed that the majority of LAs frame their allocation schemes to take into account local connection.			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £0	<b>NET BENEFIT (NPV Best estimate)</b> £0

What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	By order			
Which organisation(s) will enforce the policy?	None			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)      (Increase – Decrease)				
Increase of £0		Decrease of £0		<b>Net Impact £0</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>

## Evidence Base (for summary sheets)

### Background

On 21 June 2007 Yvette Cooper MP made an announcement in Parliament to the effect that Communities and Local Government and the Ministry of Defence had reviewed the way in which current housing legislation impacts on those leaving the Armed Forces; and had decided to make the necessary changes to housing legislation, at the earliest opportunity, to ensure that Service personnel are put on an equal footing with other people applying for social housing. This followed representations from Service personnel and MPs that the local connection provisions in housing legislation put Service personnel and those leaving the Armed Forces at a disadvantage when applying for social housing.

Under the Housing Act 1996, housing authorities may take account of whether a person has a local connection with their district when making inquiries about whether they are homeless for the purposes of Part 7 of the Act or considering their priority for an allocation of housing under Part 6 of the Act. It also provides that an individual cannot establish a local connection with a district through residence of choice or employment there when serving in the armed forces.

Under Part 6 of the 1996 Act, local authorities in England and Wales are responsible for framing their own policies and procedures for allocating social housing. In deciding who gets priority for social housing, local authorities can take into account whether someone has a local connection with their district.

Not all housing authorities take local connection into account in framing their allocation scheme. However, where they do, this can disadvantage Service personnel and those leaving the forces compared to other housing applicants (because those with no local connection are given lower priority). Specifically it is likely to disadvantage serving personnel who are approaching discharge (whereupon the accommodation provided by the Ministry of Defence will cease to be available) and seeking to plan ahead and get on the housing waiting list in good time; and former Service personnel who are within 6 months of having left the Armed Forces.

Under Part 7 of the 1996 Act, local authorities can take local connection into account when making inquiries to establish whether an applicant is homeless and owed a duty. Where an applicant is unintentionally homeless and in priority need and the local authority considers he does not have a local connection with the district but does have one somewhere else in England, Wales or Scotland, the authority can seek to refer the case to the local authority in that other district. Service personnel who seek homelessness assistance in the district where they have been living and working while in the armed forces may therefore be treated differently from civilians who have lived and worked in the district.

## Legislative Framework

Part 6 of the 1996 Act governs the allocation of social housing by local housing authorities (LHAs). Each LHA must publish an allocation scheme setting out its priorities and procedures for allocating accommodation. Under section 167(2) of the 1996 Act LHA allocation schemes must give reasonable preference for an allocation of housing to certain categories of applicants. Section 167(2A) of the 1996 Act, which was introduced by the Homelessness Act 2002 (“the 2002 Act”), provides that housing authorities may frame their allocation scheme to take into account certain factors in determining priorities for those within the reasonable preference categories. One of the factors is whether the applicant has a local connection with the district.

The local connection provisions apply where housing applicants are nominated to a housing association (RSL) property by a local housing authority (at least 50% of RSL true voids), but not where lettings are made by an RSL under the terms of its own allocations policy.

Local connection is defined in Part 7 of the 1996 Act which concerns housing authorities’ homelessness functions. Under section 199, a person has a local connection with a district of an LHA if he has a connection with it – (a) because he is or in the past was normally resident there by his own choice, (b) because he is employed there, (c) because of family associations or some other special circumstance. However, a person is unable to establish a local connection under (b) (employed in district) if he is serving in the regular Armed Forces. Further, he cannot establish local connection on the grounds of residence in the district where he is serving as that residence is not regarded as of his own choice. This exemption also applies to the family members who would reasonably be expected to live with that person.

Regular Armed Forces includes the Royal Navy, Royal Marines, regular Army, Royal Air Force and Queen Alexandra’s Royal Naval Nursing Service.

## Options

This Impact Assessment sets out two options:

**Option A:** Do nothing.

This is the baseline against which the costs and benefits of Option B have been assessed. It represents a continuation of the existing way in which housing authorities deal with applications for social housing from members of the Armed Forces. This has implications for Service personnel and those leaving the Armed Forces and for LHAs. There will also be implications for RSLs (in respect of nominations) and for other housing applicants, in particular those in identified housing need.

We do not consider this to be a viable option because:

It discriminates against Service personnel and those leaving the armed forces who apply for an allocation of social housing. This is because, where an allocation scheme is framed to give lower priority to applicants who do not have a local connection, members of the armed forces will not be given as much priority as other applicants with the same level of need who can establish a local connection. And, under the homelessness legislation, former members of the armed forces who are unintentionally homeless and in priority need may be referred to another local authority because they have been unable to establish a local connection in the district where they served in the forces.

**Option B:** Amending the Housing Act 1996 to provide that a person has a local connection with a LHA district if he has a connection with that district through residence of choice or employment while serving there in the Armed Forces or if he is or was resident because he (or someone living with that person) is or was serving in the Armed Forces.

The desired effect of the proposed amendments to the Housing Act 1996 is to put Service personnel and those leaving the Armed Forces on an equal footing with other housing applicants who are able to establish a local connection through residence of choice or employment in a LHA district.

### **Costs and Benefits**

#### **Assumptions and 'Unknowns'**

The preparation of this Impact Assessment is subject to a number of assumptions and 'unknowns'.

#### ***Applications for social housing***

(1) Option B will not increase the social housing stock or the number of households who are allocated accommodation. It is therefore assumed that any allocation of accommodation to a former member of the Armed Forces which is a consequence of changing the 1996 Act (Option B), will be at the expense of another applicant who would otherwise have been allocated that accommodation.

(2) It is assumed that there will only be implications in respect of applications made to LHAs which:

- frame their allocation scheme to take into account local connection, and
- host military establishments. This is because the local connection provision, in so far as it relates to Service personnel and those leaving the Armed Forces, will only be relevant to an applicant where he applies for housing to the LHA in whose district he is or was recently stationed.

We know that about 30 LAs host large military establishments. These are in predominantly high demand areas, many of them rural. Other LHAs may host small bases, but we do not have information about numbers. It is assumed that between 50 and 100 LAs will host military establishments.

(3) We do not routinely collect information on LHA allocation schemes. However, it is assumed that most LAs take account of “local connection” to some extent in their allocation scheme, but that not all LHAs follow the definition of “local connection” in s. 199. This is based on information received from 17 LHAs as part of an informal survey of LHAs which host large military establishments (carried out in January 2007). This found that all 17 LHAs framed their allocation scheme to take local connection into account. This IA is therefore based on the assumption that all 350 LAs will amend their allocation scheme and consult on this amendment, as they are required to do.

(4) We do not know how many applicants on LHA housing waiting lists are serving or former Service personnel; neither do we know how many lettings in LA or RSL accommodation are made to serving or former Service personnel. The survey referred to in (3) above attempted to collect waiting list and lettings data but the results were very limited, since only 9 out of the 17 respondents were able to provide data. Of these, one local authority reported 98 former Service personnel on the waiting list, and the highest number of such applicants (60) in the previous 12 months but had made no allocations to former Service personnel during that period. In contrast, 3 authorities had less than 10 former Service personnel on the waiting list, and 7 authorities had received less than 10 applications in the previous 12 months.

(5) LAs must consider all applications and must assess the needs and determine the priority of all applicants who are eligible.

#### ***Homelessness assistance***

Option B should not result in additional numbers of Service leavers being provided with homelessness assistance so will not impose a new burden on local government overall, However, Option B may increase homelessness pressures locally on the small proportion of local authorities who host large military establishments (see above) – because they will no longer have a basis for referring cases to other local authorities.

We have some data on the number of homeless acceptances where local authorities successfully referred the case to another local authority on the basis of local connection. These suggest that the number of cases successfully referred to another authority by the 30 authorities with the largest military presence is relatively small – so the impact of Option B should not be significant.

## Option A

### *Costs*

(1) The main costs relate to Service personnel (and their families) and for former Service personnel (and their families) who are within 6 months of having left the Armed Forces.

In these circumstances, a person who is about to leave (or who is within 6 months of having left) the Armed Forces and who is seeking social housing in the district in which he is/was stationed is unlikely to be able to demonstrate a local connection and as a result may not have sufficient priority under the allocation scheme to be allocated housing on (or shortly after) leaving the army. The impact on Service personnel is likely to be greatest in areas of low to medium demand for social housing. In areas where there is pressure on social housing, it is unlikely that someone would be housed within 6 months of having left the Armed Forces, even if they were able to demonstrate a local connection.

(2) There may also be cost implications for LHAs. Where former Service personnel are precluded from social housing because they cannot demonstrate a local connection, this could lead to increased applications for housing assistance which result in homeless acceptances. However, there is no evidence that this is the case. Furthermore, data suggest that homeless acceptances by former Service personnel are a small proportion of the overall numbers. In 2006, 76858 housing applicants were accepted by local housing authorities in England as eligible for assistance, unintentionally homeless and in priority need. Of these, 58 (0.1%) acceptances had priority need because they were vulnerable as a result of time spent in the armed forces, and in 224 (0.3%) of cases, the reason for homelessness was recorded as 'leaving Her Majesty's forces'.

### *Benefits*

Where LHAs frame their allocation scheme to take local connection into account, this will give some other applicants an advantage over members of the Armed Forces (or those within 6 months of having left the services). This will be the case where other applicants have similar levels of need and are able to demonstrate they have a local connection. We are unable to estimate how many cases are likely to be involved.

## Option B

### *Monetised Costs*

There may be one-off costs associated with amending LHA allocation schemes and reassessing applicants' priority.



(1) LHAs may revise their allocation scheme to reflect the changes to the local connection provision in relation to members of the Armed Forces. Where this is the case, LHAs are required to consult with RSLs on these changes, and notify those who are affected by the changes. The limited information available suggests that most allocation schemes are framed to take local connection into account. The following estimated costs are accordingly based on the assumption that all 350 LHAs will amend their allocation schemes.

Amending the allocation scheme in the light of consultation: 2 working days for one LHA officer, salary in region of £30/£40k p.a. = £160 – £220 per LA

Consulting RSLs and notifying people affected by the change: 3 working days for one LHA officer, salary in region of £20k pa. = £160 per LA

One-off costs for 350 LHAs = in the range of **£122,000 and £133,000**.

(2) Following amendment to their allocation schemes, some LHAs may consider it necessary to re-assess applications from serving and former members of the Armed Forces. This will be relevant in the case of LHAs:

- which host military bases, and
- take local connection into account in prioritising applicants.

The following costs are based on the assumptions that:

(a) between 50 and 100 LHAs host military bases and will need to re-assess applications from serving and former members of the Armed Forces, and

(b) the number of applications to be re-assessed will range between 10 – 100 per LHA, equating to an average of 4 working days per LHA.

Identify and reprioritise applicants: 4 working days for one LHA officer, salary in region of £20k p.a. = £220 per LA

One-off costs for 50 – 100 LHAs = in the range of between £11,000 and £22,000

**Estimated total one-off costs for (1) and (2) in the range of £133,000 to £155,000**

#### *Non-monetised costs*

Some applicants will be disadvantaged by the change to the local connection provision, and may have to wait longer to be allocated accommodation.

### ***Benefits***

(1) The main benefit will be for Service personnel who will no longer be disadvantaged by the local connection provision.

(2) This should enable Service personnel to apply for social housing well in advance of their date for leaving the Service and could lead to a reduction in applications for housing assistance that result in homeless acceptances.

### **Race Equality Impact Assessment**

Based on data from the three most recent years of the Survey of English Housing, there are an average of 45,000 households who were formerly NCOs and other ranks. Of these, 24,000 were owner occupiers; 15,000 private renters; and 6,000 social renters. The data does not break down further to indicate the proportion of social renters of minority ethnic origin.

Data about households on housing waiting lists is collected annually through the Housing Strategy Statistical Appendix and data on social housing lettings is collected through CORE (Continuous Recording). This data cannot be broken down to indicate how many households on the waiting list include existing or former members of the Armed Forces or how many lettings are made to former members of the Armed Forces.

However, the Ministry of Defence does collect statistics on Service personnel and on those leaving the Services. These figures apply to the UK generally.

In 2006, there were 195,000 regular Service personnel. Of this total, 10,180 (5%) were from ethnic minorities, the vast majority of whom (9,450 or 93%) were Other Ranks (ie those more likely to apply for social housing).

During 2006, 18,140 Servicepersons left the Services, of whom 16,070 (88%) were Other Ranks. 560 out of the 16,070 (or 3%) were ethnic minorities.

In England in 2006, 8% of all households and 12% of social renters were black or minority ethnic (that is to say the reference person interviewed was of minority ethnic origin). Source, "Housing in England 2005/6" published October 2007.

If it is assumed that:

(a) the proportion of former Service personnel from minority ethnic communities applying for an allocation of social housing is roughly in keeping with the proportion of BME people employed in or leaving the Services, and

(b) the proposed amendment results in more lettings going to former Service personnel

this could have a slightly negative impact on minority ethnic households accessing social housing.

### **Disability Equality**

Of the 18,140 people leaving the Services in 2006, 1,220 (6.7)% left for “medical reasons or death”, 1,140 (93%) of whom were Other Ranks.

Service personnel who are disabled or who are discharged on medical grounds, and who are assessed as having “reasonable preference” for an allocation on “medical or welfare” grounds, may be given less priority, if they are unable to demonstrate a local connection as a result of the current exceptions (relating to employment and residence) for those serving in the Armed Forces.

The amending proposal will remedy this situation and should therefore have a positive impact on disabled Service personnel.

### **Gender equality**

Of the 1,140 Other Ranks who left the Services for “medical reasons or death” – and who are likely therefore to have relative priority for an allocation – the vast majority (1,020 or 89%) were men. It is likely that a significant proportion will be single males.

In 2006, 58 (0.1%) homelessness acceptances had priority need because they were vulnerable as a result of time spent in the armed forces, and in 224 (0.3%) of cases, the reason for homelessness was recorded as ‘leaving Her Majesty’s forces’. Again, it seems likely that a substantial number of these cases will relate to single men.

Based on these figures, it seems likely that single men would benefit from the proposed amendment. Given that a larger number of females than males are the “household reference person” in social housing (SEH 2006), this would suggest that the proposed amendment could have a slight positive impact on gender equality.

### **Competition Assessment**

There is no impact on business.

### **Small Firms Impact Assessment**

There is no impact on small firms.

### **Legal Aid**

There are no implications for the Legal Aid budget.

### **Sustainable Development**

We do not anticipate any impact on sustainable development.

### **Carbon Assessment**

There is no impact on carbon emissions.

### **Other Environment**

We do not anticipate any other environmental impacts.

### **Health Impact Assessment**

We do not anticipate any impact on health.

### **Human Rights**

The proposed amendment is compatible with the Human Rights Act 1998 (HRA) and we do not anticipate any HRA challenges under the amended provision.

### **Rural Proofing**

The majority of military bases are in predominantly rural areas. Consequently, putting Service personnel and those leaving the Armed Forces on an equal footing with other applicants will have a disproportionate impact on rural LHAS and could lead to concerns that there will be an adverse impact on the ability of local people to access scarce social housing in rural communities. However, such concerns fail to recognise the benefits the Armed Forces provide to the local community through various services (e.g. search and rescue, medical facilities, civil emergencies, air traffic control, youth work, charity and fund raising, fishery protection, bomb disposal, delivering citizenship in schools) as well as their contribution to the local economy. In addition, the Ministry of Defence's policy of extended postings will enable individual Service personnel and their families to put down roots and develop a more meaningful connection with the local area.

Where LHAs consider that there is a particularly pressing case for prioritising local housing for people who have a strong local connection (e.g. housing in rural villages), they may still be able to give effect to this by means of a local lettings policy.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexes

None.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Longer Time Limits for the Prosecution of Breaches of Building Regulations</b>	
<b>Stage:</b> Introduction	<b>Version:</b> 1	<b>Date:</b> 31st October 2007
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Carol Whate

**Telephone:** 020-7944-2662

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

Concerns at the effectiveness of the building control system and its ability to ensure compliance; need for consistency in enforcement across building regulations; Government undertaking to Parliament (during passage of the Climate Change & Sustainable Energy Act 2006) to take powers to extend the longer prosecution time limits, secured in relation to climate change, to all breaches of building regulations as soon as possible.

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

What are the policy objectives and the intended effects?

- i. To provide a more effective deterrent to non-compliance in relation to provisions relating to the conservation of fuel and power and reduction of emissions of greenhouse gases; and
- ii. to ensure that the deterrent applies equally to non-compliance with the provisions relating to the health, safety, welfare and convenience of persons in and about buildings

### What policy options have been considered? Please justify any preferred option.

What policy options have been considered? Please justify any preferred option.

Option 1 – do nothing.

Option 2 – preferred; extend longer time limits across all the regulations.

This would fulfil the undertaking ministers gave to Parliament; and achieve the policy objective by removing the anomaly between the climate change – related regulations and the rest.

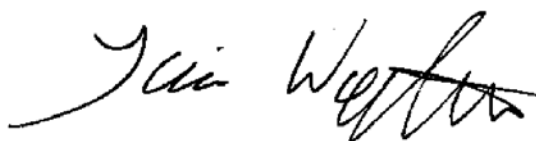
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

To be discussed with local authority representatives – but current estimates suggest it will take some 18 – 30 months for the necessary data to be available in sufficient quantities.

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

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



**Date:** 6 October 2008



## Summary: Analysis & Evidence

<b>Policy Option:</b> A	<b>Description: Do nothing</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  No costs or burdens on normally compliant and efficient businesses and business owners.
	<b>One-off</b> (Transition) <b>Yrs</b>	
	£0	
	<b>Average Annual Cost</b> (excluding one-off)	
£0	<b>Total Cost (PV)</b>	<b>£0</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Marginal familiarisation costs for local authorities will be outweighed by a more effective deterrent to non – compliance (which they have requested). No increase in prosecutions envisaged so costs should remain constant.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b> <b>Yrs</b>	
	£0	
	<b>Average Annual Benefit</b> (excluding one-off)	
£0	<b>Total Benefit (PV)</b>	<b>£0</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'  Should enable LAs to plan and resource casework more effectively. Stronger deterrent should reduce non-compliance over time. That should bring fewer injuries, deaths and less ill health for persons in and around buildings. In so far as it can be quantified, in terms of days work lost, it might be possible to quantify potential gains to the economy.		

