



The Cave Review

Of Social Housing Regulation

EVERY TENANT MATTERS:

A review of social housing regulation

June 2007

Professor Martin Cave

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The findings of this report are those of the independent author and do not reflect the views or policies of the Department for Communities and Local Government.

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FOREWORD BY THE SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT

Housing goes to the heart of society's fundamental needs and values. Decent, well-designed homes are the building blocks of our communities.

Since 1997, this Government has made great strides in tackling the legacy of decades of neglect. We have created the economic stability and high employment that have helped 1.8m become homeowners for the first time. We have cut rough sleeping by two thirds. We have put in massive investment of some £20bn to bring hundreds of thousands of homes up to a decent standard.

Building on that progress is a major priority for me.

Thanks, in part, to how far we have come, the challenges of 2007 are very different from those of 1997.

First, today first-time buyers can sometimes struggle to get what they need at a price they can afford. It's vital to help them get a first foot on the ladder.

Second, we are more than ever conscious of the challenge of climate change. With housing responsible for over a quarter of national carbon emissions, it is imperative to make our homes greener.

Third, and crucially, in a period of great change we need to think about how social housing can continue to meet its goals in the twenty-first century: how it can continue to deliver both security and opportunity for the nearly 4 million households to whom it is vital.

Professor John Hills' independent report, published earlier this year, argued – and I agree – that the principles behind social housing remain sound.

But he also made the case that social housing must be a more effective platform for social mobility, helping people get on in life, and play an active part in their community and wider society.

The report has started a vital debate across Government and the housing sector.

Professor Martin Cave's report is the next crucial step in this debate.

In the 30 years since the current system of social housing regulation was introduced, society has changed beyond recognition, and so has the landscape of social housing and tenants' expectations. Levels of satisfaction with social housing are relatively high, compared to other public services. In recent years, however, they have started to fall – and people have come to expect greater influence over the services they receive.

In the face of these changes, the current regulatory system is not flexible or transparent enough.

In the twenty-first century we need a regulatory system that enables social housing to respond more effectively to people's changing needs. That gives tenants more opportunity to have their say, and demand action on the issues that matter to them. And that ensures Government gets the most out of its investment.

That is why I asked Martin Cave to carry out his independent review. He has approached the task with acuity and insight. His report stresses the need for radical change, and makes clear recommendations to Government on the role and identity of the new regulator.

I welcome this report and will move quickly to consult on its principal recommendations. I believe this is a real opportunity. The current regulatory system has endured for thirty years: the decisions we take now must ensure an effective approach that helps give social tenants the service they deserve for a generation to come.

Ruth Kelly MP
Secretary of State for Communities and Local Government

PREFACE

The system of regulation of social housing was established over thirty years ago. It is therefore timely to review it in a comprehensive way, and this is what the Secretary of State asked me to do. This report contains my conclusions and recommendations.

Over the last five months, the review team has received an enormous amount of help from all parties involved in social housing, as providers, regulators and consumers. Over one hundred organisations responded to our call for evidence. Without this support from key stakeholders, and the many good ideas which were put forward, our task would have been difficult or impossible. Our special thanks go to those tenant organisations and individual tenants who took time to offer us help.

The review has very much been a team effort. I have been assisted by Rod Ainsworth, Julian Ashby, Andrew Dench and Roger Jarman, each of whom brought his great knowledge and experience of the sector to the review. Julian Ashby also took on much of the arduous drafting of the main report.

The review was also ably assisted by a team within Communities and Local Government, and received much advice and assistance from officials in CLG, other government departments and the existing regulators. The review was particularly assisted by the following CLG staff – Nazma Begum, Elizabeth Knapp, Emma Preece, Liam Sage and Annemarie Ward – who provided the review with invaluable administrative and organisational support. We also received support and advice from an external advisory group whose membership is noted at Annex 3.

Martin Cave
Warwick Business School

June 2007

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EXECUTIVE SUMMARY

I PRELIMINARIES

In December 2006, the Secretary of State for Communities and Local Government (CLG) commissioned Martin Cave to conduct a review of the regulation of social housing – in particular to establish objectives for social housing regulation and propose a system of regulation, and an institutional framework, capable of achieving those objectives.

The review received over one hundred submissions of evidence and met all relevant stake holders. Particular attention was paid to the views of tenants¹. The review's conclusions and recommendations are summarised here.

Social housing

Social housing organisations provide affordable housing to those whose needs are not met by the market. This includes low cost ownership schemes. For the purposes of the review, it excludes accommodation provided by private sector landlords to local authorities to meet temporary accommodation needs, services provided under Supporting People contracts, and the non landlord functions of local authorities which relate to housing, including their strategic housing role, the provision of homelessness services, and their role in relation to private sector housing.

Four million homes are covered by the review, housing 8.4 million people. There are four categories of provider

- local authorities as owners and managers of social housing (32% of the total)
- arms length management organisations (ALMOs) of local authorities (20%)
- housing associations (48%); which has grown significantly as a proportion of the social housing stock since 1988 with the advent of large scale voluntary transfers
- unregistered bodies including for-profit providers, which since 2004 have been allowed to apply for grant to provide social housing (0% of ownership to date, but for-profit organisations undertake some management).²

A recent review of social housing undertaken by John Hills for the Secretary of State for CLG (the 'Hills Report'), contains a comprehensive analysis of the 'ends and means' of social housing.³ (See Annex 7 for an account of the interrelationship between this report and the Hills Report.)

¹ Throughout the report, the term 'tenant' is used, rather than the range of possible variants, to refer to those who pay for and receive housing services from the range of providers under consideration, except where the sense requires the use of other specific terms such as leaseholder.

² Source: Regulatory and Statistical Return, Housing Corporation, March 2006; Housing Strategy Statistical Appendix, CLG March 2006.

³ John Hills Ends and Means; the future roles of social housing in England, Centre for the Analysis of Social Exclusion (CASE), London School of Economics 2007.

The current system of regulation

Social housing is currently regulated in a variety of ways, some common to all providers, some specific to a particular sector.⁴ In brief, local authority housing is regulated by CLG, in the sense that the latter sets financial and other rules and can penalise failure. ALMOs manage stock under contract from local authorities, which own the stock and monitor the ALMO. Housing associations are registered and regulated by the Housing Corporation, which also allocates public investment funds to housing associations and for-profit developers. This grant funding combined with private loans raised in financial markets (currently in the ratio of £1 of public money for £2 of private finance) permits about 30,000 additional new homes to be built or acquired every year.

Since 2004, private sector organisations have been able to compete for public funding to develop social housing. They are subject to an accreditation scheme operated by the Housing Corporation and sign contracts with the latter which govern the supply of services. So far they have opted to transfer ownership and management functions to housing associations. This may be due to the complexity of the contract for ownership and management, which replicates many of the provisions of the current complex regulatory regime.

In addition to the above form of regulation, local authorities, ALMOs and housing associations are subject to inspection by the Audit Commission. Satisfactory inspection results are a pre-requisite for the supply of funds for investment in Decent Homes for ALMOs and for development funds for housing associations. The choice of which providers to inspect is made by the Audit Commission following advice from other parties.

Is regulation of social housing necessary?

The justification for regulation needs to be periodically reviewed and updated. Clearly, subsidised housing can be provided in ways which minimise the need for regulation – for example by providing financial subsidies to households and allowing them to be spent in a largely unregulated private housing market. But such a major policy change is not recommended by Hills and there are no other indications that it is likely. The question of regulation must therefore be addressed in contexts which include the provision of social housing at affordable rents, below market prices.

This creates a system in which tenants cannot switch and are put at risk of poor treatment by providers, which face limited pressures to offer good service and choice, or even to operate efficiently. Not that all providers will behave in this way. But when they do, the error will not be self-correcting, as it is in other market contexts. This is not a standard market failure but a consequence of the objective of delivering housing at affordable rather than market prices. It does, however, make a strong case for regulation to protect tenants.

⁴ In keeping with industry practice, the overall domain of social housing is broken down into the four sectors (types of provider) identified above.

Secondly, because housing determines the wider quality of life in a neighbourhood, it has effects on communities as well as individuals. The Hills report rightly emphasises the broader consequence of the marginalisation of social housing. Both the composition, quality and occupancy of housing stock and the related security, environmental and other characteristics of that stock can have a profound influence upon a locality. Good and bad housing services thus permeate widely, creating beneficial or detrimental external effects. This is one of the reasons for setting rents below market prices – the other principal one being equity for those on low incomes. In addition, certain services which might be seen as ancillary to housing, and are supplied by some social housing providers, relating for example to education or help with employability, have similar ‘spill-over’ effects on communities. It might be appropriate in some cases to deal with these effects by regulation. In other cases more direct responses, including subsidisation of ancillary services, should be employed.

Thirdly, taxpayers have an interest in ensuring that their investments in the supply of social housing (cumulatively, more than £100bn) continue to generate satisfactory returns in the public interest. Regulation can help to secure this outcome.

Current regulation

The current regulatory system has delivered many benefits but also has acknowledged shortcomings. The key ones can be listed as follows:

- inadequate concern for tenant interests
- over-regulation of some providers and excessive administrative burdens
- inadequate separation of policy and regulation (leading to the unacknowledged implementation of policy by regulation)
- poor incentives for efficiency
- failure fully to utilise available capacity to expand provision in the housing association and private sectors

The objectives of regulation

Based on the above analysis, the review has identified three principal objectives for the regulation of social housing:

- to ensure continued provision of high quality social housing
- to empower and protect tenants
- to expand the availability of choice of provider at all levels in the provision of social housing

The review has also adopted two principles underlying the design of the regulatory system:

- to achieve the above objectives with a minimum degree of intervention
- to apply the same approach, where possible, across all providers of social housing

The former principle is now the accepted standard of better regulation. The latter flows mainly from the focus on tenants, who are more interested in the service than in the nature or status of the provider. The current ‘silo’ approach of separate regulation of each sector generates systematically unequal outcomes for tenants, rather than the best available for all. A more consistent and uniform approach is therefore desirable, which puts providers on a level regulatory playing field and identifies which best meet tenants’ needs. As a corollary, tenants should benefit from having services provided by the type of organisation best able to provide them. Regulating all types of provider in broadly the same way avoids a situation in which relative performance is influenced by regulation and incorrect inferences are drawn about which method of supply is to be preferred.

The consequence of focussing on tenants

The key structural feature of the provision of social housing – that demand exceeds supply – makes it doubly important to enhance tenants’ power and ensure their protection. The review received evidence that tenants attach the greatest importance to getting basic housing services right, but also welcome a broader range of services when that goal has been achieved. Whereas housing services appropriately defined require regulation, many additional services (such as educational or training services), which may be welcomed by tenants and which landlords may wish to supply, can be provided by a variety of public, private or voluntary organisations, and for that reason do not require regulation to prevent abuses of market power. The review generally recommends that they are not included in the regulatory system.

Choices available to tenants can be either individual or collective. As examples of the former, tenants can be given a choice over decorative schemes, or can choose tiers of service levels for particular services. Other choices have to be made collectively. Examples are several dimensions of security, such as warden patrols, and the choice of housing manager. This last might involve a decision by the tenants to manage stock themselves, via a tenant management organisation.

The review has identified a wide range of ways of granting tenants more power and wider choice. None of them on its own seems capable of eliminating the current imbalance in bargaining power between provider and tenant. Accordingly, the review identifies, and seeks to facilitate, a wide array of instruments, some or all of which can be used to meet the circumstances of individual cases.

The need for an independent regulator

At present, different providers of social housing are supervised in different ways – by CLG, by local authorities, the Housing Corporation and the Audit Commission, using either regulatory or inspection powers or a combination of accreditation and contractual relationships. The Housing Corporation and Audit Commission are non-departmental public bodies set up by statute. Their boards are appointed by the Government.

It would be possible to make CLG the regulator for all providers of social housing. But this would have serious disadvantages:

- it would needlessly ‘politicise’ a range of ‘technical’ implementing decisions
- it would add to regulatory risk as perceived by lenders
- it would cast doubt on the current ‘private sector’ classification of housing associations

Accordingly, regulation is best accomplished by an independent regulatory body, created by statute. The regulator should be assigned duties – for example, the objectives noted above – and given powers to collect information and enforce its decisions. It should have a Board of executive and non-executive directors, appointed by the Secretary of State, as other independent regulators do.

Alternative approaches to the regulation of social housing

The review considered a range of generic approaches to the design of the regulation of social housing. In broad terms, these were:

- deregulation, or the removal of restrictions on providers; but this approach places tenants in jeopardy of abuse by providers and is unacceptable
- self-regulation, or the reliance on codes of practices, voluntary benchmarking etc. by providers themselves; under this approach, providers may show insufficient vigour in investigating and eliminating their own short-comings and those of their colleagues
- co-regulation, or reliance on self-regulation subject to a ‘backbone’ of intervention by the regulator on a ‘by exception’ basis
- re-regulation, interpreted here to mean the refinement and strengthening of the current interventionist approach required of the Housing Corporation (in respect of housing associations) under current law, in the direction of a more rigorous use of the tools of comparative competition, as practised, for example, in the water industry

The review concluded that no single approach was capable of dealing with the regulatory problem of social housing. There should instead be a combined approach based on:

- eliminating unnecessary regulation
- encouraging co-operative activities by providers, such as voluntary benchmarking
- having providers supply data to the regulator, which can investigate further following a risk-based analysis, and then apply a graduated scale of regulatory interventions
- maintaining a quick response capability to deal with emergency situations, where tenants are at serious risk or if a provider is financially endangered

This corresponds most closely, but not precisely, to co-regulation. The review's proposals for how it should work are now summarised.

II THE PROPOSED SYSTEM OF REGULATION

As noted above, an independent social housing regulator ("the regulator") should be established by statute, with specified duties and powers relating to the ownership and management of social housing.

Relations with government

The regulator would interact with policy-makers on national and local levels as follows:

A. National Government

The Secretary of State would have powers to direct the regulator in two key areas:

- *standards of social housing*; in the light of tax-payers' contributions to the provision of social housing, the Government is entitled to set strategic directions for housing standards, on the basis of which the regulator would define both the physical standard of accommodation, and (where appropriate) services ancillary to housing, such as standards flowing from the Respect agenda;⁵ it would also be for the regulator to fix detailed timescales for providers to meet the standards, subject to the overall target;
- *the overall level of rents*; with over 60% of social housing rents paid from Housing Benefit, the Government has a legitimate interest in the overall level of rents; it would therefore set an overall strategy for rents – an example of which is the rent restructuring strategy now being implemented; the regulator would then turn the strategy into regulations imposed on housing providers; these might, for example, specify limits on the annual increase in individual rents.

⁵ The Respect programme is a cross-governmental and wide-ranging response to anti-social behaviour and its causes.

The regulator would consult over the implementation of the Secretary of State's directions and have a duty to inform her if it considered them to be infeasible.

B. Local Government

Local authorities will have a greater responsibility under forthcoming legislation for place shaping – ie bringing together the public sector, and relevant parts of the private and voluntary sectors, to promote well being in local communities. As housing plays a major role in establishing the welfare of communities, local authorities will have a keen interest in all social housing providers.

The regulator should therefore have the power to require social housing providers, as a condition of registration, to engage constructively and co-operate with local authorities. This does not place local authorities in either a regulatory or a super-ordinate role in relation to social housing providers, but supports the local authority's leadership role.

By the same token, providers are accountable to local authorities, as well as to other stakeholders, such as tenants. In order to promote accountability, providers will be required to supply information to the regulator in a form disaggregated by local authority area, subject to a materiality threshold. This will include data on tenant satisfaction and other performance indicators, which will be published. The regulator should also be under an obligation, subject to resource constraints, to investigate and respond to appropriately documented local authority complaints about social housing providers.

The basic strategy for regulating providers

In outline, the review envisages that providers will annually furnish data in a form determined by the regulator after consultation with stakeholders on:

- level of tenant satisfaction, tenant involvement and choice
- the standard of housing and service provided
- financial projections (for housing associations only)
- average operating costs
- rents

Providers will require most of these data for their own management purposes. In the case of local authorities, the data requirements will be made conformable with the overall performance management regime for such bodies.

The regulator will analyse the data, together with other information available to it, including complaints. Priority will be accorded to documented complaints from two sources:

- representative or organised tenant groups
- local authorities, acting in their strategic capacity

If the data show good performance and there are no contra-indications, the regulator will forbear from further intervention.⁶ While the regulator will focus on poor performance and serious complaints, performance that is merely satisfactory will continue to attract attention. The review envisages that, after a period of transition, the majority of providers will be good performers and experience significantly reduced levels of regulation.

When cause for concern is found, the regulator will seek further information and, where appropriate, institute a graduated series of actions, the nature of which will depend on the circumstances. This can culminate, in extreme cases, in a requirement to change the management of the stock and, in the case of some providers, a power exercised by the Secretary of State or the regulator to take control of the assets.

The statute will lay down the duties of the regulator (including the duty of forbearance), the nature of its information gathering powers, and its powers of enforcement or sanction (which are subject to appeal by judicial review or to a tribunal as set out in the Tribunals, Courts and Enforcement Bill).

The regulator will determine its own *modus operandi* within these constraints. But the review has identified a means of disaggregating the regulatory duties it has identified into a practical scheme of regulation which illustrates possible application of the powers in more detail. This is described in the next three sections.

Achieving the objective of ensuring the continuing provision of high quality social housing

The definition of a ‘*housing standard*’ is subject to direction by the Secretary of State. This includes basics such as the quality of the accommodation provided, completion of repairs, affording security to tenants and dealing with complaints. In certain contexts, particularly where social housing is concentrated in estates or neighbourhoods this will extend to services ancillary to housing relating to community safety and the broader environment. Our conception of standards has been historically determined, and can change over time; it may in the future extend more widely, to cover problems such as social and financial exclusion and help with employability.

⁶ Except that, in order to become fully acquainted with and to spread good practice, the regulator may investigate or inspect certain high-performing providers.

Regulation will also support the *supply of new homes*. Funds for development will be available from Communities England. The regulator will not be involved in their disbursement, except to the extent that it can veto the granting of funds to suppliers which are derelict in their performance. The review favours both (generally unregulated) competition for such funds from all sorts of developers, and opportunities for different types of organisations (which may or may not be the same as the developer) to take on ownership of the stock, and finally opportunities for a range of organisations to manage it.

At present the regulated roles of owner and manager can be undertaken by four types of provider (local authorities, ALMOs, housing associations and for-profit companies). These functions can be discharged under a regulatory regime (following registration) or by means of a contract which details legally enforceable rights and responsibilities over the expected life time of the asset.

The objective of expanding the supply of social housing is promoted by the diversity of organisations engaged in ownership and management, and the proposed regulatory regime allows such alternative providers to compete on level terms.

Regulatory certainty and the ability of the regulator to intervene decisively in case of financial difficulties is essential to ensure a continuous supply of low cost private finance. Both the supply of new homes and benefits to existing tenants are enhanced by *efficient management*. The regulator can promote this by encouraging the use of benchmarking and requiring high level cost information that would be submitted by all providers in a form which, over time, would become consistent and comparable.

The regulator will have powers to enforce housing standards and improvements in management in the interest of tenants (see below) and to ensure that housing association surpluses are used to benefit existing tenants or expand the supply of new homes.

The regulator must also ensure that public investment provides continuing benefits. This requires, *inter alia*, control over disposals of housing funded by public subsidy. Such controls should be reconstructed in a way which will assist the active management of stock, where it is pursued for such purposes as the encouragement of mixed communities of social and market housing. Providers would be enabled to rotate their stock in order to pursue this objective.

Achieving the objective of empowering and protecting tenants

The key to this is *strengthening consumer empowerment and choice* in circumstances where demand for social housing exceeds supply. This is the major motive underlying the design of the overall regulatory process.

Tenants can exercise more choice in a variety of ways, **all** of which the regulator should promote. These include:

- choices over where they live
- choices over how services are provided

- choices over different types of service, at different prices
- choices of over how to progress to ownership
- choices over the management organisation

To enhance tenants' power, it is necessary that tenant organisations have access to information supplied to the regulator by their provider. Tenants should also have the ability to trigger investigations and – subsequently, and where appropriate – enforcement action by the regulator, when their complaints are representative and documented.

The review also proposes the creation of a national tenant voice to be an advocate for tenants in national debates and undertake dialogue with the government, regulators and providers' representative bodies, on more equal terms.

Secondly, *tenant protection* should be extended by a review of current tenancy agreements, which should permit variation in levels of service from which tenants should be able to choose. This choice should also extend to choice of tenure, as the Hills report recommends, provided that existing tenants' rights are in no way abridged.

Ombudsman services should also be unified across the social housing sector, and the Housing Ombudsman Service's existing focus on dispute resolution should be retained.

The regulator should also ensure that vulnerable groups are particularly protected and that minority groups are not subject to discrimination.

The review proposes that *rents* be regulated within the terms of a direction issued by the Secretary of State. The regulator would implement the direction by imposing requirements on providers, such as a control on average rents, or a maximum percentage increase on any rent. Within this, a tolerance of 5% around the 'target rent' might be allowed. In some areas, where social and private rents converge, deregulation of rents might be appropriate. There would also be a degree of regulatory involvement in the setting of service charges.

Under the Housing Revenue Account (HRA) regime for local authorities, there is a subsidy element, whereby authorities cross-subsidise one another and are subsidised by the government. If local authorities were to come out of this subsidy system, and become self-financing, the regulator could take over responsibility for the financial monitoring of local authorities' and ALMOs' housing services.

Achieving the objective of expanding the availability of choice of provider at all levels in the provision of social housing

The value chain for the provision of social housing consists of components which require regulation in varying degrees. As with other industries, there is scope for improving effectiveness by 'unbundling' – i.e. having the various activities performed by different organisations.

Development – an activity which will be controlled by Communities England – requires little conventional regulation; ordinary commercial processes of qualification and competitive tendering will prevail instead.

The regulator should promote different forms of *ownership*, by existing bodies – local authorities, ALMOs, housing associations and for-profit organisations, and by new types of provider. For example, an ALMO might be transferred to collective ownership and then set up a subsidiary in the private sector and lever in private finance to support development. A housing association could set up a subsidiary which could own new stock on a contractual, rather than a regulatory basis. (This is quite a separate issue from allowing existing stock held by housing associations to be converted to a for-profit and contractual ownership regime, which the review does not recommend.) Provided that there is no built-in advantage for any one organisational form, such competition should only benefit tenants.

Diversity of provision could be particularly vibrant and beneficial for tenants in relation to the *management* of social housing. Owners could contract management to other providers, or to specialised public or private sector management firms. Tenants living in relative isolation from their provider's main holdings could benefit from having their housing managed by a body with a larger local presence. In extreme cases, as suggested below, management of stock where tenants are persistently neglected or receive a persistently poor level of service could be re-tendered on a mandatory basis.

The previous section has also noted the scope for increasing choice for tenants through schemes such as choice-based letting, tiering of services, etc.

The regulator's information and enforcement powers

The statute should enable the regulator to require information from providers (and exempt where appropriate) and publish information. Such requests should be limited to information which is necessary for and used in the performance of the regulator's statutory duties and the minimum that is sufficient to support a risk based approach to regulation. In the case of information supplied by local authority housing providers, the information requirement should be conformable with the performance management regime for such organisations.

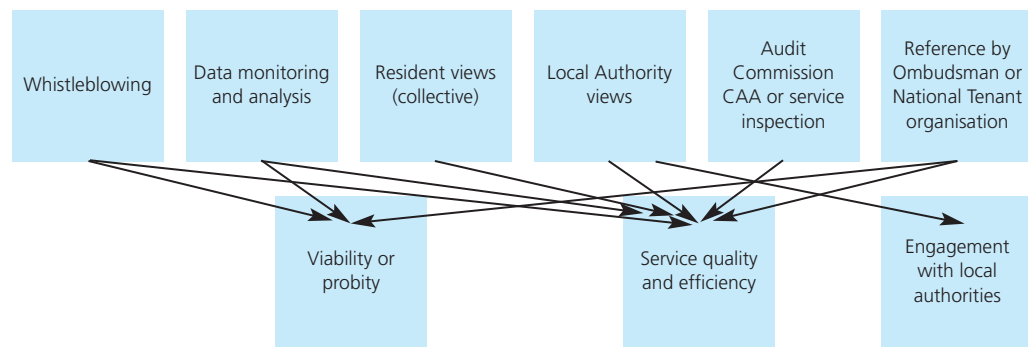
In response to information received from the providers and other sources, the regulator will be able to implement a graduated series of remedial and enforcement actions. These would be designed to meet the conditions set out in the Macrory Report⁷ and would conform with any relevant legislation.

The range of intervention and enforcement measures envisaged is set out below.

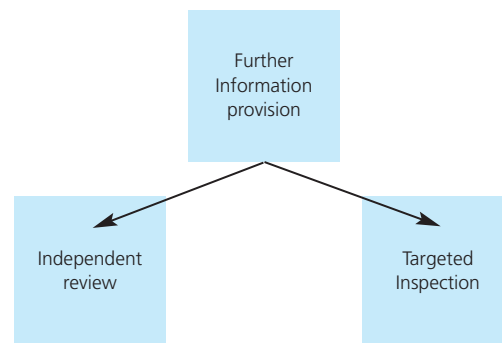
⁷ "Regulatory Justice: making sanctions effective", Prof RB Macrory, Better Regulation Executive, November 2006.

Range of intervention and enforcement measures

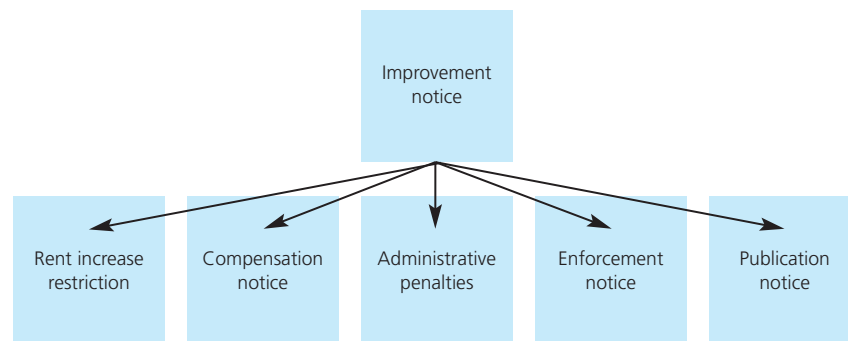
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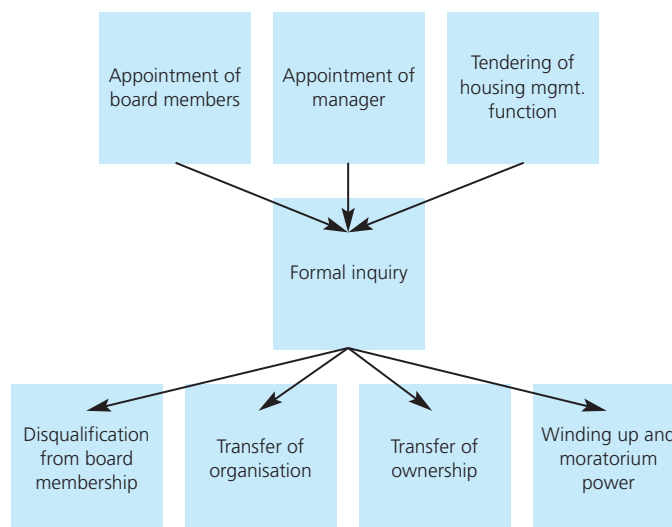
Investigatory Powers



Remedial Measures



Enforcement Measures



Notes:

At each stage, the primary intervention should be by the Governing Body or owner, with the measure applied by the regulator in default

Not all measures will be appropriate or capable of being applied to all forms of provider

Penalties and sanctions would be appealable, either via judicial review, or if the Macrony recommendation is implemented, to a tribunal such as that proposed in the Tribunal, Courts and Enforcement Bill.

