

EXPLANATORY MEMORANDUM TO
THE HOUSING AND REGENERATION ACT 2008 (CONSEQUENTIAL PROVISIONS)
ORDER 2008

2008 No. 3002

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This Order makes amendments and modifications to, and repeals of, certain provisions in primary legislation that make reference to the Urban Regeneration Agency, the Commission for the New Towns, English Partnerships (the name of organisation formed from the administrative merger of the Urban Regeneration Agency and the Commission for the New Towns) and the Housing Corporation. These amendments, modifications and repeals are consequential on the coming into force of provisions of the Housing and Regeneration Act 2008 (“the 2008 Act”) related to the establishment of the Homes and Communities Agency. The amendments, modifications and repeals are subject to transitional and savings provisions.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Order is the first use of the powers in section 321(2) and (3) of the 2008 Act (consequential amendments and repeals).

4. **Legislative Background**

4.1 This Order is made under sections 320 and 321 of the 2008 Act and provides that existing primary legislation is updated to reflect the position following the commencement of certain provisions of the 2008 Act, principally the establishment of the Homes and Communities Agency.

4.2 The provisions contained in this Order make changes to reflect the functions of the Homes and Communities Agency in England, including where it inherits functions from the Commission for the New Towns. (In Wales, the Welsh Ministers who also inherit the functions of the Commission for the New Towns as respects Wales.)

4.3 This Order is closely related to further orders which are shortly to be made. The first, also made under section 321 of the 2008 Act, amends secondary legislation, and is also consequential on the commencement of certain provisions of Part 1 of the 2008 Act. The second is an order under section 67 of the 2008 Act, transferring certain existing functions of the Housing Corporation to the Homes and Communities Agency (functions related to investment) and to the Regulator of Social Housing (those related to regulation).

4.4 Most of the provisions of the Order will take effect at the same time as the commencement of the relevant provisions of the second commencement order to be made in relation to the 2008 Act. The date on which that commencement order brings the relevant provisions of the 2008 Act into effect is intended to be 1st December 2008. (The first commencement order for the 2008 Act was made on 2 September 2008 (S.I. 2008/2358).) There are a couple of consequential amendments (listed in article 1(3) of the Order) which are consequential on the abolition of the

Urban Regeneration Agency. The Order provides for them to come into force on the same day as the abolition of that body.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales, except the amendment of section 16 of the Consumer Credit Act 1974, which also extends to Northern Ireland.

6. European Convention on Human Rights

The Minister for Housing has made the following statement regarding Human Rights:

In my view the provisions of the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 Following a housing and regeneration review in 2006¹ the Government decided to create a new national agency for the purpose of meeting the housing and regeneration needs of England and a new regulatory body for social housing in England².

7.2 In June 2007 a consultation paper was issued³ which sought views on the roles and responsibilities of the new bodies. In January 2008 a response to this consultation exercise was published⁴. There were 187 responses to this consultation exercise and, whilst not every respondent answered every question, the creation of a new agency was generally supported.

7.3 These new bodies are called the Homes and Communities Agency and the Regulator of Social Housing. With effect from 8 September both of these bodies came into existence⁵.

7.4 The Homes and Communities Agency has been established so as to combine the delivery of both housing and regeneration. The policy objective is that the Homes and Communities Agency will bring together, in one place, the regeneration functions of English Partnerships, housing investment functions from the Housing Corporation, and some related work carried out by the Department for Communities and Local Government.

8. Impact

8.1 As part of the Parliamentary passage of the 2008 Act an impact assessment was published for the creation of the new agency. The impact assessment is attached below.

9. Contact

Andrew Lynch at the Department for Communities and Local Government
Tel: 0207 944 8076 or e-mail: Andrew.lynch@communities.gov.uk can answer any queries regarding the instrument.

¹ <http://www.communities.gov.uk/news/corporate/governmentextendshousing>

² <http://www.communities.gov.uk/news/corporate/pioneeringagency>

³ <http://www.communities.gov.uk/documents/housing/pdf/322429.pdf>

⁴ <http://www.communities.gov.uk/publications/housing/communitiesenglandresponses>

⁵ http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080014_en.pdf

Summary: Intervention & Options

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

Available to view or download at:

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

Contact for enquiries: Dionne Campbell-Mark

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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:

Iain Wright.....Date: 6th October 2008

Summary: Analysis & Evidence

Policy Option:
Modernise structures

Description: This option covers the 'do nothing' rationale i.e. continue modernising structures

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs will continue as if business continued as normal.
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups' the bodies not being able to meet house building targets if.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits 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.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0		Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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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

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Kev: Annual costs and benefits: Constant Prices

Summary: Analysis & Evidence

**Policy Option: Est
Homes &
Communities Agency**

Description: Establishing the Homes and C

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The one off cost of £20m does not include establishing the new Regulator. It does include consultancy, IT & temporary staff costs, communications work, redundancy and re-hire payments, and a contingency fund. Average annual costs will run from 2009 and are appx at this time (staffing levels & accomodation costs etc TBC).
	One-off (Transition)	Yrs	
	£ 20m	3	
	Average Annual Cost (excluding one-off)		
	£ 17m p.a apx		Total Cost (PV) £ 22.1m
Other key non-monetised costs by 'main affected groups' Business as usual - day to day operations need to be maintained whilst in this period of transition.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The average annual benefit anticipated for the period 2007/8 to 2013/14 (7years) for programme efficiency savings is [07/8=£0m, 08/9=8m,09/10=124m,10/11=167m, 11/12=236m,12/13=344,13/14=477]. From 2010/11 to 13/14, there is also £3million per annum administations savings.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 193.7m. pa		Total Benefit (PV) £ 1,168m
Other key non-monetised benefits by 'main affected groups' include more streamlined working, simpler delivery chains, a more srategic approach to operations, a single identity of a national housing and regeneration agency, harnessing scarce skills 'under one roof', and increased negotiating leverage.			

Key Assumptions/Sensitivities/Risks Assumptions - the creation of the new agency will not be delayed. Risks include - loss of key staff, transitional change to structures, governance drift and the failure to establish a Regulator for social housing.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 854-1,700m	NET BENEFIT (NPV Best estimate) £ 1,146million
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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

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 12m/4yrs	Net Impact £

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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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 resources⁶. 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 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;

⁶ 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 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>

- 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 £2.5-£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 2008⁷ 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.

In addition, all Government Agencies are subject to Cabinet Office⁸ guidance and HM Treasury provides a code of practice⁹ 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

⁷ The Housing & Regeneration Act 2008 is available to download at:

http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080017_en.pdf

⁸ Cabinet Office guidance on the creation of non departmental bodies can be found at:

<http://www.civilservice.gov.uk/about/public/bodies.asp>

⁹ 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

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 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 UK's 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 greenhouse 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

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	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
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

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 amore 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