**Key Assumptions/Sensitivities/Risks** Effective advance publicity for the proposed changes – to ensure duty holders understand need for improved compliance and minimise the risk of prosecution for inadvertent breaches; clear messages to local authorities about continued need for prioritised and balanced enforcement.

<b>Price Base</b> <b>Year 0</b>	<b>Time Period</b> <b>Years</b>	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		2008		
Which organisation(s) will enforce the policy?		Local authorities		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		No		
Annual cost (£–£) per organisation (excluding one-off)	Micro <b>£0</b>	Small <b>£0</b>	Medium <b>£0</b>	Large <b>£0</b>
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £ No		Decrease of £		<b>Net Impact £0</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### 1. Proposal

Proposal to extend across all building regulations the longer time limits for prosecution for contravention of certain climate-change related provisions of the regulations secured in the Climate Change and Sustainable Energy Act 2006 Act (by inserting section 35A into the Building Act 1984).

### 2. Purpose and intended effect

#### Objectives:

- i. To provide a more effective deterrent to non-compliance in relation to provisions relating to the health, safety, welfare and convenience of persons in and about buildings;
- ii. and by doing so to achieve consistency of enforcement across the regulations..

#### Background:

The proposal would extend longer time limits for prosecution of offences across all building regulations – thus fulfilling an undertaking given to Parliament by Government Ministers during the passage of the Climate Change & Sustainable Energy Act 2006, which provided (by inserting section 35A into the Building Act) for such longer time limits to be designated in relation to contraventions of the climate change provisions of building regulations. It is supported by the representatives of local authorities who have the statutory function of enforcement. It applies to England and Wales.

**The current legislation** (the Building Act 1984) enables a four-tier approach to enforcement:

- (a) (often used) Building control bodies (local authorities and private sector approved inspectors) in their examination of plans and proposals for new works will have a close dialogue, on and off site, with clients to ensure they understand the requirements of the law and will typically give information and informal advice;
- (b) (sometimes used) Section 36 is a civil administrative procedure which allows local authorities (who alone have enforcement powers), in cases of non-compliance, to serve notices on building owners to require the removal or alteration of the non-compliant work;
- (c) (used for flagrant breaches) Section 35 allows local authorities to prosecute contraventions via summary proceedings at magistrates' courts. Currently such prosecutions must be brought within 6 months of the commission of the breach (but breaches may not be discovered immediately);

(d) (rarely used, backstop for imminent threat to health or safety) Section 36(6) procedure allowing an injunction to be applied for to require removal or alteration of work done in contravention of building regulations.

**The proposal affects** (c); it would provide that, in England and Wales, in relation to prosecution of breaches of designated provisions relating to the health, safety welfare and convenience of persons in and around buildings, the 6 month time limit for bringing proceedings would start from when local authority prosecutors have sufficient knowledge to justify proceedings (e.g. discovery of the offence) rather than the date of the commission of the offence. This 6 month time limit would be subject to an overriding time limit, such that no prosecution could be brought more than 2 years after the date of commission of the offence

Organisations representing local authorities have made repeated representations in recent years about the effect that the current time limits have on their ability to pursue non-compliance. With the 6 month time limit for starting proceedings at magistrates' courts running from the date of the offence, i.e. the completion of the offending works, and late emergence of (what may not be obvious) building defects, this can easily eat into the time that local authority prosecutors need to prepare an effective case. As a result, cases of non compliance can escape prosecution.

At meetings with Departmental officials, local authority representatives have highlighted the different, more generous provisions in other legislation and sought change along the lines of the current proposal that would assist them to deliver more effectively their existing statutory functions.

#### **Rationale for Government intervention**

- i. The initial impetus for longer time limits for energy related breaches stemmed, inter alia, from a DTI Energy White Paper – “Our energy future – creating a low carbon economy” Cm 5761 published in February 2003. In signalling the need to bring forward the revision and tightening of building regulations to achieve carbon savings the Government committed itself to working “with local authorities and their building inspectors to see whether and how enforcement of the regulations can be cost – effectively improved to achieve better correlation between design and built performance” (para 3.20). Defra’s implementation plan (Energy Efficiency: the Government’s Plan for Action – Cm 6168 April 2004) also identified enforcement (Annex 8 Table A6) as a key risk for delivery of the White Paper energy efficiency goals “Regulatory measures do not deliver expected savings due to poor enforcement – particularly relevant to Building Standards.”

- ii. Similar messages have emerged elsewhere, including from a major survey of stakeholder views on the building control system carried out in 2006 – Achieving Building Standards (by Science Applications International Corporation for the Department). This reported that stakeholders interviewed “saw the need for effective enforcement powers to deal with a small number of cases where the developer is either too determined or too incompetent to comply”. And it quoted the views of representatives of local authority building control (LABC) to a Cabinet Office study on enforcement that “The time limits in the Magistrates’ Courts Act often mean an insufficient period to take action after discovery (The move from six months from committing the offence to 2 years from discovery will help, but this needs implementing across all Parts.)”
- iii. Recent years have seen increasing concerns expressed at the extent to which building regulations are complied with on the ground but much of this is anecdotal. Of the extant research, a 2004 study by Oxford Brookes University (“Building Regulations, levels of compliance”) found that generally “levels of compliance were not always sufficient, though there was no evidence of systematic and purposeful non compliance”.
- iv. The Department is undertaking a more general review of building control which will look at a full range of options for improving compliance and enforcement. This IA deals with only one aspect of this.

### **3. Consultation**

The original proposal in the Climate Change & Sustainable Energy Bill (in relation to climate change – related offences) received collective agreement on the basis of an undertaking that longer time limits would be extended across the regulations as soon as possible: this would put prosecutions for contraventions of all regulations on the same footing. On the extension now proposed, we have consulted the Criminal Justice Delivery Unit at HM Courts Service and the Better Trials Unit at the Office for Criminal Justice Reform, the Welsh Assembly Government and LABC, which represents local authorities. We have also sought the advice of the statutory Building Regulations Advisory Committee.

### **4. Options**

- (a) Option 1 – Do nothing. Would not achieve the objective of providing a more effective deterrent.
- (b) Option 2 – extend longer prosecution time limits across building regulations. This would achieve, respectively, the policy objective and remove the anomaly between the climate change – related regulations and the rest; and should enable local authorities more effectively to pursue non-compliance. This approach would mean that the 6 month time limit would start from when local authority prosecutors had sufficient evidence to justify proceedings – so minimising the scope for non-compliers to escape the consequences of their

actions. Sufficient evidence would be signalled by their issuing a certificate to that effect. The new arrangement is subject to an overall 2 year time limit from commission of the offence, to ensure that proceedings are not launched years after the offences to which they relate, which would be oppressive.

The Government's strongly preferred option is Option 2.

## 5. Costs and benefits

- i. Option 1: No benefits but potential disbenefits and costs to the wider community. Not responding to informed local authority representations on enforcement risks sending a negative signal about the importance of the effectiveness of building control system. Inability to pursue worst non compliers risks long term damage to built infrastructure, failure to ensure that legislators' intentions (effective regulation and disincentives for non compliance) are maintained.
- ii. Option 2: Longer time limits for prosecution for all breaches of the provisions of building regulations will enable local authorities to deal with those who fail to comply and minimise the number who escape their responsibilities because of the constraints of the present time limits. It also sends a timely reminder to those doing building works of the importance the Government attaches to safe and well built homes, and of ensuring that the provisions of building regulations are fully complied with. If this is done then the consequential benefits will be fewer injuries, deaths and less ill health for persons in and around buildings. This option is also consistent with the approach recently signalled in Department's document "The Future of Building Control".
- iv. Local authorities have requested the changes which they consider will help remove a barrier to effective and efficient management of the Building Regulations. The change should provide them with a more effective deterrent to non-compliance. This outweighs any familiarisation costs for each local authority in England and Wales. There are no statistics available on the number of cases which local authorities may wish to have prosecuted but were time-barred in doing so. Therefore it is not possible to estimate how many prosecutions there might be taking advantage of the extended time limits but local authorities will retain their discretion on whether to prosecute and have more time to ensure a successful prosecution. Overall, it is not expected, and we do not intend, that there will be more prosecutions as a result of the proposals but strengthening the threat of prosecution will enable local authorities to make better use of other enforcement levers. Over time there ought to be less non-compliance.

- v. We have also looked at costs on other bodies:
  - (a) Central government. The only costs would be publicity for the changes. These are very small and likely to be incorporated with the publicity for changes made as a result of the wider Future of Building Control review. Any publicity costs would be borne from current budgetary allocation.
  - (b) Approved inspectors. No costs as they are not involved in prosecutions under Section 35 of the Building Act.
  - (c) Building owners and those carrying out building work. There will be no new burdens on normally compliant and efficient businesses or building owners and thus no costs on them.

## **6. Small firms impact test**

We do not believe that this clause will have a significant or disproportionate effect on small businesses as it merely increases the time available to local authorities in which they can take enforcement action. We are consulting the Enterprise Directorate of the Department of Business, Enterprise and Regulatory Reform as part of the formal consultation exercise now underway. A specific small firms impact test is in preparation. Before introducing the change, which will be done by separate building regulations, we would ensure that there was adequate general publicity and advance warning to businesses including small businesses via representative organisations, trade publications, etc.

## **7. Competition assessment**

In so far as this measure will improve compliance by the small minority of non compliers who merit it, it should contribute to a more level playing field for reputable companies and so assist fair competition and counteract what is in effect a market failure. As such it is consistent with wider government policies on fair trading.

## **8. Enforcement, sanctions and monitoring**

The use of this new arrangement will be by local authorities at their discretion, as now – but they operate within the principles of the Enforcement Concordat and its focus on proportionality. We intend to signal that, while the change is an indication of how seriously Government takes the need for increased energy efficiency and proper health and safety etc in buildings, we are looking not to increase the incidence of prosecutions but for increased compliance by all concerned.

## **9. Implementation and Delivery Plan**

The extension of longer time limits across the regulations should take effect as soon as there is a legislative opportunity. Current expectations are that this may be during 2008, but this cannot be predicted with any certainty (we are awaiting the views of consultees on this). The change will not be retrospective.

## **10. Post-Implementation Review**

We will discuss with local authority representatives how the outcome and impact of the changes can be assessed (likely to include the number of cases brought within the extended period and their outcome) and discuss with them when that assessment should be made. Current initial estimates suggest it will take some 18 – 30 months for the necessary data to be available in sufficient quantities to be a useful source of information.

## **11. Other assessments**

More effective compliance with the health, safety, welfare and convenience aspects of the building regulations (which include structural and fire safety, resistance to moisture, sound resistance, ventilation, protection from falling etc) should, by promoting safe and well constructed buildings that keep out the elements, assist the health and well being of their occupants. More effective compliance with the access requirements of the regulations should assist those with disabilities. Building regulations, as technical requirements for the building fabric, are gender and race neutral – and apply equally in rural as well as urban contexts with no detriment to either. There is no conflict with human rights legislation: the new time limits are reasonable, apply to and do not change existing legal processes or the entitlement to or use of legal aid; and will not be retrospective.

## **12. Summary and Recommendation**

In conclusion, the proposed legislative changes are expected to bring real benefits in terms of consistency and encouraging compliance with important building regulations, at negligible cost and we recommend that we proceed with it.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of proposal to provide 'exemption' tenancies for the purposes of delivering Family Intervention Projects</b>	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> July 2008
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Graham Knapper

**Telephone:** 020-7944-6874

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

Family Intervention Projects (FIPs) work with households at risk of eviction due to serious anti social behaviour (ASB). They often involve moving a household from their home into specialist accommodation. We wish to provide for a form of tenancy, which ensures better compatibility with existing tenancy and allocation law and assists in grappling with existing legislative complexities. We want a tenancy that offers less security than either a secure or assured tenancy, thereby providing families with more of an incentive to co-operate with their support programme.

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

We wish to provide landlords with leverage to help persuade families engage with FIPs for the duration of the programme. We want to create a tenancy that meshes with existing social tenancy law. Removal of security during the FIP is intended only as a temporary measure – when families engage successfully with the FIP they will usually go on to access secure accommodation in the social or private sector. Families who do not engage with the FIP will be evicted from the FIP accommodation as they would likely have been from their secure accommodation had they refused the FIP support offer.

**What policy options have been considered? Please justify any preferred option.**

There is no form of tenancy, at the moment, that provides social landlords with an option to offer reduced security of tenure to families in FIP accommodation. One alternative would be the use of a variation of demoted tenancies, which if enacted would "follow" the family from their secure tenancy accommodation to their FIP accommodation. This however would be controversial as tenancies (demoted or otherwise) relate specifically to properties, not people.

Our preferred option is therefore to create an insecure FIP tenancy (FIT), as it is the simplest means of achieving the policy objectives

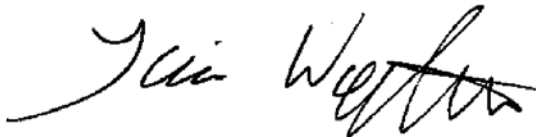
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

This will be reviewed 3 years after implementation.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: 1</b>		<b>Description: (Preferred Option) Create new Family Intervention Tenancy – schedules 1 of Housing Acts 1985 and 1988</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' We have assumed that each project (65 FIPs) will incur administrative start-up costs of £1k in revising their current tenancies and procedures. There will be a £300 per family cost of serving "notice" (£250 for administrative costs and £50 cost for the service of notice). We have assumed that there will be an average of 375 families per year
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£65,000	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	£112,500	5	
		<b>Total Cost (PV)</b>	<b>£591,000</b>
Other <b>key non-monetised costs</b> by 'main affected groups' The time it takes for officials to properly understand the provisions and mechanisms of the new FIT.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£0	5	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£0		
		<b>Total Benefit (PV)</b>	<b>£ nil</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' – ensuring better compatibility with tenancy and allocation law, circumventing existing legislative complexities, speeding up FIP entry processes because allocations and homelessness procedures will not need to be invoked, easier and cheaper eviction process where appropriate (we envisage that only between 3 and 30 cases of this nature will be heard per year) and FITs will incentivise families to engage with their FIP.			
<b>Key Assumptions/Sensitivities/Risks</b>			
10% – 40% of 1,500 families will be referred to FIPs (150 – 600 families) per year, 2% – 5% of referred families will be evicted from FIP accommodation, £1k startup costs re introduction of new tenancy and £50 cost of serving initial notice on families before they agree to give up secure tenancy.			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b>	<b>NET BENEFIT (NPV Best estimate)</b>
2007	5	<b>£-275,000 to -906,000</b>	<b>£-591,000</b>

What is the geographic coverage of the policy/option?		England + Wales			
On what date will the policy be implemented?		est. Autumn 2008			
Which organisation(s) will enforce the policy?		Local Authority, RSLs			
What is the total annual cost of enforcement for these organisations?		£			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		Yes			
What is the value of the proposed offsetting measure per year?		£ n/a			
What is the value of changes in greenhouse gas emissions?		£ n/a			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £0		Decrease of £0		<b>Net Impact £0</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Introduction

1. Family Intervention Projects (FIPs) are aimed at stopping the anti social behaviour of a small number of highly problematic families. FIPs employ a twin-track approach to help families address the root causes of their unacceptable behaviour. Therefore, the provision of supervision and support is often aligned with enforcement measures, which provide families with a further impetus to address their anti-social behaviour.
2. The FIP involves a key worker and several other local agencies (e.g. police, education authorities, mental health services) who are assigned to the family. Together they “grip” the family, establish the root causes of poor behaviour and provide a co-ordinated and intensive response and support package.
3. There is clear evidence that intensive support and supervision to the most challenging and anti-social families alongside clear sanctions where necessary, can stop entrenched anti-social behaviour and improve life chances. Sheffield Hallam University under commission of CLG, evaluated 6 broadly similar projects<sup>47</sup>. At the point at which they exited the project, complaints about ASB had ceased or reduced for 85% of families. In addition, for 90% of families project workers felt that either there had been no complaints to the police or the number of complaints had reduced after engaging with the project. In nine out of ten (92%) cases there was either no risk to the community or the risk had reduced by the time families exited the project.
4. There were also positive consequences for the families themselves. Workers reported that in four out of five cases families’ tenancies had been successfully stabilised with a similar percentage of cases also being assessed as having a reduced risk of homelessness. 53% of children showed improvement in their physical health and 40% showed improvement in their mental health after intervention. 36% of families whose children had schooling concerns showed an improvement. In 48% of cases there had been a reduction in the likelihood of family breakdown.
5. Subsequent to the Sheffield Hallam research the Respect Task Force and Communities and Local Government commissioned the National Centre

<sup>47</sup> Communities and Local Government (2006) ‘Anti-social Behaviour Intensive Family Support Projects: An evaluation of six pioneering projects’. *Department for Communities and Local Government*: London.

for Social Research to evaluate how effectively FIPs have been designed and implemented and report on early outcomes for families. The early outcomes reported by FIP staff for 90 families who completed the FIP intervention displayed considerable improvements in all key areas of the FIPs' work. ASB and criminal activities had declined considerably at the point families exited from the FIP, as had the risk of families engaging in ASB. The risk of families being evicted had also considerably reduced.

## Background

6. There are three distinct levels of FIP provision which are deployed according to a family's individual circumstances and the set up of the project itself.
  - a) Most projects provide an outreach service for families who are responsible for anti-social behaviour. This service is provided in situ. These families are usually at risk of being evicted from their homes. In this case the family remains in their existing accommodation.
  - b) FIPs can be provided in dispersed accommodation (more often than not social housing stock). In effect the family is moved into other premises where the support team works with the family.
  - c) At the most intensive level, families who require supervision and support on a 24 hour basis are referred to core residential units (only a small number of the recently announced FIPs will have this facility).
7. For the purposes of these proposals, we are concerned with the latter two categories of FIP.
8. While other bodies, such as charities may be involved, or may even run and manage the projects,<sup>48</sup> where a FIP involves the provision of accommodation to the family (as opposed to "outreach" where the family remains in their existing home), it is generally a local authority or Registered Social Landlord (RSL) which will provide the accommodation. While the families with which the FIPs are working are generally local authority or RSL tenants (latest research suggests social tenants account for around 80% of referrals), FIPs may also work with tenants of (ordinary) private landlords and on occasion owner-occupiers.

<sup>48</sup> The pioneer project which inspired FIPs, the Dundee Families Project, was run by run by NCH Action for Children Scotland in partnership with Dundee Council housing and social work departments.