III THE ORGANISATIONAL ARRANGEMENTS FOR REGULATION

The scheme of regulation proposed above is quite different from the current one, thus necessitating a review from scratch of the organisational framework of regulation.

At present two bodies are principally involved – the Housing Corporation, which regulates housing associations, and the Audit Commission which inspects local authority, ALMO and housing association housing services. The two activities are co-ordinated but not jointly controlled. The review proposes that they should both be controlled by the regulator, which could sub-contract particular tasks, including inspection.

The review has considered the options of

- i) assigning regulation to Communities England, the body to be created by the merger of the Housing Corporation and English Partnerships
- ii) making the Audit Commission the regulator
- iii) creating a new independent social housing regulator

The review has concluded that the first option is not viable because of the conflict of interest created between an investment body and a regulator covering all providers of social housing, not all of which are capable in practice of undertaking development. A further conflict arises from the danger of the social housing investment programme dominating the agenda to the detriment of regulation.

The review regards the Audit Commission as capable of undertaking the regulatory role; but it has limited experience of housing regulation beyond what is involved in inspection; has little previous contact with for-profit providers (other than as a purchaser of services) and has little support from stakeholders.

On balance, the review therefore favours the creation by statute of an independent social housing regulator, consisting of a small number of executive and non-executive board members, with a non-executive chair and majority, to which regulation should be entrusted. Such a newly-created body would be able to make a fresh start at implementing a new approach. It would also be wholly focussed on social housing regulation.

The Government should also establish and fund a national tenant voice, probably as part of the National Consumer Council (NCC) to express tenants' interests nationally.

A single Ombudsman service for social housing should be established in place of the existing combination of one for housing association tenants and one for local authority and ALMO tenants.

RECOMMENDATIONS

Recommendations to the Secretary of State⁸

S1. 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.

S2. The regulator should have three principal duties:

- To ensure the continuing provision of high quality social housing
- To empower and protect tenants; and
- To expand the availability of choice of provider at all levels of the provision of social housing

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

S3. The regulator should:

- apply common principles, where practicable, across the whole social housing domain and
- reduce and manage the burden of regulation

S4. 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.

S5. The regulator should maintain and update a clear statement of provider obligations.

S6. 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.

⁸ The recommendations which follow are divided between those directed to the Secretary of State, relating largely to the nature of the proposed legislation, and those directed to the proposed regulatory body, in relation to its implementation of its regulatory duties. The boundary between the two categories will clearly depend on the details of the legislation.

- S7. The regulator will implement a framework for the ownership and management of social housing, where the provider is registered. Where long term ownership and management arrangements are integrated into supply contracts (where grant is provided), the regulator must satisfy itself that the contract terms are in the long-term interests of tenants. This will require contract terms to provide for a degree of flexibility to take account of changes in standards.
- S8. Restrictions on disposals and changes of use should be reviewed and relaxed in order to allow providers more easily to manage their stock in the pursuit of objectives such as mixed communities. Some regulation should remain to ensure the continued supply of benefits from past public investment. These powers should be exercised by the regulator over the whole domain.
- S9. 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.
- S10. The regulator should have a duty to promote ways in which tenants can be empowered and have more choices.
- S11. The voluntary process for tenant management 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.
- S12. A national tenant voice should be established to give tenants both a voice and expertise at national level.
- S13. 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.
- S14. 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 increases in individual rents to protect tenants.
- S15. 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.
- S16. The regulator should retain merger approval powers but these should be exercised solely on grounds of consumer protection and competition.
- S17. 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'.

- S18. 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
- S19. The statutory powers covering remedial and enforcement measures should give regulated bodies the opportunity to appeal against those measures to the first tier of the Tribunal Service.
- S20. 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.
- S21. 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 commissioning or performance of social housing inspection.
- S22. 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.

- S23. The regulator should have the resources to undertake research, gather statistics and promote good practice on the scale necessary to discharge its duties.

Recommendations to the regulator

- R1. The system for regulating social housing providers should as far as possible 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.
- R2. 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.
- R3. 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.
- R4. 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.
- R5. 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
- R6. 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.

- R7. 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 reduces barriers to entry for development, 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
- R8. 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.
- R9. 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.
- R10. 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.
- R11. 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.
- R12. The regulator should develop a range of ways of triggering interventions in consultation with providers, local authorities and the national tenant voice.
- R13. 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.

EVERY TENANT MATTERS

1 INTRODUCTION

Purpose

- 1.1. The Secretary of State for Communities and Local Government (CLG), announced the Cave Review of Social Housing Regulation ('the review') on 14 December 2006.
- 1.2. The purpose of the review is to establish a regulatory system for social housing which is clearer and more effective than the present set of arrangements in ensuring that social housing providers are regulated according to a clear set of objectives and accords with established principles of good regulation.
- 1.3. The terms of reference are to establish those objectives for social housing regulation and to propose, from a range of limited options, the system which the review recommends, and the institutional arrangements which will be most capable of achieving the objectives.
- 1.4. The attributes required of the proposed system as they are set out in the terms of reference are that it will need to:
 - ensure a clear system of accountability and responsiveness to tenants;
 - be robust
 - be able to adapt to future policy demands
 - be capable of dealing with different organisational forms as the future social housing domain develops
 - minimise regulatory burdens to encourage innovation and encourage new providers and increased investment into the social housing sector; and
 - not impede the future flow of private finance into housing associations or other bodies which might be able to access such funding

Process

- 1.5. This report sets out the conclusions reached by the review and the submission of this report to the Secretary of State is the final stage in the formal review process. The review team reached these conclusions on the basis of the evidence provided through the review process.

- 1.6. The review has had to get to grips with an area of work that has a full share of acronyms. Those used in this report are defined on their first usage and also listed in the glossary at Annex 1.
- 1.7. A Call for Evidence was published on 14 December 2006 inviting responses to the range of issues set out in the terms of reference by 16 February 2007. 115 submissions were received from a range of organisations and individual contributors. The list of those contributing evidence to this review is included at Annex 2.
- 1.8. In the course of the review, meetings were held with the following groups of stakeholders:
 - tenants
 - housing associations
 - local authorities (both those that are landlords with retained stock, and a representative group of all local authorities exercising a strategic housing function)
 - Arms Length Management Organisations (ALMOs)
 - private funding institutions
 - private sector 'for profit' housing providers
 - Housing Ombudsman Service
 - Local Government Ombudsman
- 1.9. There were two meetings with tenants, one held in London and one in Manchester. These events were assisted by external facilitators, and the report from those events has been published on the Cave Review website. The website incorporated an internet forum facility through which contributors could raise issues throughout the course of the review, and the review is very grateful for these contributions.
- 1.10. During the course of the review, the review met at intervals with an Internal Reference Group, principally comprised of officials from Communities and Local Government, but with representatives from other Government Departments with a particular interest, and with an External Advisory Group whose membership comprised representatives of the range of stakeholders as set out above, and with representatives from the Housing Corporation and the Audit Commission. The full membership of the External Advisory Group is set out at Annex 3.

2 CONTEXT

Social housing providers and the current regulatory framework

- 2.1. This part of the report is concerned with establishing the scope and purpose of the review, and the principles which emerge from that assessment as the basis for identifying and evaluating the available options for future regulation.
- 2.2. Therefore, the context for the review is to establish a clear view:
 - about the scope of social housing which is subject to regulation, whether defined in terms of organisational type or activity
 - of the rationale for regulating social housing
 - about the extent to which the current regulatory arrangements have been effective
 - of the necessary attributes of the future regulatory system that best address the features of social housing which require it to be regulated

What is social housing?

- 2.3. Effective regulation, in any area, requires clarity in the specification of what is regulated – whether it is the regulation of organisations or the regulation of particular activities. The terms of reference indicate the scope of the review in broad terms.
- 2.4. As a starting point, the review takes a pragmatic operational approach to defining which social housing is regulated. The National Housing Federation (NHF) proposed the definition that “social housing is housing for those whose needs are not met by the market and where there are rules governing access to that housing”.
- 2.5. This appears to the review to be substantively the same definition set out in “Rent Influencing Regime – implementing the rent restructuring framework”⁹ which specifies that social housing is “homes for letting or low cost home ownership and associated amenities and services, for people whose personal circumstances make it difficult for them to meet their housing needs in the open market”.
- 2.6. The review does not cover the functions of local authorities in relation to their strategic housing, homelessness and private sector housing roles.

⁹ ‘Rent Influencing Regime – Implementing the rent restructuring framework’, Housing Corporation, 2001, page 24.

What organisations are social housing providers?

2.7. The review used the following simple classification of social housing providers in developing its proposals:

- housing associations¹⁰
- ALMOs
- local authorities with retained housing stock (other than ALMOs)
- private sector ‘for profit’ providers

2.8. This is not the only possible classification, but it allows for a comprehensive assessment of the existing regulatory system, and the development of the recommended option. The review uses the term ‘domain’ to refer to all four categories.

2.9. The table below indicates the approximate number of homes owned and/or managed by each of these classes of organisation which fall into the operational definition of social housing.

Provider	Homes managed (approximate)
Housing Association	1,900,000
Local Authority (retained stock)	1,300,000
ALMOs	800,000
Private ‘for profit’ sector	None yet (but possible since 2004)

2.10. The review’s terms of reference do not include the private rented sector. This provides some 2.5 million homes of which some 90,000 are used by local authorities for temporary accommodation. Also some leaseholders receive services from social housing providers which may be affected by the regulatory system.

2.11. The structure of the housing association sector has changed significantly since 1974 – in particular, in recent years, there has been increasing stratification of the sector through merger activity, and the development of group structures. There are 1165 small housing associations with less than 250 units, while there are 60 large associations or group structures with more than 10,000 homes, which comprise some 55% of the housing association sector stock.

¹⁰ The term “housing association” has no specific legal or constitutional meaning. The statutory designation for housing associations registered with the Housing Corporation is “Registered Social Landlord” (RSL). The report uses the term ‘housing association’ throughout to refer to RSLs, both as a matter of normal practice and to avoid confusion in discussions of changes to the registration system later in the report. A not for profit housing association that is not registered with the Housing Corporation, but that is registered with the Financial Services Authority or the Charity Commission, would technically fall outside this classification.

- 2.12. The local authority housing sector has changed even more dramatically over the same period. Some 1,735,000 homes have been sold under the Right To Buy. A further 1,050,000 homes have been transferred to new or established housing associations. There are now 210 (out of 354) local authorities with retained stock, some of which have outsourced their housing management to ALMOs. These vary hugely in size. Some city authorities have over 65,000 homes while some district councils have fewer than 500 homes.
- 2.13. As a result of the transfer of local authority stock to housing associations, there is as much social housing in the hands of housing associations as local authorities. This has significant implications for policy-makers in central Government and for local authorities in how they fulfil their strategic housing role. It also means that in some areas a particular housing association may be the dominant landlord of both the social housing stock and the community as a whole. This implies a wider role and responsibility of the housing association beyond its core landlord function.
- 2.14. Since 2001, 60 ALMOs have been set up (as at 1 May 2007), managing over 800,000 homes owned by local authorities. These are public sector organisations, established primarily to deliver the Decent Homes Standard. However, as the CLG review of ALMOs indicates, and as this review contemplates, they exist as providers within the social housing domain, with a distinct organisational form. The regulatory framework needs to be adaptable to the range of possible future options for these organisations. Some ALMOs are considering opportunities to develop and own properties and to become landlords. ALMOs are also examining a range of ownership and management models which could give tenants a bigger stake in their organisation.

The current regulatory framework

- 2.15. All social housing providers fulfil similar housing needs but are subject to different regulatory arrangements. A summary of these arrangements is set out below. It is neither exhaustive nor detailed.
- 2.16. Housing associations have been regulated since 1974 by the Housing Corporation, a Non-Departmental Public Body (NDPB) sponsored by CLG. The Corporation maintains a public register of housing associations which are subject to its regulatory oversight. The regulatory requirements are primarily set out in the Corporation's Registration Criteria and the Regulatory Code and Guidance. The underlying statutory framework for Housing Corporation regulation has been amended periodically, but has not been substantially redesigned since 1974.
- 2.17. The Corporation operates a risk-based approach to regulation which is intended to identify, using a range of information, risks of failure or non-compliance with regulatory requirements. For larger associations, it publishes a Housing Corporation Assessment, periodically updated, that sets out the extent of compliance with regulatory requirements using a traffic light system. Where there is serious non-compliance, the Corporation puts associations into supervision, and may exercise its statutorily defined intervention powers to secure compliance.

- 2.18. Local authority housing is regulated by CLG and inspected by the Audit Commission. Local authorities are statutory bodies that operate within a democratic framework. Elected council members are responsible for their overall direction and strategic management. Authorities with housing functions include district councils, unitary authorities and metropolitan and London boroughs.
- 2.19. Where there is generic or service failure in local government, legal and other provisions are available to the Secretary of State including the power to appoint special managers to run local authorities or individual services that are seriously underperforming.
- 2.20. ALMOs are companies limited by guarantee, and are owned and regulated by their local authorities. An ALMO manages the housing stock of its local authority under contract. If an ALMO does not fulfil the terms of its contract there are a range of sanctions that the local authority can impose, including taking the management of the stock back in-house.
- 2.21. Private sector social housing provision became possible as a consequence of the Housing Act 2004. Private sector providers are not registered but receive grant and are regulated under a contract and accreditation system administered by the Corporation. The grant contract, and the associated rentcharge¹¹ is intended to incorporate the substance of most of the regulatory requirements on housing associations. At the time of this report, one for-profit organisation had been accredited by the Housing Corporation to manage general needs social housing.
- 2.22. The Audit Commission has a statutory inspection function which is applied in a broadly consistent way across the landlord functions of local authorities, ALMOs and housing associations – but not private sector housing providers. It is carrying out a programme of inspections in the housing association sector (principally of larger associations).
- 2.23. Housing inspection activity in the local authority sector is generally determined by the outcome of the annual Comprehensive Performance Assessment (CPA). Only relatively poorly performing local authorities are subject to a service inspection. Housing services are only inspected in those authorities where housing performance is a relatively weak and where an inspection would be considered beneficial. Housing inspection in the local authority sector covers both landlord and non-landlord activities (including the strategic housing role and homelessness services).

¹¹ The rentcharge is the form of agreement by which the Housing Corporation secures the continued use of a property for social housing. The rentcharge is a continuing charge on the property.

- 2.24. ALMOs are also subject to housing inspections by the Audit Commission. They need to be inspected to secure the Decent Homes funding and then again within three years of the original inspection to provide assurance that high quality housing services have been maintained. There would be no further inspections of the ALMO unless an authority's CPA were to show that the authority's housing service (run by the ALMO) was performing poorly.
- 2.25. All social housing providers are required to fulfil a range of Government policy objectives. Examples of these include delivery of the Decent Homes Standard by 2010 and achieving rent restructuring by 2012. Some policy objectives, such as dealing with anti-social behaviour, are set out in statute, but delivery of the Decent Homes Standard and rent restructuring are not. The regulatory mechanisms for these will differ between each type of provider, but the use of some form of regulatory lever (whether regulatory requirements, contract requirements, or funding conditions) is common to all of them.
- 2.26. Housing associations are independent, non profit distributing organisations. They are responsible for managing their own finances and are independently audited. They must prepare their accounts in accordance with an accounting Statement of Recommended Practice (SORP).
- 2.27. Funding arrangements for local authority housing services are embodied in the operation of the Housing Revenue Account (HRA). This is funded largely by rental income and, where necessary, contributions from the HRA subsidy system.¹² The delivery by local authorities of some key policy objectives, particularly rent restructuring, is embedded in the design and calculation of HRA subsidy. The annual recalculation of HRA subsidy entitlement provides central government with a greater scope to direct delivery of policy objectives by local authorities. The Audit Commission may undertake relevant financial checks on the administration of a local authority's HRA and HRA subsidy claims.
- 2.28. For ALMOs, access to additional Government funding to meet the Decent Homes target is dependent on the attainment of at least a two star rating ('good service') from the Audit Commission following a housing inspection. The ALMO's accounts are audited by external auditors.
- 2.29. Ombudsman services are an important part of the regulatory framework for social housing. Housing associations and organisations accredited under the Corporation's Housing Management Accreditation scheme must be members of the Independent Housing Ombudsman scheme (IHO), also known as the Housing Ombudsman Service. The Local Government Ombudsman has responsibility for handling complaints against local authority housing services and ALMOs.

¹² This is a complex arrangement for channelling cross-subsidies among local authorities and subsidies from central government to local authorities' housing accounts,

The justification for regulation of social housing

- 2.30. The review's approach to designing the new regulatory system is grounded in an assessment of the fundamental issues that justify regulation. Across the social housing domain there is substantial evidence that, because of the policy of affordable rents, at below market prices, and the consequent excess of demand over supply:
- there is very limited choice for prospective tenants at the point of entry (in spite of the introduction of the 'choice-based letting scheme')¹³
 - there are very limited choices for tenants within social housing
 - tenants have very limited bargaining power in dealings with their landlord
 - across most of the domain there are limited pressures to improve efficiency and service quality
- 2.31. Secondly, housing services have an impact on the community, and not just the individual, as they determine the nature of the locality in which they are sited. A well-run estate can thus have a broader influence. This creates a positive 'spill-over' effect, and is one of the reasons for rent subsidies. Equally, broader services provided by some housing providers – relating for example to education and training and employability – can also have a wider positive effect. Such services can generally be supplied by a variety of providers and are not necessarily suited to intervention by regulation of housing providers.
- 2.32. There is also a strong justification for regulation to maintain continuing benefits from substantial public subsidy. The main aspects of this are:
- Some £30 billion of public grant investment in housing associations
 - Some £90 billion of public value in local authority homes (at 1999 values)
 - Substantial potential for 'windfall' profits (by raising sub market rents to market levels and by selling homes that have had substantial capital grant input)

¹³ 'Choice based lettings (CBL) systems are intended to 'open up' the letting of social housing. CBL allows housing applicants in certain areas to view details on, choose between, and apply (or 'bid') for currently available-to-let properties. This contrasts with traditional housing allocation systems where applicants are normally faced with the choice of whether to accept or reject a property deemed 'suitable' by a social landlord.

2.33. There are some sector specific factors that provide additional reasons for regulation. These are:

- Over 1,000,000 homes were transferred from local authorities on the basis that the recipient organisations would be regulated, and the relaxation of safeguards could be criticised as leaving tenants without the promised protection
- Some £35bn of private sector lending to the housing associations has been made on the basis that they are in a regulated sector. This regulated status is protected in loan conditions, so that de-regulation would risk a financial crisis for borrowers, undermine lender confidence, risk a shortage of private funding for new long term public/private projects and increase the cost of current and future borrowing

The effectiveness of the current regulatory arrangements

2.34. Social housing providers have made significant progress in delivery of a number of important housing policy objectives, including progress in converging social rents, bringing the homes they own up to the Decent Homes Standard, the development and expansion of choice-based lettings schemes, and the delivery of efficiency objectives originating from the Gershon review.

2.35. Whilst providers across the social housing domain have been effective in a number of areas, the evidence on quality of services and tenant empowerment is more variable. Tenant satisfaction with the services they receive has remained relatively static at just under 80% in recent years – by no means a poor figure, but still indicative that every fifth household is for some reason dissatisfied and, because of the structure of the market, can probably do little about it.

2.36. There is evidence that the performance of many providers in handling complaints has been less amenable to improvement than other aspects of their service to their customers. Too many inspection results still indicate no more than a 'fair' service, indicating a limited ambition or capacity to deliver a 'good' service on the part of those providers.

2.37. The regulatory framework has helped to raise standards overall and focus attention on areas where risks are greatest and performance is weakest. It has been the instrument for setting the Decent Homes standard target and for achieving a coherent framework of rents by 2012. While significant regulatory reform is due, because of changing circumstances and to meet future need, most of the evidence submitted to the review concludes that the regulatory regimes have performed successfully.

Establishing a regulatory environment attractive to private finance

- 2.38. The way in which housing associations have been regulated has provided significant comfort to lenders. The Housing Corporation's attention to housing association financial viability and its capacity to intervene to prevent the collapse of an association has helped to underpin the confidence of private funders. This has enabled housing associations to borrow money at low rates of interest. It has been estimated that the benefit from falling within the Housing Corporation's regulatory regime is equivalent to around 60 basis points.
- 2.39. *'It has been variously estimated that the saving in lower interest rates alone made possible by the existence of regulation is £200 – £400 million per annum, representing margins for RSLs of rates as low as 30 basis points over the London Inter-Bank Offered Rate (LIBOR) compared to rates 90 to 200 basis points for comparable unregulated commercial lending'.¹⁴*

High standards of probity

- 2.40. The organisations chiefly responsible to date for owning and managing social housing – whether local authorities, ALMOs or housing associations – have a good reputation for proper conduct and even-handedness. In the local authority world, this is an extension of wider public sector principles. Their application in the housing association sector reflects the strong emphasis placed on probity by the Housing Corporation.

Driving improvement in services

- 2.41. While standards vary between individual social housing providers, the combination of the Housing Corporation's regime for housing associations and the Audit Commission's service inspections across the social housing domain has established a significant impetus for improvement. In the case of ALMOs, the linkage between Audit Commission inspection results and financial outcomes has been a particularly powerful incentive for improvement. However, it is clear that there are still housing organisations that do not provide the quality of basic housing management services that their tenants would wish.

Assisting the delivery of government policy objectives

- 2.42. In relation to rents, the setting of assumed rents and the Housing Corporation's ability to 'policy passport' rent levels to housing associations, is leading to convergence of rent levels. However there is no explicit statutory basis for this policy.

¹⁴ Submission from the Council of Mortgage Lenders (paragraph 8)

- 2.43. The distribution of grant investment by the Housing Corporation to housing associations has facilitated an extensive development programme for new homes. The detailed arrangements maintained by the Corporation for administering grant have varied. The current arrangements are by means of the National Affordable Housing Programme. This focuses delivery through some 80 programme partners. The Corporation's target setting and close monitoring of progress have, in the main, ensured delivery of the programme and achievement of completion targets.
- 2.44. The Housing Act 2004 has enabled the private 'for profit' sector to build, own and manage homes with the benefit of grant. So far, the main private sector interest has been at the building stage. But there is now one accredited manager and further interest in all three elements is expected.

The changing policy context and the case for change

Focus on providers rather than tenants

- 2.45. The most common criticism of the regime for regulating social housing, and a view put forward most forcefully by organisations representing housing tenants, is that regulation focuses on the providers of social housing and has taken insufficient account of the interests of tenants and communities.
- 2.46. *'Regulation currently puts the protection of Government investment and the good governance of housing associations at the centre. We believe that this approach leads regulation to focus too strongly on the needs of and challenges for the landlord; it is producer led'.¹⁵*
- 2.47. The evidence of the Hills review is that 46% of Council tenants and 45% of housing association tenants would prefer to be owner occupiers and 39% and 33% respectively would prefer to remain with their current tenure.¹⁶
- 2.48. In respect of access to social housing, as Shelter pointed out in its evidence, there is *'an inherent tension between the preferences of the majority of social housing tenants and meeting the needs of the most vulnerable potential tenants.'*¹⁷ It is also concerned that the regulatory system does not provide incentives to housing associations *'to play their full role in tackling homelessness.'*¹⁸

¹⁵ Evidence from TPAS (page 2)

¹⁶ Ends and means: the future roles of social housing in England. John Hills. CASereport 34. (page 70)

¹⁷ Evidence from Shelter (page 3)

¹⁸ Evidence from Shelter (page 5)

- 2.49. The Audit Commission has concluded that *'choice based lettings where they have been introduced have been successful.'*¹⁹ but this only applies to a minority of lettings. The problem of limited choice at the point of access to housing is exacerbated by the falling rates of re-lettings. *'...there has been a very sharp decline in the number of lettings to new social tenants since 2000. By 2005 these were 170,000, down from 290,000 as recently as 1998.'*²⁰
- 2.50. The choices available to tenants do not increase significantly once they have gained access to social housing. As the Audit Commission states, *'choice is still not a common feature of community housing. Typically, providers struggle to offer customers effective choice when demand exceeds supply, and where the national rents-setting regime means market choice would have little consequence.'*²¹
- 2.51. *'...while 15% of social tenants said that they were dissatisfied with their accommodation in 2005-06, nearly 80% said they were satisfied, 45% saying "very satisfied".'*²² But, *'one in seven social tenants now say they are dissatisfied with their local area and with their accommodation, one in five with their landlord, and one in four with the standard of repairs and maintenance.'*²³ As Hills concluded, *'figures for dissatisfaction with social housing are disappointing in several respects.'*²⁴
- 2.52. A further concern is the ability of tenants to get an adequate response to complaints. The Housing Ombudsman Service has reported that *'complaints about repair have slipped from first to second place in the scale of the most common causes of reference to my service. Instead, the principal issue complained about was how landlords handled their original complaint.'*²⁵
- 2.53. What is common to each of these points is that they are all symptoms of the failure of the social housing system to provide customer choice. The current regulatory arrangements have been only partially successful in remedying these defects.