### **Rational for Intervention**

9. The FIP is generally seen as a “last chance saloon” for the family. The landlord, working closely with the project, may present the tenant with the option of participating in a FIP, or else the landlord may signal they will have no choice but to seek possession of the tenant’s home having tried alternative means to stop the household’s ASB. Evidence of current practice suggests that often families are encouraged to surrender their secure or assured tenancy (where they have not actually been evicted but are under serious threat of possession action being taken against them) and then agreeing to move to dispersed accommodation or core units.
10. Where the family has not formally surrendered the tenancy, if they move out of their previous home to move into the FIP accommodation, and their previous home ceases to be their only or principal home, the tenancy would cease to be secure or assured. This is because it would no longer classify as the household’s principal home providing grounds on which to end the tenancy. There is no option under the law that would allow a local authority or RSL to “suspend” the original tenancy for the duration of the FIP project and then resume it once the programme is completed. In any case it may often not be appropriate to move a family back into a neighbourhood where they have been the cause of serious nuisance and where relationships with neighbours would have been left very fraught.
11. This situation presents some difficulties. It often makes little sense to provide a household in FIP accommodation with a secure or assured tenancy- whereby if they disengage but do not voluntarily move out of the FIP accommodation, the landlord cannot evict without taking the case to court and asking that possession be granted under specified discretionary ground/s (i.e. the court must make a decision whether or not toward a possession order on the evidence presented). This means that families who are, in effect, on their last chance having accepted the FIP, with a form of tenancy that is unsuitable for the relatively short term duration of the support programme (which is unlikely to last beyond a year and can sometimes run for less than six months). This is not much of an incentive for families to engage with the FIP so that on successful completion, they can regain their security of tenure.
12. A number of projects have raised concerns over the difficulties they face in administering the transition of families from mainstream social housing into accommodation assigned for the delivery of support and then, if appropriate, back into a mainstream let.



13. Our understanding is that at present, some local authorities and RSLs operating core or dispersed FIPs may sometimes be acting in good faith in granting licences in an attempt to provide less security of tenure but which in law may sometimes in fact be found to be tenancies, whether secure or assured, because they involve a grant of exclusive possession.
14. Local authorities are unable to give any other type of tenancy save those exemptions which are provided under Schedule 1 to the Housing Act 1985. FIPs delivered through dispersed or core accommodation are not currently covered by those exemptions. In other cases, RSLs may (legitimately) be granting Assured Short-hold Tenancies (ASTs), although possession cannot be sought under an AST under mandatory grounds within the first six months of the tenancy, (i.e. should the landlord wish to take possession within that period they must take evidence to court and prove grounds).
15. They also face difficulties in assigning FIP accommodation to a household once they have relinquished their previous tenancy. At the moment the household would need to be routed through one of two processes before they could be 'rehoused':
  - the family presents as homeless and are then assessed as to their need before being offered temporary accommodation (where FIP accommodation is then assigned)
  - The family present as in general housing need and their case is assessed against the relevant code of allocations in determining whether an offer of housing should be made.
16. This is cumbersome and in effect may force landlords to fast track FIP cases through processes which are not designed nor easily configured to facilitate this type of support provision.
17. We seek to support projects by creating a better environment, in terms of housing legislation, for them to operate within. Given the evidence thus far on their effectiveness and the resources government has assigned in order to get projects up and running, there is a strong case for ensuring better compatibility with tenancy and allocation procedures.
18. We do not wish to see the current complexities deter landlords and projects from offering support in specialist accommodation, where this would provide the best platform for giving households the support they need.

### Proposal

19. We would like local authorities and RSLs providing accommodation as part of a core or dispersed FIP to be able to offer a tenancy with less security of tenure than an assured or secure tenancy. The families participating in these projects are on their last chance and need to be aware of the consequences of disengaging with the FIP. Having already lost their former secure form of tenancy, the prospect of regaining it after successfully completing the FIP, is a powerful incentive to positively engage with rehabilitation and address the root cause of their anti-social behaviour.
20. Families who do engage with support may often go on to enjoy the benefits of secure tenure without damaging the lives of others, often gaining the confidence to move forward through the fresh start their experiences in participating in the FIP provides.
21. The form of tenancy we wish to create, hereby known as a Family Intervention Tenancy (FIT), would be subject to the Protection from Eviction Act 1977 which provides that landlords must give proper notice of their intention to seek possession.
22. A major advantage of introducing the FIT is that households who surrender their secure or assured tenancies can be given a new FIT tenancy without being routed through the normal allocations procedures (i.e. their case does not need to be assessed alongside others in terms of whether it meets the criteria for a new allocation). This will help speed things up and avoids authorities having to 'fast-track' families through these processes.

### Costs/Benefits

23. Since April 2007, FIPs have been operational in 53 local authority areas. Between February and October 2007 885 families were referred to a FIP, of these 78 % met referral criteria and agreed to work with the FIP. These projects should reach full capacity by the end of 2007, when they will be working with around 1000 families. In total it is estimated that these projects will work with 1500 families in a calendar year. Projects are delivered by a range of providers including Local Authority departments, RSLs and voluntary organisations such as Shelter.
24. Subsequent to publication of the partial Impact assessment, a further 12 FIPs have been established. In addition the Youth Crime Action Plan has recently announced plans to increase the reach of intensive family

interventions in every local authority during the next three years. This will build on Family Intervention Projects through providing funding and expert practitioner support to local authorities to help them focus on a small number of families (on average 40 in each area) where a complexity of problems place children and young at greatest risk of going on to become future high-rate offenders. Family Intervention tenancies could only be used to support such projects where their primary aim is to address anti-social behaviour.

25. Costings in this impact assessment are based on the existing 65 Family intervention projects. At this stage in the programme we do not know what proportion of households per annum will receive support through dispersed or core accommodation. On the basis of a throughput of 1500 families we estimate that between 10% and 40 % (150-600 households) will be moved into 'specialist accommodation.'
26. The average project costs range from around £8,000 per family per year for those receiving outreach help in their homes or living in managed properties to around £15,000 per family per year for a place in a residential core unit. These running costs (largely staff resource) will not be impacted on by our proposals.
27. We envisage there may be some small costs incurred upon introduction where landlords /projects will be required to familiarise themselves with the new proposals and incorporate the new tenure regime within their policies and procedures (staff training etc). We have estimated these costs will not exceed £1k per project.
28. We have also assumed administrative and stationary costs of £250 per case where notice will be issued to households and new tenancy agreements under a Family Intervention Tenancy drawn up. Draft legislation will prescribe that landlords must serve notice informing a household of the nature of a Family Intervention Tenancy and the potential consequences should it be breached. The tenant will then be able to take a view (drawing on further legal advice if they wish) before deciding whether or not they wish to accept the offer. We are therefore assuming a further £50 per case cost to actually issue the notice. This cost will cover the actual administration and postage of the mandatory notice.
29. Only a small number of families are likely to disengage with FIPs. We estimate that this is likely to apply to between 2% and 5% of families. The top end of this range may prove a significant over-estimate as

FIP providers are persistent and do not take a decision to disengage with a family lightly. Policy leads working in the Youth Task Force in DCSF, based on their experience of intensive support initiatives to date, indicated they would only expect a handful of families to dropout or be removed from projects.

30. Where they do disengage assuming they have all been granted our proposed Family Intervention Tenancy, eviction should be a relatively simple (and thus a cheaper) process – due notice must be served in adherence to the Protection from Eviction Act but no court hearing on the facts is required. We estimate that only between 3 and 30 cases of this nature will be heard per year. By making it easier for a landlord to move a household into FIP accommodation without having undertaken homelessness or mainstream allocations procedures we should also be creating efficiencies. A faster and easier process will mean less resource is required in administering these transitions.
31. However the driver behind the proposal is not to save costs through quicker eviction procedures or reducing the bureaucracy in handling transitions. Rather we want to provide a type of tenancy that can be readily understood and be more easily used in these circumstances so as to remove confusion over which tenancy regime is appropriate and robust under the law.
32. We also believe that giving families a FIT will provide a further incentive for households to engage with support – (a warning on the one hand that the family has limited security and on the other hand, an incentive to regain their security of tenancy if they successfully complete their support programme). We expect the proposal will act, alongside a range of other factors, in establishing a framework where the chances of successful interventions are maximised. Where these families do not enter a Family Intervention Project the cost to the taxpayer could potentially be between £250,000 and £350,000 per family per year (drawn from Sheffield Hallam Research). These costs often fall to a wide range of services (housing officer time, police call-outs, interventions by schools and social services etc.)

### **Evidence base and Consultation Details**

33. This is a CLG led proposal. However, we are working closely with the Youth Task Force (YTF) in the Department for Children, Schools & Families (DCSF), who lead on FIPs. Our intention is to facilitate delivery of the programme. A cross – government officials group has been established to support delivery of FIPs and we have used the group as a sounding board in taking this proposal forward.

34. The YTF run a series of regionally based practitioner's fora where FIP-practitioners get together to discuss operational issues. Issues relating to tenancies have been the subject of debate and practitioners support measures to provide greater clarification and better alignment of operation of FIPs with housing law.

### **Implementation & Delivery Plan**

35. In addition to the proposal covered by this IA, we are also working on a package of complementary measures to support FIPs including measures to smooth the transition of household between mainstream social housing and specialist accommodation.
36. We plan to publish guidance for FIPs (and partner social landlords) on operational matters relating to Family Intervention Tenancies & allocations procedures. We have amended legislation so that FIT provisions will be commenced by order rather than automatically 2 months after royal assent of the Housing & regeneration Act. This will help ensure Guidance has been circulated before FITs become available for use.

### **Monitoring and evaluation**

37. We intend to review the effectiveness of Family Intervention Tenancies (FITs), three years after they come into force in December 2008. Family Intervention Projects (FIPs) are being led by the Department for Children, Schools and Families, who will be responsible for evaluating the effectiveness of all three types of FIPs – core unit, dispersed and in situ.
38. FITs can only be used in core unit and dispersed FIPs. We will assess the effectiveness of FITs by considering how their deployment has contributed to the successful delivery of core unit and dispersed FIPs, which hitherto experienced problems in relation to the nature of the tenancies that families were being offered and was the main catalyst for the creation of this new tenancy.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### SPECIFIC IMPACT TEST ASSESSMENTS

#### COMPETITION ASSESSMENT

Our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on competition.

#### SMALL FIRMS IMPACT TEST

We have considered the document "Small Firms Impact Test – Guidance for Policy Makers" and we can confirm that our proposed amendments to the Housing Act 1985 and 1988 will have no impact on small businesses.

#### JUSTIFICATION

Our proposed amendments are only relevant to secure and assured tenancies (social tenancies). Small businesses do not deal with social tenancies. Small businesses are legislatively prohibited from issuing "social tenancies" (only local authorities and Registered Social Landlords (RSLs) can issue secure and assured tenancies).

The only organisations that are going to be affected by our proposed amendments will be local authorities and RSLs. Both are "not for profit".

#### CONCLUSION

Amending the Housing Act 1985 and 1988 will have no impact on small business.

#### LEGAL AID & COURT TIME

We have liaised with colleagues in the Ministry of Justice and after having carefully considered our proposal, they have confirmed to us that they are content that our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on public funding and court time.

#### SUSTAINABLE DEVELOPMENT

Our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on sustainable development.

#### CARBON ASSESSMENT

Our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on carbon assessment.

## **OTHER ENVIRONMENT**

Our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on other environmental issues.

## **HEALTH IMPACT ASSESSMENT**

### **EXISTING DATA:**

The Sheffield Hallam research on FIPs (2006) showed that the impact of health related problems could be far-reaching in terms of leading to anti-social behaviour and was seen by some parents referred to support programmes as the single most important cause of their difficulties. Evidence included:

- Almost 1 in 6 adults referred to FIPs suffered from depression, compared to 1 in 20 of the general population.
- 28% of adults referred to FIPs had alcohol and/or drug misuse problems.
- 18% of children referred to FIPs suffered from ADHD and this figure rises to 25% when children with dyspraxia and dyslexia are included – compared to the general population where ADHD is prevalent in 5% of children.

In recognition of the high level of physical and mental health needs of families who were being referred to the more established FIPs, a commitment has been secured from the Department of Health to ensure that each of the new 53 FIPs will have a Nominated Health Professional (NHP) attached to their service to ensure that health input is secured where appropriate for families.

### **HEALTH IMPACT OF OUR PROPOSAL**

It is our position that rather than adversely impacting on health and health resources, though not directly, our proposal will have a positive impact.

### **WILL THERE BE PUBLIC/COMMUNITY CONCERNS OVER HEALTH IMPACTS OF THE PROPOSED LEGISLATIVE AMENDMENTS?**

Given that our proposal is part of a package of support offered to disruptive families so that their community-affecting anti social behaviour can be addressed and resolved, we are confident there will not be any public/community concerns over our proposed legislative amendments.

## **RACE EQUALITY**

### **EXISTING DATA:**

- 79% of families referred to FIPs are from the public sector/social housing.
- 11% of FIP accommodation is currently managed or core (this may change as projects continue to develop) (9% and 2% respectively). The remaining 89% of FIPs are currently delivered *in situ*.
- 92% of families currently referred to FIPs are white



**DOES OUR POLICY ADVERSELY IMPACT ON RACIAL EQUALITY?**

We are of the view that our policy does not impact adversely on racial equality.

Our proposed amendments to schedules 1 of the Housing Act 1985 and 1988 do not introduce FIPs. Rather the proposed amendments will facilitate the smooth transition of FIP referred families in and out of FIP accommodation. Our amendment will harmonise current practices and provide a type of tenancy that can be readily understood and be more easily used so as to remove any confusion over which tenancy regime is appropriate and robust under current housing legislation.

Our proposed amendments will provide FIP-providers that are social landlords with flexibility, where they deem it appropriate, to offer tenancies to referred families that fall outside the secure/assured tenancy regimes.

There is no evidence to suggest that our amendments will result in either more or less BMEs being referred to FIPs or being evicted from a FIP. Any BME families referred to a FIP would have been referred because of the high level of their anti social behaviour and would be evicted because they have disengaged with the programme. It is very unlikely that more BME families will be referred to or evicted from FIPs because of we have provided for a less secure form of social tenancy.

We are mindful of the need to ensure that households are made fully aware of the consequences of voluntarily surrendering their secure or assured tenancy – landlords will therefore be obliged to issue notice alerting households to the possible impacts should they not abide by the conditions of their 'Family Intervention Tenancy'. Landlords will need to be mindful of the need to ensure notice is given in an accessible format (for example explaining the notice to the family, where this is more culturally appropriate or providing the notice in a language that the family understands where English is not their first language)

**CONCLUSION:**

Having considered the suggested CRE screening criteria for our proposals, we are confident that our proposed amendments to the Housing Acts 1985 and 1988 will not adversely impact on racial equality. Consequently, a "full assessment" is unnecessary.

**DISABILITY EQUALITY**

Our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on disability equality policy.

## **GENDER EQUALITY**

Our proposed amendment to the Housing Acts 1985 and 1988 will not have an adverse impact on gender equality policy.

## **HUMAN RIGHTS**

These proposals do raise human right issues under Article 1 of Protocol 1 (deprivation and control of property), Article 8 (right to respect for private and family life) and Article 6 (right to a fair trial).

We are confident though that we have provided sufficient safeguards that will make the Family Intervention Tenancy (FIT) proposal ECHR compliant. Safeguards include; the obligation that the tenant actually “consent” to surrendering their secure/assured tenancy. A provision that the landlord must serve on the family a notice that clearly explains the consequences of surrendering a secure/assured tenancy in exchange for an insecure FIT. And provision for a second tier “review” procedure of a decision take possession proceedings against a family in FIP accommodation.

## **RURAL PROOFING**

“Rural proofing” is a commitment of this Government to ensure that all its domestic policies take account of rural circumstances and needs. Rural proofing is now a mandatory part of the policy process, which means that as policies are developed, policy-makers should systematically:

- assess the likely impact of policy on rural areas
- assess the impacts where new policies will be most significant
- adjust the proposed policy where appropriate, offering solutions that will meet rural needs and circumstances.

We have considered whether our proposed amendments to the Housing Acts 1985 and 1988 (including FIP tenancies in the list of tenancies issued by local authorities and RSLs that are respectively deemed not to be secure or assured) will have any adverse impacts on rural areas.

## **CONCLUSION**

Amending the Housing Act 1985 and 1988 will have no impact on rural areas.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of minor changes to clarify the Right to Buy rules</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 1 November 2007
<b>Related Publications:</b> Consultation paper: Clarifying the Right to Buy rules (22 August 2007) Written Statement to Parliament on high major works charges (29 March 2007)		

### Available to view or download at:

<http://www.communities.gov.uk/publications/housing/righttobuyconsultation>

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070329/wmstext/70329m0001.htm#07032949000022>

**Contact for enquiries:** Chris Meader

**Telephone:** 020-7944-3422

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

The proposals address a number of problems. The existing legislation (Part 5 of the Housing Act 1985) is ambiguous in places, imposes unnecessary burdens on lenders, social landlords and Government, and offers opportunities for abuses. These problems can only be addressed by legislating.

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

To clarify ambiguities relating to (i) tenants facing possession proceedings and (ii) tenants denied the RTB because their homes are suitable for the elderly. To widen landlords' powers to help leaseholders facing high major works bills, enable district valuers to improve their service to tenants and landlords, reduce the regulatory burden on lenders, improve the demolition notice procedure introduced by the Housing Act 2004, and correct a typographical error in the Housing Act 2004 as printed.

### What policy options have been considered? Please justify any preferred option.

The preferred option is to legislate. Because each of the issues arises from the wording of legislation, the policy objectives cannot be achieved in any other way. The alternative, do nothing, would leave unaltered ambiguities and lacunae in the legislation that will continue to lead to uncertainties for tenants and leaseholders, maintain existing burdens on lenders, and allow abuses to continue.

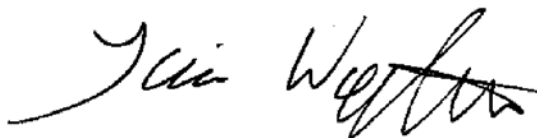
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

After 3 years. The impact of the proposed changes will not be visible before then.

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Weyler', written in a cursive style.

**Date:** 6 October 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>		<b>Description: Possession orders and Right to Buy</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'	
	<b>One-off</b> (Transition) <b>Yrs</b>		
	£	The aim is to clarify that tenants facing possession proceedings are not eligible for the RTB. This has been the statutory position since 1985 but administrative and judicial decisions have made the position unclear. The number of cases depends upon circumstances and court decisions, none of which can be forecast or quantified.	
	<b>Average Annual Cost</b> (excluding one-off)		
£	<b>Total Cost (PV)</b>	£	
Other <b>key non-monetised costs</b> by 'main affected groups'			
The number of cases depends upon circumstances and court decisions which cannot be predicted or quantified.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
	<b>One-off</b> <b>Yrs</b>		
	£	The number of cases depends upon the circumstances of individual tenants and on court decisions. No information is collected on these issues, so no forecasting or quantification is possible. But statutory clarity will minimise the number of unnecessary court cases and thereby reduce enforcement costs.	
	<b>Average Annual Benefit</b> (excluding one-off)		
£	<b>Total Benefit (PV)</b>	£	
Other <b>key non-monetised benefits</b> by 'main affected groups'			
The number of cases depends upon circumstances and court decisions, none of which can be forecast or quantified.			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		Specified post RA		
Which organisation(s) will enforce the policy?		LAs, RSLs, courts		
What is the total annual cost of enforcement for these organisations?		£ Unquantifiable		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£N/A		
What is the value of changes in greenhouse gas emissions?		£N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Final jurisdiction over Right to Buy appeals</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The aim is to clarify that residential property tribunals have the final jurisdiction on appeals by tenants denied the RTB by their landlords because their homes are particularly suitable for occupation by elderly persons. The inadvertent right of appeal to the High Court has not been used, so the cost is not known</p>
	<b>One-off (Transition)</b> <b>Yrs</b>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
£	<b>Total Cost (PV)</b>	£
Other <b>key non-monetised costs</b> by 'main affected groups'		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>The benefit will be avoiding appeals to the High Court against tribunal decisions. The right of appeal arises purely from the drafting of the Housing Act 2004 and was unintentional. No appeals have been made, so the benefit cannot be quantified.</p>
	<b>One-off</b> <b>Yrs</b>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
£	<b>Total Benefit (PV)</b>	£
Other <b>key non-monetised benefits</b> by 'main affected groups'		

### Key Assumptions/Sensitivities/Risks

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		RPTS			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£N/A			
What is the value of changes in greenhouse gas emissions?		£N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	



## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Power for local authorities to offer equity loans</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>To widen the range of ways in which local authorities can help their leaseholders to pay high major works bills, by empowering them to offer equity loans instead of eg, traditional interest-bearing loans under s450 of the Housing Act 1985 or buying properties back. The costs of each option are estimated to be similar.</p>
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		
	<b>Total Cost (PV)</b>		£
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p>
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		
	<b>Total Benefit (PV)</b>		£
Other <b>key non-monetised benefits</b> by 'main affected groups'			

### Key Assumptions/Sensitivities/Risks

That such loans by local authorities will not reduce opportunities for other lenders, because the leaseholders concerned are unlikely to be able to afford commercial rates.

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		Local authorities			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£N/A			
What is the value of changes in greenhouse gas emissions?		£N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Power for local authorities to buy equity shares</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>To widen the range of ways in which local authorities can help their leaseholders to pay high major works bills, by empowering them to buy equity shares in properties instead of eg offering traditional loans. Total cost estimated to be £18.7m (£12.6m to LAs, £6.1m to central Government); the same as traditional loans.</p>
	<b>One-off</b> (Transition) <b>Yrs</b>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
£	<b>Total Cost (PV)</b>	£
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p> <p>The cost estimate is based on a number of assumptions and figures provided by London Councils for March 2007. See Annex for details of the assumptions and figures.</p>		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>With both an equity share and a loan, councils might expect to receive a return. It is difficult to estimate this return as it will be determined by future house price inflation and interest rates. However if sales/repayment occurred after 10 years then net returns on the equity shares/loans of between £3.5m and £5m.</p>
	<b>One-off</b> <b>Yrs</b>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
£	<b>Total Benefit (PV)</b>	£
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'</p> <p>The estimated returns are based on a number of assumptions. See Annex for details.</p>		

### Key Assumptions/Sensitivities/Risks

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		Local authorities			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£N/A			
What is the value of changes in greenhouse gas emissions?		£N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

## Summary: Analysis & Evidence

<b>Policy Option:</b>		<b>Description: Power to replace flawed determinations of value</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The aim is to enable district valuers to replace determinations of value that are based on incorrect facts. This will reduce the costs of the Valuation Office Agency (VOA).</p>
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Cost (excluding one-off)</b>		
	£		
		<b>Total Cost (PV)</b>	£
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>VOA estimates that between 5 and 10 flawed determinations are issued each year and that facilitating easier resolution of these will save between £1,000 and £2,000 per case.</p>
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£5,000 – £20,000		
		<b>Total Benefit (PV)</b>	<b>£5,000–£20,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £

What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		VOA			
What is the total annual cost of enforcement for these organisations?		£			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £5K–£20K pa		<b>Net Impact £5K–£20K pa</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Approval of lenders for Right to Buy purposes</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>To reduce regulatory costs on lenders by combining RTB ALI status with FSA authorisation. Currently, they have to apply for authorisation and then for RTB approval.</p>
	<b>One-off (Transition)</b> <b>Yrs</b>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
£	<b>Total Cost (PV)</b> £	
Other <b>key non-monetised costs</b> by 'main affected groups'		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>This provision will save lenders the cost of applying for RTB approval. The current cost of their doing so is unknown and will vary between companies, so it is not possible to estimate the financial benefit to them. But this will save the Government £2,000-£4,000 per year on processing RTB approval applications.</p>
	<b>One-off</b> <b>Yrs</b>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
£2K-£K+pa	<b>Total Benefit (PV)</b> £	
Other <b>key non-monetised benefits</b> by 'main affected groups'		

### Key Assumptions/Sensitivities/Risks

CLG currently processes 3-6 ALI applications per year, at a cost of £700 per case (average 45 hours per case).

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		FSA			
What is the total annual cost of enforcement for these organisations?		£			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	



## Summary: Analysis & Evidence

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option:</b>		<b>Description: Demolition notices</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The aim is to allow local authority landlords to issue demolition notices that suspend or end the RTB when the property is to be demolished by another body. There will be a small administration cost per case, outweighed by the benefit of not having to repurchase properties at market value. Numbers of cases not known.</p>
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>The number of cases in which local authorities will transfer properties for demolition by other bodies depends on local circumstances and cannot be forecast.</p>
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£2K-£K+pa		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £

What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		Local authorities			
What is the total annual cost of enforcement for these organisations?		£			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		Yes/No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Correction of misprint in Housing Act 2004</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The aim is to correct a misprint in Schedule 9 to the Housing Act 2004 as printed. This will help a few local authorities and lawyers to deal with cases slightly more quickly. It will impose no costs and the financial benefits will be de minimis.</p>
	<b>One-off (Transition)</b> <b>Yrs</b>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
	£	
		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups'		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>Very small and unquantifiable.</p>
	<b>One-off</b> <b>Yrs</b>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
	£	
		<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups'		

<b>Key Assumptions/Sensitivities/Risks</b>
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<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Specified post RA			
Which organisation(s) will enforce the policy?		Social landlords			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		Yes/No			
Annual cost (£–£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)					
Increase of £		Decrease of £		<b>Net Impact £</b>	
Key:	<b>Annual costs and benefits: Constant Prices</b>			<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Objectives

1. The proposed measures have seven objectives:
  - a. to clarify:
    - i. that tenants facing possession proceedings are not eligible for the RTB
    - ii. that residential property tribunals have the final jurisdiction in respect of appeals by tenants against denial of the RTB by their landlords on the grounds that the property in question is particularly suitable for occupation by elderly persons
  - b. to widen the range of ways in which social landlords can assist their leaseholders (owners of flats sold by the landlord on long leases) to pay major works bills
  - c. to enable district valuers to replace determinations of value that are found to be based on factually incorrect information, to ensure that tenants and landlords receive fair valuations
  - d. to reduce the regulatory burden on lenders who lend for RTB purposes by combining this with Financial Services Authority authorisation
  - e. to provide that landlords may serve initial and final demolition notices when the property concerned is to be demolished by a body on behalf of the landlord as well as by the landlord
  - f. to correct an acknowledged typographical error in the Housing Act 2004 as printed.

### Background to the proposals

2. The RTB scheme, introduced in 1980, has enabled more than 1.7 million social tenants in England to become home owners. Its success has tempted some people, tenants and companies, to seek to exploit the rules. The Government addressed such exploitation in the Housing Act 2004, in particular by enabling landlords to suspend or end the RTB where the property in question is scheduled for demolition, and by requiring tenants who agree to sell on their newly-acquired homes to companies at discounted prices to repay their RTB discount.

3. The measures in this Bill aim to address some minor issues that have come to the Government's attention since the passage of the Housing Act 2004.
4. The statutory basis for the RTB scheme is Part V of the Housing Act 1985. This applies to England and Wales. There is a RTB in Scotland, governed by separate legislation (by the Westminster Parliament prior to devolution and since then by the Scottish Parliament).
5. The RTB legislation provides that local authority and housing association secure tenants, and tenants of housing associations who have been transferred with their homes from local authorities, who have been public sector tenants for at least five years (two years if their current tenancies began before 18 January 2005) may buy their rented homes at a discount. The current provisions on the proposals set out in this Bill are described in the following paragraphs.
6. Tenants are not eligible for the RTB if they are bankrupt or are facing bankruptcy or possession proceedings.
7. Certain types of property are excluded from the RTB – if they are let in connection with the tenant's employment, or are particularly suited for occupation by physically or mentally disabled people (by virtue of adaptations or nearby special services), or are particularly suitable for occupation by elderly people. A tenant denied the RTB because their landlord considers that their home is particularly suitable for occupation by elderly people may appeal against this decision. Prior to the Housing Act 2004, the appeal was to the Secretary of State. The Act provided that in future tenants should appeal to a residential property tribunal.
8. Tenants who buy flats from social landlords do so on long leases and are liable to contribute to the maintenance of the blocks containing their flats through annual service charges and by paying a share of the costs of major works of repair, maintenance or refurbishment when these arise.
9. When a landlord accepts a tenant's RTB application, it must provide the tenant with information including the price at which they are entitled to buy the property – specifically, its value and the discount to which the tenant is entitled. If the tenant disagrees with this valuation, they are entitled to seek a determination of value from the district valuer, who is employed by the Valuation Office Agency, an executive agency of HM Revenue and Customs.

10. If a tenant buys their home and then chooses to resell it within five years, their former landlord may require them to repay some or all the discount they received. However, if the owner is unable to keep up the payments on their mortgage, 'approved' lenders are entitled to recover what they are owed (by taking possession and selling the property) ahead of the landlord's entitlement – ie, they have a 'first charge' on the property. A lender is 'approved' for RTB purposes either by category specified in section 156 of the Housing Act 1985 or individually by the Secretary of State.
11. If a property is due to be demolished (eg, under a regeneration scheme), the social landlord may suspend or end the right to buy that property.

### **Reasons for proposed changes**

#### **General**

12. Each of the proposed measures has been prompted by a particular set of issues and circumstances. The following paragraphs consider these in turn.

#### **Eligibility of tenants facing possession proceedings**

13. Section 121(1) of the Housing Act 1985 provides that the RTB cannot be exercised if the tenant must give up possession of their home because of an order granted by a court or will be so obliged at a date specified in the order. The aim is to prevent tenants who are seriously breaching the terms of their tenancy from being able to buy their homes.
14. But this may be undermined by a new 2-stage procedure for postponed possession orders on the grounds of rent arrears, required by a recent Court of Appeal decision. A wording for such an order was recommended by HM Courts Service, an executive agency of the Ministry of Justice (then the Department for Constitutional Affairs). The first stage of the new procedure (which was approved by the Civil Procedure Rules Committee) is that a possession order is granted which does not specify a date for the landlord to be entitled to possession. Arguably, because section 121(1) refers to a date, the exclusion from exercising the RTB does not apply where the tenant has received a postponed order which does not specify a date.
15. The proposal is to rectify this unintended effect by clarifying that section 121 of the Housing Act 1985 applies where a possession order has been granted whether or not a date for possession is specified on the face of the order.
16. Doing nothing will mean continuing uncertainty, incorrect decisions by landlords, unfairness to tenants, and disputes which may have to be resolved by the courts at an unnecessary cost to the taxpayer.

**Jurisdiction of residential property tribunals – appeals against denial of the RTB on the grounds that the property is particularly suitable for occupation by elderly persons**

17. In transferring jurisdiction of these appeals from the Secretary of State to the Residential Property Tribunal Service (RPTS), the wording of the Housing Act 2004 inadvertently introduced a further right of appeal against the decisions of the RPTS, to the High Court. No such appeals were possible against decisions of the Secretary of State, and there was no intention to permit them. The proposal is to remove the unintended right of appeal to the High Court.
18. If nothing is done, it is likely that a tenant will seek to take their case to the High Court. This would result in unnecessary costs to the RPTS and hence to the taxpayer.

**Widening the range of assistance available to leaseholders facing high major works bills**

19. Some leaseholders, particularly in London, are facing high bills arising from works of repair and refurbishment by local authority landlords aiming to meet the Government's Decent Homes target. The Government has reviewed the issues and announced its conclusions in a statement to Parliament on 29 March 2007 (on the Parliament web site at:  
<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070329/wmstext/70329m0001.htm#07032949000022>)
20. This included a commitment to add to the ways in which landlords can assist leaseholders in financial difficulties, by enabling local authorities to buy shares in properties and to offer loans on equity share terms (the return on which takes the form of a proportional share of the proceeds when the property is sold instead of interest). Both options were recommended by an Association of London Government (now London Councils) working group on major works bills.
21. Local authorities already have powers to buy properties outright, and to offer interest-bearing loans. They also have a general power under section 2 of the Local Government Act 2000 to do anything which they consider is likely to promote or improve the economic, social or environmental well-being of their areas. But it is not clear that these powers enable them to buy shares in properties or offer equity share loans.
22. The proposal is to provide unequivocally that local authorities may do these things, to increase their ability to respond flexibly to the varying circumstances of leaseholders who are facing difficulties. It is estimated that the costs of buying shares or of offering equity loans will be the same as



those of offering traditional loans, so the new measures will not impose any additional costs on local or central Government.

23. Doing nothing will limit the ability of landlords to be flexible in response to individuals' needs, and will reduce the likelihood that they will receive early payment of the monies owed to them under the terms of their leases.

#### **Improving the flexibility of the RTB valuation system**

24. The Valuation Office Agency is aware of a number of cases each year in which district valuers discover that their determinations of value are flawed because they are based on factually-incorrect information, but are unable to withdraw these because they have no power to do so. The only remedy available to tenants and landlords affected by such inaccuracies is judicial review, a time-consuming and costly process. It is proposed to provide a straightforward and low-cost means of rectifying demonstrable errors. Doing nothing will mean the continuation of a situation that can mean that incorrect determinations of value have to stand, to the detriment of tenants (who may have to pay too much) or landlords (which may receive less for properties than would be justified by the market).

#### **Regulation of RTB lenders**

25. The Twelfth Report of the House of Commons Treasury Select Committee (7 November 2006) recommended that the Government should explore the possibility of transferring responsibility for approving lenders for the purposes of Right to Buy lending under section 156 of the Housing Act 1985 from the Department for Communities and Local Government to the Financial Services Authority (FSA). Approval under section 156 benefits such lenders by giving them a first charge on a Right to Buy property ahead of the landlord's entitlement to be repaid some or all the Right to Buy discount if it is resold within a specified period.
26. Rather than require lenders that are already authorised by the FSA to seek a separate approval, the Government proposes to combine FSA authorisation with section 156 approval. Doing nothing will mean that lenders will have to apply for FSA authorisation and also for approval from the Secretary of State for Communities and Local Government.
27. An alternative option would be to end the approval procedure and hence the right of first charge. However, it has been concluded that this would not be appropriate:
- (i) it is probable that doing this would mean that reputable non-approved lenders would not be willing to lend for Right to Buy purposes

- (ii) ending approval would create a two-tier system, with already-approved lenders having a competitive advantage over reputable non-approved lenders
- (iii) ending approval would also expose tenants wishing to exercise their Right to Buy to a higher risk from lenders who aim to obtain possession as quickly as possible.

#### Circumstances in which demolition notices can be served

28. Social landlords may suspend or end the RTB in cases where the property in question is to be demolished, allowing time to develop and finalise a renewal scheme. A social landlord may serve an initial demolition notice which suspends its obligation to complete a RTB sale where it intends to demolish the property in question within 5 years. It may serve a final demolition notice, valid for 24 months (which may be extended by the Secretary of State), under which the RTB will not arise in respect of the property in question. A final demolition notice terminates an outstanding RTB application in respect of the property in question.
29. These powers were introduced by the Housing Act 2004, to address problems caused by tenants seeking to make a profit by buying their homes under RTB in the knowledge that the properties were to be demolished as part of regeneration schemes. Having bought at a discount on the market value, they would receive full market value plus home loss compensation when the properties had to be compulsorily purchased. The potential cost of compulsorily purchasing properties sold in this way called at least one regeneration scheme into question, to the detriment of local tenants and other residents.
30. The legislation provides that a final demolition notice is a notice stating that the landlord intends to demolish the dwelling-house. The Government proposes to make the powers available if demolition is to be carried out by another body on behalf of the landlord. Doing nothing would increase the risk that regeneration schemes and the resulting benefits to local residents could be called into question by tenants exercising an unrestrained RTB.

#### Typographical error

31. Paragraph 5 of the new Schedule 5A to the Housing Act 1985 ('Initial Demolition Notices') inserted by Schedule 9 to the Housing Act 2004 contains a typographical error. It states that:

*Paragraph 16 of Schedule 13 (service of notices) applies in relation to notices under this Schedule...*

This is incorrect – it should read:

*Paragraph 16 of Schedule 5...*

29. It is proposed to correct this error.

### **Costs and benefits**

32. The *economic impact* of most of the proposals is likely to be negligible.

However:

- a. combining RTB approval and FSA authorisation of lenders will reduce the administrative burden on Central Government, as two separate application, evaluation and assessment procedures will no longer be necessary. It will also reduce the regulatory burden on lenders, as they will no longer have to obtain RTB approval as well as FSA authorisation
- b. enabling district valuers to withdraw determinations will avoid situations in which landlords do not receive a fair market price for their properties.

33. The *social impact* of the proposals is likely to be negligible. They will apply to all areas of England (and Wales, subject to the views of the Welsh Assembly Government), and will not impact adversely on *rural communities*. Nor will they have any *race or gender equality* impacts, as they will apply to all tenants who are eligible for the RTB.