Over-protection and burdens

- 2.54. A common theme in the representations from housing associations and the NHF, is that the regulatory regime, despite recent efforts to be more discriminating and take a risk-based approach, is too detailed and onerous. Whilst accepting that this has helped to maintain the sector's reputation for probity and its viability, associations highlight the risk that *'the overprotective nature of present regulation allows weak governance to survive by undermining the primacy of Boards.'*²⁶

¹⁹ Evidence from the Audit Commission – The future Regulation of Housing (paragraph 52)

²⁰ Ends and means: the future roles of social housing in England. John Hills. CASereport 34. (page 145)

²¹ Evidence from the Audit Commission – The future Regulation of Housing (paragraph 51)

²² Ends and means: the future roles of social housing in England. John Hills. CASereport 34. (page 74)

²³ Ends and means: the future roles of social housing in England. John Hills. CASereport 34. (page 3)

²⁴ Ends and means: the future roles of social housing in England. John Hills. CASereport 34. (page 74)

²⁵ Evidence from the Housing Ombudsman

²⁶ Evidence from the National Housing Federation. (paragraph 3.2)

- 2.55. This aspect of regulation has been recognised throughout Government. The work of the Better Regulation Task Force (now the Better Regulation Commission) and more recently the Hampton Review (“Reducing administrative burdens”²⁷) has identified the range of ways in which poorly designed and managed regulation systems add unnecessary costs to business activities. It is clear that, for social housing, unnecessary costs are manifest both as policy costs (the costs of having to do particular things in a particular way) and administrative costs (the costs of monitoring and reporting compliance with regulations).
- 2.56. It is clear that a significant element of these administrative costs relate to information burdens, as is common to many areas of public policy. The volume of data required is excessive and the regular changes made to particular data requirements make it particularly costly to fulfil. There is no overall strategic view of how information burdens should be managed and no overall responsibility across the social housing domain. Information requirements can be apparently unrelated or disproportionate to the underlying reasons for data collection.
- 2.57. The regulatory regime has underpinned confidence in the strength and viability of the housing association sector and has provided assurance and protection for public funding. But it has involved a substantial burden and has had a tendency to cause over-dependence and thus weakened the overall strengths and vitality of the sector.
- 2.58. In local authorities and ALMOs, the most forceful manifestation of regulation has been the inspection regime. This has yielded significant service improvements and a greater emphasis on the consumer experience, but is criticised across the domain for its cost to regulated organisations, and its scale and inflexibility.

Unrestricted ‘policy passporting’

- 2.59. The practice of securing the implementation of a range of government policies through the regulatory system is an endemic feature of the present arrangements – these are the policy costs of regulation. It is the main cause of ‘regulation creep’ and strongly discouraged by the Better Regulation Commission. Recent years have also seen the introduction of a range of overarching policy objectives for the whole social housing domain, including the Decent Homes target, rent restructuring, tackling anti-social behaviour (the Respect agenda) and Choice Based Lettings (CBL). But imposing a stream of policy burdens on providers without regard to the costs is poor regulation.
- 2.60. It is right that regulation should be used to achieve policy objectives. But current and future social housing providers need to have more regulatory certainty about the extent and cost of policy burdens. The process for introducing and adapting policy requirements needs to be more structured, transparent and equitable. Achieving this will significantly reduce both the policy costs and the administrative costs which regulation imposes on social housing providers.

²⁷ “Reducing administrative burdens: effective inspection and enforcement”, P Hampton, HM Treasury, March 2005

Increasing social housing supply, and structure of social housing providers

- 2.61. The Barker report²⁸ outlined the scale of unmet demand for social housing, and indicated a need for 40,000-50,000 new social rented homes each year. The current level of additions from the programme administered by the Housing Corporation is 28,000 new social rented homes each year. Although current output has significantly increased since 2003, there remains a significant gap between the Barker targets and current output. The Comprehensive Spending Review will determine the extent to which there are further public resources available to bridge this gap and take a view on whether more homes can be provided for less grant.
- 2.62. Housing associations have significant levels of unused financial capacity and Government would like to utilise this to contribute to the provision of affordable housing. This is in the context of a drive for efficiency and value for money provided by housing associations, particularly following the Gershon efficiency review. A number of local authorities also have land on which new homes could be built where this is consistent with local authorities' own asset management and housing strategies.
- 2.63. A mixed economy for the provision and management of new social housing is developing following the introduction of the new powers in the Housing Act 2004. The Government is keen to increase the role of private developers in providing affordable housing to bring innovation and competition for grant with traditional providers. Housing associations and 'for profit' providers are currently subject to different regulatory levers.

Weak accountability and involvement for tenants and stakeholders

- 2.64. As *What Tenants Want* puts it, 'tenants understand the value of involvement but are cynical about the way it is done.'²⁹ 'The majority of tenants believe that their housing association is not interested in them or what they think. As a result, there is a very apathetic attitude amongst tenants towards involvement.'³⁰
- 2.65. There are differing views on the most effective methods of tenant involvement. Some favour a structure of democratically elected representative organisations while others favour a range of mechanisms such as surveys, focus groups, forums, mystery shopping, etc. These different mechanisms are not mutually exclusive. Involvement helps to drive up service standards and performance. There is evidence that tenants would be more involved if they were convinced that it would make a difference.

²⁸ Delivering Stability: Securing our future housing needs, Kate Barker, Her Majesty's Treasury, 2004

²⁹ What Tenants Want: Report of the Tenant Involvement Commission (page 28)

³⁰ What Tenants Want: Report of the Tenant Involvement Commission (page 29)

- 2.66. The Local Government White Paper places more emphasis on the local authority role in leading and giving strategic direction to local communities. The ‘place making’ role of local authorities will be key. Assessment of most if not all public services delivered in an area will be encompassed in the new regime. More emphasis will be given to Local Strategic Partnerships³¹ and Local Area Agreements³² to ensure the effective delivery of public services at the local level. The effectiveness of housing providers in engaging with local authorities as strategic “place makers” will be material in the effectiveness with which this policy objective is delivered. See paragraphs 4.27-4.34 below.

Consumer protection or consumer empowerment?

- 2.67. The evidence submitted by tenants to the review paints a picture of a dysfunctional social housing system and this constitutes one of the primary drivers for the continuance of regulation. This is not to be over-critical of the role played by the sector’s providers, funders and regulators. The review was not presented with any evidence that housing providers do not wish to provide a good service for their tenants. On the contrary, the determination of the many people and organisations that have contributed to the review to improve the quality of services to tenants and other customers is impressive. But four key structural factors contribute to the disempowerment of tenants:
- Demand for affordable housing outstrips supply and requires rationing
 - Rents at sub-market levels and the increasing cost of home ownership make pathways out of social housing very steep
 - The Housing Benefit framework makes rents affordable but also undermines price based choice and can be a powerful disincentive to employment
 - Mobility within the social housing sector is very restricted and has been exacerbated by the falling number of vacancies for re-letting
- 2.68. Faced with the evidence of tenant disempowerment and the intractability of the structural issues that inhibit the development of a more consumer responsive system, the review has to consider the most appropriate strategic regulatory response. The traditional regulatory response would be to focus on consumer protection. This would seek to define minimum standards of service and housing and then seek to enforce them through a range of regulatory mechanisms from inspection to enforcement.

³¹ LSPs are non statutory, multi agency partnerships which match local authority boundaries. LSPs bring together at a local level the different parts of the public, private, community and voluntary sectors; allowing different initiatives and services to support one another so that they can work more effectively.

³² An LAA is a three year agreement, based on local Sustainable Community Strategies, that sets out the priorities for a local area. The agreement is made between Central Government, represented by the Government Office, and a local area, represented by the lead local authority and other key partners through Local Strategic Partnerships (LSPs).

- 2.69. The more modern regulatory response would be to explore the possibility of harnessing ever-increasing consumer empowerment to drive improvements and choice. This approach would seek to empower consumers and systematically tackle the many barriers to choice that exist within the present arrangements.
- 2.70. The degree of difference between the four current provider groupings that make up the social housing domain (housing associations, local authorities, ALMOs and accredited private developers) is significant. These differences include:
- Access to grant
 - Access to other funding
 - Organisational form
 - Constitutional objectives
 - Accounting framework
 - Regulation of governance
 - Treatment of surpluses
- 2.71. Nevertheless, there is no reason why the consumer experience of being a tenant (or other customer) of social housing should be any different across the domain. On the contrary, in the things that matter to tenants there is every reason why the quality of service, the quality of housing, rent levels and access to housing should be comparable and improving.
- 2.72. Consumer protection and consumer empowerment are not mutually exclusive but they characterise different approaches to market failure. Consumer protection accepts the failure of the market and compensates for it as far as possible. Consumer empowerment seeks to change the market so that it becomes progressively more effective. Consumer protection may be needed for a considerable period of time but it is consumer empowerment that has the greatest potential to address the underlying problems of market failure.

Modern regulation

- 2.73. Government is committed to reducing the regulatory burdens on organisations of all kinds and in all sectors of the economy. The Government is also committed to improving standards of regulation. Through the work of the Better Regulation Executive and Better Regulation Commission, the Government has established key principles to guide the development of all public regulatory systems, including greater proportionality and transparency.

- 2.74. The review has taken significant account of the range of recent reviews of regulatory practice and, in particular the work of:
- the Better Regulation Task Force (now the Better Regulation Commission)
 - the Hampton review, and the associated follow up reports
 - the Macrory review of regulatory penalties and enforcement³³
- 2.75. The precepts of these reviews have significantly influenced and shaped these proposals.

Initial conclusions based on the new context and case for change

- 2.76. The review's primary initial conclusion is that the regulatory arrangements need to be much more focussed on the needs of tenants. For the last thirty years or so, the focus of social housing regulation has been on regulating providers. The review concludes that now is the time to set a new long term strategic direction for the regulation of social housing. The focus for the future should be on regulating social housing for the benefit of consumers. This conclusion is grounded in the view that increasing consumer power and choice is what tenants want and that it will, over time, improve the performance of providers and reduce the need for more intrusive regulation.
- 2.77. In reaching a conclusion about the strategic direction of regulation in the social housing sector the review has been encouraged by the views of the National Consumer Council, Audit Commission and Housing Corporation. *'The truth is that, in the absence of consumer choice, there would indeed continue to be limited pressure on providers to drive quality and efficiency. Tenants would be in the hands of benign landlords, who would risk drifting into self-serving patterns, as have public service monopolies before them.'*³⁴
- 2.78. *'The Cave review presents the opportunity to establish a regulatory framework that looks at the community housing domain increasingly as a market. Such an approach will take time to establish itself and to support far more active customers, whether they are tenants, shared owners or leaseholders. With customer power, people benefit from competition as well as initiating and sustaining it.'*³⁵
- 2.79. *'The current regulatory system uses regulation and inspection in part as a proxy for consumer influence. In the reformed system, we would like to see actual power transferred direct to the consumer.'*³⁶

³³ "Regulatory Justice: making sanctions effective", Prof R B Macrory, Better Regulation Executive, November 2006

³⁴ Evidence from the National Consumer Council – House Rules (page 35)

³⁵ Evidence from the Audit Commission – The Future Regulation of Housing (paragraph 41)

³⁶ Evidence from the Housing Corporation (paragraph 45)

- 2.80. The review has also reached the conclusion that the regulation of social housing is in urgent need of modernisation to bring it in line with regulatory best practice. Government has drafted a Regulator's Compliance Code following the Hampton report, and this document underpins many of the specific proposals set out here. The review envisages that the detailed design of the new regulatory system must enable it to meet the requirements of this Code when it is adopted.
- 2.81. The review also concludes that there is considerable scope for reducing the burden of regulation, both the policy costs and the administrative costs which it imposes. Regulation and inspection should be more closely aligned to tenants' wishes for good quality services. This should be done in a way which recognises the role of social housing providers in assisting the delivery of local government's strategic goals.
- 2.82. The congruence between the approach set out here and the policy recommendations set out in the review carried out by John Hills is noted in Annex 7
- 2.83. The role, powers, objectives and duties of the regulator need to be clearly defined in statute. Primary legislation will be necessary to establish a more modern regulatory framework. Government should ensure that it takes this opportunity to establish a framework for the regulator, in conjunction with Government, for managing the costs of policy and administrative requirements more effectively.
- 2.84. Simplification and clarification of regulatory requirements aids both compliance by providers and enforcement of the requirements by the regulator. The Macrory report suggests a range of options for sanctions which are aimed at putting consumers in the position they should have been in if their landlords had met their regulatory requirements.

Statement of objectives

- 2.85. The preliminary analysis of the context and the review's initial conclusions suggest the following three over-arching strategic objectives for the new regulatory system:
- To ensure the continuing provision of high quality social housing
 - To empower and protect tenants
 - To expand the availability of choice of provider at all levels in the provision of social housing

- 2.86. There are two further strategic principles which this analysis suggests should be embedded in the design of the framework. They are that the regulatory system should:
- apply common principles, where practicable, across the whole social housing domain
 - to reduce and manage the burden of regulation
- 2.87. The next chapter – Empowering tenants – expands on the review’s initial conclusion that the new regulatory system needs to be more tenant focussed. The report then goes on to evaluate the main regulatory options before setting out its recommendations.

3 EMPOWERING TENANTS

3.1. This chapter expands on the primary conclusion of the review that the regulatory framework needs to be much more focussed on the needs of tenants. This view is set out in the following sections:

- What tenants want
- Broadening choice
- Improving the quality of information
- Enhancing accountability to tenants
- Strengthening the tenant voice
- Addressing the structural obstacles to consumer empowerment and choice

3.2. The following extracts from the evidence put to us illustrates how much still needs to be done.

*'...tenants of affordable housing are particularly disenfranchised. Many are captive consumers, with limited choices and very significant barriers to switching.'*³⁷

*'...the relationship between most landlords and their tenants is unequal and one-sided.'*³⁸

*'...customers are rarely able to make a positive choice about the type of provider that is responsible for their housing.' '...it can still be very difficult for households to enforce their rights or demand improvements.'*³⁹

What tenants want

3.3. Satisfaction and dissatisfaction data does not (on the evidence of Hills) seem to indicate sharp differences as between local authority and housing association tenants. This was borne out by the review's own tenant consultation exercises. On this basis, the review is inclined to view the findings of the Tenant Involvement Commission as applicable across the social housing domain and not just to housing associations.

³⁷ Evidence from the National Consumer Council – House Rules (page 8)

³⁸ Evidence from the National Consumer Council – House Rules (page 8)

³⁹ Evidence from the Chartered Institute of Housing (paragraph 2.7)

- 3.4. The report *What Tenants Want* gave a clear steer that ‘tenants want their associations “to get the basics right” as a landlord before broadening the scope of their service. The dream landlord provides a strong, basic service before “going the extra mile” in offering choice to tenants and listening to their needs. In contrast, housing associations are often perceived to be paternalistic or, even patronising, in their approach to tenants.’⁴⁰
- 3.5. A good basic service is considered to be:
- Commitment to delivering a quality service
 - Competent and polite service from frontline delivery staff
 - Speedy repairs completed to a high standard
 - Listening to Tenants
 - Security
 - Affordable rents
- 3.6. The review therefore concludes that the regulator should be responsible for the oversight of core housing management services. These would be services that would be delivered by all social housing providers. The regulator would have the power to define what services should be subject to regulation and this may change from time to time.
- 3.7. The review has not attempted to define in detail the scope and standards required for core housing management services. This is properly a task for the housing regulator to perform, consulting widely with tenants and social housing providers. However, following the essential points identified by tenants, the following areas that will need to be considered in defining the social housing activities that are regulated:
- Allocations and lettings
 - Tenant Participation
 - Tenancy Management
 - Void Control
 - Rent Collection

⁴⁰ What Tenants Want: Report of the Tenant Involvement Commission (pages 2 & 3)

- Rent Arrears Recovery
- Rent Accounting
- Responsive Repairs
- Cyclical Repairs
- Major Repairs and Improvements
- Estate Management
- Complaint handling

- 3.8. The way in which these services are designed and delivered will vary according to the needs and wishes of tenants, and the context within which those services are managed. There are many housing providers who work with tenants with particular or special needs. The definition of the scope and standards of services should accommodate the wide range of ways in which services may need to be delivered to reflect those needs.
- 3.9. Except with respect to their social housing landlord function, specialist providers, especially those that are funded through separate funding streams such as Supporting People, are better regulated through the relevant contract or inspection regimes which relate to services of that nature. The report later refers to the arrangements required to ensure that the interaction of different regulatory regimes are properly managed.
- 3.10. The regulatory regime would not have a direct remit over the broader activities of housing providers. These activities can be many and varied but are likely to centre on the development and management of local neighbourhoods. Included here would be training and employment initiatives, projects linked to social and financial exclusion and a wide range of community safety programmes. These activities are desirable and may indeed be essential in some neighbourhoods.
- 3.11. The link between these core housing roles and 'place shaping' is explored more fully in paragraphs 4.27-4.34 and 5.16-5.28 below. These important wider roles are not undertaken by all landlords and not in all areas. Such services are also, in many cases, funded by a wide range of agencies, with monitoring and reporting requirements specific to those agencies' needs. For that reason, the review is taking the view that these activities should fall within the 'place shaping' remit of the local authority rather than be subject to direct housing regulation.

Broadening choice

- 3.12. Choice is central to consumer empowerment. As the Audit Commission put it, *‘residents who make conscious choices about where they live and whose services they receive are more likely to put down roots and give support to the future of their locality’*. . . . *‘Where tenants can exercise choice over their provider, this will encourage providers to ensure tenant satisfaction. The need for regulation will diminish as tenants are increasingly able to use market choice to spur providers to better provision.’*⁴¹
- 3.13. In relation to choice, the Tenant Involvement Commission concluded that *‘there is a huge appetite for choice’*.⁴² Few tenants feel that they currently have choices but the overwhelming majority would like to have more choices in the services provided to them.
- 3.14. The review has received a substantial body of evidence on the ways in which tenants and other consumers of social housing could be empowered and given more choices. At the level of the individual, better landlords already offer choices that include:
- Access times to tradesmen
 - Different payment mechanisms
 - Access routes to housing staff
 - Priced additions to landlord services
 - Property refurbishment options
- 3.15. Over a longer period of time it should be possible to broaden individual choices in such areas as:
- Choice based lettings and transfers
 - Opportunities to change tenure
- 3.16. Again, over a period of time, collective choices could include:
- Range of estate services
 - Change of manager

⁴¹ Evidence from the Audit Commission – The future Regulation of Housing (paragraphs 54 & 55)

⁴² What Tenants Want: Report of the Tenant Involvement Commission (page 3)

- Additional services (at a cost to the tenant)
- Change of maintenance provider
- Self management options

Improving the quality of information

- 3.17. Empowerment involves more than choice. It requires information, the ability to be heard, to hold providers to account, to influence and to take decisions. The Tenant Involvement Commission found that: *'Awareness of how housing associations perform is very low.....Few tenants know how to find out how their association performs compared to others.'*⁴³ The review suspects that local authority and ALMO tenants find it equally hard to be well informed.
- 3.18. *'...information on the quality of accommodation, rent and service charge levels, the quality of service provision and the rights and responsibilities of both tenants and landlords must be readily and consistently available for comparison at a local level. This public benchmarking will be key in informing tenants and their advocates and will engineer a degree of competition.'*⁴⁴
- 3.19. The review accepts that providing local comparative information may be problematic for landlords which operate across many local authority areas. The regulator should play a key role in ensuring that the core information requirement is manageable and consistent across all areas.
- 3.20. Many key data are gathered on the performance of the social housing domain. Indeed there are indications that the volumes of data are excessive and under-utilised. But it is also significant that opportunities to obtain comparative information across the domain are lost. The CORE system for recording lettings is compulsory for housing associations but voluntary for local authorities. The STATUS survey of how tenants view their service covers housing associations but only parts of it are used by local authorities. There is scope for rationalisation and a review of information collection by all users.

⁴³ What Tenants Want: Report of the Tenant Involvement Commission (page 20)

⁴⁴ Evidence from the Audit Commission – The future Regulation of Housing (paragraph 56)

- 3.21. If consumers are to be well informed then there is a need to *‘have a single system at national level for the collection of performance information.’*⁴⁵ As the CIH suggests: *‘this information could be contained on a national website enabling customers to compare the performance of different providers and – if not switch providers as with utilities – then at least question the variation in that performance with their own landlord.’*⁴⁶ *‘Consumer empowerment could be taken a step further if the national tenant survey was located within a body charged with national representation of the tenant voice’*⁴⁷ (see section below on strengthening the tenant voice).

Enhancing accountability to tenants

- 3.22. The ability to be heard and to hold providers to account is a key part of consumer empowerment. The review agrees with the National Consumer Council that clarity of regulation requires clarity of accountability. The accountability map of a housing association is likely to be different from an ALMO or a local authority housing provider and from an accredited private developer. But all social housing providers need to be clear about their accountabilities.
- 3.23. There are many excellent examples of effective accountability listed by the Audit Commission including:
- Involving customers in shaping services
 - Including customers and their representatives as advisors
 - Tenants and leaseholders acting as board members and non-executive directors of housing associations and ALMOs
 - Involving customers in assessing the quality of housing services
 - Flexible arrangements for communication, information, consultation and participation which give customers some control
 - Responding positively to complaints
- 3.24. But as the Audit Commission concludes: *‘this does not appear everywhere and accountability to customers is patchy at best.’*⁴⁸

⁴⁵ Evidence from the Housing Corporation (paragraph 62)

⁴⁶ Evidence from the Chartered Institute of Housing (paragraph 4.17)

⁴⁷ Evidence from the National Consumer Council – House Rules (page 22)

⁴⁸ Evidence from the Audit Commission – The Future Regulation of Housing (paragraph 61)

3.25. The Housing Corporation makes additional suggestions⁴⁹ including:

- Resident scrutiny panels as part of corporate governance structures
- Resident led inspections
- Compensation frameworks
- Compacts or frameworks for consumer empowerment

3.26. The approach commended by the National Consumer Council, which sets minimum options such as: *'empowered scrutiny panels of residents of tenants, a minimum representation of tenants on Boards or options appraisals for tenant management of services'*⁵⁰ also offers a clear way forward.

3.27. Local authorities can also play a role in promoting accountability to tenants via such mechanisms as community calls for action.⁵¹

Strengthening the tenant voice

3.28. Strengthening the voice of tenants is another key dimension of consumer empowerment. Most of the focus in recent years has been on strengthening the voice of tenants with their landlords. This is clearly of great importance. But it ignores the fact that many of the most important matters that have a direct impact on tenants are taken over the heads of landlords. This includes:

- The introduction and enforcement of the Decent Homes Standard
- The current framework of rent setting
- The standards against which performance of landlords is measured
- Public investment in new homes and the investment framework for local authority housing
- The current framework of Housing Benefit
- The design and implementation of the social housing regulatory framework

⁴⁹ Evidence from the Housing Corporation (paragraphs 45 and 47)

⁵⁰ Evidence from the National Consumer Council – House Rules (page 31)

⁵¹ Community Call for Action provides a mechanism that allows Councillors to deal with issues of concern in their local community by enhancing their ability to deal with the problem themselves or by demanding a formal response through local scrutiny procedures.

- 3.29. Tenant empowerment needs to start at the top as well as at the bottom. The review considers that there is an overwhelming case for the establishment of a national voice for tenants of social housing providers. While existing tenant representative groups do good work, there is the need for an expert advocate in the many strategic policy discussions that shape the professional housing agenda.
- 3.30. As the National Consumer Council expressed it, *'national representation of the tenant interest is fragmented. This contrasts with the well-resourced and professional bodies representing housing organisations and their profession.....These organisations are not necessarily opposed to the tenant interest, but do not exist to promote it.'*⁵²
- 3.31. The evidence the review team has received from many organisations representing tenant interests is that strengthening the voice of tenants requires resources. The voice of tenants needs to be heard not just by their landlord but at a local authority, sub-regional, regional and national level – in other words, at all levels where decisions that affect tenants are taken.

Addressing the structural obstacles to consumer empowerment and choice

- 3.32. Part of the reason why the social housing domain exhibits so many signs of failure is because of the unintended or unavoidable consequences of deeply embedded structural features. As the Audit Commission stated: *'Choice is still not a common feature of community housing. Typically, providers struggle to offer customers effective choice when demand exceeds supply, and where the national rent-setting regime means market choice would have little consequence.'*⁵³ As the National Consumer Council put it, *'rent setting in social housing subdues the market. But a further factor [Housing Benefit] anaesthetises it.'*⁵⁴
- 3.33. Embedded structural features can be amended over time and some of their least desirable side effects may be mitigated by 'fine tuning'. It is not the role of this review to recommend changes in social housing policy but to recommend a framework that can accommodate them. Nevertheless, any regulator has a proper interest in proposing amendments that will help to address identified failures and thereby promote consumer empowerment and choice. Amongst the possible candidates for reform are:
- Separating the housing development role from the ownership and management roles so that achieving economies of scale in procurement doesn't lead to ever larger monopolistic housing providers

⁵² Evidence from the National Consumer Council – House Rules (page 21)

⁵³ Evidence from the Audit Commission – The Future Regulation of Housing (paragraph 50)

⁵⁴ Evidence from the National Consumer Council – House Rules (page 13)

- Overcoming the present VAT disincentive to outsourcing housing management services so as to facilitate:
 - Contestability of housing services at the instigation of consumers collectively or by the regulator
 - Rationalisation of management services on estates in multiple ownership
 - Local management of dispersed housing stock
- Introducing stronger price mechanisms so as to improve consumer choice and incentivise improved value for money from consumers

Conclusions on consumer empowerment

3.34. From the evidence received, the review is convinced that there are both the ideas and the willingness to make consumer empowerment work. It will not be an easy road and some of the structural obstacles to choice may take many years to overcome. Nonetheless, a concerted effort over several years within a redesigned regulatory process which puts tenants first should have a good chance of success.

4 EVALUATING OPTIONS

- 4.1. The evidence submitted to the review identifies many options for regulation, with the principal common thread being that regulatory burdens should be reduced. The breadth of the review (encompassing local authority housing, ALMOs, housing associations and accredited private sector providers) also adds to the range of choices, as there are significant differences among these four elements which have regulatory implications.
- 4.2. There is a wide range of regulatory instruments and approaches which could be applied to the four elements of the domain in different combinations.
- 4.3. Faced with this plethora of possibilities, the review begins by identifying eight main areas of contention:
 - Uneven playing fields
 - Domain or sector
 - Choice of regulatory instruments
 - Regulation of rents
 - Expansion of new supply
 - Contracts
 - Place-shaping – relationships with local authorities
 - Extent of de-regulation

Uneven playing fields

- 4.4. There are many key differences between the four main types of provider in the social housing domain. The main ones are:

Issue	LA retained stock	Housing association	ALMO	Accredited private sector
Access to grant for new housing	No social housing grant	Social housing grant	Restricted but possible access	Social housing grant
Access to loan funding	Highly constrained	Largely unrestricted	Highly constrained	Unrestricted
Provision of new homes	Very difficult for most	Strongly encouraged	Difficult but may be possible	Strongly encouraged
Accounting framework	HRA for most	Specific SORP	HRA based	Normal private sector rules
Organisational form/objectives	Public body	Private but not for profit	Public not for profit company	PLC for profit
PSNCR ⁵⁵	Inside	Outside	Inside	Outside
Regulation of governance	Deemed not applicable	Regulated	Contract specified	Un-regulated
Treatment of surpluses	Clawed back	Mainly untaxed. Applied towards objects	Untaxed: Applied as per contract	Taxed. Retained or distributed

- 4.5. Perhaps unsurprisingly, each of the four provider groups considers that they are unfairly treated by some aspect of these differences. All want the playing field to be levelled in different ways. Most of the differences stem from matters that fall well outside the remit of the review and of the role of any future regulator. Nevertheless, they influence the shape of the regulatory options.

Domain or sector

- 4.6. The main differences between the four parts of the domain have been summarised in the preceding section. But there are also some substantial similarities. The main ones are as follows:
- All four elements of the domain are shaped by the same government policy on rents. Convergence of rents is expected to be achieved in 2012
 - The desired housing standard (Decent Homes Standard) is common to the whole domain

⁵⁵ Public Sector Net Cash Requirement

- Good industry practice on such issues as lettings, housing management, repairs and maintenance, equality and diversity, dealing with anti-social behaviour is common across the whole domain
 - Lettings to new tenants are increasingly through nomination rights and on a system of choice based lettings. This applies across the domain
 - Most tenancy terms are common across the domain and would be further brought into line by the Law Commission's proposals for a common form of tenancy
- 4.7. In short, it is intended that the customer experience should be similar across the domain. The drive to achieve good standards and continuous improvement is also assisted by the Audit Commission's inspection process which applies to local authority, ALMOs and housing association housing services (but not to those of accredited private sector owner/managers).
- 4.8. Major contributions to the review take different views of the desirability of domain wide regulation. The Housing Corporation states: *'Our view is that it is important that all social housing customers should have essentially the same rights, opportunities and performance expectations regardless of the nature of their landlord. We do not consider, however, that this means that all providers must fall under the same regulatory system.'*⁵⁶ Shelter would like to move to: *'a single system of consistent standards and priorities for all providers of social rented housing... We would like these standards and priorities to be monitored and overseen in the same way and by the same organisation(s).'*⁵⁷ The National Consumer Council takes the view that: *'One regulatory body should oversee the providers of social housing, covering providers from the voluntary, co-operative, municipal and private sector.'*⁵⁸
- 4.9. The review's conclusion on this issue is that the whole social housing domain should come under one regulator. This is for a combination of reasons. First, tenants should receive an equally good service across all parts of the domain. This is difficult to secure if the providers are regulated by different bodies. Second, there are important issues such as access to housing and mobility that need to be dealt with on a domain wide basis. Third, performance needs to be compared across all providers so that good practice can be spread across the whole domain. Fourth, the failures that have been described earlier cannot be addressed effectively if each segment of the domain is regulated separately. Fifth, there is a strong trend in regulation practice to regulate on a domain wide basis (as evidenced by the creation of Ofcom for the communications sector and Ofgem for energy).

⁵⁶ Evidence from the Housing Corporation (paragraph 31)

⁵⁷ Evidence from Shelter (page 4)

⁵⁸ Evidence from the National Consumer Council – House Rules (page 43)

Choice of regulatory instruments

4.10. There are many potential regulatory instruments. The main types are listed with comments below:

Mechanism	Comments
Command & Control (rules & regulations)	Not consumer responsive Difficult to enforce Incompatible with independent status of housing associations (if taken to extremes)
Self regulation	Good for 'buy in', flexibility and adaptability Can be unchallenging and too 'producer friendly' Not good for some areas (control of new investment)
Contract regulation	Good for predictable situations Complex and over rigid for the long term Costly for small value activities Encourages problem resolution by the courts
Licensing	Good for flexibility and periodic review Poor for investment protection Poor for compliance (except nuclear option)
Constitutional regulation	Good for flexibility and the long term Good for enforcement and trouble shooting Can drift into 'command and control' Can be over-expensive
Co-regulation/enforced self regulation	Makes self regulation more robust by being regulator approved and externally validated Stops self regulation being producer dominated Good at coping with non-compliance Could be domain wide
Information	Good for consumer empowerment Good for peer pressure Important for other regulatory judgments Hard to obtain on a consistent basis across the domain
Competition	Encourages efficiency and high standards Enables choice Significant barriers exist at present

- 4.11. The range of views on the regulatory mechanisms is also wide – but not all mutually exclusive. The NHF points to the use of contracts to regulate the private sector housing providers and state: *‘this is a much better mechanism and one that should apply equally to housing associations.’*⁵⁹ The Chartered Institute of Housing (CIH) prefers *‘regulation of activities, not of organisations’*⁶⁰ and proposes a system of licensing. The Housing Corporation proposes *‘a brand new registration system...open to all private affordable housing providers, profit-making and non profit-making.’*⁶¹ The Council of Mortgage Lenders (CML) states: *‘contractual regulation would not be appropriate for financial regulation of H[ousing] A[ssociation]s.’*⁶²

Regulation of rents

- 4.12. The regulation of rents raises a number of issues. In principle, all parts of the domain are intended to be on a converged system of rents by 2012. But in practice the treatment and enforceability of rent setting varies across the domain.
- 4.13. In relation to local authorities, government sets its assumptions on rental income through the process of the annual determination of HRA subsidy. An assumed rent charge is calculated for each local authority but its precise application is then a matter for that authority. In the case of ALMOs, the actual rents structure is agreed when the ALMO is established and the annual increase is then factored into the sponsoring local authority’s HRA and applied to the ALMO under the terms of its contract.
- 4.14. In the case of housing associations, the system of rent setting has been ‘policy passported’ to housing associations. As described in the evidence of the NHF, *‘Government imposed new rent limitations on independent social businesses unilaterally through the regulator without there being clear statutory justification for so doing.’*⁶³
- 4.15. In the case of accredited private sector providers, it is assumed that starting rents will be on the national rent setting formula and all increases thereafter will be on a basis of RPI + ½%. Both starting rents and increases will be covered by the Grant Agreement and Rent Charge.

⁵⁹ Evidence from the National Housing Federation (3.5)

⁶⁰ Evidence from the Chartered Institute of Housing (paragraph 3.9)

⁶¹ Evidence from the Housing Corporation (paragraph 19)

⁵² Evidence from the Council of Mortgage Lenders (paragraph 30)

⁶³ Evidence from the National Housing Federation (3.4)

- 4.16. Setting rents goes to the heart of the concept of social housing. The whole requirement for subsidy and regulation is predicated on the basis that rents will be below market levels and it is this which makes them 'affordable'. Given its central importance, the review does not consider that it is appropriate for rent setting to be undertaken on an informal 'policy passporting' basis. The review agrees with Shelter's conclusion that *'Rents in social rented housing must continue to be controlled.'*⁶⁴
- 4.17. There are also problems with the current rent setting arrangements in terms of their impact on choices across the domain. The lack of flexibility undermines the ability of providers to develop choices for tenants that have cost implications. As the National Consumer Council has pointed out, *'the price differentials between properties of different size and quality are trivial in comparison to the equivalent price differentials that exist in the private sector.'*⁶⁵ This results in a perverse incentive to over-occupy property when family size has diminished.
- 4.18. But rent matters are also contentious because of their relationship with service charges. Clarity of which services are paid for by rents and which are paid for by service charges is not always achieved – particularly within parts of the local authority sector. This is a source of continuing tension with leaseholders and this problem will become more acute as mono-tenure estates are replaced with more mixed communities.

Expansion of new supply

- 4.19. One of the main issues facing the domain is the under supply of affordable housing and the consequent need for rationing mechanisms. It also creates one of the most powerful constraints on choice and makes tenants 'captive consumers'. The review's core objective of making a more effective operating environment gives us a particular interest in supporting the supply of new homes. But the expansion of supply will primarily be the responsibility of Communities England. The process of selecting developers will be a competitive one which will not generally involve regulation. Nonetheless the regulatory system relating to ownership and management of social housing can have an impact on that process. It would also be inappropriate for Communities England to fund development by a provider which was not properly meeting the needs of its existing customer base.
- 4.20. There are sharp differences of view amongst the different parts of the sector about their role in new supply. Those parts that are the 'public' side of the Public Sector Net Cash Requirement (PSNCR) resent the limitations placed upon them. But on the 'private' side of the boundary, housing associations and 'for profit' developers both think the playing field is tipped in favour of the other. This is therefore an area in which differences between different parts of the domain makes it hard to take a consistent domain wide approach.

⁶⁴ Evidence from Shelter (page 12)

⁶⁵ Evidence from the National Consumer Council – House Rules (page 12)

- 4.21. The interest in new supply coupled with the desire to get the best possible value from public subsidy creates additional incentives and pressures. At present these are focussed most strongly on housing associations because they have visible resources that could be increased through greater efficiency. But new supply is not the only proper use of surpluses and those with a special interest in community development or support services or higher housing standards or higher quality services are all eyeing the same pot of potential resources. Competing demands on a finite pot is always a source of potential conflict.
- 4.22. It is clear that the review's consideration of this issue will need to take account of a number of different factors including:
- Relationship with Communities England
 - Public/private boundaries
 - Efficiency
 - Barriers to entry
 - Incentives to unlock capacity
 - Proper use of surpluses

Contracts

- 4.23. The review has received different views about contracts as the main mechanism of regulation. The National Housing Federation has proposed that both new investment and the legacy of past investment should be the subject of contract regulation rather than a registration based system.⁶⁶ The Council for Mortgage Lenders has taken the opposite view and said '*contractual regulation would not be appropriate for financial regulation of H[ousing] A[ssociation]s.*'⁶⁷ The Housing Corporation has proposed a new form of registration.⁶⁸ The Chartered Institute of Housing has proposed a licensing system.
- 4.24. Contracts are at the centre of the current arrangements for the ownership and management of 'for profit' private sector social housing. But the terms of the proposed contracts have, so far, deterred any private sector company from using that route. The representatives of the private sector whom the review consulted were not keen on the current contractual framework. Nor did they evince much enthusiasm for Private Finance Initiative (PFI) schemes as they continue to involve lengthy and costly negotiating processes with uncertain outcomes. This may change in the future.

⁶⁶ Evidence from the National Housing Federation (5.2 and 9.1)

⁶⁷ Evidence from the Council of Mortgage Lenders (paragraph 30)

⁶⁸ Evidence from the Housing Corporation (paragraphs 25-30)

- 4.25. But contracts also have disadvantages from other perspectives. As Shelter pointed out, *'the contracting out of services in the housing sector to date has been far from trouble free...a contracts based system could lead to difficulties and a lack of flexibility to meet changing need.'*⁶⁹ In order to ensure, for example, that a 30 year housing contract can provide for a changing involvement with a local authority's place shaping role, that contract will have to be capable of emendation in the course of its fulfillment.
- 4.26. One way of getting round this situation is to require that all new social housing stock be subject to the same regulatory framework. A single system is simpler but necessarily closes down options. At this early stage of opening up the domain to new providers, closing down options does not seem productive.

'Place-shaping' – relationships with local authorities

- 4.27. The role of regulation in relation to place-shaping has been a source of disagreement in the submissions the review has received. It is the most contentious issue within two wider debates. The first is the relationship between non council housing providers and local authorities and the second is about what constitutes the core role of social housing providers and the extent to which desirable wider roles should be regulated.
- 4.28. The Audit Commission stated that *'community housing organisations should actively contribute to the social, economic and environmental well being of neighbourhoods in which they have an interest, and to that of the residents who live in those neighbourhoods.'*⁷⁰ The Hills review points to several ways in which housing providers could contribute more widely including more integrated ways of helping tenants into work.⁷¹
- 4.29. The evidence of the Local Government Association (LGA) states *'RSLs can potentially play a greater role in tackling quality of life issues in local communities, further enhancing tenant experience. The regulatory regime should recognise this and give adequate flexibility and weight to the wider contribution that social housing providers make in maintaining and managing communities and neighbourhoods, and not focus purely on accommodation provision.'*⁷²
- 4.30. London Councils propose that the onus should be on the regulator to *'ensure that all landlords and providers are properly engaged in effective joint working in the pursuance of better outcomes for their communities.'*⁷³

⁶⁹ Evidence from Shelter (page 18)

⁷⁰ Evidence from the Audit Commission – The Future Regulation of Housing (paragraph 42)

⁷¹ Ends and means: the future roles of social housing in England. John Hills. CASereport 34

⁷² Evidence from the Local Government Association (4.1)

⁷³ Evidence from London Councils (page 4)

- 4.31. The view of the National Housing Federation is different. It states that *‘housing associations have traditionally undertaken a wide range of functions beyond their narrow role as landlords, and not required by the regulator. We are confident that these functions will be maintained and extended in the future, but they should not be the concern of the regulatory regime.’*⁷⁴
- 4.32. While generally in favour of strengthening requirements for co-operation with and accountability to local authorities, the Housing Corporation also warns that *‘any enhanced local authority role would need to be carefully tested to ensure that it did not negatively impact on registered bodies’ status as private bodies for public accounting purposes’.*⁷⁵
- 4.33. Some of the submissions have proposed a local authority ‘regulatory role’. The review does not consider this appropriate. There are three different issues here. The first is about accountability. Local authorities should be key stakeholders in the accountability maps of housing providers – particularly for those providers with a significant holding in an area. The second is about constructive engagement and co-operation with local authorities in relation to their statutory roles and responsibilities. The review considers social housing providers should be required by law to work alongside their local authority partners in this way (as they are for homelessness). Regulation is a separate matter. It would be inappropriate for social housing providers to be subject to regulation by a wide range of different bodies (in this case local authorities). Standards could potentially be different in adjoining areas and enforcement measures could be developed and applied inconsistently. The regulation of social housing should be undertaken by a national body. Nonetheless, engagement with councils can contribute to the shaping of the regulator’s judgements, and councils may in some cases be able to assist providers in addressing problems which have emerged from the regulatory process.
- 4.34. The review also takes strong account of the evidence of ‘What Tenants Want’ which is also picked up both in the Hills review and in the submission from the National Consumer Council. The absolute priority for providers is to ‘get the basics right’. The review considers that this must also be seen as the priority for the regulator. But the review also wants housing providers (and particularly larger housing providers) to engage with the greater role articulated by the Local Government Association and London Councils. It is not, in the review’s view, the role of the regulator to regulate the place shaping activities in which local authorities engage with both housing providers and many other organisations. This will be the job of the Audit Commission under the Comprehensive Area Assessment arrangements due to be implemented from 2009. But the social housing regulator will be there to ensure that housing providers engage constructively and play their part. The review expands on the relationship with local authorities in paragraphs 5.16-5.28.

⁷⁴ Evidence from the National Housing Federation (Appendix)

⁷⁵ Evidence from the Housing Corporation (paragraph 50)

Extent of de-regulation

- 4.35. While there is a general consensus about the desirability of a reduction in the regulatory burden, there is no agreement about the appropriate extent of such de-regulation. There are divergent views from important stake holders. The CML state: *'It is essential the terms and conditions of existing lending are not retrospectively changed by dilution of regulation.'*⁷⁶ Other lenders have confirmed this view and do not wish to see a reduction in the effective regulation of financial viability and governance.
- 4.36. The NHF asserts that: *'The sector, not the regulator, should set and guarantee standards of governance, probity, conduct and service.'*⁷⁷ The Audit Commission considers that there should be *'a regulatory framework that is proportionate to risk, scale and performance'*.⁷⁸ The Housing Corporation wishes to retain what it sees as *'the cornerstone of a statutory registration system.'*⁷⁹ The Home Builders Federation set out their *'overarching principle that regulation should be as light as possible in order to facilitate flexibility and innovation.'*⁸⁰

Developing options

- 4.37. The full range of possible options for the regulation of a domain with four elements is far more extensive than can be accommodated within a report of this nature. The review has sought to overcome this problem by developing a limited range of options that could be described as 'approaches' rather than specific options. They could each be carried out in a variety of ways and have deliberately been defined in this way so that they do not represent a specific option that has been championed by one of the many organisations that have submitted evidence. They represent a spectrum from light regulation to intrusive regulation.
- 4.38. But, for each of the four levels of regulation, the review team has considered the possibility that it applies to either the whole social housing domain or to its separate elements. This gives a total of eight options.
- 4.39. The implications of these four approaches to regulation can be quite varied, but they are illustrated in the following sections with a summary of their advantages and disadvantages of a particular variant of each. Those advantages and disadvantages will depend on the perspective of the stakeholder. One person's meat may be another person's poison.

⁷⁶ Evidence from the Council of Mortgage Lenders (Page 1)

⁷⁷ Evidence from the National Housing Federation (5.2 a)

⁷⁸ Evidence from the Audit Commission – The Future Regulation of Housing (paragraph 95)

⁷⁹ Evidence from the Housing Corporation (paragraph 65)

⁸⁰ Evidence from the Home Builders Federation

4.40. De-regulation

Description	Advantages	Disadvantages
<p>The most de-regulatory option would be to replace the regulation of organisations with the regulation of activities by contracts.</p> <p>The core role of the regulator would be to organize the contract framework and be the principal commissioner and holder of contracts.</p> <p>This would maximise the use of contracts for both procurement of new housing and for the protection of existing housing association homes.</p> <p>This would put housing associations and private sector providers on a similar basis. But it would have little impact on public providers (local authorities and ALMOs).</p> <p>Private sector providers are not subject to Audit Commission Inspection and this exemption would be extended to housing associations.</p> <p>The form of contract would ensure that affordable rented housing continued to be used for the purpose that grant (or other forms of subsidy) was provided.</p>	<p>There would be significantly less regulation for housing associations.</p> <p>In principle it could open up a more level playing field competition between the private sector and housing associations for both new supply and existing homes.</p> <p>This should increase the resources available for new supply. It could also stimulate flexibility and innovation.</p> <p>It would be possible to build various intervention powers into contracts without the paraphernalia of a full blooded registration system. But the options for intermediate levels of intervention would be limited.</p>	<p>The end of special registered status and the end of the regulation of financial viability and governance would change the terms of current lending retrospectively. This would lead to widespread covenant breaches and a hiatus in relation to both current and future lending. At the least, the current cost of borrowing would increase and there could be a significant reduction in the future supply of loans.</p> <p>There would be very limited scope for taking a domain wide approach to standards as there would be a clear separation of the public and private sectors.</p> <p>Creating a contract framework for current housing association stock is fraught with difficulties.</p> <p>The end of inspection for housing associations and greater freedom of action may lead to a much wider range of performance. The standard of service experienced by residents of poorer providers may deteriorate.</p> <p>Use of long term or indefinite period contracts might entrench traditional approaches rather than stimulate innovation and continuous improvement.</p> <p>Long term contracts are unlikely to be able to entrench much of a role for local authorities.</p>

4.41. Self Regulation

Description	Advantages	Disadvantages
<p>The next most de-regulatory option would be to maintain the registered status of housing associations. This status could be opened up to profit making bodies and/ or subsidiaries of profit making bodies.</p> <p>Tight bounds for the role of the regulator would be set. The supply of new homes would be governed by contract.</p> <p>The main areas of housing management and maintenance standards and performance, governance, and financial control would be self regulated.</p> <p>Within a self regulated framework there could still be a role for statutory guidance.</p> <p>Housing providers would be responsible for their own inspection arrangements but there would be a backstop inspection and intervention role for the regulator.</p>	<p>There would be significantly less regulation for housing associations.</p> <p>The option of registration within a self-regulatory framework might be more attractive to the private sector than the current contract framework.</p> <p>Both factors should increase the resources available for new supply. They could also stimulate flexibility and innovation.</p> <p>The retention of registered status would make it easier to have a graduated range of intervention mechanisms.</p> <p>Statutory guidance would provide some scope for requiring landlords to address emerging priorities.</p> <p>A backstop inspection role would provide greater protection for residents than having no inspection power.</p>	<p>Self regulation of financial control and governance would probably be seen by lenders as a retrospective change in the terms of current lending (albeit not as great as in the de-regulatory option). This would risk an increase in the cost of current borrowing and a reduction in future lending.</p> <p>It is likely that self regulation would be more 'producer friendly' and less challenging – to the disadvantage of tenants.</p> <p>It is likely that self-regulation of standards and service would be provider specific and maintain or increase the differences between local authority, ALMO, housing association and private sector providers. As a consequence, domain wide approaches would be very constrained.</p> <p>The limited scope of the regulator's role might reduce the extent of housing providers' engagement with local authorities.</p>

4.42. Co-regulation

Description	Advantages	Disadvantages
<p>A co-regulatory approach would give a wider role to the regulator than the two preceding approaches. Registered status would be maintained (with the same option of opening it up to the private sector).</p> <p>There would be some areas covered by contract, some by direct regulation and some by self regulation.</p> <p>The self-regulated element would be within a framework that was approved by the regulator.</p> <p>Core standards of home and service would be set by the regulator and could therefore be domain wide.</p> <p>Providers could develop a range of improvement, tenant involvement and inspection mechanisms but if they were not robust or there were poor outcomes then the regulator could impose inspection and follow up with a range of intervention measures.</p> <p>Some elements of regulation would be provider specific. For example some regulation of financial viability and governance would continue for housing associations proportionate to the level of risk.</p>	<p>There would be less regulation than at present (albeit more than for the two previous options).</p> <p>Opening up registered status might be more attractive than the current contract framework.</p> <p>Both factors should increase the resources available for new supply.</p> <p>There would be a domain wide approach to standards and this would help to ensure consistency of treatment irrespective of the status of the provider.</p> <p>The greater freedom to operate and self regulate – but within a domain wide framework of standards and agreement – should stimulate innovation and responsiveness to local circumstances.</p> <p>It would provide more safeguards for tenants than the preceding options and be more challenging than pure self regulation.</p> <p>The continuation of regulation of the financial viability and governance of housing associations (albeit on the basis of risk) together with a wider spectrum of intervention options would maintain the current terms of lending and encourage lender confidence.</p>	<p>The level of de-regulation would be less than in the two previous options.</p> <p>In relation to the areas of direct regulation, there would be a danger that the new regulator could become bureaucratic and process driven rather than outcome focused and receptive to new ideas.</p> <p>The greater freedom to be flexible and innovate could lead to less consistency of service across all providers.</p>

4.43. Re-regulation

Description	Advantages	Disadvantages
<p>This option could be described as the modernisation of the current framework. It is the least de-regulatory option but could still involve improvements on the current arrangements.</p> <p>Housing associations would continue to be registered bodies and the private sector would be involved through contract regulation only.</p> <p>The main scope for reform would be to strengthen the risk based focus of regulation so that better performing lower risk organisations received a lighter touch.</p> <p>The definition of standards across the domain would evolve in the Key Lines Of Enquiry (KLOE) format. Audit Commission inspection would continue but on a far less frequent basis unless triggered by risk factors or poor reported outcomes. It would not apply to the private sector.</p> <p>Regulation of the governance and financial viability of housing associations would also continue, but on a more risk based approach.</p> <p>The group of associations receiving a significantly streamlined approach would be widened from the current 1,000 homes threshold. But this would be risk based rather than a fixed size.</p>	<p>As this would be an evolution from the current framework rather than a wholly new system, it would be easier to implement and would require the least legislative change.</p> <p>There would be no danger of it triggering concerns amongst lenders as the main ingredients that have underpinned their confidence would be retained.</p> <p>The continuation of Audit Commission inspection as the primary inspection mechanism (albeit on a less frequent basis) would sustain the pressure on most of the domain to raise standards of service and cost efficiency.</p> <p>The continued regulation of housing associations as organisations makes the continuation of policy passporting possible. This will be perceived as an advantage by Government (both centrally and locally).</p>	<p>This option would be the least de-regulatory and would therefore achieve only a modest reduction in the regulatory burden.</p> <p>This would free up fewer resources for new investment (although it could be argued that this could be offset by the continued inspection focus on cost efficiency).</p> <p>Although the definition of standards could be common across the domain, the lack of inspection for private sector providers would be seen as an unlevel playing field. This might encourage associations to bid through unregistered subsidiaries.</p> <p>The regulator's intervention options for private owner/managers would continue to be more circumscribed and this could lead to less protection for their tenants.</p> <p>The continuation of the KLOE system may be viewed as unnecessarily prescriptive and therefore limit innovation.</p> <p>The continued regulation of housing associations as organisations makes the continuation of policy 'passporting' possible. This will be perceived as a disadvantage by housing associations.</p>

Initial conclusions on these approaches

- 4.44. As stated previously, aspects of these options can be mixed in a variety of ways. None has been spelt out in detail as it is the consequences of the overall approach rather than the detail that the review is seeking to elucidate. With this proviso, there are serious reservations about the first two approaches, chiefly because they seem incapable of offering tenants the protection and support to which they are entitled. They might also have an impact on the terms of current (and future) lending. The existing £35 billion private investment in the sector is now larger than the government's input of grant over the same period. Action that undermines the confidence of lenders will produce a significant increase in costs, undermine development capacity and increase the cost of new supply for the public purse.
- 4.45. The review also has reservations about the fourth option because it does not seem to maximize the potential opportunity for more radical change in regulatory arrangements. This leaves the third option as the one most likely to form the basis of the review's recommended option.
- 4.46. As described in paragraph 4.9 above, the review has concluded that regulation needs to be on a domain wide basis. Differences between the four categories of provider need to be respected. But where possible, regulatory treatment should be the same or on an equivalent basis.
- 4.47. But in considering the preferred option, the review feels free to pick elements from the other approaches where this is appropriate. In broad terms therefore, the initial conclusion is the preferred regulatory system lies in the shaded area of the following table.

	De-regulation	Self regulation	Co-regulation	Re-regulation
Domain				
Sector				

5 THE PROPOSED SYSTEM OF SOCIAL HOUSING REGULATION

- 5.1. The review team's preferred option for social housing regulation is set out under the following three main sections:
- The strategic approach
 - The wider regulatory context
 - Regulating providers
- 5.2. The review's conclusions with respect to institutional arrangements are set out in the subsequent chapter.

THE STRATEGIC APPROACH

- 5.3. Historically, social housing regulation has been focussed on tackling supply side problems. More recently there have been measures to lessen the impact of failures in social housing by addressing quality of service and tenant involvement deficiencies. At the same time advantage has been taken of the regulatory framework to get providers to implement a range of other government objectives.
- 5.4. The location of responsibility for tackling the supply side problems with Communities England provides an opportunity for a complete re-think of the focus of social housing regulation. The review's conclusion is that the focus for the future should be on regulating social housing for the benefit of consumers, current and future.
- 5.5. Moreover, in order to prevent fragmentation of regulation and thereby endanger the well-being of at least some tenants, the regulator should have powers over the ownership and management of social housing across the whole domain.

Recommendation S1⁸¹: 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.

Recommendation S2: The regulator should have three principal duties:

- **To ensure the continuing provision of high quality social housing**

⁸¹ The recommendations which follow are divided between those that are addressed to the Secretary of State, relating chiefly to the nature of the proposed legislation, and numbered Recommendation S1-24, and those directed to the proposed regulatory body, relating to the implementation of its regulatory duties, and numbered Recommendations R1-13. The boundary between the two categories would clearly depend on the details of the legislation.