34. The proposals will have no *environmental impact*.

35. Only one of the proposals will have any *impact on small businesses*. That impact is expected to be beneficial. Combining FSA authorisation of lenders with approval for RTB purposes will mean that lenders already FSA-authorized will not have to seek separate approval if they want to enter the RTB lending market, while lenders who are not FSA-authorized will only have to apply once and to a single body instead of (as at present) two.

36. This proposal will not impact adversely on *competition*. The requirement for lenders to seek Government approval if they want to benefit from having a first charge on RTB lending has been in place since 1980. All that is proposed is to combine that approval with FSA authorisation.

37. *Enforcement* will not be an issue. Each of the proposals amends a pre-existing aspect of the RTB that is already operated by landlords or the Valuation Office Agency or residential property tribunals.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	No	No
Rural Proofing	Yes	Yes

## Annexes

### Cost and Benefit Assumptions

#### Data

The table below shows the service charge bills issued by London Boroughs alongside the average property values in those boroughs.

Borough	Total No of leaseholders	No with bill £10k > £20k	No with bill > £20k	Total No with bill > £10k	Average Property Value
Barking	2,802	1	0	1	£169,489
Barnet	3,571	50	0	50	£321,119
Brent	3,684	324	3	327	£266,942
Camden	9,316	1,394	419	1,813	£350,657
Croydon	2,333	1	16	17	£220,825
Ealing	5,000	328	36	364	£274,583
Enfield	4,571	155	16	171	£229,469
Greenwich	9,385	155	82	237	£226,121
Hackney	9,091	258	10	268	£252,152
Hammersmith & Fulham	5,591	240	28	268	£415,350
Havering	2,206	30	0	30	£221,017
Hillingdon	2,500	15	1	16	£234,790
Hounslow	2,600	292	25	317	£259,935
Islington	10,040	606	176	782	£333,865
Kensington & Chelsea	2,500	242	99	341	£756,125
Lambeth	10,934	104	3	107	£269,593
Lewisham	9,000	54	42	96	£204,569
Merton	2,500	15	0	15	£287,336
Newham	5,500	238	29	267	£202,129
Redbridge	2,500	5	0	5	£240,513
Southwark	13,240	607	210	817	£272,654
Sutton	1,415	70	141	211	£226,283
Tower Hamlets	10,000	153	129	282	£263,641
Waltham Forest	2,000	329	51	380	£205,619
Wandsworth	12,250	60	0	60	£349,890
Westminster	9,300	1,309	538	1,847	£552,687
<b>Total</b>	<b>153,829</b>	<b>7,035</b>	<b>2,054</b>	<b>9,089</b>	

### **Cost Assumptions**

We assume that councils handled 10% of those households with bills in excess of £10,000 (so around 910).

We assume that the proportion of the property bought back by the council is equal to the value of the service charge bill.

To break down the bills within each of the bands in the third and fourth columns we have assumed that of those with bills between £10,000 and £20,000 1/3 have bills of £10,000, 1/3 have bills of £15,000 and 1/3 have bills of £20,000. For those with bills above £20,000 we have assumed that 1/3 have bills of £30,000, 1/3 have bills of £40,000 and 1/3 have bills of £50,000.

### **Benefit Assumptions**

The net costs of the scheme will be the up-front costs minus the returns, in the form of house price appreciation (equity shares) and interest payments (loans).

Clearly, in both cases the net cost depends on the assumptions made about:

- timing (i.e. when the property is sold and over what period the loan is repaid);
- the rate of House Price Inflation; and
- the borrowing rate.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Changes to Current Leasehold Enfranchisement Rules</b>	
<b>Stage:</b> Final	<b>Version:</b> 3	<b>Date:</b> 1 September 2008
<b>Related Publications:</b> Shared Ownership and Leasehold Enfranchisement consultation		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Carole Wendland

**Telephone:** 020-7944-3634

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

Current legislation on leasehold enfranchisement is inconsistent in relation to shared ownership. In some cases, landlords risk shared owners circumventing the terms of their shared ownership lease by enfranchising (i.e. buying their freehold) before they have bought 100% of the property through shares. This can discourage private developers from providing houses on a shared ownership basis. Also, proposals being developed to allow restrictions to the full purchase of a property in certain circumstances would make housing associations and LAs similarly vulnerable to early enfranchisement.

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

To allow all providers the opportunity to offer shared ownership leases for houses without the additional risk of a shared owner enfranchising early in order to avoid purchasing additional shares through their shared ownership lease.

To allow staircasing to be restricted without the risk of early enfranchisement.

The intended effect is potentially to increase the supply of shared ownership housing

### What policy options have been considered? Please justify any preferred option.

- 1) Do nothing
- 2) The proposal as detailed in the above sections – the only viable option to solve the problem

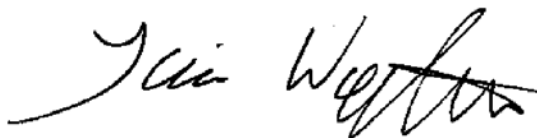
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

end 2011

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Weyler', written in a cursive style.

**Date:** 6 October 2008



## Summary: Analysis & Evidence

<b>Policy Option: 1</b>		<b>Description: Do nothing</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'	
	<b>One-off</b> (Transition) <b>Yrs</b>		
	£0		
	<b>Average Annual Cost</b> (excluding one-off)	<b>Total Cost (PV)</b> <b>£0</b>	
	£0		
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
	<b>One-off</b> <b>Yrs</b>		
	£0		
	<b>Average Annual Benefit</b> (excluding one-off)	<b>Total Benefit (PV)</b> <b>£0</b>	
	£0		
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £0	<b>NET BENEFIT (NPV Best estimate)</b> £0

What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		In force		
Which organisation(s) will enforce the policy?		N/A		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £ Nil		Decrease of £ Nil		<b>Net Impact £ Nil</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>		<b>Description: Changes to existing leasehold enfranchisement legislation</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£0		
		<b>Total Cost (PV)</b>	<b>£0</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£0		
		<b>Total Benefit (PV)</b>	<b>£0</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			
To allow all providers the opportunity to offer shared ownership leases for houses without the additional risk of early enfranchisement. To potentially enable affordable housing in areas where it is hard to replace to remain affordable in perpetuity. To potentially increase the supply of shared ownership houses.			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £0	<b>NET BENEFIT (NPV Best estimate)</b> £0

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		April 2009		
Which organisation(s) will enforce the policy?		N/A		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Early Enfranchisement – The Issue

Shared owners of houses have a shared ownership lease which enables them to buy shares of their property in stages over time, until they have bought 100%. However, unless the lease is granted by a housing association or local authority and the purchaser is allowed to staircase to 100% (see below), this potentially allows tenants with long leases to circumvent their shared ownership lease by buying the freehold of their home before they have purchased 100% through buying shares (i.e. staircased to 100%).

Once a tenant has bought the freehold to the property, they essentially own it all. If they have not bought all the shares to 100% and still have a shared ownership lease with the freeholder, once they become the freeholder they will in effect have a lease with themselves.

There is a risk that owners may buy the freehold of their property before they have staircased to 100%, and at a lower price than they would have had to pay to buy the remaining shares in their home. This would leave housing associations and local authorities with fewer funds to reinvest in affordable housing, and provide a disincentive for private investors to provide shared ownership housing. It is a risk for shared ownership houses only, not flats.

Under current leasehold legislation, housing associations and local authorities are protected from this risk of early enfranchisement, provided that their shared ownership leases allow purchasers to eventually staircase to 100%.

However, if staircasing was restricted, as outlined above, they would not currently be protected by the legislation above, and would be at risk of enfranchisement.

Private developers are not protected by current leasehold legislation and are at risk of enfranchisement if they provide houses on a shared ownership basis, unless they pass them to a Registered Social Landlord. As a result, many may choose not to provide houses, but flats instead, regardless of other factors.

### Early Enfranchisement – Proposed Amendment

We propose to amend existing legislation to remove the ability for purchasers whose properties fit the description of a shared ownership house to enfranchise before they have purchased 100% of the property under the terms of the shared ownership lease. All new leases for shared ownership houses will need to set out how a tenant staircases to 100% and how they purchase the freehold.

## **Economic Costs and Benefits of the Options**

### ***1) Do Nothing***

There is a possibility that without this barrier to the delivery of shared ownership houses we may see private supply (without any government funding) increase. If we do not change existing legislation, this additional supply may not be delivered. Currently, any shared ownership housing provided by private developers is likely to be confined to flats as a result of the risk of early enfranchisement.

### ***2) Amend the legislation***

This amendment will remove a perverse barrier to the development of shared ownership houses. It will therefore result in an increase in development where other conditions are favourable. We expect any increase would be marginal in the short term but could be more significant in the longer term.

Private developers will be able to provide shared ownership houses, as well as flats, to meet their planning obligations. Developers will therefore be able to better balance their supply between flats and houses to reflect local market conditions.

It is believed that there would be no negative impacts relative to the 'do nothing' case and there are likely to be small benefits.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### **Specific Impact Tests**

#### **Rural Proofing**

There will be an impact on Rural Exception Sites. The current policy of maintaining shared ownership houses as affordable in perpetuity will be more straightforward to implement.

#### **Race, Disability, Gender and other Equality**

We are confident that there will not be an impact on the equality strands, as the proposals will impact on specific areas as a whole, rather than individual groups within them.

#### **Other tests**

We have considered the other specific impact tests and do not believe that this policy will have an impact.



## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Tolerated Trespasser provisions in Housing and Regeneration Act</b>	
<b>Stage:</b> Final	<b>Version:</b> 3	<b>Date:</b> 1 July 2008
<b>Related Publications:</b> Consultation Paper on Tolerated Trespassers		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Frances Walker

**Telephone:** 020-7944-3666

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

Creation by the courts of “tolerated trespassers” – occupants of social rented housing who have lost tenancy status following a possession order – causes serious problems for tenants (eg loss of rights around succession and repair) and landlords (issues around entitlement to rent, including rent increases, voting rights in stock transfer/tenant management ballots). Remedies exist to restore tenancy status individually to existing tolerated trespassers, but are costly and time consuming. Amendment to primary legislation required to deal effectively with the issues.

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

The main policy objective is to remove the problems which the tolerated trespasser doctrine has caused for landlords and tenants:

- by ensuring that tolerated trespassers are not created in future; and
- by restoring tenancy status to existing tolerated trespassers.

In addition, landlords should be protected from challenges arising from the change in the law.

**What policy options have been considered? Please justify any preferred option.**

- (i) the base case (status quo);
- (ii) amending legislation to prevent the creation of future tolerated trespassers;
- (iii) as (ii) plus amending legislation to restore tenancy status to all existing tolerated trespassers;
- (iv) as (ii) plus amending legislation to restore tenancy status only to compliant tolerated trespassers.

Following consultation, options (ii) and (iv) have been omitted from the final IA. The option to be implemented is (iii). Option (i) is referred to hereafter as option (A), and option (iii) as option (B).

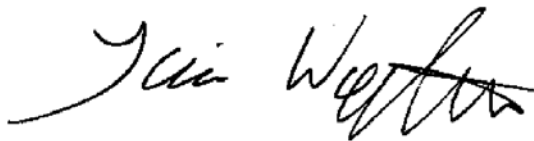
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Three years following implementation is deemed good practice.

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

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



**Date:** 6 October 2008

## Summary: Analysis & Evidence

<b>Policy Option: B</b>	<b>Description: Amend the 1985, 1988 and 1996 Housing Acts to remedy the situation in respect of future and existing tolerated trespassers</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'	
	<b>One-off (Transition)</b> <b>Yrs</b>		
	£0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£0	<b>Total Cost (PV)</b>	<b>£0</b>

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

Disrepair cases continue with costs for landlord, tenant and courts – but not quantified. Loss of opportunity to charge higher rent where this has occurred. Training for landlord staff to operate new provisions, but already require training to deal with complexity of tolerated trespassers – so not additional cost.

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
	<b>One-off</b> <b>Yrs</b>		
	£0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£19,413–£71,550	<b>Total Benefit (PV)</b>	<b>£97,065 – £357,750</b>

Removal of need for court action to restore tenancy to those subject to possession order: social landlords £300–£500 per case; HMCS £72–£200 per case; tenants £35–£65 per case unrepresented and £500–£800 per case with representation. But court appearances remain necessary for disrepair cases (see above).

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

Restoration of tenancy status and rights to existing and future tolerated trespassers. Simplified management systems for landlords and removal of challenge relating to voting rights in tenant ballots.

**Key Assumptions/Sensitivities/Risks**  
 Need to ensure that by granting a new tenancy, landlords are not disadvantaged (ie likely to be subject to challenge through the courts) or newly restored tenants put in a more favourable position than they would be if the courts restored tenancy status at the moment.

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b>	<b>NET BENEFIT (NPV Best estimate)</b>
	<b>5</b>	<b>£97,065–£357,750</b>	<b>£227,408</b>

What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	April 2009			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)
Increase of £	Decrease of £	<b>Net Impact £</b>

Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>
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## Evidence Base (for summary sheets)

### Background

1. A tolerated trespasser is an occupant of a rented property under a secure or assured periodic tenancy (probably also under an introductory or demoted tenancy) who has lost the status of a social tenant after the court has granted the landlord a possession order, but whom the landlord or the court is allowing to remain in the property. This will usually be on terms such as payment of current rent and a weekly sum towards arrears of rent. Even if the occupant complies with the terms, this does not in itself alter the fact that he or she has become a tolerated trespasser. The problems caused by the creation of “tolerated trespassers” are largely confined to tenants of social landlords, i.e. local authorities and Registered Social Landlords (RSLs).
2. A tolerated trespasser has no rights under the former tenancy agreement or the relevant Housing Acts<sup>49</sup> (although the Protection from Eviction Act 1977 continues to apply). He or she remains in the property for as long as the landlord or the court permits. A landlord who is no longer willing to tolerate the continued occupation may apply to the court for a warrant to enforce the possession order, leading potentially to eviction by the court bailiff. However, even then many tolerated trespassers will in practice continue to occupy properties following the suspension of the warrant by the court, where the court had discretion to do this. It is not uncommon for tolerated trespassers to continue living in their homes for years, frequently without realising that they are no longer technically tenants.

### Legislative Framework

3. The concept of the tolerated trespasser was developed by the courts, in particular the House of Lords judgment in the 1996 case of *Burrows v Brent*. For many years it was applied only in cases involving secure tenants (i.e. mostly local authority tenants). The concept arises from the combination of the wording of section 82(2) of the Housing Act 1985 (which repeated wording in the Housing Act 1980) and the fact that under the 1985 Act courts have the power to postpone the date of possession or stay or suspend execution of the possession order. Section 82(2) states that where the landlord obtains an order for possession, the secure tenancy ends on the date specified in the order for the tenant to give up possession.
4. Until early 2006 it was thought that the tenant only became a tolerated trespasser upon breach of the terms of the order after the possession date. However, in February 2006, the Court of Appeal held in *Harlow v Hall* that

<sup>49</sup> The Housing Act 1985 in the case of secure tenants; the Housing Act 1988 in the case of assured periodic tenants.

the standard wording for such orders meant that the secure tenancy would end on the date specified in the order as the date the landlord was entitled to possession, regardless of whether the tenant complied with the terms of the order or not. *Harlow v Hall* thus gave rise to a new category of (relatively) blameless occupiers – those who have fallen into rent arrears and whose landlord has been granted a suspended possession order, but who have lost security of tenure even where they have complied with the terms of the order.

5. The Court of Appeal decision in *Knowsley v White* (2 May 2007) extended the tolerated trespasser doctrine to assured periodic tenants of RSLs.
6. At present there is no Court of Appeal judgement on whether the tolerated trespasser doctrine extends to local authority introductory tenants or demoted tenants. We have made the assumption therefore that it does apply. Where a landlord obtains a possession order against an introductory tenant or demoted tenant, but then reaches agreement with the tenant and does not enforce it by eviction, we believe it is likely that the courts would hold that in these circumstances the former tenant became a tolerated trespasser once the possession date has passed. The problems associated with erstwhile secure and assured tenants who have become tolerated trespassers, set out below, would apply equally to former introductory and demoted tenants, except that they do not have the right to exchange.

### Options

7. Following consultation on a number of options to resolve the issues created by the tolerated trespasser doctrine, this Impact Assessment considers 2 options.

#### **Option A:** Do nothing

8. This is the baseline against which the costs and benefits of Option B has been assessed. It represents a continuation of the existing ways of dealing with tolerated trespasser issues, which have cost implications for tenants, landlords, and the court service in relation to the restoration of tenancy status.
9. There are a number of reasons why we do not consider this to be a viable option. The existence of tolerated trespassers creates the problem of loss of tenancy status, usually without tenants' knowledge. Problems arising from loss of tenancy status include:
  - i) **Succession Rights** – tolerated trespassers are not tenants and so there are no succession rights (a fact which is frequently only realised on

their death, when a family member is told they cannot succeed to the tenancy).

- ii) **Right to exchange** – tenants who become tolerated trespassers, lose their right to request their landlord’s agreement to exchange with other secured or assured tenants of LAs/RSLs. However, this is less significant as landlords already have the right to refuse agreement to a tenant subject to a possession order, regardless of whether they have become a tolerated trespasser. Introductory and demoted tenants do not have a right to exchange.
- iii) **Contractual right to repair and maintenance of property for secure tenants** – there is no statutory obligation upon landlords to repair and maintain property for tolerated trespassers. Tolerated trespassers have no entitlement to damages for landlord’s breach of repairing obligations.
- iv) **Unlawful increases in Rent** – The relevant Housing Acts provide for increases in rent to secure and assured tenants, but these provisions do not apply to tolerated trespassers.
- v) **Voting rights** – For landlords, there are difficult issues regarding whether tolerated trespassers should be able to vote in stock transfer and tenant management ballots, since the statutory rules on both refer to the votes of tenants.

10. Currently for many tolerated trespassers the option exists of applying to the court to exercise its discretion to restore tenancy status by amending the original order by resetting the date for possession in the future. However, this can only occur on a case by case basis. In July 2006 a new two stage process came into force whereby form N28A (a “postponed possession order”) could be used to omit a date for possession so that the provision, in section 82 (2) of the Housing Act 1985, about the tenancy ending no longer applies. Landlords who wish to proceed to eviction following breach of terms must apply to the court (paying a fee) for a possession date to be fixed.
11. This process of applying to vary the terms of the possession order is burdensome to both tenants and landlords. In many cases tenants make applications in person and without legal representation as Legal Aid costs are being curtailed, requiring a hearing in front of a judge – a further burden on the courts.
12. Another option exists of granting a new tenancy. However where the problem which led to the possession order in the first place still exists – e.g. outstanding rent arrears – many landlords are reluctant to allow this. This

approach may be burdensome for landlords, and does not completely solve the problem as it does not involve restoring the original tenancy with retrospective effect. This can be particularly problematic in relation to succession rights. It will also potentially restore the right to buy which the tenant was not entitled to while subject to a possession order.