- **To empower and protect tenants**
- **To expand the availability of choice of provider at all levels of the provision of social housing**

- 5.6. These three duties should form the basis of the statutory definition of the regulator's powers across the domain of social housing.
- 5.7. The two strategic principles cover how to approach the duties described above.
- 5.8. Given the major challenges currently facing the system, this has to be recognised as a long term strategy, which it will take some time to accomplish. But unless the strategic direction is set and the journey started, a system that works in the interests of consumers will not be achieved.

Recommendation S3: The regulator should:

- **apply common principles, where practicable, across the whole social housing domain**
- **reduce and manage the burden of regulation**

- 5.9. The burden of regulation on the domain varies between its different elements. Taken together the review considers that it is excessive and should be significantly reduced. In the long term the review expects regulation to decrease significantly as mechanisms develop that increase competition and boost customer choice. In the meantime it can be reduced by a combination of better definition of a more limited set of regulatory requirements, a risk- based approach to regulation which requires direct engagement and intervention only where there is evidence of failure, and a better managed and more sparing approach to regulatory information requirements.
- 5.10. Government should be able to issue directions to the regulator in relation only to rents and the standards of housing provision. It should be for the regulator to transpose these into the regulatory framework.

Recommendation R1: The system for regulating social housing providers should as far as possible 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.

- 5.11. A more detailed description of the key elements necessary to achieving each of the three strategic objectives are set out below. But first the review sets out the important relationships between the regulator and central and local government.

THE WIDER REGULATORY CONTEXT

The central government relationship

- 5.12. As the review has stated above, the regulator should be independent of government with that independence defined by statute. But there are certain defined matters for which the government should have the power to issue directions to the regulator.
- 5.13. The first of these areas relates to housing standards. The standard of housing for the four million homes in the social housing domain is a matter over which the government should be able to establish strategic direction. The clearest recent example of this is the Decent Homes Standard. The review has little doubt that this standard will need to be redefined over the next decades in response to new priorities in relation to energy and water efficiency. Standards may also extend to a limited number of services ancillary to housing, but essential to provision, such as implementation of the Respect agenda. This might in the future be extended to activities flowing from a broader definition of needs, such as measures to enhance health or combat worklessness. It will be a matter for the government to establish strategic directions relating to such standards. The review recommends that the regulator should then set more detailed standards within the terms of the ministerial direction, and should – following consultation with housing providers – set timescales for their achievement within overall government targets and monitor implementation.
- 5.14. The second key area for government direction relates to rent levels. Pricing is integral to most regulated sectors and the review therefore recommends that the regulator have the statutory power to set rent levels across the domain. But rent levels have a direct impact on the amount and distribution of public expenditure both through their impact on housing benefit and through Housing Revenue Account subsidy. They also have a substantial indirect impact on the cost of procuring new subsidised housing. It is therefore appropriate that the general outline of rent policy should be a matter for the government rather than the regulator. The government should have the power to set directions to the regulator on rents. This is set out in further detail in paragraphs 5.115-5.120 below. The regulator's role in setting rents would be within a policy framework determined by the government.

Recommendation S4: 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.

- 5.15. Key parts of the review's proposals relate to attracting new providers and increasing the efficiency of existing providers. Reducing the regulatory burden and increasing regulatory certainty is a key element of this. The review also proposes that the regulator stands between the domain and government and restricts the long established pattern of 'policy passporting' by which additional burdens are added through 'regulation creep'. The Better Regulation Commission is clear that burdens should not be increased in this way and that where it is necessary to impose an additional obligation it should be on the basis of removing equivalent existing obligations ('one in one out').

Recommendation S5: The regulator should maintain and update a clear statement of provider obligations.

The local government relationship

- 5.16. Local authorities have a range of roles in relation to housing. These include statutory housing responsibilities, their strategic function, homelessness, housing in multiple occupation, planning and, in many cases, direct housing service provision. The review's focus in this section is on the relationship between the regulator, housing providers and local authorities with strategic housing responsibilities.
- 5.17. The role of local authorities is changing. The recent White Paper and the final Lyons report point to a wider 'place shaping' role. *'Local authorities should be recognised as the body in the locality with the responsibility of bringing together the efforts of the public sector, and also of relevant parts of the private and voluntary sectors, to secure local well-being through a convening role. That is at the heart of what place shaping is about.'*⁸²
- 5.18. The performance assessment system for local authorities is also changing. The Local Government White Paper and the subsequent Local Government and Public Involvement in Health Bill describe how Comprehensive Area Assessment (CAA) will be at the heart of this new performance framework. CAA will focus on place rather than the individual bodies responsible for local services. It will look across local government, housing, health, education and community safety. The Audit Commission has been given the task of delivering this new performance management system.

⁸² Place-shaping: a shared ambition for the future of local government (Paragraph 2.48) Sir Michael Lyons, The Stationery Office, March 2007.

- 5.19. CAA will be developed by the Audit Commission in partnership with other regulators and in close consultation with local public services and central government. The system will differ from the current approach to performance assessment by being area based, risk focussed and forward looking. It will require regulators to work jointly together to deliver proportionate, effective and properly targeted inspection. The new framework will be in place by April 2009⁸³.
- 5.20. The regulation of social housing will sit alongside the new framework for the assessment of local services. The precise arrangements for this will need to be settled when the new performance regime for local areas is introduced later this decade. This will require close liaison between local authorities, the Audit Commission and the social housing regulator.
- 5.21. The Lyons report recommends that: *'The Government should ensure that local authorities have appropriate influence over housing issues in their place shaping role and should consider whether to extend the duty to cooperate to housing associations and other social landlords.'*⁸⁴ As the review has described in paragraph 4.27, this has been an area in which the review has received conflicting representations. Some have proposed a regulatory role for local authorities and others have proposed that social housing providers should have no formal obligations to local authorities.
- 5.22. The review considers that the Lyons report has identified the key issue – should local housing providers have a duty to cooperate with a local authority's place-shaping role? The review's answer is an unequivocal 'yes'. Without such cooperation, place-shaping is unlikely to be successful.
- 5.23. Place-shaping will provide a wider strategic context for local authorities' housing strategy role. Effective local authorities will be engaging with key public and private sector providers in the development of their strategies. They will have planning powers in relation to new supply and some commissioning powers in relation to support services. They may have Local Strategic Partnerships and also be direct housing providers in their own right. They will have nomination agreements for lettings and Local Area Agreements.
- 5.24. The review agrees with the Lyons report description of the new local authority role as 'convening'. This is not a regulatory role and there are considerable dangers in seeing it in such terms. Lyons is equally clear that: *'Embracing and enhancing the convening role also involves a recognition on the part of local government of the importance of influencing outcomes in services which are being directly delivered by others. This form of leadership requires a consensual approach, new skills and strong, shared knowledge and understanding of local needs and priorities. Too often key partners find local government tending to confuse leadership with dominance.'*⁸⁵

⁸³ The Evolution of Regulation, Audit Commission, April 2007

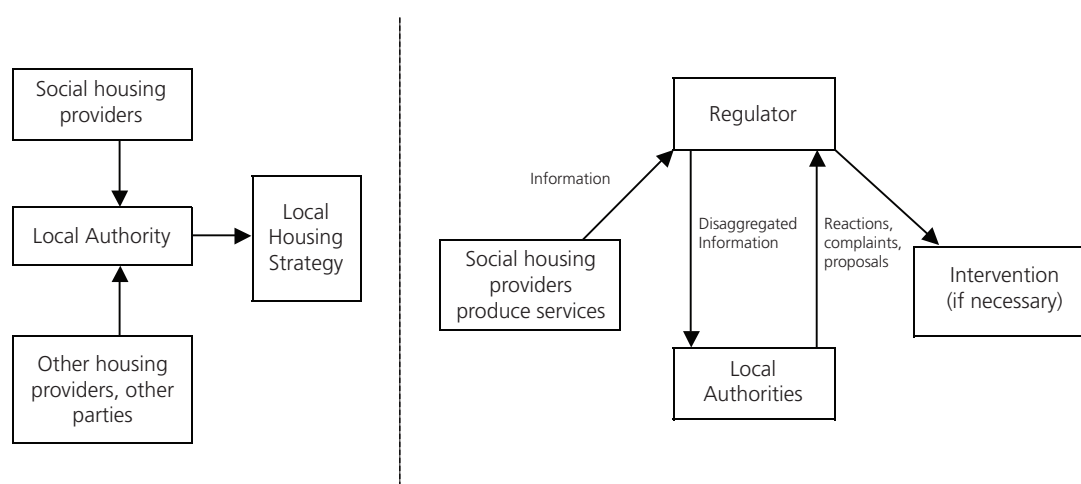
⁸⁴ Place-shaping: a shared ambition for the future of local government (Paragraph 4.22) Sir Michael Lyons, The Stationery Office, March 2007.

⁸⁵ Place-shaping: a shared ambition for the future of local government (Paragraph 5.30) Sir Michael Lyons, The Stationery Office, March 2007.

- 5.25. Already, half the social housing domain is in the private 'not for profit' sector rather than the public sector. The review anticipates that this proportion will grow and that there will also be a small but growing 'for profit' component to the sector.

Recommendation S6: 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.

- 5.26. This cooperation will require social providers to engage constructively and will often include a variety of local agreements and partnerships. But local authorities will need to implement the approaches recommended by Lyons if this engagement is to achieve successful outcomes. The terms of agreements and partnerships are for both parties to agree. It will not be the role of the regulator to coerce providers into one-sided agreements. Constructive engagement is a reciprocal responsibility. The Audit Commission will assess the effectiveness of local authorities in engaging with public and private partners. The social housing regulator will assess the effectiveness of the cooperation of social housing providers. A diagram illustrating the sequential nature of the relationship between the two processes is set out below.



- 5.27. As stated in paragraphs 4.27-4.34 the review considers that local authorities are key stakeholders in the accountability maps of all social housing providers. For housing providers with a dominant role in a local authority area, this will be a particularly important accountability. The review is proposing in paragraph 5.98 that all housing providers are required to provide the top level of performance information on a local authority by local authority basis. This will enable every local authority to compare the performance of the providers in their area. The review considers that this is an important element in the development of effective local scrutiny and accountability.

- 5.28. Finally, there will be occasions when specific housing providers perform poorly, don't engage with their local authority or are in breach of Local Area, nomination or other agreements. The review proposes in paragraph 5.151 below that local authorities can be triggers for regulatory intervention. The circumstances and level of response will be a matter for the regulator to determine at the time. The regulator will 'triangulate' local authority evidence of poor performance with other indicators and respond accordingly.

Relationships with other key stakeholders and regulators

- 5.29. There are other key players with a stake in social housing provision. As the review has indicated in several parts of this report, lenders have played a key role and their continued support is one of the core objectives of the review's proposals. Lenders have invested more in housing associations than government.
- 5.30. While the focus of the relationship may currently be on housing associations, the review anticipates that this will change. High performing local authorities and ALMOs, for instance are already assessing with CLG the potential for them to opt out from the HRA subsidy system. Such landlords might in future be able to access private funding in order to support the development of their housing stock. It is also the review's aim to lower barriers to entry and encourage wider private sector participation. The review therefore expects that all parts of the domain will, in the future, have relationships with lenders.
- 5.31. The review's aim in framing these recommendations is to modernise, but not fundamentally change in the relevant respects, the regulatory assumptions on which the current lending of some £35 billion is based. The review is proposing the continuation of both financial viability assessment and of intervention. The detailed proposals on these matters are set out in paragraphs 5.57-5.61 and 5.146-5.149 respectively. Although the review's proposed arrangements will be lighter touch and more risk based, there will also be a number of new elements that will continue to justify the current good terms on which providers can borrow. The result should be greater regulatory certainty and a reduced regulatory burden. The review's proposals on intervention and enforcement provide for a wider range of responses than the limited 'nuclear' options that are available at present.
- 5.32. The regulation function (wherever performed) will have a relationship with Communities England as the principal agency responsible for increasing the supply of new homes. The review envisages that Communities England will be the principal investment agency responsible for increasing the supply of new affordable housing.
- 5.33. The regulator will have two roles in relation to procurement. First, it will advise on situations where it considers a registered provider is not suitable as an investment partner. Second, it will be encouraging both efficiency and the use of surplus resources to support new investment.

- 5.34. The regulator has the primary interest in the long term ownership and management of social housing. The relationship will therefore be closest in relation to long term contract approaches to procurement (such as PFI). There will need to be arrangements for agreeing contract terms so that these encourage rising standards and do not undermine the tenant empowerment thrust of the proposed approach to regulation.
- 5.35. This review proposes a new approach to inspection and therefore a new relationship with the Audit Commission in its role as custodian of the CAA arrangements post 2009. As described in paragraph 6.4 below, the review recommends that the housing inspection function is controlled by the regulator and that inspections can be carried out directly by the regulator or commissioned externally.
- 5.36. Nevertheless, the relationship between the regulator and the Audit Commission will continue to be important. The Audit Commission will play a key role in developing the framework for Comprehensive Area Assessments and undertaking the role of the Local Service Inspectorate. This will be a broad strategic role encompassing health, education, policing and all of the local government 'place shaping' roles. Social housing will be a small but crucial element on this wider stage. There will therefore be a relationship between the Audit Commission and the regulator as there will between the Audit Commission and the Healthcare Commission, Commission for Social Care Inspection (CSCI), Ofsted, and the Inspectorates of Constabulary, Probation and Prisons. All such regulators will be engaging with the Audit Commission as it orchestrates the overall assessment.
- 5.37. There are also other key players that abut or overlap with the social housing domain. This is particularly the case with care and support. Some care and support is provided directly by housing providers and some is provided in their homes by other agencies. This brings relationships on care services with social services departments and other commissioners and with CSCI as regulator. It is important that the regulation of services to people who are often very vulnerable do not 'fall between stools' of different regulatory systems. But it is equally important that providers are not subject to dual or triple regulation.
- 5.38. Specialist agencies (which can include housing providers) incur significant additional costs because of the plethora of different contracting arrangements and reporting requirements of different commissioners. Some commissioners also duplicate the role and information requirements of other regulators. The review strongly commends the national initiatives to standardise approaches to procurement and to agree a national outcomes framework under development within Supporting People. Commissioners should recognise the oversight arrangements of other regulators (such as the housing regulator's oversight of financial viability) and not seek to duplicate this in their own arrangements. Equally, the housing regulator should not duplicate the scrutiny that exists under care and support contracting arrangements.

- 5.39. The regulator is the primary regulator of the social housing domain. However, other regulators will have an interest, including the Charity Commission and Financial Services Authority. Where possible there should be explicit arrangements for roles to be distributed among regulators so that regulatory functions are not duplicated.

Recommendation R2: 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.

REGULATING PROVIDERS

To ensure the continuing provision and development of high quality social housing

- 5.40. The review considers that there are the four following strands to this objective:

- Improve housing and service standards
- Support the supply of new homes
- Encourage efficient management
- Protect past and future public investment

Improve housing and service standards

- 5.41. Ensuring, as far as practicable, the delivery of good quality housing services across the domain is a core responsibility of the regulator. This requires the regulator to have a clear sense of what constitutes the core housing service in terms of both the quality of homes and of the management service provided. In reaching conclusions on this issue the review has heard some powerful advocates of wide definitions that include 'place-shaping', neighbourhood regeneration and a broad range of tenancy support functions. But the review has also heard direct evidence from tenants and from What Tenants Want that getting the basics right must be the first priority. This stated that the basics comprised:

- Commitment to delivering a quality service,
- Competent and polite service from frontline delivery staff
- Speedy repairs completed to a high standard
- Listening to Tenants

- Security
- Affordable rents

5.42. The review accepts this conclusion but with the following six provisos:

- The review is determined to ‘practice what it preaches’ in terms of empowering tenants. There should be wider consultation on the core standards and this should be an early focus for the new national tenant voice that the review has proposed above.
- The standard should take account of context and, most specifically in this connection, that there should be a wider definition of ‘core standards’ where homes are concentrated in estates or neighbourhoods.
- The standard should allow all housing providers to deliver high quality housing management services that are responsive to the needs of their tenants, particularly where they are specialist organisations providing for the needs of specific groups in the community
- Housing providers have a duty to co-operate with local authorities in relation to their strategic ‘place-shaping’ responsibilities.
- The review is aiming for improved housing standards both now and in the long term. This means that the core standard should be adapted and raised as ‘getting the basics right’ becomes more universally achieved.
- The review is sufficiently concerned about the mixed quality of landlord complaint mechanisms to believe that ‘high quality complaints procedures’ should be added to the ‘basics’ described above.

Recommendation R3: 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 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.

Recommendation R4: 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 the providers.

Recommendation R5: 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**

5.43. The review considers that approaches such as those provided by Quality Housing Services to their members and the Tenant Participation Advisory Service (TPAS) accreditation framework exemplify what the review is proposing. The review would hope that similar services, that combine independent assessment, tenant assessment and benchmarking, become more widespread. Those that have such arrangements and that demonstrate good performance outcomes should be subject to the least regulation and be exempt from any standard form of inspection.

5.44. The review envisages a continuing role for inspection in the improvement of housing services. In future the review proposes that inspection takes one of four forms. The first is to explore potential problem areas in response to a range of performance triggers (which are described further in paragraphs 5.150-5.152 below. Such inspections are likely to be targeted on the area of concern but might be broadened in the light of the findings. They will be risk based and proportionate. The second is to validate the effectiveness of the various types of peer review and tenant led assessments that are developed to drive continuous improvement (described in the preceding paragraphs). These inspections are likely to be carried out on a random and short notice basis. Third, inspection could be used as part of the qualifying criteria for additional funding or other purposes. The fourth type of inspection might more accurately be described as research. The review envisages that they would be on a particular theme (such as complaint systems or tenant involvement or developing choice). Their purpose would be to seek out good practice with a view to promoting sector wide improvement.

Recommendation R6: 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.

- 5.45. In a later section, the review set out its view that voluntary ‘unbundling’ of management from ownership could help to improve housing standards in specific situations. The review also considers that the possibility of requiring tendering of housing management in cases of demonstrable poor performance could be a useful tool in the regulator’s armoury for addressing unacceptable levels of performance. This is discussed further below. If there is a continuing group of providers whose performance in delivering core housing services fails to improve then it would be open to the regulator to lower the threshold at which the existing management would be required to contest the right to manage, with other providers.
- 5.46. Local authorities have key roles to which social housing providers make a contribution. These roles include:
- Place-shaping (area and neighbourhood sustainability)
 - Sustainable Community and Housing Strategies
 - Homelessness
- 5.47. As the review has stated in paragraphs 5.16-5.25, housing providers must cooperate and engage constructively with local authorities in relation to these housing related roles and in proportion to the scale of their housing in the area. The regulator will have a role in ensuring that they do so.
- 5.48. These roles may broaden in future in relation to community safety, worklessness, health, social and financial exclusion and improving life chances. But, in the absence of directions from government, it is not the role of the regulator to regulate the activities of housing providers in these important but non-core housing roles. These wider activities will be seen as a worthwhile use of surplus funds at the discretion of the housing provider. But the regulator will actively discourage the siphoning of resources from the core housing role if there is evidence that the provider is not delivering the core service to a good standard.
- 5.49. Overall, the intention of the framework the review is proposing in this and the subsequent sections is to provide incentives to good performance and continuous improvement. The review sees this coming in the following ways:
- Lightest regulation for the best performers
 - Greater opportunities to build a wider housing management service business on the back of good performance (see paragraph 5.128)
 - Good publicity from the open publication of performance information by the regulator (see paragraphs 5.140-5.142)
 - Greater scope for flexibility and innovation

5.50. The role that the review envisages for the regulator in improving housing standards will apply to all parts of the domain. The review considers it will be de-regulatory in its impact and co-regulatory in its design. It will encourage self improvement mechanisms and reward positive outcomes with significantly lighter regulation. However, poor performers can expect to get high levels of attention as poor service outcomes are not acceptable.

Support the supply of new homes

5.51. One of the main causes of tenant disempowerment across the domain is the under supply of affordable housing and the consequent need for rationing mechanisms. It also creates one of the most powerful constraints on choice and makes tenants 'captive consumers'. The regulator's core 'market making' role therefore give it a particular interest in supporting the supply of new homes. The principal agency with responsibility for increasing supply will be Communities England.

Recommendation R7: 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 reduces barriers to entry for development, 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**

5.52. The present regulatory and procurement framework is dominated by the vertical integration of developers, owners and managers. As the review will describe below, this prevents organisations from playing to specific strengths, inhibits new entrants to the social housing domain and excludes many organisations with development capacity. The review recommends that the framework enables specialist organisations to play a role with a level of regulation that is limited to that role.

- 5.53. The review considers that the barriers to entry for development, ownership and management are too high. While the intentions are good (to ensure that only appropriate bodies are admitted to registered or accredited status), the outcome can reduce competition and the availability of funding for new supply. One of the disincentives to entry is uncertainty of obligations combined with 'regulation creep'. Taken as a whole, the review considers that the review's proposals will provide greater clarity and certainty for new entrants.
- 5.54. Communities England will have comprehensive pre-contract vetting procedures, programme monitoring processes and development performance assessment processes. The regulator's interest will be limited to the areas set out below in paragraphs 5.56-5.65.
- 5.55. The review considers that there may be significant interest in long term private sector investment in affordable housing (for example from pension funds). At present, the only available route for such private capital is through a combination of accreditation and a complex and onerous grant agreement and rent charge. So far no companies have sought to provide social housing on this basis. An alternative would be to open registered status to private sector 'for profit' organisations and subsidiaries of 'for profit' organisations. Such organisations would be required to charge affordable rents, manage and maintain their homes to the same standards as the rest of the domain and dispose of homes to other registered organisations. They would be entitled to pay dividends out of their taxable surpluses. The focus of regulation would be limited to the registered body and not the parent company.
- 5.56. The financial regulation of housing associations combined with the effective use of intervention powers has facilitated lending on the finest terms. This is beneficial to housing associations as it reduces their costs and benefits the public purse by reducing the level of grant necessary to fund new homes.

Recommendation R8: 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.

- 5.57. The review is proposing a wider and more graduated range of intervention powers (see paragraphs 5.147-5.160). But it is not the job of the regulator to cushion those whose financial management is poor. Public or 'not for profit' organisations that need to be 'rescued' from the consequences of poor financial management will not play an influential role in determining their future.
- 5.58. It may be desirable in future for the financial viability of ALMOs and local authority HRAs to be monitored by the regulator. Registered private sector 'for profit' providers will be subject to the same financial scrutiny as housing associations. But shareholder equity will rank behind public sector investment and the regulator will not intervene to protect the interests of shareholders.

- 5.59. As the review has concluded, the domain is likely to be best served by a diversity of public, 'not for profit' and private sector ownership options. Community ownership may offer routes that enable ALMOs or retained stock authorities to access the benefits of borrowing outside public sector borrowing constraints and thereby increase the supply of homes. The review is also keen to encourage routes that enable land owned by local authorities to be used to increase the supply of homes. Private sector evidence to the review indicates that there is interest in other ownership options than the current offer (that no company has accepted). The regulator should not place unnecessary constraints on the forms of ownership option that might contribute to the growing provision of new homes.
- 5.60. The regulator will be directed by Government to update the standards required of social housing from time to time. The review and updating of standards is a necessary tool to reflect the changes in tenants' expectations, and the emergence of new priorities for Government and for communities over time. It would be undesirable for long term contracts to allow providers to be unnecessarily excluded or to exclude themselves from the need to make improvements to standards required across the housing domain, because long term contracts do not provide for some flexibility.
- 5.61. Communities England will have the responsibility for determining the basis on which providers bid for grant and for other opportunities to supply new homes. The regulator and Communities England will have a common interest in making the arrangements as open and transparent as possible. The review does not consider it necessary or desirable for the regulator to be involved in the mechanisms by which Communities England organises bids or selects partners for the purposes of building homes. But the regulator will need to be able to advise Communities England that a registered provider would not be a suitable partner by virtue of weaknesses in financial viability or inadequate performance in other areas. This should form part of Communities England's pre contract vetting process.

Recommendation S7: The regulator will implement a framework for the ownership and management of social housing, where the provider is registered. Where long term ownership and management arrangements are integrated into supply contracts (grant), the regulator must satisfy itself that the contract terms are adequate to meet the long-term interests of tenants. This will require contract terms to provide for a degree of flexibility to take account of changes in standards.

- 5.62. The regulator will play an important role in maximising the capacity of regulated bodies to meet their objectives. Increasing the supply of new homes will be a particular focus and the regulator will help to unlock development capacity in housing associations that are not currently developing. Increasing capacity will, in part, be achieved by the general measures to increase efficiency. These are described further in the section below.

- 5.63. The review considers that the design of the supply side bidding frameworks will play an important role in harnessing the development capacity of housing associations (and possibly, ALMOs and local authorities that either set up special purpose vehicles (SPVs), or that come out of the subsidy system) as well as the 'for profit' parts of the private sector. There are significant levels of capacity for additional borrowing in associations that do not currently have access to grant and this will increase if there is a further narrowing of the developer base or more grant resources go to private developers. As the review has stated above, the supply side bidding framework will be a matter for Communities England. But there will need to be close co-operation with the regulator in order to incentivise the release of capacity.
- 5.64. It should be easier to separate the roles of developer, owner and manager. This should open up a range of ways in which housing associations with available financial capacity can become the owners of new homes developed by others. The review considers that this mechanism has the greatest potential as it does not limit the use of capacity to those with development expertise.
- 5.65. At this point in time, the role that the review envisages for the regulator in supporting the supply of new homes will have a limited impact on local authorities and ALMOs but a larger impact on housing associations and the 'for profit' private sector. The review considers that it will be de-regulatory in its impact because the review is avoiding duplication of work more appropriately undertaken by Communities England. The review is also encouraging greater flexibility than the present arrangements permit.

Encourage efficient management

- 5.66. Efficient management of resources is highly desirable across the domain. There are resource constraints on most of the activities that housing providers undertake and most of these activities receive both direct and indirect subsidies from the public purse. There is a presumption that the 'for profit' sector constantly drives for efficiency in the interests of shareholders. The same presumption does not apply to 'not for profit' and public sector bodies. Evidence would suggest that the desire to meet social objectives more effectively is not always an adequate driver to efficiency.
- 5.67. At a strategic level, the review is proposing to make housing providers more efficient by reducing the overall burden of regulation. The review's recommendations about reducing barriers to entry, 'unbundling' development, ownership and management and increasing consumer power and choice are all aimed at developing incentives for efficiency that are currently weak across the domain as a whole. This is particularly the case in relation to management.