**Option B:** Amend the 1985, 1988 and 1996 Housing Acts to prevent the creation of future tolerated trespassers and to restore tenancy status to all existing tolerated trespassers.

13. This is the option which was supported by the majority of responses to consultation. It proposes the amendment of the Housing Acts to spell out when tenancies come to an end, that is to say:
  - following grant of a possession order, on the date the tenant is actually evicted, or
  - on the date the tenant leaves voluntarily, if earlier than that.
14. This will remove the requirement for tenants, who become subject to possession orders after commencement of the new legislation, to apply to the courts to restore tenancy status and the related additional costs. It will also prevent the need to grant new tenancies and the associated problems as outlined in paragraph 12.
15. This option will also restore tenancy status for all existing tolerated trespassers by providing that a new tenancy is treated as arising on the commencement date, provided that the dwelling-house in which the tenant lives continues to be his/her principal home (though see paragraph 17 below in relation to tolerated trespassers where there has been a change of landlord). The new tenancy will be on the same terms and conditions as the original tenancy, but will be updated to reflect any changes in terms and conditions and amount of rent payable which have occurred during the termination period.
16. For some purposes, the new and original tenancies are to be treated as the same one continuing interrupted. The relevant purposes are:
  - succession rights – to ensure that the newly restored tenant does not acquire new rights as a result of the new tenancy
  - qualification for the right to buy and the right to acquire – so that, if the possession order is discharged, the time spent as a tolerated trespasser will count



- outstanding and new claims for breach of the terms of the tenancy agreement and/or breach of statutory duty (e.g. mainly disrepair claims) – subject to permission of the court
- decants – to ensure that the newly restored tenant may return to their original home as a secure tenant once the works have been carried out on it.

17. We will consult on whether the changes should extend to tolerated trespassers where there has been a change of landlord (eg following a large scale voluntary transfer). If changes are made, following consultation, these will be introduced by secondary legislation and will be brought into force at the same time as the changes introduced by the primary legislation.

### **Costs and Benefits**

#### **Assumptions and 'unknowns'.**

18. The preparation of this Impact Assessment is subject to a number of 'unknowns'. The estimated figures of between 250,000 – 300,000 tolerated trespassers in England is based on the number of suspended possession orders granted to all social landlords between October 2001 and July 2006 only. We are unsure of the numbers that have occurred since. Postponed possession orders were introduced in July 2006, which are currently probably more widely used than suspended orders. These defer the point at which a tenant becomes a tolerated trespasser to later in the process.
19. The 250,000 – 300,000 figures do not include those tenants who became tolerated trespassers prior to 2001.
20. We have only very limited statistics on the number of applications made to courts to vary possession orders. Numbers are very low – during 2006 a total of 53 applications to vary were made and in the first six months of 2007 there were 49 – and reasons for the application are not specified. However we consider it likely that most applications to vary are for the purposes of restoring tenancy status. We are therefore basing estimates on these figures.
21. Estimated costs as summarised above have been calculated using the 250,000 – 300,000 suspended possession orders granted to social landlords between October 2001 and July 2006, assuming an annual average of 52,632 cases per year as an ongoing trend.
22. The death rate used to calculate succession rates is taken from the ONS website using 2006 projections. The ONS calculates death rates for England and Wales combined and so some deaths that occur will be in Wales and therefore not affect succession rates in England. Due to the small numbers

involved this should not be a cause for concern. Assume 52,632 suspended possession orders per year (from consultation paper) and using ONS data 318 tolerated trespassers will die per year and if 50% are eligible to succeed then 159 will lose the right to succession. Using ONS population statistics on England and Wales, out of the 318 deaths 300 of these are likely to be in England, resulting in 150 people losing the right to succession. In England and Wales in 2006 there were 6,056 deaths per 1,000,000 people, average between men and women taken). Source: [http://www.statistics.gov.uk/downloads/theme\\_population/Table\\_1\\_Deaths\\_Rates\\_Summary.xls](http://www.statistics.gov.uk/downloads/theme_population/Table_1_Deaths_Rates_Summary.xls).

23. There are likely to be more applications to vary, in order to restore tenancy status, within other housing court actions such as disrepair claims rather than as free-standing actions. However these are not recorded separately.

### **Costs and Benefits**

#### **Option A**

##### *Costs*

24. Currently once a tenant is made aware of his/her loss of tenancy status, an additional application to restore tenancy status will need to be made. This is where the main costs arise. If both tenant and landlord are in agreement it is likely that costs to the landlord will not exceed £300, including staff time. However given that these applications arise following a dispute with a landlord, usually over damages for disrepair, it is probable that a hearing will be needed leading to an increase in costs for both landlord and tenant. Where this is the case, we estimate the costs to the landlord could be up to £500 per case. We estimate that the costs to tenants of such applications are likely to be in the region of £35 to £65 per case, if the tenant is unrepresented, or up to £800 if represented. The costs to the Court Service are estimated at between £72 and £200 per case.
25. In addition, there are a number of other problems that arise from loss of tenancy status, although we are unable to quantify these costs.
26. For tenants the potential costs are as follows:
- vi)** Loss of succession rights – family members who would have succeeded will be likely to incur expenses in finding new accommodation.
  - vii)** Loss of right to exchange – tenants could potentially suffer loss of opportunity (although landlords can already refuse an exchange where the tenant is subject to a possession order).

- viii)** Right to Repair & damages for disrepair – this could lead to financial loss for tenants. Although necessary repairs are probably carried out (since it is in landlords’ interests to maintain their properties in an adequate state of repair), landlords are unlikely to pay compensation for any disrepair suffered. However, this will not be the case where the courts restore tenancy status in order to allow a disrepair claim for compensation to go ahead.
- ix)** Increases in rent – although costs are unknown, anecdotal evidence suggests that some landlords are charging higher rents to tolerated trespassers.

27. There could also be costs involved if landlords are challenged on tolerated trespasser rights to vote in stock transfer and tenant management ballots but to date we are unaware of such challenges taking place. However, we have been informed that some landlords are balloting tolerated trespassers and tenants separately, which must involve extra costs.

#### Benefits

28. We see no benefits for tenants in retaining the status quo. Landlords may possibly gain through a tenant’s loss of succession rights as the freeing up of properties might enable them to make better use of their existing stock (although an under-occupation ground for possession already exists following succession) and meet the needs of those on waiting lists. However a family member who cannot succeed to the tenancy may apply to the landlord for housing assistance in any case. Landlords may also gain from charging higher rents but benefits are unknown and are likely to be small.

#### Option B

##### Costs

29. There may be minimal costs associated with the changes related to future tolerated trespassers, arising out of the loss of opportunity to charge higher rents or to ignore the disrepair duty. However, these are not considered to be significant, since there is very little evidence to suggest that most landlords charge higher rent, and the courts have the power to allow disrepair claims by tolerated trespassers anyway (though there are no figures on how frequently this is exercised).
30. The intention is to ensure as far as possible that landlords and tenants are not disadvantaged by the legislative changes relating to existing tolerated trespassers. There may be some costs attached to the provision that the time spent as a tolerated trespasser will count towards qualification for the right to buy. However, as newly restored tenants subject to a possession order will

continue to be precluded from the right to buy, it is considered that these costs are likely to be minimal.

31. There may also be some disadvantages for landlords if the changes are extended to tolerated trespassers whose landlord has changed. The main circumstance in which a landlord changes is likely to be a stock transfer from a local authority to a Registered Social Landlord. We believe that most Registered Social Landlords grant a tenancy to all occupants who transfer (either a full assured or assured shorthold tenancy). However, we understand that some do not but are unable to estimate the numbers involved. (Other transfer circumstances will include where a Registered Social Landlord merges with or is taken over by another one, or where a local authority landlord changes following a boundary change but these are likely to happen only rarely.) RSLs may consider that losing their discretion not to grant a tenancy is a disadvantage. However, we believe that this is likely to be outweighed by the benefits: the savings from removing the costs associated with loss of tenancy status (see paragraph [33] below); and benefits more generally in terms of certainty and fairness.

#### **Benefits**

32. This option would resolve the problem of tolerated trespasser status for all tenants subject to future possession orders.
33. Existing tenants subject to possession orders would no longer need to apply to the courts to restore tenancy status. The costs associated with loss of tenancy status as identified in option A would be removed for tenants, landlords and the courts.

#### **Race Equality Impact Assessment**

34. Ministry of Justice (MoJ) data on the numbers of suspended possession orders granted to all social landlords cannot be further broken down by race or ethnicity. However CLG collects data on the numbers of social renters who are currently in rent arrears or had been in rent arrears at a previous time during the year of data collection.
35. Data is collected annually and is broken down into various sub groups, as part of the Survey of English Housing (SEH). It is likely that those surveyed would have included a proportion of tenants who are now tolerated trespassers; we are therefore using the SEH data as an indicator of likely numbers. The dataset comprise years 2001/2 to 2004/5, a similar timeline to that covered by the MoJ possession orders data. Please note that households are regarded as in arrears with rent if the payments are two weeks or more behind.

36. SEH data indicates that BME households are more likely to be in arrears (or to have been in arrears) than white households. As a result it is likely that any restoration of tenancy status will have a positive impact on BME tolerated trespassers.

### **Disability Equality Impact Assessment**

37. As outlined above, MoJ data on the numbers of suspended possession orders granted to all social landlords cannot be further broken down into sub-groups. Using SEH data as an indicator of likely numbers, figures indicate that households with disabled or seriously ill members are much less likely to be in arrears than households without. It is therefore our view that amending the legislation as proposed will have minimal impact on disabled households.

### **Gender Equality Impact Assessment**

38. Data taken from the SEH indicates that there is little difference in the likelihood of being in arrears by gender. Subsequently we do not anticipate that restoring tenancy status to existing tolerated trespassers will have any disproportionately negative impact across the sexes. In fact as there are a larger number of females as household reference person than males (SEH 2006) in social housing it is likely that females will gain from any changes we make.

39. A table summarising the SEH rent arrears data is attached at Annex A.

### **Competition Assessment**

40. Competition will be unaffected by any amendments to legislation as proposed.

### **Small Firms Impact Assessment**

41. Small Firms will be unaffected by any amendments to legislation as proposed.

### **Legal Aid**

42. Data collected by MoJ does not enable us to determine the amounts of Legal Aid allocated to tenants who have sought to restore tenancy status. However, there is likely to be a saving made here if further cases are prevented in the future.

### **Sustainable Development**

43. We do not anticipate any impact on sustainable development by amending legislation as proposed.

### **Carbon Assessment**

44. Carbon emissions will be unaffected by any amendments to legislation as proposed.

### **Other Environment**

45. We do not anticipate any other environmental impacts.

### **Health Impact Assessment**

46. We do not anticipate any direct impact on health will arise as a result of amending legislation as proposed. However, it is likely that those family members affected by loss of succession rights will have experienced some degree of stress and instability as a consequence of being under threat of eviction and homelessness. Restoring tenancy status will remove any potential impact on health.

### **Human Rights**

47. The right to respect for private and family life etc under Article 8, and the right to protection of property under Article 1 of the First Protocol, are both issues which have been examined in the context of possession proceedings. In general the position has been that human rights law cannot be used to challenge possession proceedings. The House of Lords recently in *Kay v Lambeth* reviewed the law and previous cases with regard to Article 8. Currently the position is that, with regard to secure and assured tenancies, a grant of possession in proceedings properly instituted by the landlord in accordance with the statutory provisions will not constitute a breach of Article 8 rights.
48. Probably the most significant aspect of property rights is that at present where a tolerated trespasser dies there are no succession rights, whereas if an occupant were to remain a tenant until death the succession rules would apply. These differ slightly for secure and assured tenants, but for both regimes only one succession to a property is allowed; if the dead tenant was already a successor, no further succession to the tenancy is possible. Family members who would otherwise succeed to tenancies will continue to be deprived of the right to succeed so long as the current state of the law exists; but if the law is reformed landlords will lose the chance to make a fresh allocation to the property on a tolerated trespasser's death. However, it is not considered that this engages Article 1 of the First Protocol since that relates only to existing possessions not the chance of gaining a possession right. Overall, if any ECHR property issues do arise in respect of the proposed reform, the Government considers that its aims are in the public interest and proportional.

## **Rural Proofing**

49. We do not have analysis on the geographical location of the estimated 250,000 tolerated trespassers, but by restoring tenancy status we are by and large improving tenant outcomes the impact of which will apply across all localities, both rural and urban.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	No
Rural Proofing	Yes	No



## Annexes

Summary of percentage of social renters currently in rent arrears or previously in rent arrears

Percent of social renters who were either currently in rent arrears or had been in rent arrears at some other time in the past year

SEH survey yr	ethnicity of HRP		gender of HRP		Is someone in the h/hold seriously ill or disabled?	
	BME	white	male	female	yes	no
2001/2	25.4	13.6	14.2	15.3	11.0	17.9
2002/3	21.2	12.8	12.0	14.9	9.7	16.8
2003/4	18.4	11.5	10.5	13.8	7.1	16.2
2004/5	14.4	9.4	9.2	10.5	8.3	11.4

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Residential Leasehold Reform – Providing service charge payers payers with Regular Statement of Accounts</b>	
<b>Stage:</b> Final	<b>Version:</b> 4 (see Ev Base)	<b>Date:</b> November 2007
<b>Related Publications:</b> Consultation paper – “A Consultation Paper on Regular Statements of Account and Designated Client Accounts” – July 2007		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Ian Fuell

**Telephone:** 020-7944-3463

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

Service charge payers can be asked to hand over large sums of money to their landlord or manager (the payee) to pay for the upkeep of their property. Legislation provides some protection for this money including the right to ask for a summary of service charges and to see supporting documents, but regular information does not have to be provided unless the lease requires this of the landlord, making it easier for abuses to take place.

Information received from stakeholders to CLG and LEASE over a number of years has highlighted this as an area that needs addressing through regulation.

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

To provide service charge payers with improved transparency and safeguards in respect of the service charges that they pay by making amendments to section 21 of the Landlord and Tenant Act 1985 (the 1985 Act), as amended by section 152 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act), at the same time as other associated measures. This particular measure will ensure that a minimum level of accounting information is received, explaining in sufficient detail how service charge monies have been spent and any balances held at the end of the accounting period.

**What policy options have been considered? Please justify any preferred option.**

1. Not implement the amendments and repeal section 152 of the 2002 Act.
2. Commence section 152 of the 2002 Act and the amendments to the 1985 Act, together with supporting regulations (preferred option). This option will provide in conjunction with other measures the transparency and protection sought in relation to service charge monies whilst providing payees with the flexibility that will help to minimise burdens and the costs that will be passed onto service charge payers.

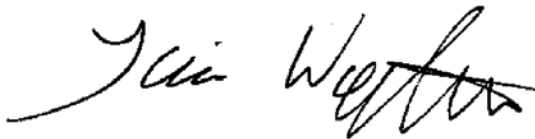
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

10/2012

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: 1</b>		<b>Description: Not implement and repeal section 152</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Landlords/managers (payees) recovering service charges would not need to provide anything in addition to what they already do, or what existing legislation would require of them when asked to provide a summary. No extra costs would be incurred with this option for either payees or the tenants paying service charges.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ None		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ Unchanged		<b>Total Cost (PV)</b> <b>£</b>
Other <b>key non-monetised costs</b> by 'main affected groups'  Continued difficulties would be experienced by some tenants in obtaining sufficient information about what their service charge money is being used for and ensuring it is not being misapplied. Any existing tension between parties caused by a lack of relevant information would continue.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Landlords/managers recovering service charges in the residential sector and the tenants paying those charges will not incur any additional costs.
	<b>One-off</b>	<b>Yrs</b>	
	£ None		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ Unchanged		<b>Total Benefit (PV)</b> <b>£</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'  None identified.			
<b>Key Assumptions/Sensitivities/Risks</b>  There is currently no statutory requirement to provide a regular statement accounting for service charges. The existing right for a tenant to request a summary does not guarantee a sufficient level of transparency and is felt to be ineffective.			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> <b>£</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£</b>

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		N/A		
Which organisation(s) will enforce the policy?		Local Authority		
What is the total annual cost of enforcement for these organisations?		£ Unknown		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ No change		
Will the proposal have a significant impact on competition?		No		
Annual cost (£–£) per organisation (excluding one-off)	Micro None	Small None	Medium None	Large None
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £		Decrease of £		<b>Net Impact £</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

<b>Summary: Analysis &amp; Evidence</b>			
<b>Policy Option: 2</b>		<b>Description: Amend and implement section 152 together with supporting regulations (preferred option)</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Landlords/managers recovering variable service charges and the tenants paying those charges. The amended proposals should substantially reduce many of the costs highlighted in responses to previous proposals.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ See Ev Base</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ See Ev Base</b>		<b>Total Cost (PV)</b>
Other <b>key non-monetised costs</b> by 'main affected groups'  Where additional admin burdens (and costs) are incurred by landlords/managers which are passed on to tenants, this could create initial tension between the parties. However, recognising the benefits of this option, any negative impact is expected to be offset by those benefits.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  The increased transparency and stronger sanctions that this and associated measures will produce in relation to service charge monies should mean a reduction in the number of disputes that will arise in relation to those monies and a corresponding reduction in the number of such disputes going to LVTs.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ See Ev Base</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ See Ev Base</b>		<b>Total Benefit (PV)</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'  The greater transparency that will be provided to tenants in relation to how their service charge monies are accounted for, the ability to invoke appropriate sanctions where legislation is not complied with and the potential for easier detection of fraud if it occurs, will provide reassurance to those tenants.			

<p><b>Key Assumptions/Sensitivities/Risks</b></p> <p>Assumption that the vast majority of landlords/managers will comply creating increased levels of transparency in respect of service charge monies. Risks – increased withholding of service charge monies although this is considered an effective and reasonable means of ensuring compliance.</p>
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<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV) £</b>	<b>NET BENEFIT (NPV Best estimate) £</b>
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	Expected April 2009			
Which organisation(s) will enforce the policy?	Tenants (using rights)			
What is the total annual cost of enforcement for these organisations?	£ 0 (see Ev Base)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ None anticipated			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)
Increase of £	Decrease of £	<b>Net Impact £</b>

Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>
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## Evidence Base (for summary sheets)

### Background to the RIA

The Commonhold and Leasehold Reform Act 2002 (section 152) contains provisions that set out to address the deficiencies highlighted by stakeholders where accounting for service charges is concerned. These have not yet been implemented.