- 5.68. At the present time there is a lack of reliable and accepted information about costs within each of the different provider groupings of the domain. There is even less domain wide information on costs that can be used for comparison purposes. In part this reflects the very different bases on which the accounts of housing associations, ALMOs and local authority HRAs are drawn. It is not acceptable that reliable cost comparisons cannot be made across the domain and within the distinct provider groups. The review recommends that this deficiency be repaired within a period of four years. This will require co-operation from providers.
- 5.69. The review recommends that greater encouragement be given to cost benchmarking within each provider grouping. There should be an obligation on all larger providers to benchmark their costs with other similar providers. As part of the process of monitoring financial viability, the regulator should develop efficiency tests in consultation with the provider representative bodies.
- 5.70. Because of the technical difficulties of comparing relative efficiency across the domain, the regulator will need other methods to uncover areas of inefficiency and to promote best practice. The regulator should be given the resources to commission or directly undertake efficiency and effectiveness studies.

Recommendation R9: 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 enhance service delivery.

- 5.71. The underlying purpose for increasing efficiency is to free up additional resources. In the case of 'for profit' organisations this can be available for re-investment, if market conditions justify it. In the case of the 'not for profit' and public sectors, the benefit is increased resources with which to meet the organisations' objectives. The regulator has a legitimate interest in increasing efficiency and in ensuring that surpluses are applied properly. But it does not have the right to decide how the surpluses of good performing organisations should be applied. That is a matter for the organisations themselves. Some will wish to focus on increasing supply, some will increase the quality of their homes beyond the standards set by Decent Homes. Others will broaden the range of services that they provide to their tenants or others in need. Others will focus on local area improvement and regeneration. Most will want to make a considered allocation of resources across a range of these options which best reflect their purposes and the context in which they work.
- 5.72. The regulator has a role in ensuring that all providers are driven, or drive themselves, towards efficiency. 'Coasting' in comfortable inefficiency or piling up surpluses that are not used are not legitimate options for providers in this domain. The later section on enforcement sets out the range of ways in which the regulator will be able to address such issues.

- 5.73. Housing associations look to increase their resources by undertaking other activities including building for outright sale or other non-core activities. The regulator has a legitimate interest in ensuring that such activities do not put core housing provision at risk and ensuring that public subsidy and the benefits that flow from it are not put at risk. In all other respects, the regulator should have no need to gather further information on this area of activity or to intervene.

Maintaining the benefits of public investment

- 5.74. However successful Communities England is with its role of increasing the supply of affordable homes, it is the use of the existing stock that will have the greatest impact for the foreseeable future. Ensuring a continuing flow of returns from such investment is thus important.
- 5.75. This is a role in which a number of factors need to be taken into account and which do not always pull in the same direction. These are:
- Restricting disposal of publicly owned or grant-funded assets
 - Restricting changes in use of such assets (in particular from affordable rent to market rent)
 - Receiving back or recycling the subsidy element or windfall profit from changes in use
 - Reducing the burden of regulation
 - Facilitating mobility between tenures
 - Encouraging strategies for creating mixed and sustainable communities in locations which are dominated by social housing
 - Enabling providers to have greater flexibility in the way they manage their assets
- 5.76. Under existing arrangements, in order to protect tenants and to maintain public assets, disposals by local authorities and the first onward disposal of stock by voluntary transfer associations are controlled by Communities and Local Government while disposal by housing associations (other than the first onward disposal of stock by voluntary transfer associations) are controlled by the Housing Corporation under Section 9 of the Housing Act 1996. Disposals by private sector affordable housing providers are dealt with in a different way under the rentcharge. The disposal still requires consent but the main control is that the rentcharge continues on the property and binds the subsequent owner to the same requirements as were placed on the initial owner.

- 5.77. The rentcharge mechanism suffers from the normal problem of very long term contracts in that it inhibits changes of use that might become desirable in the future. But the current disposal restrictions (which include disposal of an interest such as a charge) are bureaucratic to operate and an obvious target for efforts to reduce the burden of regulation. To prevent any adverse consequences of the proposed changes, a note of the regulator's interest in grant could be placed in the land registry.

Recommendation S8: Restrictions on disposals and changes of use should be reviewed and relaxed in order to allow providers more easily to manage their stock in the pursuit of objectives such as mixed communities. Some regulation should remain to ensure the continued supply of benefits from past public investment. These powers should be exercised by the regulator over the whole domain.

- 5.78. The review considers that the present arrangements can be improved in the following ways:
- The regulator is responsible for (and has the statutory powers to) approve disposals and changes of use across the whole domain.
 - The regulator can give general consents for classes of disposal on specified terms, which would not require specific approval for each disposal. The review envisages that there would be a broader range of such general consents so that fewer individual consents are required than at present.
 - The review proposes that disposals between registered organisations on the basis of an appropriate valuation do not require consent but need to be notified.
 - In relation to landlords engaged in substantial programmes of disposals or changes of use with the objective of achieving more balanced communities, there would be an ability to agree a programme consent that would set limits on the scope of the programme and specify how, if appropriate, the subsidy element would be recycled or repaid. Individual consents would not then be required within the approved programme. The regulator would consult with Communities England and others and then publish the criteria it would use to set any limits.
 - When disposals or changes of use justify the repayment or recycling of subsidy then this should include grant, free or reduced cost land input, Section 106 benefit, etc. In the case of disposals of newly provided homes after 2008, the real value of the subsidy should be protected. The amount to be repaid should be the same proportion of the sale price as the initial proportion of subsidy to total cost at the point of provision. This is the basis of subsidy protection built into the rent charge that currently applies to private sector providers. It puts the public investment on the same basis as equity.

- 5.79. The review proposes that the registered status of housing associations is maintained and that the same status is automatically accorded to ALMOs and any new forms of housing that are created for the ownership or management of local authority stock. Registration would not be required for the development role of providing new homes. That would be dealt with through Communities England's pre qualification criteria.
- 5.80. Consideration should be given to handing to the regulator the process for managing the voluntary transfer of local authority stock to new large scale voluntary transfer housing associations, within a policy framework set by CLG, and subject to Communities England's willingness to make the necessary financial contributions. The balloting of tenants as the basis for undertaking such transfers is an important part of tenant empowerment, and could usefully be overseen by the regulator.

Recommendation S9: 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.

- 5.81. The review envisages that 'not for profit' organisations may wish to seek registration of 'for profit' companies alongside the private sector. But the regulator should guard against the leakage of the benefit of grant – whether from 'for profit' or 'not for profit' bodies. The review does not consider it appropriate for 'not for profit' organisations to change their status to profit distributing organisations. The review has seen no convincing evidence that this would be in the interests of their tenants.
- 5.82. Part of the role of protecting past and future public investment is to maintain the continued stability of social housing providers and the continuing availability of the social housing they own and manage. This is not about 'feather bedding' or supporting incompetence. But it is concerned with ensuring that there is not systemic failure as a consequence of burdens becoming greater than the available income streams. In common with other regulated sectors, it is the role of the regulator to ensure a healthy sector with a range of providers that can survive and prosper if they are providing the high quality services that their customers want.
- 5.83. The role includes managing those situations where a provider gets things wrong to an extent that threatens their survival and thereby threatens the stability of the services to their tenants. This is a role that has been carried out successfully by the Housing Corporation in relation to housing associations and is one of the reasons why lending to the sector is on such attractive terms. It is a role that needs to be continued in the future. The mechanisms available to the regulator for this purpose are considered more fully at paragraph 5.146.

5.84. The role that the review envisages for the regulator in protecting past and future public investment will apply to all parts of the domain. The review considers that it will be de-regulatory in its impact as it will offer greater flexibility and a reduced level of bureaucracy.

To empower and protect tenants

5.85. The review considers that there are the three following strands to this objective:

- Strengthen tenant empowerment and choice
- Extend tenant protection
- Regulate rents

Strengthen tenant empowerment and choice

5.86. Strengthening consumer empowerment and choice is important in its own right and as a key way of redressing the imbalance of influence between tenants and providers. It is evident from the review's own consultation with tenants and from *What Tenants Want*⁸⁶ that there is a great appetite for choice. Because there is a lack of incentives to provide choice, it is necessary to stimulate it by encouraging providers, empowering consumers and removing the institutional barriers to choice (some of which have been described above).

5.87. At the review's tenant consultation events (which included tenants from local authorities, ALMOs and housing associations) there was widespread support for a minimum (but good quality) universally applied standard of service. There was also recognition of the need for some variations of service to meet the needs of individuals. Tenants were interested in a range of choices on both an individual and collective basis. They were realistic about the fact that choice of services would have cost implications.

5.88. *What Tenants Want*⁸⁷ came to similar conclusions. Getting the basics right was the first priority. But there was a strong interest in choice as well. 57% of tenants consulted as part of the work of the Tenant Involvement Commission considered that they had very little or no choice in the services provided to them. Their interest in choices included:

- Choices over where they live
- Choice over whether something is repaired or replaced
- Choice of contractors

⁸⁶ What Tenants Want: Report of the Tenant Involvement Commission

⁸⁷ What Tenants Want: Report of the Tenant Involvement Commission (page 22)

- Prioritisation of repairs
- Option to organise a repair themselves
- Choices about the modernisation of their home
- Choices about internal decoration when the opportunity arises
- Choices of service level that would include paying more
- Choices to progress to ownership

5.89. At the review's own tenant consultation events, there was wide support for a similar range of choices. In addition, all tenants felt that, at a collective level, they should be able to call for a change in the provider of management services.

Recommendation S10: The regulator should have a duty to promote ways in which tenants can be empowered and have more choices.

5.90. The review considers that opening up management services is one of the most important ways in which choice in housing could be provided. Evidence from our consultation with tenants suggests that most tenants want an efficient housing management organisation, but if the service is poor and shows no signs of improvement, then they would prefer a mechanism by which the management could be changed to a better provider rather than carrying out the management themselves. But there may be circumstances where tenant management options are the preferred choice of tenants. Tenant management organisations usually have a long gestation period and need seed funding and support. The review considers that a voluntary scheme is preferable because it is more likely to come to a successful conclusion through co-operation. This is a natural function for the regulator to discharge provided that it does not call into question the regulator's impartiality among different providers.

Recommendation S11: The voluntary process for tenant management 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.

5.91. Embedding tenant involvement in service delivery is also an essential component in consumer empowerment. Evidence from Audit Commission inspection outcomes, the review's own tenant consultation events and from the Tenant Involvement Commission is that the extent and quality of tenant involvement is very uneven. Some providers are very good but too many are poor. This is demonstrably an area where substantial improvement is required.

- 5.92. The review considers that tenant involvement should be embedded in the definition of a good core housing service. Measuring tenants' satisfaction with their opportunities to influence the performance of their housing provider should be one of the key performance measures. Beyond that the review is reluctant to specify precisely how it should be carried out as the review considers that there are a variety of productive routes.
- 5.93. The review supports the idea of the Service Pledge in the Customer First Plan recommended by the Tenant Involvement Commission⁸⁸ and also their suggested Accountability Pledge. Their proposals also pay particular attention to the need to reach all tenants in an open and transparent way and that respects the diversity of tenants in terms of income, race, age, faith, household make up, sexuality, disability, health problems or other vulnerabilities.
- 5.94. The review concurs with the National Consumer Council's conclusion that, *'regulators are needed when accountabilities fail, so clarity of regulation can only flow from a sufficient clarity of accountability. A framework for the accountability of social housing providers, as proposed by the Tenant Involvement Commission, which clarifies minimum options such as empowered scrutiny panels of tenants, a minimum representation of tenants on Boards or options appraisal for tenant management of services, is overdue.'*⁸⁹
- 5.95. The review also commends the TPAS *Resident involvement quality*⁹⁰ landlord accreditation toolkit. But the continuing development of good practice in tenant involvement must be dynamic and that is why the review is reluctant to propose a specific standard that then becomes a drag on further innovation. The review is also interested in the NHF's proposal to develop a code of practice for tenant involvement. But the review wants best practice to be developed and spread across all types of social housing provider for the benefit of their tenants.
- 5.96. The review is also strongly in favour of empowering tenants by increasing the role they can play in assessing the performance of their landlord at both the local/estate and overall level. Tenants already play a key role in the Audit Commission inspection process and the review has seen evidence of how they can be involved more directly in the assessment of their own landlord's performance. The review has been particularly impressed by those landlords that have instituted their own tenant inspection or assessment processes which give them regular assessments of tenants' views on the service rather than waiting for very infrequent external inspections. The best of these benchmark with other landlords and include an independent element to ensure that the process is rigorous.

⁸⁸ What Tenants Want: Report of the Tenant Involvement Commission (pages 63 & 64)

⁸⁹ Evidence from National Consumer Council – House Rules (page 28)

⁹⁰ Resident Involvement Quality, a Self-assessment Toolkit for Landlords, TPAS 2005

- 5.97. The review also considers that tenants can be further empowered by having a key role in triggering regulatory action. This issue is considered further in the section on regulatory intervention below.
- 5.98. Another essential component of empowering tenants is to improve the quality of performance information that they receive from their landlord. This is a subset of the regulator's wider information role that the review set out below. There is a strong case for a core standard of national performance data on all providers and this should be provided to all tenants on at least an annual basis. This information should be capable of analysis and provision at a local authority level and facilitate comparison between providers. In due course, the review believes that this could be a powerful incentive to drive up standards of performance.
- 5.99. Most of the focus of tenant involvement has been at the level of tenant and landlord. While this is understandable and important, many of the most fundamental decisions that affect tenants are taken at a national or regional level and over the heads of landlords as well as their tenants. Rent levels established under the rent re-structuring regime, the Decent Homes Standard and the Supporting People framework are all examples of strategic decisions that have had a profound impact on tenants but for which tenant involvement with landlords provided no effective voice for tenants at the point when these decisions were taken.
- 5.100. The review considers it essential to establish a strong national voice for tenants. This must have the resources and expertise to ensure that the interests of tenants are at least as effectively represented in national debates and decision making on issues that affect tenants as are housing professionals and providers through their various well resourced trade bodies.
- 5.101. There was strong support for such a body at the tenant consultation events that the review held and a belief that it had the potential to redress the imbalance of influence from which tenants suffer at present. It was also considered important that such a body could have influence at a regional level.
- 5.102. The precise shape and role of the national tenant voice needs to be subject to further consultation. There was not agreement about this amongst those the review consulted and there are some tricky issues to resolve in marrying the required level of technical expertise with legitimacy of representation and the role of current organisations. The review considers that these issues further in the review's chapter on Institutional Arrangements.

Recommendation S12: A national tenant voice should be established to give tenants both a voice and expertise at national level.

5.103. The role that the review envisages for the regulator in strengthening tenant power and choice will apply to all parts of the domain. The review considers that it will have further deregulatory consequences in the long term as it will replace regulatory direction with tenant power. In the short and medium term the review would expect the regulator to take a co-regulatory approach rather than prescribe precisely how it should be implemented.

Extend tenant protection

5.104. The review's proposed approach to the substantial evidence of failure in the social housing domain is to empower the tenant. Both to achieve this end and to protect tenants from the current extent of failures in the social housing system, consumer protection measures are essential. Other sections of this chapter deal with setting rents, improving housing standards and enforcement. This section focuses on individual tenancy issues.

5.105. The Law Commission has recently published a document on tenancy agreements which would give added protection to tenants.⁹¹ An approach along these lines might make it clearer and easier for tenants to enforce their rights (and bring equal clarity and ease of enforcement in relation to their obligations); this could open the way to less regulation. and replace current forms of tenancy agreement which exist in a fog of implied terms that are confusing to most housing professionals let alone tenants. This feature of social housing tenancy merits review by CLG.

5.106. Such an approach would not entail that tenancy agreements will be identical – either across the domain or within the different categories of provider. First, the review wishes to promote choice for tenants and some aspects of choice may need to be reflected in the service definition component of the tenancy agreement. Second, there are some rights that do not extend to all parts of the domain (such as the Right to Buy). Third, government may choose to respond to the Hills report by developing additional forms of tenure that, for example, may not confer life long tenure. There may also be variants that are appropriate to key worker or mid market housing.

5.107. In principle, the review is in favour of choice of tenure (as the review is in favour of other areas of choice), with the proviso that this does not reduce the protection that current tenants enjoy. The review therefore envisages that substantial areas of tenancy agreements will be in common but that there will be defined areas that can be different.

⁹¹ Renting Homes: The Final Report (Law Com No 297).

- 5.108. Even if tenancy terms can be enforced more easily and at less cost, it is not desirable to have to go to court to rectify each and every service failure. Requiring landlords to have high quality and improving complaint procedures is an essential protection for tenants. The review is concerned that the highest category of complaints to the Housing Ombudsman Service is now in respect of how landlords are failing to deal adequately with complaints. The review gathered similar anecdotal evidence from the review's tenant consultation events. The wide range of performance of landlords in relation to complaints handling is a source of considerable concern and this will need to be a focus for the regulator.
- 5.109. The evidence of failure in too many internal complaint handling procedures underscores the continuing importance of ensuring consistent access to Ombudsman services for all tenants across the domain. The Housing Ombudsman Service devotes considerable resources to dispute resolution which goes beyond the core role of investigation and adjudication. The review considers this wider role to be valuable and believe that these benefits should extend to all parts of the domain.
- 5.110. The review has not undertaken a detailed comparison of the respective approaches of the Housing Ombudsman Service and the Local Government Ombudsman service. Each service covers roughly half the domain. But the review concludes after consultation with tenants and others that there should be a single Housing Ombudsman for the whole domain. The arrangements for this should take account of the benefits which the Local Government Ombudsman arrangements may derive from the ability to consider both housing and other local government functions in a single complaint. The application of a dispute resolution approach for all housing complainants will make a valuable contribution to consumer protection. The review recommends that the right to take a complaint to the Ombudsman be more widely publicised and be set out explicitly in any prospective form of tenancy agreement.

Recommendation S13: 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.

- 5.111. The domain does not house a representative cross section of the population. As the Hills report and others demonstrate, it houses a disproportionate number of people who are not in work. It houses 17% of white people but 27% of people from black and minority ethnic backgrounds.⁹² It also houses nearly a quarter of all people over the age of 65, and a high proportion of those with specific requirements for additional support of various kinds.

⁹² Ends and means: the future roles of social housing in England. John Hills. CASEreport 34. (page 48)

- 5.112. This gives the regulator two additional roles. The first is to ensure that housing providers are equally responsive to the needs of all their tenants and do not overtly or unintentionally discriminate against vulnerable groups or minority communities. The second is to play an active role in the management of the boundary between housing and care and support. Care and support are funded separately from housing but many housing providers undertake both roles. In their evidence to this review, Shelter considered that housing associations did not respond adequately to local authority nominations of vulnerable and marginalised people with additional support needs.⁹³ The issue is most acute where the level of funding available to meet support needs is insufficient. The regulator should play a constructive role in tackling the issues that arise along funding boundaries and which could otherwise lead to poor outcomes for vulnerable people.
- 5.113. The role that the review envisages for the regulator in extending consumer protection will apply to all parts of the domain. Overall, the review considers it will be de-regulatory in its impact as it will make it easier for disputes to be resolved by dispute resolution, the Ombudsman and the courts with less interference from the regulator. But the regulator will bear down on providers with a poor record of complaint handling.

Regulate rent levels

- 5.114. Rent policy has changed many times over the last 20 years and the framework that the review proposes must be capable of coping with further change. It is probable that there will be substantial convergence of rents between the different providers within the domain by 2012. This is on the basis of an income and property price formula that will be significantly out of date by then in relation to the property value component in particular. The property value element could be re-based, the relationship between income and property value could be altered or more radical changes could be envisaged. As stated in paragraph 5.14, the review considers that changes from the current rent policy would be a matter for government.

Recommendation S14: 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 increases in individual rents to protect tenants.

- 5.115. Implementation rules would normally determine the maximum by which the aggregate rental income of a provider can be increased in each year together with caps on the level of individual increases.

⁹³ Evidence from Shelter (pages 5, 6 & 7)

- 5.116. There is flexibility within the current rent framework that operates differently for housing associations and local authorities. Local authorities are free to set actual rents at whatever levels they choose but if they set rents below the assumed rent used in the subsidy calculation they lose income, and if they set rents above the assumed rent they have to pay any costs of rebates above that limit. Within this framework local authorities are working towards restructured rents where actual rent increases are restricted to RPI plus ½% plus £2/week, and they have a 5% tolerance in relation to target rents. Housing associations have 5% tolerance in relation to the target rents resulting from the rent setting formula. But many providers choose not to use it or believe that they are constrained from doing so. The review considers that flexibility within 5% limits is desirable across the domain. This flexibility should be developed by providers in consultation with their tenants in order to increase the choices available. It should be possible to flex rents to reflect different levels of service. In principle the review would like to see the flexibility enjoyed by local authorities extended to housing associations and the flexibility enjoyed by housing associations extended to local authorities. The latter will only become practicable for those authorities that operate outside of the current HRA subsidy system.
- 5.117. The lack of incentives for efficiency in the HRA subsidy system is an issue that concerns the review team. The system also makes it difficult for housing authorities to develop choices for tenants and is a drag on innovation. The review has not heard from any party that considers it an effective way of organising the funding of a local authority's housing function. The review strongly supports the experiments with possible 'opt out' mechanisms. If these are not to be developed more broadly then the system needs to be modified so that it incentivises efficiency and choice for tenants.

Recommendation S15: 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.

- 5.118. This will stimulate competition between providers for the benefit of tenants. The review also recommends that the DWP extends its experiments on Local Housing Allowance as the review believes that this will also have the effect of stimulating real choice for tenants.
- 5.119. The regulator will also have a role in relation to service charges. At present there are inconsistencies across the domain as to what should be included in or excluded from service charges. The review recommends that the regulator establishes a code of practice (following detailed consultation) which ensures that there is an equitable, transparent and legal approach to the delivery of services which are funded by service charges.

5.120. The role that the review envisages for the regulator in setting rents under policy guidance from the government will apply to all parts of the domain. Account will need to be taken of the differences between providers but the broad purpose of a domain wide rent framework is desirable and achievable. The review considers that this recommendation will be de-regulatory in its impact as it will give greater pricing flexibility to providers.

Expand the availability of choice of provider at all levels in the supply of social housing

5.121. The effectiveness of the market for social housing can be improved by a wide range of measures. The examples set out below are suggestions rather than fully worked proposals. They are intended to illustrate the range of matters that should be considered by the new regulator.

5.122. The social housing domain encompasses a range of different roles and services. The review sees development, ownership and management as three separate functions which should not have to be combined in one organisation. Within each there can be a variety of different products. For example in relation to development, there are distinctions to be made between several different forms of low cost home ownership. Within rented housing there are distinctions between social rented, intermediate rent and private rented (market) housing. There are differences in tenures and forms of tenancy or lease agreement. This illustrates that it is a complex market. With the increasing interest in sustainable communities, this complexity is likely to increase rather than diminish.

5.123. It is likely that further options will be developed for retained local authority stock (perhaps outside of the HRA subsidy system) and further options for ALMOs (which could include sufficient collective tenant ownership of the ALMO for it to be classifiable as outside the public sector borrowing requirement). New forms of grouping or joint venture may arise within the housing association sector, the local authority sector (through Special Purpose Vehicles (SPVs)), and the private sector may take an interest in long term ownership and management rather than the present focus on development. New models of provision could include Community Land Trusts or Community Interest Companies. The review envisages that registration will be limited to organisations registered in the UK so as to ensure that regulatory action is enforceable under UK law.

Recommendation R10: 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.

- 5.124. Opening access to new providers is only likely to be successful if there is a more concerted effort to reducing barriers to entry. The present arrangements only permit private sector entry to accredited owner/manager status after a process that requires enormous investment of time and resources. The contract documentation runs to over 290 pages and is only part of the required paperwork because of the volume of method statements that must also be provided. It is likely that substantial private capital could be attracted to the provision of further affordable rented homes if the barriers to entry were reduced and became more proportionate to the scale of holding envisaged.
- 5.125. The review considers that there should be routes open to new providers other than the present form of long term contract. The review considers that registered status should become available to 'for profit providers' and to subsidiaries of unregistered organisations. Joint venture arrangements should also be possible. These might be with local authorities, ALMOs or housing associations.
- 5.126. The regulator should not be obliged to develop new forms of arrangement but should be willing to engage with prospective new providers to develop a range of routes. It will help if there is a degree of standardisation for different types of scheme but this should not become a regulatory 'dead hand' preventing further innovation.
- 5.127. Within the housing association sector, the roles of developer, owner and manager are generally combined (vertical integration). The roles of owner and manager are also combined in most local authorities with retained stock. The review considers that there are substantial benefits to be achieved by making it easier for these different roles to be separated. The best developer may not be the best manager and vice versa. There are many associations with homes that are remote from their core operations which might be better managed by someone more local. There are also estates in multiple ownership which might benefit from having a single manager.

CityWest Homes 'case study'

CityWest Homes is a successful ALMO with a track record of delivering excellent housing management services, which are innovative and customer focused. This has been recognised by the Audit Commission, with CityWest Homes retaining its status as 'excellent with excellent prospects for improvement' in 2006.

In 2005/2006 CityWest Homes carried out the re-tendering of 13 housing management contracts across the city. The revised contract specification was developed in consultation with resident representatives, resulting in a number of changes to the previous specification. For example, specifying customer service standards and how results of monitoring will be published.

Seventeen bidders submitted pre qualification questionnaires. Of these seven were invited to tender. Six organisations submitted tenders for a mix of individual and group contracts. The tender evaluation complied with EU procurement rules.

The tender evaluation was carried out by a panel of Westminster City Council and CityWest Homes staff, and resident representatives. The panel used a set of agreed criteria to evaluate the respective tenders. This approach ensured that resident priorities were reflected in the evaluation criteria.

Residents were closely involved throughout the tender exercise from the drafting of the specification to the detailed evaluation process. The tender evaluation panel included four resident representatives nominated by the Housing Panel.

In addition, a series of meetings at each of the thirteen contract areas was set up to give tenderers an opportunity to outline the details of their tender. Members of Residents' Panels, Residents' Associations and representatives of local community groups attended and had an input into the evaluation process, informing the evaluation panel's recommended award.

The mixed economy of different contractors across the city enabled CityWest Homes to get best price and drive service improvements. Re-tendering resulted in a saving of £777,000 or 7% in 2006/2007 on the projected costs of the original contracts, well above the 2.5% target set by the Government as a result of the Gershon Review.

The content of the revised contracts reflects much greater resident involvement, and there continues to be strong resident input locally to make the revised contracts work: their success is measured in terms of resident satisfaction. For example, ten percent of the contractor's management fee is linked to performance against agreed service areas including performance against targets set out in Local Service Improvement Compacts. These unique agreements involve residents in setting service priorities and monitoring performance.

Under this incentive scheme contractors need to show that they are making real progress and improvement on the issues identified by residents. This is a real incentive, as it makes a difference of as much as £25,000 for each contract area. This gives residents a direct and meaningful way of monitoring and improving service.

Satisfaction with landlord services has increased appreciably. Results from the 2006 STATUS survey show that 69% of tenants are satisfied with overall landlord services, up from 63% in 2003.

It should be noted that ALMOs and local authorities do not incur VAT on contracts of the type described above.