Information arising from the previous consultation paper – “Accounting for Leaseholders Monies & summaries of tenants rights and obligations” carried out in June 2004 on these same issues, has been updated as a result of the latest consultation paper – “A Consultation Paper on Regular Statements of Account and Designated Client accounts” published in July 2007, where possible. Monetary information has been given where possible, taking account of information obtained from the consultation exercises and from continuing dialogue with stakeholders although it should be noted that it has been difficult to establish actual costs with any certainty, in particular any additional costs that may be incurred. This is partly due to the nature of the measure and the fact that any additional costs will only become clear once the detailed requirements to be specified in regulations (and which forms part of the 2007 consultation) are implemented and landlords/managers (payees) are able to assess more accurately the extent to which changes are required to their current practices.

### The problem and reason for government intervention

Tenants can be asked to hand over large sums of money (service charges) to payees to pay for works and services. Existing legislation does provide tenants with the right to request a summary setting out the costs upon which their service charges are based, together with the amounts received from and balances held on behalf of tenants required to pay those charges. There are also additional rights to inspect supporting documentation such as accounts and receipts. However, regular information does not have to be provided to service charge payers unless the lease requires this of the landlord, making it more difficult to obtain the information required to assess value for money and detect any fraud. Information received from service charge payers over a number of years leading up to the Commonhold and Leasehold Reform Act 2002, and since, highlights and supports the need for intervention in this area.

The majority of respondents to previous consultation exercises on the subject also agreed that tenants should be supplied with better and clearer accounting information which would when combined with other measures being proposed, help ensure that any misappropriation of funds would be easier to discover.



Examination of the existing rights and the enforcement procedures available indicated that these needed to be improved upon to better ensure that tenants receive regular and sufficient detail about the costs that they are contributing towards, and could see whether their service charge monies are being used for the purpose for which they were provided.

### **The objective**

We wish to increase transparency in relation to service charge monies by providing for tenants to receive information that accounts sufficiently for the service charges that they have to pay, make it easier for them to discover any fraudulent activity and introduce more effective sanctions where a payee fails to comply with the law. This is part of a package of measures aimed at improving the rights of tenants to information about their service charge monies.

### **Extent of Consultation**

Public consultation took place on this provision in November 1998 and again in August 2000 as part of the Draft Bill and Consultation Paper. An informal discussion paper was then sent to key stakeholders for comment in January 2003 after the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) received Royal Assent in May 2002) and a public consultation exercise took place in June 2004 on the detail of what should be contained in regulations. A further consultation exercise took place in July 2007 following the redevelopment of the original proposals. Included as part of these consultations were:

#### ***Within Government***

- The Small Business Service
- Local Government Association
- Association of London Government
- London Councils
- CLG

#### ***Public consultation***

Public consultation has taken already place with over 600 stakeholder organisations and individuals. These include:

- Association of Residential Managing Agents
- Federation of Private Residents Association
- Campaign for the Abolition of Residential Leasehold
- The Leasehold Advisory Service
- Association of Retirement Housing Managers

Council of Mortgage Lenders  
Housing Corporation  
Housing Ombudsman  
Institute of Chartered Accountants in England and Wales  
Association of Chartered Certified Accountants  
The Law Society  
Royal Institution of Chartered Surveyors  
British Property Federation  
Financial Services Authority  
Chartered Institute of Public Finance and Accountancy  
National Housing Federation

Various financial institutions were also consulted, together with other leaseholder representative groups and tenants associations, and individuals who had responded to previous consultation exercises on similar issues. A number of face to face meetings and discussions have also been held, as well as visits to stakeholders.

Prior to, during and subsequent to the public consultation exercises, communication and dialogue has taken place with stakeholders and others, including landlords, tenants and managing agents etc. As a result of the extensive stakeholder engagement that has taken place and the comments received section 152 of the 2002 Act has been redeveloped.

### **Policy Options**

#### **Option 1**

##### **Not implement the amendments and repeal section 152 of the 2002 Act**

##### *Economic costs and benefits*

Landlords/Managers (payees) – Their position will remain the same. There will be no additional costs or administration incurred because they will be able to continue with their current regime. The current requirements specify a limited amount of detail about the information that should be supplied when a summary is requested and the overall statutory rules in relation to accounting for service charges do not necessarily deliver what could be seen as an acceptable level of transparency.

Tenants – Their position would remain the same. They would not have to pay any additional costs, but would also not benefit from the additional transparency, protection or sanctions afforded by option 2 below. There are also concerns

about the adequacy of existing sanctions for any failure by a payee to comply with a request by a tenant for a summary of service charges.

### *Enforcement*

Tenants can ask a local authority to take proceedings where a payee fails to comply with the requirement to provide a summary of service charges, but there is no duty on the local authority to do so. Otherwise, tenants would have to take a private action for non-compliance. There is currently no statutory right for a tenant to withhold service charges.

### *Other Impacts*

See annex for further details.

### **Option 2**

**Commence section 152 of the 2002 Act and the amendments to the 1985 Act, together with supporting regulations. (preferred option).**

#### *Economic costs and benefits*

Landlords/Managers (payees) – Some additional costs may arise for some payees if regulations were to prescribe the form and content for the statement and establish specific requirements and guidelines for accountants in relation to reports supporting the statement, since these would not necessarily correspond with how those payees currently account for service charges. This will be the case particularly for those payees who are currently supplying little or no accounting information. There has also been concern from payees about allowing service charge payers to withhold service charge monies if an appropriate statement and report is not provided and that this will lead to cash flow problems for landlords. However the ability to withhold service charges is considered to be an appropriate means of ensuring that tenants receive the required information.

The 2004 paper put forward specific proposals for the content of the statement of account and the requirements for the supporting accountant's certificate. A large number of respondents stated that there would be initial costs in setting up new IT systems and thereafter an increase in running costs. However there were particular concerns from local authorities and some registered social landlords about the potential costs of the proposals. For local authorities these concerns were based upon how they are currently required to account for expenditure on their housing stock under other legislation (the Housing Revenue Account).

The significant additional costs previously identified as being incurred for social landlords because of specific amendments needed to their statements of account would be minimised by the amended proposals. For example, one of the larger London authorities previously estimated that their set up costs in order to produce the information in the statement proposed in the consultation exercise of 2004

could be up to £1.4m, with ongoing costs of £0.9m per year. While the same authority has commented on the redeveloped proposals in the 2007 consultation paper and raised a number of issues, no confirmation of the original estimates was provided.

Following the 2004 consultation paper, estimates were also put on the cost of providing the accountant's certificate that would have been required, which ranged from £12.24 per lessee to total costs of £1.86m for a registered social landlord. One housing association member of the NHF estimated that the certificate could cost £25k across their estate to provide. More recently proposals have been developed by members of a working party which included the Institute of Chartered Accountants in England and Wales, the Association of Chartered Certified Accountants, the Association of Residential Managing Agents and CLG to replace the requirement for a certificate with a more flexible approach involving the provision of a report. Whilst providing greater certainty about the work required this should also allow the accountant some flexibility in deciding the checks that are most appropriate in each particular case. The working party considered that the cost of providing an accountant's report (rather than a certificate) could be around £1500 for service charge expenditure up to £20k rising to £4k for expenditure up to £50k. However the actual cost in each case will depend upon a number of factors such as the record keeping of the landlord and the size and complexity of the relevant transactions. Therefore some responses to the 2007 paper that have highlighted and based any cost estimates on the £1500 figure may not be that representative and the actual figure could be lesser or greater depending on the individual circumstances. Revised exemption(s) from the need to provide a report have been considered in this light in order to help ensure that whilst disproportionate costs are not incurred in the provision of such reports, they are provided where thought necessary.

Some additional information has been forthcoming following the 2007 consultation exercise in respect of potential costs for local authorities (LAs) or RSLs in particular, although it has proved difficult to extrapolate it into possible costings that could be regarded as reliable. This has been the case with previous consultation exercises. In some instances the figures provided may have been based upon an assumption that there was less flexibility available within the provisions than is in fact the case. In addition, whilst some landlords estimated the cost of providing the report required (as outlined above), others based their costings upon the ballpark figure of £1500 identified in the Consultation Paper.

The information provided most recently by LAs & RSLs was based upon different criteria in each instance, ranging from £3 to £15 per unit for the accountant's report compared to £17 per unit for one off costs and £16 pa per tenant for ongoing costs of providing the statement and a £25 increase on the average

service charge bill in total. These figures do need to be considered alongside the fact that leaseholders have sought improvements to their position where service charge accounting is concerned and the benefits that will eventually result. It is also unclear from the information received whether the figures provided are for additional costs or whether in fact they include costs that may already be incurred where service charge information is provided.

However it would seem that the amended requirements included in the latest proposals should mitigate many of the costs originally identified as applying to all payees. This includes the removal of the need for an individual statement which itself was estimated as likely to cost an additional £10 per tenant, and more flexibility being allowed in both information that can be included in each regular statement and how it can be presented. Procedures are also being developed that will provide more clarity on the duties of the accountant required to 'report' on the statement whilst establishing minimum requirements, to allow procedures that are more appropriate to the circumstances of each case to be adopted. This should help to mitigate the associated costs.

There may be additional costs in complying with the associated requirements that will also be needed where a payee operates one designated account holding service charge funds that is not covered in a single statement of account. However this is not expected to impose additional costs on the industry or service charge payers in those many instances where landlords or managers are already operating separate bank accounts for each building or estate and the greater overall flexibility within the provisions as a whole should mean that any burdens and additional costs that are incurred will be kept to a minimum.

Tenants – Should benefit from being supplied with regular information relating to service charges and being able to withhold payments if the relevant documents are not supplied within 6 months of the end of the accounting period. Prescribing the minimum amount of accounting information to be provided will also mean that the service charge payer will be in a better position to challenge unreasonable costs and identify whether funds have been misappropriated. There may be some additional costs associated with the amended overall accounting regime (which includes service charges being held in designated accounts) where access is required to information in relation to other statements of accounts needed to explain balances held in a bank account containing money belonging to a number of groups of tenants. However whilst any additional costs that are incurred through the requirement upon landlords to provide a statement and report are likely to be passed onto service charge payers these should be kept to a minimum as a result of the amendments made to previous proposals.

*Other benefits*

Landlords/Managers and Tenants – The overall package being put in place in relation to accounting for service charges should ensure that all tenants are able to receive the information they need to see what their monies are paying for and that they are being applied correctly. Any additional costs that may be incurred are believed to be outweighed by the overall benefits to service charge payers as a whole in knowing that they must automatically receive a minimum level of information, the improved transparency and the rights they have to take action if information is not received.

*Enforcement*

There are 2 types of enforcement/sanctions that could apply if a payee fails without reasonable excuse to comply with the measures being introduced. The service charge payer's new right to withhold payment of a service charge where the landlord fails to provide a statement of account and accompanying accountant's report (where required), is seen as a powerful sanction. This sanction costs nothing to enforce, and is aimed at avoiding the need for court or tribunal action where possible. Withholding service charges could in the longer term affect the maintainance of the building, but the payee (landlord/manager) will in any case be under a duty to maintain the property under the terms of relevant leases and so should be encouraged to more readily comply with the legislation. Secondly, action could otherwise be taken for a summary offence which would be subject to a fine not exceeding level 4 on the standard scale (£2,500) on conviction. In this case the local housing authority has the power to bring proceedings, or proceedings can be brought by the tenant concerned.

*Other Impacts*

See Annex for further information.

**Summary: Analysis & Evidence (Annual cost (£-£) per organisation) – explanation**

Whilst payees (landlords/managers) will incur the costs in the first instance, these will most likely be passed on to service charge payers through their service charges. Establishing a cost per 'organisation' in this instance is not possible as it would require information including the number of payees (landlords and managers – including Resident Management Companies) and the number of flats they manage where service charges are payable. The likely costs would also vary widely in each case and circumstance. It would also require detailed information about accountancy costs which again will vary depending on the circumstances, including each firm's involvement and the work that is required.

## 2007 Consultation exercise (amended proposals) – Support and cost information

The amended proposals received a large amount of general support from respondents compared to the original proposals, which was either unqualified or accompanied by comments or suggestions as to content of the statement and its practical application, as well as the accountants' report, as follows;

	Overall support (unqualified & qualified)	No overall support/ No comment	Not supported	<b>Total responses</b>
Individual Leaseholders	9	6	3	18
Property Management Companies	6	1	2	9
Residents' Management Companies	2	2	0	4
Surveyors	3	0	0	3
Accountants	3	0	0	3
Local Authorities & ALMOS	10	8	2	20
Registered Social Landlords*	10	5	1	16
Representative/trade/ other organisations	11	8	2	21
Others	3	2	0	5
<b>Totals</b>	<b>57</b>	<b>32</b>	<b>10</b>	<b>99</b>

\* Some responses were from 'Groups' that comprise or represent more than one housing association and therefore a large number of units (E.g. AnchorTrust – 24,000 sheltered housing units; Whitefriars Housing Group – 17,000 tenancies; Affinity Sutton Group – 50,000 homes; Orbit Group – 27,000 homes).

As highlighted in option 2 above, little consistent costing information was provided in response to the latest consultation for the cost of compliance with the proposals although many respondents indicated that any such costs were not considered to be significant. While some costs were provided by a few respondents this did not elicit any further information that could reasonably be applied on a more general basis to allow costs of a reliable nature to be narrowed down further, either at organisation or individual level. This was particularly so in respect of any possible additional costs bearing in mind that the majority

of payees and those tenants affected by this measure are likely to already be incurring some costs where service charge information is already supplied, either in connection with terms of leases, existing legislation, compliance with a relevant Code of Practice or general agreement.

As mentioned, it is believed that the redeveloped proposals should reduce and mitigate the costs compared with the original 2002 Act proposal, and should not add significantly to any costs already being incurred.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### Specific Impact Tests

#### **Competition Assessment**

We have assessed the impact of the preferred option against the Office of Fair Trading checklist criteria and believe that there is unlikely to be a negative competition impact as a result. The provisions will apply to all landlords/managers (payees) that are responsible for collecting variable service charges in respect of private sector residential properties.

#### **Small Firms Impact Test**

The majority of landlords and managers of leasehold properties would be considered small businesses, although there are a few landlords with larger portfolios of leasehold property.

As a result of extensive consultation that has previously taken place with stakeholders in the sector affected, including individual leaseholders and landlords, as well as bodies such as Association of Residential Managing Agents, Association of Retirement Housing Managers, Royal Institution of Chartered Surveyors, Institute of Chartered Accountants in England & Wales, Association of Chartered Certified Accountants, Federation of Private Residents Associations, Campaign for the abolition of Residential Leasehold; Leasehold Advisory Service, London Councils, Local Government Association, British Property Federation and others, together with ongoing stakeholder engagement, we propose to adapt the measures originally set out in the Commonhold and Leasehold Reform Act 2002. These reflect the concerns raised by stakeholders in respect of the costs and burdens that are believed would ensue from the original provisions. This will achieve the overall objectives of improved transparency and safeguards where service charges are concerned.

We have discussed these issues with the Small Business Service who are content with our approach.

#### **Legal Aid**

There are no anticipated legal aid impacts.

#### **Sustainable Development**

The preferred option, which recognises the need for improving tenants' rights, will not have any discernable effect on sustainable development issues.

### **Carbon Assessment**

The preferred option will not have any discernable impact on the sectors or key sources of greenhouse gas emissions. Namely energy, industrial processes, solvents and other product use, agriculture, land-use change and forestry and waste. We do not therefore believe there is a need to undertake a full carbon impact assessment.

### **Other Environment**

The preferred option will not have a serious impact on other environmental issues identified in the environmental impact guidance published by DEFRA. Namely the predicted effects of climate change; a change in the financial costs or the environmental and health impacts of waste management; air quality; the appearance of the landscape or townscape; the degree of water pollution; levels of abstraction of water; exposure to flood risk; disturb or enhance habitat or wildlife; or affect the number of people exposed to noise or the levels to which they are exposed.

### **Health Impact Assessment**

Whilst the preferred option appears to have no direct impact on the health of those it is designed to benefit (service charge payers), the additional transparency and protection provided should help mitigate any worry or concern that may currently exist by providing an additional level of comfort and clarity in the way service charges are accounted for, and allow a clear course of action to be taken where non-compliance or fraud is suspected. Those required to comply with the measure (payees) and who have to take positive action to do so because they do not already comply, may initially adopt a negative approach to it. However, the longer term effects should benefit all those affected by creating greater certainty leading to greater cohesion and understanding.

### **Race Equality**

Where racial groups are affected by the preferred option they will be affected equally. There is no evidence to indicate that any particular racial group will be affected differently from any other, that it will affect relations between racial groups, or that any one racial group will be unlawfully discriminated against either directly or indirectly. All those affected will also have the same expectations.

### **Disability Equality**

The preferred option will not have any specific impact in relation to disability equality.

### **Gender Equality**

The preferred option will affect those women and men that it applies to equally and will not affect either gender differently or disproportionately.

### **Human Rights**

The preferred option will not engage or affect anyone's Convention rights.

### **Rural Proofing**

The preferred option will not have a different or disadvantageous impact on anyone in rural areas that will be affected by it. It will apply to everyone in exactly the same way, including those in urban areas.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities &amp; Local Government</b>	<b>Title:</b> <b>Impact Assessment of Residential Leasehold Reform – Service charges to be held in designated account</b>	
<b>Stage:</b> Final	<b>Version:</b> 4 (See Ev Base)	<b>Date:</b> November 2007
<b>Related Publications:</b> Consultation paper – “A Consultation Paper on Regular Statements of Account and Designated Client Accounts” – July 2007		

### Available to view or download at:

<http://www.communities.gov.uk>

**Contact for enquiries:** Ian Fuell

**Telephone:** 020-7944-3463

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

Service charge payers can be asked to hand over large sums of money to their landlord or his agent (the payee) to pay for the upkeep of their property. Existing legislation provides some protection for this money (need to hold it in trust in two or more funds), but information received from stakeholders over a number of years has highlighted difficulties in establishing that service charges are being held correctly and about the ease at which abuses could take place, together with the lack of suitable rights of redress.