- 5.128. Stimulating competition in these three roles could have additional benefits. Housing providers should be able to build a successful growing business by winning a wider management role on the back of their excellence in housing management. At present such opportunities are very limited. Excellence in development should not be limited by the developer's ability to fund long term ownership.
- 5.129. At present this separation of roles is limited to some degree by the imposition of VAT on management services sold to housing associations, and other private sector providers, but not to local authorities and ALMOs. There is a small input tax available for offset, as affordable housing provision is not subject to VAT. The result is an apparent 15% fiscal advantage to vertical integration that restricts the effective operation of the market place.
- 5.130. Ideally, the VAT rate on management of social housing would be eliminated or reduced, but this may not prove practicable. In practice, the exact treatment of VAT depends on the supply being made, e.g. through the use of joint contracts of employment or certain types of lease.
- 5.131. Addressing structural obstacles to entry is also crucial to the development of more effective consumer empowerment and choice. At present, social housing providers find it hard to offer price based choices to tenants within the target rent system. In addition, Housing Benefit operates in a way that either makes price based choice 'pain free' or unavailable. Taken together, these current two systems anaesthetise consumer choice in relation to pricing. This is to the detriment of consumers.
- 5.132. Similarly, the way in which the Housing Revenue Account subsidy system operates limits choice and provides fairly weak incentives to efficiency. Options for reform are being considered and in some cases tested. These are areas that are unlikely to be fixed quickly. But over a significant period of time, there can be steady improvement by a continuing focus on strengthening consumer power and choice in a more competitive operating environment.
- 5.133. A core feature of ensuring a competitive market is to ensure a range of competent providers in each of the market's segments that drive up standards and service quality under the impetus of competition. The present spate of merger raises prospective competition issues that need to be addressed. The review would expect the market regulator to take account of the impact of a prospective merger on competition in the market when considering whether or not to approve a merger or group structure. In practice there is not a single national market but a series of regional and sub-regional markets. It is not in the interests of either consumers or the public purse for a provider to achieve a monopoly position or significantly reduce competition at a sub-regional level.

Recommendation S16: The regulator should retain merger approval powers but these should be exercised solely on grounds of consumer protection and competition.

5.134. The roles that the review envisages for the regulator in improving customer choice and boosting competition will have a potential impact on all four current categories of provider. The review regards this recommendation as de-regulatory in its impact as it is about reducing barriers to entry, enabling a wider range of business relationships and stimulating flexibility and innovation.

Regulatory powers

5.135. There are two key mechanisms by which the regulator carries out the roles described above. These are:

- gathering, analysing and publishing information
- exercising intervention and enforcement powers

5.136. These are considerations generic to all regulators. They are not ends in themselves, but are powers which enable regulators to achieve their broader regulatory objectives. They must be properly defined and described, both to ensure that their operation is equitable and transparent, and so that the cumulative cost burdens which they entail are proportionate and properly managed.

Improve the quality and cost effectiveness of information provision

5.137. The provision of information is an area where the review considers that there is scope for reducing the regulatory burden while improving the value of the information provided. The review recognises that the de-regulatory impact of its recommendations would be significantly diminished if there was not an integrated approach to the management of information requirements on providers.

5.138. The provision of performance information has three core objectives:

- Enabling the regulator to make a risk assessment (so that regulatory attention is focussed on poor performers and the burden on good performers is reduced)
- Enabling local authorities in their place shaping role to compare the performance of local housing providers
- Enabling tenants and prospective tenants to be better informed about the relative performance of housing providers so as to improve choice and put pressure on poor performers

5.139. This involves an important trade-off. The review's proposed deregulatory approach requires limited, specified, standard performance information. This allows for an effective risk assessment to be made. The regulator can use this to adjust the intensity of regulation to the minimum level necessary. But performance information is also important for other stakeholders and, in particular for tenants and local authorities. Insufficient information may mean a reduction in the immediate burden but not provide the confidence for reduced regulation. Conversely, unconstrained information requirements may provide greater regulatory assurance, but produce an unreasonable burden.

Recommendation S17: 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'.

5.140. The regulator will need to develop and implement a strategy for managing information requirements on housing providers. The review considers that much of the information currently provided is not required for regulatory purposes. There needs to be robust challenge of existing information requirements on the basis of what is needed to make the regulatory judgements that will underpin risk based regulation. It is beyond the scope of this review to devise the strategy but the review considers that it will include a number of key elements such as:

- Specifying the scope and frequency of regulatory information requirements, and managing and commissioning the arrangements for data collection or submission
- Ensuring as far as practicable that data are provided on a national domain wide basis
- Reducing and rationalising regulatory and statistical data collection – this may require amendment of the duties on other regulators who collect similar or identical data in order to eliminate duplication, and will require design and operational management of the National Register of Social Housing (if this is still required) to pass to the regulator in order to allow overlapping requirements to be properly eliminated
- Establishing the core housing performance data that would be appropriate for all social housing providers and that would also meet the housing component of Comprehensive Area Assessment and enable local authorities to exercise their local scrutiny function
- Including information on how providers are opening up choices for tenants and how satisfied tenants are with their opportunities to influence the service they receive

- Establishing a fuller set of housing performance indicators that would be required from those providers that do not have robust performance management arrangements (of the type described in the section headed 'Improving the Quality of Information') or whose performance is poor or where concerns have been triggered
- Establishing levels of financial viability information that will vary as between those applying for programme funding, those judged as higher risk in relation to income cover, gearing or other relevant factors and those for whom the annual provision of audited accounts will be sufficient
- Data requirements will be the subject of consultation with the national domain and sector bodies and the national tenant voice

5.141. The review proposes that the regulator will publish the top level of performance information that it receives from all providers on its website. The review sees the publication of such information as in the interests of consumers, a reward for good performers and a wake up call to poor providers. The review expects that the regulator will wish to rank providers in different performance categories as well as overall.

5.142. As information will be provided on a basis that can be analysed by local authority area, this will enable either the regulator or local authorities or other parties to rank the performance of providers in each local authority area. The review considers this to be an important contribution to local accountability.

Recommendation R11: 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.

5.143. The review recommends that the current form of CORE (Continuous Recording of Lettings) should be reassessed. At the least, the regulator should review the scope and content of CORE to reduce the amount of information that must be collected each time a CORE log is completed. If it continues then it should be used uniformly across the domain and updated to become a consistent tool for measuring the effectiveness of allocations policies and practices in tackling homelessness and meeting housing need.

- 5.144. The STATUS survey has been used as the basis for a standard set of questions in surveys of the tenants of social landlords. The review proposes that, following from the requirement to establish core performance data requirements, some of these will need to be derived from standard forms of question about tenant satisfaction as the Housing Corporation and CLG presently require in respect of STATUS questions on tenant satisfaction. The regulator should specify the core questions and the frequency with which they must be surveyed.
- 5.145. The review also proposes that other broader survey activities designed to build up a better knowledge and understanding of the profile of tenants, their characteristics and views, should form part of the remit of the national tenants' voice organisation, and that it should be properly resourced to carry out this function effectively.

Exercise proportionate and graduated enforcement action

- 5.146. A core element of the regulatory role is coping with those situations where those who are regulated fail to achieve the required standards. This is an area that needs to balance a number of different factors. As tenants have repeatedly pointed out to us, if nothing happens when things go wrong then tenants cease to have any interest in involvement as it has no effect. At the other end of the scale, the current powers of the Housing Corporation in relation to housing associations and of the Secretary of State in relation to local authorities contain 'nuclear' type options that are draconian, expensive, contentious and potentially disruptive (at least in the short run).
- 5.147. Issues of when and how to intervene are amongst the most difficult that any regulator has to make. The review fully subscribes to the Better Regulation principles that intervention should be at the minimum level necessary to achieve the desired outcome. The review is equally committed to the related Macrory principle of proportionality of response.
- 5.148. While the review is committed to the principle of achieving equally good core housing standards across the whole social housing domain, intervention mechanisms must take account of the different nature of the providers that make up the domain. The principle of fair and even handed treatment means that tenants should not be disadvantaged by virtue of the nature of their provider. Poor performance in terms of outcomes for tenants must be equally unacceptable wherever it arises and dealt with in as similar way as circumstances permits. But the intervention mechanisms, particularly at the more severe end of the spectrum, will need to take account of the core differences between providers.
- 5.149. For example, private sector 'for profit' landlords may be operating in a contractual framework and enforcement mechanisms will need to be consistent with the contract framework. Retained stock local authorities will not usually have a board of management for their housing service but will have other avenues of accountability. Whereas both ALMOs and housing associations will have boards.

Recommendation R12: The regulator should develop a range of ways of triggering interventions in consultation with providers and with the national tenant voice.

5.150. The review envisages that such triggers will focus on the following key performance areas:

- Tenant involvement (including consumer protection and choice)
- Delivery of housing standards (both in terms of service quality and quality of home)
- Efficiency
- Organisational viability (initially focussed on housing associations and including both governance and financial viability)

5.151. The review envisages that the triggering mechanisms will be a combination of:

- Desktop analysis of outcomes from data provided to the regulator
- References from tenants
- References from local authorities (including community calls for action)
- References from the Audit Commission (in its Comprehensive Area Assessment role), the national tenants voice and the Ombudsman services
- Whistleblowing

5.152. As far as possible, the regulator should endeavour to ‘triangulate’ evidence for action rather than rely on a single source. But this will depend on the strength of evidence and on individual circumstances.

5.153. In parallel with the agreed range of intervention triggers, there needs to be a broader range of enforcement measures that can be escalated as required. The present arrangements have a number of informal mechanisms and then move swiftly to draconian levels of intervention. This does not meet the Macrory tests. The regulator needs to develop a more graduated range of responses that can then be applied in a way that is more obviously proportionate to the nature of the issue that is being addressed.

5.154. The review’s initial thoughts on the continuum of possible responses are set out below. They are not intended to be an invariable progression. ‘Levels’ of response could be omitted if the circumstances justified it. But the burden of proof for any particular response would rise as the level of response became more severe.

- Requests for further information – the ability of the regulator to require a response/explanation to a matter that has aroused initial concern.
- Targeted inspection – a right to commission an inspection (that could be carried out by the regulator or be independently commissioned) in order to get to the facts. This would be less onerous than either a full Audit Commission inspection or the current mechanism of a statutory inquiry.
- Publication of failure – the regulator would have an ability to publicise a provider's failure as an incentive to speedy correction.
- Improvement notice – the regulator could serve a formal notice on the provider to address a particular issue within a reasonable timescale. This would indicate that the matter was too serious to be dealt with on an informal basis but would be encouraging voluntary action on the part of the provider to tackle the issue as a matter of urgency.
- Enforcement notice – this would be a specific instruction from the regulator with which the provider would be legally bound to comply. In most cases it would be preceded by both a targeted inspection and an improvement notice so there would be strong evidence of the need for action that included a failure to respond adequately to earlier intervention measures.
- Fines – the regulator should have an ability to impose fines on a provider. The review envisages that this would primarily be relevant to three sets of circumstance. First, where a provider made a 'super profit' as a result of breaching requirements (for example by disposing of assets and not using the proceeds in the agreed manner). Second where there was refusal to implement an enforcement notice and a fine would be a more effective measure than prolonged legal action. Third where a fine might provide the regulator with the resources to provide restorative justice.
- Compensation – the regulator can require the provider to compensate its tenants for a service failure. This has the advantage over fines that the resources stay within the sector.
- Rent increase cap – the regulator would have the ability to place a more severe rent increase cap on a provider that failed to provide an acceptable standard of management. This measure would not be applied in those cases where a lack of resources was a contributing factor to the poor service or where this would lead to a breach of loan covenants. But it might be appropriate in circumstances where the provider was not resource constrained but was still providing a poor service.

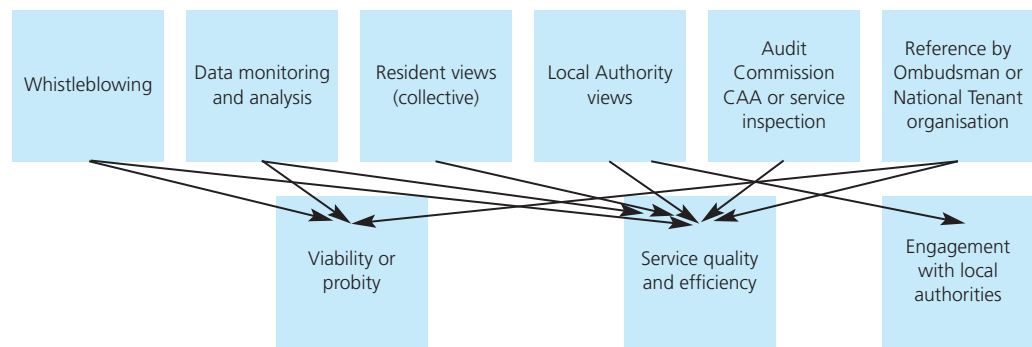
5.155. The levels of intervention greater than those outlined above (or at least the mechanism through which they were exercised) would vary according to the type of housing provider. Such interventions could include:

- Appointment of additional independent board members (in relation to housing associations and ALMOs) and, in the case of ALMOs, after consultation with the local authority.
- A requirement that the housing management function be put out to competitive tender. In all cases, tenants would be involved in the selection of a new manager and the regulator would have a right to appoint a minority of independent people to the selection panel. In the case of an ALMO, the local authority would also have a right to appoint people to the selection panel. In the case of housing associations, there would be a requirement for the new arrangements to be compatible with the association's interest cover requirements.
- The regulator could require a board to appoint an independent manager (an individual with executive powers). This would be a measure taken when there was evidence of substantial failure and a continuing inability of the defaulting provider to resolve the matter. Recent cases would suggest that this would usually be a voluntary appointment. In the case of private sector 'for profit' organisations operating under contract then this would be an appointment as manager and receiver under the rentcharge. In the case of local authority retained stock it would require the consent of the Secretary of State.
- The regulator would have a 28 day moratorium power in relation to the rights of creditors. This power would be a continuation of the power enjoyed by the Housing Corporation in relation to housing associations. It could, in the future, become relevant to ALMOs.
- Ownership and/or management could be transferred to another body. These fallback powers would need to be preceded by a formal independent inquiry that found evidence of mismanagement that would justify such actions as a proportionate response. For local authorities these actions would require the consent of the Secretary of State and a transfer of ownership would require a tenant ballot. In the case of private sector 'for profit' organisations it would be action either under the contract or following the termination of the contract. In the case of a 'not for profit' registered provider, the options open to the regulator could include a requirement to transfer engagements to or amalgamate with or become a subsidiary of another registered provider.

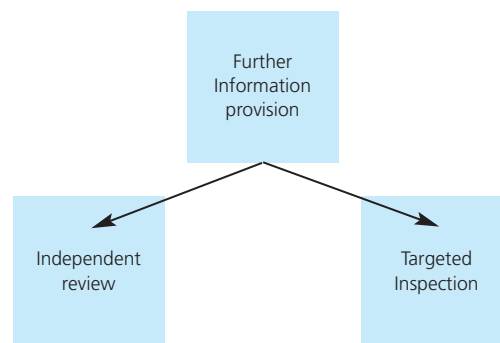
5.156. A schematic representation of this range of measures is set out in the table below.

Range of intervention and enforcement measures

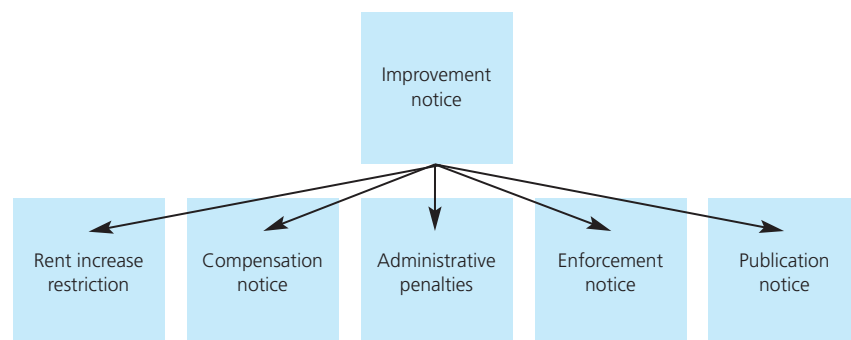
Triggers



Investigatory Powers



Remedial Measures

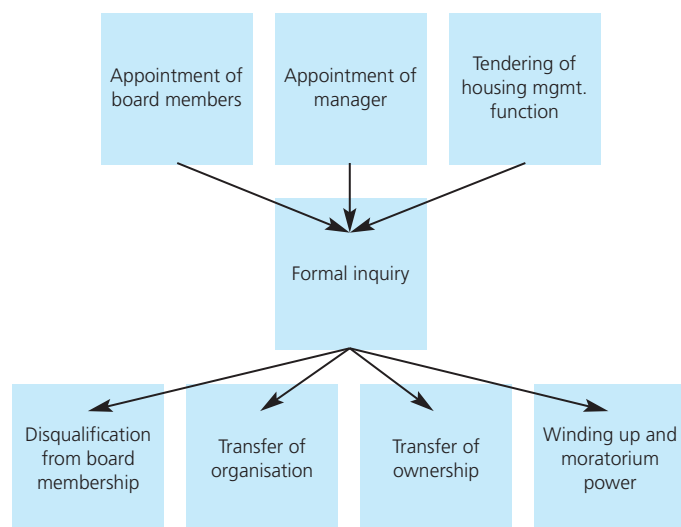


Enforcement Measures

Notes:

At each stage, the primary intervention should be by the Governing Body, with the measure applied by the regulator in default

Not all measures will be appropriate or capable of being applied to all forms of provider



5.157. In the light of this broader range of intervention powers, the review does not consider it necessary for the regulator to have the power to guarantee loans.

5.158. The Macrory report⁹⁴ envisaged that penalties and sanctions should be subject to appeal at a Regulatory Tribunal. This right of appeal would apply to the range of remedial and enforcement measures set out above. Government has proposed in the Tribunals Courts and Enforcement Bill, currently before Parliament, not to establish a specific Regulatory Tribunal. However, it proposes that the Tribunal Service first tier tribunal could hear such appeals if this provision is incorporated in legislation relating to the powers of a regulator to impose such sanctions. This right of appeal need not preclude the application of interim measures by the regulator in an emergency situation.

Recommendation S18: 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**

Recommendation S19: The statutory powers covering remedial and enforcement measures should give regulated bodies the opportunity to appeal against those measures to the first tier of the Tribunal Service

5.159. The four hypothetical case studies below exemplify how a graduated system of intervention could work to improve performance in a range of different situations.

⁹⁴ "Regulatory Justice making sanctions effective", Prof RB Mcrory, Better Regulation Executive, November 2006.

HYPOTHETICAL CASE STUDY 1

A medium sized housing provider has been assessed as a reasonable 'low risk' performer.

The regulator receives complaints about poor maintenance service from a tenant led assessment panel. The complaint is reinforced by below average performance in the key service area and corroborated by the local authority.

The regulator seeks a formal explanation from the provider together with proposals for addressing the weaknesses.

The provider disputes the analysis of poor performance and does not therefore consider there is a need to make improvement proposals.

The regulator commissions a targeted inspection. This finds conclusive evidence of poor service and makes detailed recommendations.

The regulator issues an Improvement Notice, publicises the failure and puts the provider into the 'high risk' category so that more detailed performance information is required until further notice. Outcome measures are agreed with the provider following consultation with the tenant panel and the local authority. The provider is given 6 months to achieve significantly improved outcomes.

The housing provider achieves the required outcomes in the 6 month period. After 12 months it is re-classified as 'low risk'.

HYPOTHETICAL CASE STUDY 2

A development programme partner provider with a substantial open market sales programme experiences a significant fall in projected sales income as a consequence of misjudging local market conditions. This threatens the viability of its 'for profit' trading subsidiary and means that expected cross subsidy of £1.5 million will not be available to support the affordable rented component of its programme.

The problem comes to light as a consequence of Communities England's programme monitoring process. The provider informed the regulator (knowing that Communities England will also do so under the Protocol).

The regulator places the provider under 'high risk' financial reporting requirements.

The regulator requires the provider to re-work its financial projections with a range of sensitivity tests and have the results independently validated. These show that, under most scenarios, the 'not for profit' subsidiary will remain viable but that the loss of anticipated covenanted surpluses from the subsidiary may cause the parent association to breach its toughest income cover covenant for one year only.

The covenant breach can be averted by a 'fire sale' of voids or by a sale and leaseback of the provider's freehold offices. Neither option is considered desirable and the regulator agrees that the provider should seek a covenant waiver from the lender. This is granted and, following detailed discussions between the regulator and Communities England, both are content to let the provider's development programme agreement continue as it has the reserves to withstand the loss.

The regulator requires the provider to commission an independent review of the lessons to be learnt from this expensive mistake. This identifies weaknesses in risk management, financial forecasting and the governance of the subsidiary. The provider accepts the recommendations. The sales programme is eventually concluded and the 'high risk' financial reporting requirements revert to normal status.

HYPOTHETICAL CASE STUDY 3

The regulator receives a complaint from a local authority about a major provider's reluctance to engage with its proposals for a Local Area Agreement. The provider has a development programme in the local authority's area and a significant (but not dominant) property holding.

The regulator requests an explanation from the provider together with proposals for engaging constructively.

The provider responds with a long list of complaints about the unreasonableness of the local authority's stance on a range of issues and says that it has tried – but failed – to reach agreement.

The regulator requires the provider to commission an independent review of whether it is engaging constructively with the local authority. This finds that there is a history of poor relationships between the local authority's lead manager and the provider's regional manager. Other providers confirm that they have no difficulties in working in partnership with the authority.

The regulator concludes that the provider is acting unreasonably. It calls in the Chair and Chief Executive of the provider and warns them to resolve the matter immediately or face a publication of the failure and an enforcement notice.

The provider reassigns its regional manager to other duties and the replacement quickly establishes positive relationships with the authority.

HYPOTHETICAL CASE STUDY 4

A large housing provider has been assessed as a reasonable 'low risk' performer. Its overall performance indicators are good.

The regulator receives complaints from a local authority at the instigation of a local tenant action group. The main focus of the complaints is about the provider's unwillingness to engage with tenants about a series of local issues. The local authority indicates that the provider has shown no interest in its local strategy development and rarely sends representatives to local housing liaison meetings.

The regulator seeks a formal explanation from the provider together with proposals for addressing the weaknesses.

The provider's response is that the 300 or so homes in question are less than 2% of its stock and are the most distant from its regional office. It is not therefore economic or practical to vary its standard pattern of services as the tenants would wish. It is only the 8th largest provider in the local authority's area and cannot be expected to play a more prominent role.

The regulator considers the local performance data. This indicates that the local service is adequate but well below the standard that the provider achieves across most of its operations. Its tenant satisfaction ratings are also low in relation to its overall ratings.

The regulator informs the provider that it is not acceptable for this group of tenants to receive a less good service just because of their geographical location. The provider is keen to avoid the bad publicity of an Improvement Notice and agrees to hold a meeting with tenant and local authority representatives to consider the way forward. The meeting discusses a range of options from a local surgery office through to a tenant management organisation.

A consultation exercise is held and the majority conclusion is to consider a management agreement with one of the local providers. The provider accepts the recommendation. Tenants are involved in drawing up the tender specification and tenant representatives are included on the selection panel. The four main providers with offices in the local authority area are invited to tender for an initial five year contract, and the contract is designed to minimise the incidence of VAT.

The regulator receives regular progress reports but does not intervene further as progress towards an acceptable outcome is being maintained. Eighteen months after the initial complaint, the management contract is awarded to a local provider.

The regulator makes follow up inquiries after a year. Tenant satisfaction has increased sharply and the local authority is satisfied because the local manager is actively engaged with its local plans. The provider is also satisfied as, contrary to its expectations, its management costs were reduced. It is engaging with its tenants in two other locations that are relatively remote from its regional offices about out-sourcing management to local providers.

Other recommendations for de-regulation

5.160. In the preceding sections the review has focussed on the overall system of regulation that should be applied to the whole domain. Within the local authority and ALMO sectors, all providers are of a significant size. But within the housing association sector there are a large number of very small providers that own only a small proportion of the housing and that find the current burden of regulation excessive.

Recommendation R13: 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.

5.161. Amongst the smallest registered housing associations are almshouses and many Abbeyfield societies. Most of these are registered charities. While they may have historically received small amounts of grant, these were generally one or two decades ago.

Recommendation S20: 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.

5.162. The review considers that up to 500 organisations could be relieved of the burden of dual regulation by this proposal with no significant loss of protection for the public purse.

6 INSTITUTIONAL ARRANGEMENTS

- 6.1. The previous section has set out a preferred option for the regulation of social housing; this section considers which institutional framework might best support that system of regulation.
- 6.2. The current landscape of regulatory institutions is complex, even if significant regulators, such as the Charity Commission and Financial Services Authority, are ignored. In summary, the Housing Corporation regulates housing associations, and is responsible for contracting with private sector owners and managers of social housing. The Housing Corporation currently employs 145 staff directly in regulation – there are a small additional number of staff whose work is integral in contributing to regulation. The Audit Commission inspects all social housing providers, whether LAs, ALMOs or housing associations. About 80 people are engaged in this aspect of the Audit Commission's work. Local authorities own and operate their own stock, and contract with ALMOs for the management of further holdings. They are themselves subject to inspection by the Audit Commission and also to major interventions from CLG, particularly with respect to the reporting of performance and the Housing Revenue Account. The Secretary of State may in specified circumstances take over a local authority's management role.
- 6.3. The preferred option set out above simplifies these relationships in the following principal ways:
- it establishes an independent body which regulates all four kinds of provider in a broadly uniform manner, but one which takes account of specific differences relating to funding, governance arrangements and other factors
 - it removes a feature of present arrangements that inspection of all providers and regulation of housing associations are under separate control
- 6.4. The rationale for the former change is set out in the previous chapter. On the assumption that it is implemented, the argument for unified control of inspection and regulation becomes stronger. Inspection is best seen as a component of regulation and its results are an input, with other inputs, into further regulatory decisions, which may involve either forbearance or intervention. There are thus strong arguments for changing present arrangements to allow the regulator to control the inspection process. The proposed change does not mean that the regulator has to undertake inspections itself. They can readily be outsourced to another public or private sector body. But they should be determined within the framework of a unified regulatory strategy.

- 6.5. In discussing the institutional framework of regulation, it is important to bear in mind that the preferred option set out above would introduce major changes from current arrangements, and require some different skills from regulatory personnel. A useful and fairly exact parallel is provided by the creation of Ofcom from five pre-existing regulators, with a new set of duties and a different regulatory approach⁹⁵.
- 6.6. The role of inspection would change (see paragraph 5.44). The level of administrative burdens, particularly information requirements, especially those on housing associations, would be substantially reduced (see paragraphs 5.137-5.145 and annex 4). In those limited cases where intervention would be required, much of the regulators' work would involve choice among a larger range of means of interventions than is currently available. Regulatory personnel would thus not be dealing on a daily basis with leading officers of the provider organisations.
- 6.7. The review received a number of representations from local authorities relating to regulatory structures, as described in paragraphs 4.27-4.34 above. One variant, proposed by the London Councils, involved a system of regulatory responsibility shared between a national regulator and local authorities. This might involve, for example, a right for the local authority to carry out an inspection of a provider in its area and to impose remedies where it considered it appropriate.
- 6.8. The review understands the frustration of local authorities which currently see themselves in some cases as powerless to deal with problems of poor provision which they may identify in their areas. However, it would create serious problems of confusion, double jeopardy and forum shopping if a national and a local regulatory body had duplicated powers to intervene in the case of a single supplier. The consequences on the supply of capital to the sector might be serious, as a result of the regulatory uncertainty thus created. For this reason, the review has sought to meet the local authorities' legitimate interests, by involving them formally in the processes of the regulator, and by making all providers accountable to the local authority as the chief strategic actor in an area (see paragraphs 5.26-5.28). This is reiterated in the LGA's submission to the review.
- 6.9. On this footing, responses to the review's call for evidence, and views subsequently expressed in meetings with the review team, have concentrated on three principal institutional options:
- the regulator should be part of Communities England, to be formed from the union of the Housing Corporation and English Partnerships (just as now the regulatory function for housing associations is undertaken by the Housing Corporation);
 - a wholly new and independent Social Housing Regulatory Authority should be created;

⁹⁵ This process is described in *A case study of public mergers and regulatory structures*, Ofcom, (2006).

- the combined regulatory function should be undertaken by the Audit Commission, which is currently responsible for inspection.

- 6.10. A range of views is contained in evidence submitted to the review.⁹⁶ By way of partial summary, the Council of Mortgage Lenders stressed the importance of the regulator being independent from government and states that *'clearly two of the prime candidates to host regulation are Communities England and the Audit Commission...At present the A[udit] C[ommission] has a very public sector culture, and this would need to change significantly if it were to effectively regulate H[ousing] A[ssociation]s. One significant fact in favour of Communities England concerns the desirability of co-location of financial regulation and investment in order to facilitate close communication and co-operation.'*⁹⁷
- 6.11. The National Consumer Council offered a different perspective. *'The creation of a national development agency is worthwhile; but, alongside and separate from this should be a regulatory agency that operates in the interests of consumers. The review does not have fixed views about whether this is a new or adapted organisation, but believe there is a case for aligning the role of inspection with a regulatory agency, as part of its monitoring role and consumer focus.'*⁹⁸
- 6.12. The Housing Corporation considered that the *'regulator could be created either alongside the capital investment function as part of Communities England or as a stand-alone specialist social housing regulator...On balance we consider that there is a strong case for continuing co-location of the investment and regulatory functions.'*⁹⁹
- 6.13. The Audit Commission did not in its evidence propose a specific institutional arrangement but believes that the role for the regulator *'needs to be independent of both government and housing providers, and of any other bodies that might give rise to a conflict of interest'*.¹⁰⁰
- 6.14. More generally, the arguments about institutional arrangements made during the consultation process that has followed the call for evidence are captured in the following three sections.

For and against co-location with Communities England

- 6.15. The advantages and disadvantages of co-location with Communities England, expressed to the review, can be summarised as:

⁹⁶ See Annex 6 for an analysis of responses on this topic to the call for evidence.

⁹⁷ Evidence from the Council of Mortgage Lenders (paragraphs 26 & 27)

⁹⁸ Evidence from the National Consumer Council – House Rules (page 40)

⁹⁹ Evidence from the Housing Corporation (paragraphs 66 and 71)

¹⁰⁰ Evidence from the Audit Commission – The Future Regulation of Housing (paragraph 122)

6.16. *For:*

- a co-located regulator can use the incentive of access to grant to encourage good performance generally and can more easily promote the voluntary assimilation of government policies
- the incentive to win and retain investment partner status can be a powerful incentive to utilise financial capacity and to maintain performance levels with existing stock
- on a very limited number of occasions access to investment funds has helped to resolve regulatory problems and thereby safeguarded the interests of both tenants and the taxpayer
- it facilitates good communication and synergies between regulator and funding body and avoids conflict between regulation and investment
- the provision of social housing on both a regulatory basis and a contractual basis can be accomplished within a single organisation
- the location of long term functions like Decent Homes within Communities England would overlap strongly with the regulation function
- sharing of financial appraisal work and central overheads reduces the costs of both regulation and investment functions

6.17. *Against:*

- policy passporting is now seen by many organisations as something that should be tightly controlled rather than encouraged
- the recent capacity study indicates that co-location is a weak incentive which misses a significant number organisations which have spare capacity
- there should be greater transparency in the use of grant for purposes of safeguarding the interests of both tenants and the taxpayer
- internalising the tensions that can exist between regulation and investment does not necessarily resolve them in the best way and can lead to cosiness
- the core focus on Communities England will be on increasing the supply of new homes and on investment in the development and regeneration of neighbourhoods, whereas regulation of the whole of the existing stock would sit more appropriately with the regulator

- Communities England's primary focus of increasing supply is a very different focus from the primary regulatory role of managing the whole social housing domain in the interests of consumers; housing regulation would be in danger of taking second place
- the creation of Communities England, with a wider range of functions than the Housing Corporation will extend the range of possible conflicts of interest and enhance perception of them; this will discourage other players from getting involved

For and against an independent Social Housing Regulatory Authority

6.18. The advantages and disadvantages of an independent Social Housing Regulatory Authority, expressed to the review, can be summarised as:

6.19. **For:**

- an independent Authority will be seen as genuinely independent by all parties; this perception is essential to implementing a policy of expanding alternatives at all levels
- an independent Authority will have a clear uncluttered focus that is free from other influences and priorities
- a new body will establish a culture and values which are most appropriate for the housing domain, and a multi-sectoral approach
- a new body will be able to develop a culture and approach which is attractive to new entrants, especially from the private sector
- the new role that is envisaged for the regulator will get off to the best possible start if it is not co-located with other organisations that will be perceived as having legacies that would inhibit their ability to make a fresh start

6.20. **Against:**

- there could be a lack of clarity in roles and boundaries in relation to Communities England, and difficulties of co-ordination
- the same could apply in relation to the Audit Commission, in relation to its role in Comprehensive Area Assessment
- independence limits opportunities for the sharing of back office functions, which could save resources

- a newly created organisation could lose some of the inheritance of the regulatory and inspection experience of the Housing Corporation and Audit Commission
- creation of a wholly new organisation would take more time

For and against co-location with the Audit Commission

6.21. The advantages and disadvantages of co-location with the Audit Commission, expressed to the review, can be summarised as:

6.22. **For:**

- the Audit Commission has a strong consumer orientated focus
- inspection has had a positive impact on the quality of housing services and will be a continuing element in the proposed regulatory system
- the Key Lines Of Enquiry (KLOEs) developed by the Audit Commission have generated a detailed description of a high quality housing service that applies across most of the domain
- co-location would facilitate good communication and understanding between the inspection function and regulation – particularly in relation to post inspection follow up
- sharing of central overheads reduces the costs of both regulation and inspection functions
- the Audit Commission has already concerned itself with the issue of regulating the public sector, and can readily extend that knowledge to a regulation of a combined public/private sector activity
- the housing regulation function would sit well alongside the Audit Commission's role in Comprehensive Area Assessment

6.23. **Against:**

- inspection does not extend to private sector (for profit) providers
- the frequency of inspection has fallen and its role is likely to become more of a backstop than the primary service improvement tool; consequently the Audit Commission's primary responsibility in this area is of declining scale going forward

- the review is proposing a wider range of self improvement and independent inspection models. The Audit Commission may be perceived as having a conflict of interest in judging their adequacy against their own distinctive style of inspection
- it would be inappropriate to combine the assessment of the local authorities' strategic housing role with regulation of the direct providers of that service
- many of those inspected consider that the standard used by the Audit Commission is too detailed and inhibits both flexibility and innovation
- the primary role of the Audit Commission is to audit or inspect or track the impact of public expenditure across some 11,000 public bodies; a role as housing regulator would be in danger of taking second place
- the new role for the Audit Commission in relation to local government will be to undertake Comprehensive Area Assessment, which will include assessing multi-functional outcomes from a range of players across health, education, housing etc; having a specific *regulatory* responsibility for one of the players will cut across or conflict with this strategic role
- making the principal auditor of public bodies the regulator of independent private sector bodies would contribute to undermining their private sector status

The review's proposed institutional arrangement

- 6.24. The review has held individual consultations with the Housing Corporation, Audit Commission and Communities England transition team. It has explored the three options with its external advisory group and has consulted Communities Scotland on its experience of co-located functions.
- 6.25. It is essential that the form of the institutional arrangement should follow its function. In this case, the latter involves a radical new approach to social housing regulation the core purpose of which can be rendered as 'regulating social housing in the long term interests of its consumers'. In addition there will be increasing competition among a wider range of providers, from which the regulator will seek a uniformly high standard of performance.
- 6.26. If this role of stimulating consumer empowerment and choice and stimulating competition among a wide range of providers is to be effective, then the regulator must be demonstrably independent from government and providers. But the regulator should also be able to gain the confidence of the full range of stakeholders. To achieve this, it must be free from actual or perceived conflicts of interest.

- 6.27. The review has concluded that assigning regulation to Communities England would not satisfy this condition. This is in no way a criticism of how the Housing Corporation has discharged its duties under the current regime. But the nature both of those duties and of the Housing Corporation itself will change substantially, in ways which lead to greater conflicts than under the present regime and make the co-location of regulation with Communities England undesirable.
- 6.28. An independent Social Housing Regulatory Authority does satisfy the requirements of focus and freedom from conflict of interest. Its scale is not a matter on which the review has reached a firm opinion, but the preferred option described above is intended to be deregulatory, in the sense of substantially reducing the current burden imposed on the housing association sector. This is counterbalanced to some degree by the proposed extension of future regulatory functions to local authorities and ALMOs, but the review expects the new regulator will require significantly fewer resources than are now expended by the various bodies involved. It is the review's preliminary view, by analogy with the observed scale of other economic regulators such as Ofwat (with some 180 personnel) that the resulting body would be on a scale to make it sustainable as a free-standing body. But this requires further investigation, particularly in the light of the recent policy of amalgamating small regulatory bodies.
- 6.29. The third option noted above involved placing the regulatory function within the Audit Commission, which currently inspects all providers of social housing (save 'for profit' organisations). Some have suggested this would lead to conflicts with the Audit Commission's other roles, particularly its role in Comprehensive Area Assessment. There is also potential for conflicts for attention if housing regulation is located in a large pre-existing organisation. Moreover, the Audit Commission has not undertaken a similar regulatory function to date, and its experience of interacting, other than as a purchaser of services, with the for-profit private sector is limited.
- 6.30. The fact that some potential regulatees favour an alternative institutional framework is relevant but not decisive; such attitudes can change as events unfold. But the Audit Commission option has little support from other stake-holders, such as representatives of local authorities, tenant groups and consumer organisations, the Council of Mortgage lenders, the Housing Ombudsman and prospective private sector providers. The Local Government Association has expressed no preference.
- 6.31. The review concludes that the balance of advantage between a new regulatory body and the Audit Commission in terms of the likely regulatory outcome lies clearly with the creation of a new Social Housing Regulatory Authority. This decision would in particular permit the creation of a new body from scratch, to perform a new task; and it would produce a body with a single-minded focus on the long-term interests of consumers of social housing.

- 6.32. Further analysis than the review has been able to provide is required of practical issues relating to the scale of the organisation, including the nature of its regional presence. The review recommends that CLG undertake this analysis.
- 6.33. Nonetheless, two further comments can be made. It is common practice now to establish regulatory bodies as boards or authorities, consisting of a relatively small number of members, the majority, including the Chair, being non-executive. This model seems appropriate for an independent Social Housing Regulatory Authority.
- 6.34. Secondly, there is a good argument for having regulation funded by contributions from the providers of regulated services. This is the custom among existing economic regulators. And one of its consequences is the application of continuous pressure on the regulator to keep costs to a minimum. It would be a matter for the regulator to decide how exactly to apportion costs among providers – in particular whether to impose the costs of regulatory investigations, inspections and interventions on those providers whose conduct has instigated them.

Recommendation S21: 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 commissioning or performance of social housing inspection.

Institutional arrangements for the national tenant voice

- 6.35. The review also recommends that there be created a national voice for tenants of social housing established at the same time as the regulator. This body could take four forms:
- an independent agency (along the lines of Passenger Focus for the rail industry)
 - a largely independent consumer panel which is part of the regulatory body (along the lines of the Ofcom Consumer Panel)
 - an additional statutory responsibility for the National Consumer Council (currently adding to its portfolio the advocacy roles of Energywatch and Postwatch)
 - a new national tenant body with a regional and local structure
- 6.36. A fully representative national tenant body that has regional and local elements would provide a level of legitimacy that the other options would not achieve. However it is evident from consultations with tenants that it would take considerable time and resources before such a body could be established. There is also substantial disagreement about its role in relation to existing organisations.

- 6.37. **Recommendation S22: 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.**
- 6.38. The National Consumer Council (NCC) has already demonstrated its knowledge and commitment to tenant empowerment and would be committed to facilitating and developing existing tenant organisations across social housing. The NCC should work with existing organisations such as TAROE and develop structures that ensure legitimacy for this key role.

Institutional arrangements for ombudsman services

- 6.39. As set out in paragraphs 5.111-5.113 above, the review recommends that there should be a single Housing Ombudsman for the whole domain. The extension of the Housing Ombudsman's dispute resolution role to other housing providers will also make a valuable contribution to consumer protection. Further consultation with interested parties should be held to examine how the domain-wide Housing Ombudsman role should be organised.

Resources for the regulator

- 6.40. The style of regulation that is proposed is co-regulatory. As far as possible good practice will be developed and spread in a collaborative way. The focus of interventions will be risk and intelligence based. Regulating in a less bureaucratic way requires the resources to gather and analyse information and undertake or commission studies. The regulator will need to provide support and encouragement for innovative approaches to developing choices for tenants and other tenant empowerment methods. It is essential that the regulator has the resources for this style of work.

Recommendation S23: The regulator should have the resources to undertake research, gather statistics and promote good practice on the scale necessary to discharge its duties.

ANNEX 1

Glossary of housing acronyms and terms used in the report

ALMO	Arms Length Management Organisation
AES	Annual Efficiency Statement
BPSA	Business Plan Statistical Appendix
CAA	Comprehensive Area Assessment
CIH	Chartered Institute of Housing
CLG	Department for Communities and Local Government
CORE	Continuous Recording of Lettings
CPA	Comprehensive Performance Assessment
CSCI	Commission for Social Care Inspection
DWP	Department for Work and Pensions
HB	Housing Benefit
HCA	Housing Corporation Assessment
HRA	Housing Revenue Account
HSSA	Housing Strategy Statistical Appendix
IGP	Innovation and Good Practice
KLOE	Key Line of Enquiry
LAA	Local Area Agreement
LGA	Local Government Association
LSP	Local Strategic Partnership
NCC	National Consumer Council
NDPB	Non Departmental Public Body

NROSH	National Register of Social Housing
Ofcom	Office of Communications
Ofgem	Gas and Electricity Markets Authority
Ofwat	Water Services Regulation Authority
NHF	National Housing Federation
PFI	Private Finance Initiative
PSNCR	Public Sector Net Cash Requirement
RPI	Retail Price Index
RSL	Registered Social Landlord
RSR	Regulatory and Statistical Return Survey
SACS	Self Assessment Compliance Statement
SORP	Statement of Recommended Practice
SPV	Special Purpose Vehicle
STATUS	Standardised Tenant and User Survey
TAROE	Tenants and Residents Organisation of England
TPAS	Tenant Participation Advisory Service
TMO	Tenant Management Organisation
VAT	Value Added Tax

ANNEX 2

List of 115 contributors that submitted written evidence to the review

- Adrian Holloway
- Alison Ewart
- Almshouse Association
- Amicus (the trade union)
- Anchor Trust
- Aspire Housing
- Aster Group
- Audit Commission
- Birmingham City Housing Partnership
- Bob Line
- Bolton Metropolitan Borough Council and Bolton at Home
- Bromford Housing Group
- Bury Metropolitan Borough Council
- Byker Bridge Housing Association
- Camden Federation of Tenants and Residents Associations
- Catalyst Housing Group
- Charity Commission
- Chartered Institute of Housing
- Churchill Gardens Residents' Association
- CIPFA
- CityWest Homes
- Contour Housing Group
- Cosmopolitan Housing Group
- Council of Mortgage Lenders
- Cyril Bezan
- Dane Housing Group
- Daventry District Council
- Defend Council Housing
- Devon and Cornwall Housing Group
- Devon Strategic Housing Group
- Ducane Housing Association
- Emily Thornberry MP
- Erimus Housing
- Family Mosaic
- Fareham Borough Council
- Federation of Black Housing Organisations
- G320
- Gallions Housing Association
- Helena Housing

- Home Builders Federation
- Home Group Limited
- Housing Corporation
- Hyde Housing Group and Metropolitan Housing Partnership
- Independent Housing Ombudsman
- Innisfree Housing Association
- Investors in Excellence Ltd
- Joseph Rowntree Foundation
- Kensington and Chelsea TMO
- L&Q Group
- Lewis Silkin LLP
- Local Government Association
- Local Government Ombudsman
- London BME Associations
- LB Barnet
- LB Brent
- LB Haringey
- LB Havering
- LB Lambeth
- LB Lewisham
- LB Newham
- LB Southwark
- London Councils
- London Leaseholder Network
- London Tenants Federation
- Look Ahead Housing & Care
- Manchester Resident's Association, Greater Manchester Tenants and Residents Federation, North West Tenants and Residents Assembly
- Milton Keynes Council
- National Audit Office
- National Consumer Council
- National Federation of ALMOs
- National Housing Federation
- Nationwide Building Society
- North Somerset Housing
- Northern Housing Consortium
- Notting Hill Housing Trust
- Octavia Housing and Care
- Oldham Metropolitan Borough Council
- Orwell Housing Association
- Peabody Trust
- Places for People
- Plus Housing Group
- Quality Housing Services
- Radcliffe Housing Society
- Radian Group

- Regenda Group
- Riverside Group
- Roger Brocklehurst
- Royal Borough of Kensington & Chelsea
- Sanctuary Housing Group
- Sentinel Housing Association
- Sheffield City Council
- Sheffield Homes Limited
- Shelter
- South Bank Tomorrow
- South Holland District Council
- South Oxfordshire District Council
- Southern Housing Group
- SPACE
- Sunderland Housing Group
- Sutton Housing Society Ltd
- TAROE
- Tenants Participation Advisory Service
- The Housing Finance Corporation
- Town and Country Housing Group
- Transport and General Workers Union
- Trent and Dove Housing
- TUC
- UNISON
- Uttlesford District Council
- Vanguard Consulting
- Vicinity Housing Group
- Waltham Forest Housing Association
- West Kent Housing Association
- West Lancashire District Council
- Whitefriars Housing Group
- Wirral Methodist Housing Association Ltd

External Advisory Group

- | | |
|---------------------|---------------------------------------|
| • Mike Biles | Housing Ombudsman |
| • Steve Bundred | Audit Commission |
| • Mike Davis | London Borough of Croydon |
| • Simon Dow | The Guinness Partnership |
| • Keith Exford | Affinity Sutton |
| • Andrew Heywood | Council of Mortgage Lenders |
| • Genevieve Macklin | London Councils |
| • Ed Mayo | National Consumer Council |
| • Phil Morgan | Tenant Participation Advisory Service |
| • David Orr | National Housing Federation |
| • Dennis Rees | National Federation of ALMOs |
| • Jon Rouse | Housing Corporation |
| • John Stewart | Home Builders Federation |
| • Sarah Webb | Chartered Institute of Housing |
| • Martin Wheatley | Local Government Association |

ANNEX 4

Impact of recommendations on intensity of regulation

Ref	Recommendation	Impact on policy costs	Impact on admin costs
S1-3, S21, S23	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
S4	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
S5	Statement of provider obligations	Clarity of statement of scope and standards of regulatory requirements limits regulatory creep	Consequent limits on monitoring and reporting requirements
S6	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
S7	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
S8	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
S9	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
S10, S11	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
S12, S22	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
S13	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
S14, S15	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
S16	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
S17, 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
S18, S19, 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
S20	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 compliant 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

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 organisational 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 associations 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

Regulatory requirement	HAs (now)	HAs (following reform)
Governance – payments and benefits	Relevant provisions of Schedule 1 of Housing Act 1996 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

ANNEX 5B

The regulatory requirements for local authorities and ALMOs and associated administrative burdens (landlord issues only) – currently and following regulatory reform

Regulatory requirement	LAs and ALMOs (now)	LAs and ALMOs (following reform)
Registration	Not applicable	Obligatory but registration will be automatic for these bodies and will mean limited administrative burden
Information provision		
– Financial	Data returns required to claim Housing Revenue Account (HRA) subsidy (in part)	Where LAs (and their partner ALMOs) are able to opt out of HRA system, data requirements will lessen significantly. Otherwise as now
– Stock data	HRA subsidy claim forms; Business Plan Statistical Appendix (BPSA); Housing Strategy Statistical Appendix (HSSA)	Potential for NROSH to substantially replace these requirements, subject to review of extent of NROSH data requirements and minimisation of administrative burdens
– Performance indicators	Best Value PIs submitted to CLG	Only key performance data to be collected and published by regulator and for that data to be comparable with that collected for other providers; regulator required to ensure administrative burdens are minimised
– Lettings	CORE – voluntary	CORE – obligatory
– Compliance and efficiency reports	Annual Efficiency Statement and BPSA primarily	Potential for AES to be dropped for individual service areas (including housing); LAs and ALMOs required to report regulatory non compliance by exception
Control over disposals	Secretary of State consent required	Some controls still needed but potential for greater flexibility.
Constitutional matters (LAs)	Democratic framework dictates constitutional form	As now
Constitutional matters (ALMOs)	Model guidance on governance provided by CLG; LA and ALMO Board has some discretion on these issues	Regulator could take responsibility for issuing guidance
Payments and benefits	Government has guidelines that LAs must follow and ALMOs are <i>expected</i> to follow.	Potential for regulator to take this role from Government; domain wide Code of Practice could be adopted




Regulatory requirement	LAs and ALMOs (now)	LAs and ALMOs (following reform)
Performance assessment	Subject to annual Comprehensive Performance Assessment (CPA) by Audit Commission	Publication of Performance Indicator information as determined by the regulator; these would be fed to the AC for local authority Comprehensive Area Assessment (CAA) arrangements post 2009
Audit	LAs audited by suppliers appointed by AC under Commission's Code of Audit Practice; ALMOs appoint their own auditors	As now
Inspection (LAs)	Subject to AC inspection under 1999 Local Government Act; now risk and performance based under CPA regime	More limited statutory inspection function, with greater role for external accreditation of service quality AC will have role as 'gate keeper' of inspections of 'local services'
Inspection (ALMOs)	Subject to AC inspection under 1999 Local Government Act; inspections required (with at least a 2* score) to access Decent Homes funding; re-inspection programme also in place to ensure high quality services continue to be delivered; inspection programme finishes once Decent Homes programme complete	More limited statutory inspection function with greater role for external accreditation of service quality; AC will have role as 'gate keeper' of inspections of 'local services'
Intervention (LAs)	Zero star/0* housing authorities are subject to re-inspection by AC and if there is no improvement the SoS has a wide range of intervention powers under 1999 Act (such as appointment of special manager or direct management of service)	Wider, more graduated range of statutory powers to take remedial intervention and enforcement action; potential for SoS to have a limited interventionist role in extremis
Intervention (ALMOs)	LA has option to determine contract if there is performance failure; provisions of 1999 Act still applicable but would have to be applied through LA	LA has option to determine contract if there is performance failure; wider, more graduated range of statutory powers to take remedial intervention and enforcement action also possible through regulator

ANNEX 6

Respondent views on favoured institutional arrangements

The review's call for evidence of December 2006, while focussing on the form of regulation, also invited views on future institutional arrangements. It noted that 'options could include the existing bodies involved in regulation and inspection, or a completely new body'.

An analysis of the responses shows that preferences were expressed by different types of respondent as follows:

	Favoured Regulator					
Respondent type ↓	Communities England	Audit Commission	Stand alone	Other	No view/Not specified	Total
Housing association	13	1	3	17	11	45
Local authority/ALMO	0	4	4	6	14	28
Representative etc.bodies	2	1	1	7	12	23
Other	1	1	2	7	8	19
Total	16	7	10	37	45	115

Notes:

Representative etc. bodies: these are representative, trade, professional or statutory bodies.

Other (respondents): these are individuals, tenant groups, trade unions, etc.

Other (views): here respondents indicated that they preferred regulatory arrangements other than those potentially on offer through Communities England, the Audit Commission or a stand alone regulator. Typically housing associations were calling for self regulation while local authorities sought a role for local councils in the regulation of social housing in their areas.

ANNEX 7

Hills review issues and the proposed regulatory framework

The table below highlights the paragraphs in the current report that address key issues raised in Professor Hills' recent report on the future of social housing in England ('Ends and Means: the future roles of social housing in England', CASE report 34, 2007).

Issues in Hills Report	As covered in the review of social housing regulation
To increase the attention given to the existing stock and tenant population	The review's overriding focus is on the delivery of high quality housing services to existing tenants and other service users in social housing. Less attention will be centred on providers (e.g. paragraph 2.45). Also the proposed regulatory framework covers the ownership and management of the social housing domain. The development of new social housing will be overseen by Communities England. The non landlord housing functions of local authorities will be monitored and regulated by the Audit Commission and CLG.
To support more of an income mix within existing communities	This is covered primarily in sections about disposals of social housing stock to generate more mixed communities (paragraph 5.76). The interests of key workers, shared owners and similar groups that receive services from social housing landlords will be covered by the proposed regulatory framework.
To support the livelihoods of tenants and others in housing need	References to the role social landlords can play in providing education, training and other activities to support the livelihoods of social housing tenants are made in, for example, paragraphs 2.31, 3.8, 5.48 and 5.73. The government has a power of direction in relation to the definition of mandatory housing standards, which can extend to services ancillary to housing (paragraph 5.13). Housing providers have an obligation to engage and co-operate with local authorities in their place-shaping agendas (paragraphs 5.16-5.28).
To offer 'a more varied menu' for both prospective and existing tenants	The proposed framework for regulating social housing offers tenants and others significantly more choice than they have at present. The review wants to see choice for existing and prospective tenants broadened (paragraph 3.12-3.16). This is re-affirmed elsewhere in the report (paragraph 5.85-5.89). Choices for tenants should include where to live, the provider of the housing management service and, ultimately, the type of tenure.



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