Regulatory intervention is required to address these deficiencies.

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

To provide service charge payers with improved transparency and safeguards in respect of the service charges that they pay by making amendments to section 42 of the Landlord and Tenant Act 1987 as amended by section 156 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) – otherwise known as section 42A of the Landlord and Tenant Act 1987 (the 1987 Act) at the same time as other associated measures. This should ensure that any misapplication of the funds is easier to discover which in turn should help to reduce the risk of any fraud.

**What policy options have been considered? Please justify any preferred option.**

1. Do nothing
2. Amend section 42 of the 1987 Act, as amended by s.156 of the 2002 Act (with associated regulations). (preferred option). This option will provide increased transparency and protection in relation to service charge monies but payees will at the same time have a greater degree of flexibility in operating accounts which will help to minimise burdens and costs to service charge payers.

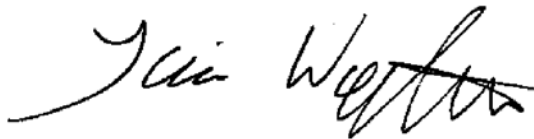
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

10/2012

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

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



**Date:** 6 October 2008

## Summary: Analysis & Evidence

<b>Policy Option: 1</b>	<b>Description: Not implement and repeal section 156</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>Landlords/managers recovering variable service charges in the residential private sector would not need to do anything in addition to what is currently required. No extra costs would be incurred with this option for either landlords/managers or the tenants paying service charges.</p>
	<b>One-off</b> (Transition) <b>Yrs</b>	
	£ None	
	<b>Average Annual Cost</b> (excluding one-off)	
	£ Unchanged	
<b>Total Cost (PV)</b> <b>£</b>		
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p> <p>Continued difficulties would be experienced by tenants in ensuring that their service charge money is being held and used for the correct purposes. Any existing tension between parties would continue.</p>		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>Landlords/managers recovering &amp; holding variable service charges in the residential private sector and the tenants paying those charges will not incur any additional costs.</p>
	<b>One-off</b> <b>Yrs</b>	
	£ None	
	<b>Average Annual Benefit</b> (excluding one-off)	
	£ Unchanged	
<b>Total Benefit (PV)</b> <b>£</b>		
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'</p> <p>None identified.</p>		

### Key Assumptions/Sensitivities/Risks

The current provisions do not ensure that there is transparency about the service charge monies held on behalf of tenants which means that it can be difficult to discover any misappropriation of funds.

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		N/A		
Which organisation(s) will enforce the policy?		Courts		
What is the total annual cost of enforcement for these organisations?		£ See Ev base		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ No change		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease)				
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	



## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Amend and implement section 42A as set out in s.156 of the 2002 Act (with associated regulations).</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The amended proposals should substantially reduce the costs which the consultation paper in 2004 highlighted as arising for landlords/managers recovering variable service charges in the residential private sector from previous proposals, costs that would have been passed onto tenants.</p>
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ See Ev Base		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ See Ev Base		
		<b>Total Cost (PV)</b>	<b>£</b>
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p> <p>Where additional admin burdens (and costs) are incurred by landlords/managers and are passed onto tenants, this could create initial tension between the parties, though any such tension should reduce once the benefits become apparent, and is not expected to be as significant when compared to option 1 (do nothing).</p>			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>None identified.</p>
	<b>One-off</b>	<b>Yrs</b>	
	£ N/A		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ N/A		
		<b>Total Benefit (PV)</b>	<b>£</b>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'</p> <p>The greater transparency that will be provided to service charge payers in relation to how their service charge monies are held, the ability to use more effective sanctions for non-compliance, and the potential for easier detection of fraud if it occurs will provide reassurance, and should lead to fewer disputes.</p>			

**Key Assumptions/Sensitivities/Risks**  
 Assumption that vast majority of landlords/managers will comply creating increased protection & transparency for tenants. Risks – misuse of tenants’ right to withhold service charges until compliance, although this right is considered an effective and reasonable means of ensuring compliance.

<b>Price Base Year</b> 2007	<b>Time Period</b> Years	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	Expected April 2009			
Which organisation(s) will enforce the policy?	Tenants (using rights)			
What is the total annual cost of enforcement for these organisations?	£ 0 (see Ev Base)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ None anticipated			
Will the proposal have a significant impact on competition?	No			
Annual cost (£–£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)
Increase of £	Decrease of £	<b>Net Impact £</b>

Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>
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## Evidence Base (for summary sheets)

### Background to the RIA

The Commonhold and Leasehold Reform Act 2002 (section 156) contains provisions that set out to address the deficiencies highlighted by stakeholders where accounting for service charges are concerned. However, these have not yet been implemented.

Information arising from the previous consultation paper – “Accounting for Leaseholders Monies & summaries of tenants rights and obligations” carried out in June 2004 on these issues has been updated as a result of the latest consultation paper – “A Consultation Paper on Regular Statements of Account and Designated Client Accounts, published in July 2007, where possible. Monetary information has been given where possible, taking account of information obtained from the consultation exercises and from continuing dialogue with stakeholders, though it should be noted that it has been difficult to establish actual costs with any certainty, in particular any additional costs that may be incurred. This is partly due to the nature of the measure and that any additional costs will only become clear on the implementation of the detailed requirements to be specified in regulation (and which formed part of the 2007 consultation), and the extent to which these differ from the current practices of all affected landlords/managers (the payees).

### The problem and reason for government intervention

Tenants can be asked to hand over large sums of money (service charges) to payees for works and services. Whilst existing legislation already requires this money to be held by the payee in trust as a single, or two or more funds, it does not guarantee that service charge payers can easily establish whether that money is being held properly and is being used for the purposes for which it was collected. Tenants raised concerns about the possible fraudulent use of the money which would not be easy to detect under the existing requirements, and they felt that any measures needed to be backed by appropriate sanctions in the event of non-compliance by payees. The majority of respondents to previous consultation exercises also agreed that improvements are needed to the existing level of protection available and to the level of transparency, and the government agrees.

### The objective

We wish to provide increased transparency in relation to service charges monies in order to make it easier for tenants to discover fraudulent activity, and introduce appropriate sanctions where a payee fails to comply with the law. This is part of a

package of measures is aimed at improving transparency for tenants in relation to their service charge monies.

### **Extent of Consultation**

Public consultation took place on this provision in November 1998 and again in August 2000 as part of the Draft Bill and Consultation Paper. An informal discussion paper was then sent to key stakeholders for comment in November 2002 after the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) received Royal Assent in May 2002) and a public consultation exercise took place in June 2004 on the detail of what should be contained in regulations. A further consultation exercise took place in July 2007 following the redevelopment of the original proposals. Included as part of these consultations were:

#### ***Within Government***

The Small Business Service

Local Government Association

London Councils

CLG

#### ***Public consultation***

Public consultation has taken place on each occasion with over 600 stakeholder organisations and individuals. These include:

Association of Residential Managing Agents

Federation of Private Residents Association

The Leasehold Advisory Service

Association of Retirement Housing Managers

Council of Mortgage Lenders

Housing Corporation

Housing Ombudsman

Institute of Chartered Accountants in England and Wales

Association of Chartered Certified Accountants

The Law Society

Royal Institution of Chartered Surveyors

British Property Federation

Financial Services Authority

Chartered Institute of Public Finance and Accountancy

## Campaign for the Abolition of Residential Leasehold

National Housing Federation

Various financial institutions were also consulted, together with other leaseholder representative groups, and tenants associations, and individuals who had responded to previous consultation exercises on similar issues. A number of face to face meetings and discussions have also been held, as well as several visits to stakeholders.

Prior to, during and subsequent to the consultation exercises communication and dialogue has taken place with stakeholders and others affected, including landlords, tenants and managing agents etc. As a result of the extensive stakeholder engagement that has taken place and the comments received, section 156 of the 2002 Act has been redeveloped.

### **Policy Options**

#### **Option 1**

**Do nothing (repeal section 156 of the 2002 Act and not implement amendments to the 1987 Act)**

#### *Economic costs and benefits*

Landlords/Managers (payees) – With no additional requirements being placed upon them their position will remain the same and they will be able to continue with their current regime.

Tenants – Their position would remain the same. They would not have to pay any additional costs, but would not benefit from the additional transparency, protection and sanctions afforded by option 2 below. It would remain difficult for them to establish that their service charges are being held securely and being used correctly.

#### *Enforcement*

The only existing way for a tenant to take formal action against a payee that is failing to hold service charges correctly (where evidence of this is available) would be to instigate court action. Evidence is unavailable as to how many actions have been taken, but it is understood to be very few based on the present legislation.

#### *Exempt organisations*

The existing requirement to hold service charges in trust does not apply to tenants of the following: local authorities, registered social landlords, the housing corporation, fully mutual housing associations, the Broads or a National Park Authority, the commission for New Towns or a Development corporation, a housing trust which is a charity.

### *Other Impacts*

See annex for further details.

#### **Option 2.**

**Amend section 42 of the 1987 Act, as amended by s.156 of the 2002 Act (s.42A of the 1987 Act) – with associated regulations. Preferred option.**

#### *Economic costs and benefits*

Landlords/Managers (payees) – Whilst some payees may be required to open up more accounts to fully comply with this option, removing the requirement that no other funds are held in the account, which this redeveloped option does, allows payees greater flexibility with the separation of service charge funds into separate designated accounts. This means that a number of service charge funds can be held in one account, even if they are unrelated to each other. There will be other safeguards if payees opt to manage the service charges under their control in this way, to ensure that the required level of transparency is provided.

There may of course be some costs incurred for compliance with the new requirements (letters to financial institutions confirming account names and details etc. where not already done), where payees do not already comply. However, we understand from stakeholders that a significant number will already be complying (in the main) with the proposed new requirements as a result of the need to comply with Codes of Management Practice approved by the Secretary of State. Where additional costs are incurred however, these costs are believed to be outweighed by the overall benefits to service charge payers with the greater transparency that should result from this, and the additional rights to take action for non-compliance. Costs should also be kept to a minimum because of the greater flexibility being provided by the redeveloped proposals, in the number of accounts that need to be operated.

Establishing reliable costs have been difficult to come by or quantify in any detail, but information available to us indicates that implementing section 156 of the 2002 Act without the additional amendments to the 1987 Act that have since been identified, would mean that a significant number of accounts would need to be opened (perhaps in excess of 100,000), and that the costs for the work involved to ensure compliance, e.g. identifying the accounts needed, dealing with money laundering issues, setting up the accounts, through to running and reconciling them could cost up to £40m. The information provided is assumed to relate to about 750,000 service charge payers that may be affected. If the assumption is made that there are 1.5m that may be affected, costs for compliance could then amount to £80m.

By further amending the 1987 Act as it will be amended by the 2002 Act (s.156) should therefore bring about the benefits intended by the legislation, but

because of the greater flexibility that it provides this should be achievable at more reasonable cost, particularly since it would appear that many payees are already complying to a greater or lesser degree with this option.

Tenants – They will benefit from the greater degree of protection and transparency being provided for their service charge monies together with sanctions available for non-compliance. Whilst they will be asked to contribute towards any additional compliance costs incurred by the payee, these should be considerably reduced from those that may otherwise be necessary if section 42 of the 1987 Act is amended by s. 156 of the 2002 Act but without the additional amendments to the 1987 Act that have since been identified.

### ***Enforcement***

There are 2 types of enforcement/sanctions that could apply if a payee fails without reasonable excuse to comply with the measures being introduced. The most powerful of these is believed to be the service charge payer's ability to withhold payment of a service charge where the payee fails to hold service charges in the manner designated. This sanction costs nothing to enforce, and is designed to avoid the need for court action where possible. Withholding service charges could in the longer term affect the maintainance of the building, although the charges become payable once the payee complies. The payee will in any case be under a duty to maintain the property under the terms of relevant leases and so should be encouraged more readily to comply with the legislation. Action could otherwise be taken for a summary offence which would be subject to a fine not exceeding level 4 on the standard scale (£2,500). In this case the local housing authority has the power to bring proceedings, or proceedings can be brought by an individual.

### ***Exempt organisations***

The existing requirement to hold service charges in trust does not apply to tenants of: local authorities, registered social landlords, the Housing Corporation, fully mutual housing associations, the Broads or a National Park Authority, the commission for New Towns or a Development corporation, a housing trust which is a charity.

### ***Other Impacts***

See Annex for further information.

### ***Summary: Analysis & Evidence (Annual cost (£-£) per organisation) – explanation***

Whilst payees (landlords or their agents) will incur the costs in the first instance, these will most likely be passed on to service charge payers through their service charges. Establishing a cost per 'organisation' in this instance would prove difficult since this would require additional information about the number of payees (including Resident Management Companies) and the number of flats

they manage affected by the proposal etc. The likely costs would also vary widely in each case. Therefore, because costs will in the main fall to the service charge payer, a better indication may be to extrapolate the possible annual costs on a per flat basis. Consultation on previous proposals indicated that set up costs could be £10 per flat and ongoing costs anything between £5 and £50 per flat.

### 2007 Consultation exercise (amended proposals) – Support and cost information

The amended proposals received a large amount of general support from respondents compared to the original proposals which was either unqualified or accompanied by comments or suggestions about their practical application, as follows:

	Overall support (unqualified & qualified)	No overall support/No Comment	Not supported	<b>Total responses</b>
Individual Leaseholders	9	8	1	18
Property Management Companies	5	1	3	9
Residents' Management Companies	0	4	0	4
Surveyors	1	1	1	3
Accountants	2	1	0	3
Local Authorities & ALMOS ( <b>exempt from provision</b> )	0	19	1	20
Registered Social Landlords ( <b>exempt from provision</b> )*	4	11	1	16
Representative/trade/ other organisations	7	13	1	21
Others	4	1	0	5
<b>Totals</b>	32	59	8	99

\* Some responses were from 'Groups' that comprise or represent more than one housing association and therefore a large number of units (E.g. AnchorTrust – 24,000 sheltered housing units; Whitefriars Housing Group – 17,000 tenancies; Affinity Sutton Group – 50,000 homes; Orbit Group – 27,000 homes).



However little information was provided about any additional costs that could result which may indicate that for many of those respondents any such costs were not considered to be significant. While some costs were provided by a few respondents (3) to this did not elicit any further information that could reasonably be applied on a more general basis to allow us to narrow the costs down further than above, either at organisation or individual level, particularly about any possible additional costs bearing in mind that those payees and tenants affected by this measure will already be incurring some costs as a result of the existing requirements.

For example, one bank is assumed to charge £1k for operating separate accounts for each property managed and each transaction. However, the proposals will allow the funds of more than one property to be held in one account. One managing agent anticipates £50k software costs if virtual accounts are not allowed, yet the provisions will not prevent their use of virtual accounts. One registered social landlord anticipates costs of £2.5k per year, yet these landlords are exempt by legislation from having to comply with this provision.

As mentioned previously, it is believed that this redeveloped proposal should substantially reduce the costs compared with the original 2002 Act proposal, and should not add significantly to the costs already being incurred.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### Specific Impact Tests

#### **Competition Assessment**

We have assessed the impact of the policy options against the Office of Fair Trading checklist criteria and believe that there is unlikely to be a negative competition impact as a result. The provisions will apply to all landlords/managers (payees) that are responsible for collecting variable service charges in respect of private sector residential properties.

#### **Small Firms Impact Test**

The majority of landlords and managers of leasehold properties would be considered small businesses, although there are a few landlords with larger portfolios of leasehold property.

As a result of extensive consultation that has previously taken place with stakeholders in the sector affected, including individual leaseholders and landlords, as well as bodies such as Association of Residential Managing Agents, Association of Retirement Housing Managers, Royal Institution of Chartered Surveyors, Institute of Chartered Accountants in England and Wales, Association of Chartered Certified Accountants, Federation of Private Residents Associations, Campaign for the Abolition of Residential Leasehold, Leasehold Advisory Service, London Councils, Local Government Association, British Property Federation and others, together with ongoing stakeholder engagement, we propose to adapt the measures originally set out in the Commonhold and Leasehold Reform Act 2002. These reflect the concerns raised by stakeholders in respect of the additional costs and burdens that are believed would ensue from the original provisions. This will achieve the overall objectives of improved transparency and safeguards where service charges are concerned.

We have discussed these issues with the Small Business Service who are content with our approach.

#### **Legal Aid**

There are no anticipated legal aid impacts.

#### **Sustainable Development**

The preferred option, which recognises the need for improving tenants' rights, will not have any discernable effect on sustainable development issues.

### **Carbon Assessment**

The preferred option will not have any discernable impact on the sectors or key sources of greenhouse gas emissions. Namely energy, industrial processes, solvents and other product use, agriculture, land-use change and forestry and waste. We do not therefore believe there is a need to undertake a full carbon impact assessment.

### **Other Environment**

The preferred option will not have a serious impact on other environmental issues identified in the environmental impact guidance published by DEFRA. Namely the predicted effects of climate change; a change in the financial costs or the environmental and health impacts of waste management; air quality; the appearance of the landscape or townscape; the degree of water pollution; levels of abstraction of water; exposure to flood risk; disturb or enhance habitat or wildlife; or affect the number of people exposed to noise or the levels to which they are exposed.

### **Health Impact Assessment**

Whilst the preferred option appears to have no direct impact on the health of those it is designed to benefit (service charge payers), the additional transparency and protection provided should help mitigate any worry or concern that may currently exist by providing an additional level of comfort and clarity in the way service charges are held. It will also allow a clear course of action to be taken where non-compliance or fraud is detected, at no cost to the tenant. Those required to comply with the measure (payees) who may have to carry out some extra work to do so because they may not already comply, may initially adopt a negative approach to it. However, the longer term effects should benefit all those affected, particularly the tenants, by creating greater certainty and a better level of transparency, leading to greater cohesion and understanding.

### **Race Equality**

Where racial groups are affected by the preferred option they will be affected equally. There is no evidence to indicate that any particular racial group will be affected differently from any other, that it will affect relations between racial groups, or that any one racial group will be unlawfully discriminated against either directly or indirectly. All those affected will also have the same expectations.

### **Disability Equality**

The preferred option will not have any specific impact in relation to disability equality.

### **Gender Equality**

The preferred option will apply to and affect those women and men that it applies to equally, and will not affect either gender differently or disproportionately.

### **Human Rights**

The preferred option will not engage or affect anyone's Convention rights.

### **Rural Proofing**

The preferred option will not have a different or disadvantageous impact on anyone in rural areas that will be affected by it. It will apply to everyone in exactly the same way, including those in urban areas.