EXPLANATORY MEMORANDUM TO

THE HOUSING AND REGENERATION ACT 2008 (CONSEQUENTIAL PROVISIONS) ORDER 2010

2010 No.

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

2. Purpose of the instrument

2.1 Parts 1 and 2 of the Housing and Regeneration Act 2008 ("the 2008 Act") make provision for social housing assistance and a new regulatory regime for providers of social housing. This Order makes amendments to primary legislation in consequence of the bringing into force of the remainder of Parts 1 and 2 of the 2008 Act. In particular, it makes amendments and modifications to, and repeals of, certain provisions in legislation that make reference to the Housing Corporation and registered social landlords (registration of social landlords is provided for in Part 1 of the Housing Act 1996). The amendments, modifications and repeals are subject to transitional, transitory and savings provisions. It is intended that a consequential amendment order dealing with similar amendments to subordinate legislation will be brought forward soon.

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

3.1 None.

4. Legislative Context

4.1 The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 is made under sections 320 and 321 of the 2008 Act.

4.2 The Order will come into force on 1st April 2010, which is the date when the remainder of Parts 1 and 2 of the 2008 Act will be brought into force by a separate Commencement Order. The Order also makes further transitional, transitory and saving provisions in relation to the existing regulatory regime.

4.3 In parallel to this Order, the Government is also laying the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010, which relates to the regulation of local authority providers of social housing.

5. Territorial Extent and Application

5.1 Apart from the provisions referred to in Article 3(2) (which extend to England and Wales only), the consequential amendments and repeals in this Order have the same extent as the enactments to which they relate.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State, Ian Austin MP, has made the following statement regarding Human Rights:

In my view the provisions of the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2009 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Following a housing and regeneration review in 2006 the Government decided to create a new national agency for the purpose of meeting the housing and regeneration needs of England and a new regulatory body for social housing in England (the Regulator of Social Housing (known as the Tenant Services Authority ("TSA")).

7.2 In December 2006, the Government invited Professor Martin Cave to head an independent Review of Social Housing Regulation ("the Cave Review"). Professor Cave's remit was to consider options for reform of the regulatory system including fundamental changes, and make recommendations to Government. His report, Every Tenant Matters, was published on 19 June 2007.

7.3 The Cave Review recommended the creation of a standalone, independent regulator with clear statutory objectives to put tenants at the heart of regulation and wider powers to set and enforce clear performance standards. The 2008 Act implemented the Cave Review's recommendations, making provision for the establishment of the TSA and its new powers.

7.4 Prior to the establishment of the TSA, regulatory functions in relation to registered social landlords were exercised by the Housing Corporation. The 2008 Act (Schedules 8, 9 and 16) contained some but not all the consequential amendments needed to move from current regime operated by the Housing Corporation principally under the Housing Act 1996 to the new regime operated by the TSA principally under the 2008 Act. This Order makes the remaining consequential amendments and repeals in relation to primary legislation.

7.5 A key change reflected in this Order is the introduction by the 2008 Act of the term 'Registered Provider of Social Housing' (Registered Provider). In general this term will replace – in England only – the term 'Registered Social Landlord' (RSL) which currently describes bodies that are registered with the Tenant Services Authority. RSLs are required to be non-profit making bodies. The 2008 Act permits profit-making bodies to register with the TSA as well, hence the need to introduce the new term 'Registered Provider of Social Housing.' The 2008 Act obliges the TSA to register Registered Providers as either 'profit-making' or 'non-profit' bodies.

7.6 In parallel to this Order, the Government is also laying the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010, which would provide for the TSA to register local authority providers of social housing. That Order is designed to implement the Cave Review's recommendation that there should be a single, 'cross-domain' regulator of social housing. Schedule 1 to that Order would amend the 2008 Act to designate Registered Providers that are not local authorities as '*Private* Registered Providers.'

7.7 In making consequential amendments to primary legislation that includes references to RSLs, our approach has generally been to apply the same provisions to 'private registered provider of social housing' as are currently applied to RSLs. (It is worth noting that all bodies in England which are RSLs will automatically become private Registered Providers under section 278 of the 2008 Act.) The rationale for this approach is our overall aim to deliver, as far as possible, a level playing field for providers and similar levels of service and protection for tenants. However, in a limited number of cases, there are compelling policy or technical reasons to amend the existing provisions so as to apply them to private *non-profit* Registered Providers only, and not to profit-making bodies.

Consultation

7.8 In June 2007 a consultation paper was issued which sought views on the roles and responsibilities of the two new investment and regulation bodies (*Delivering Housing and Regeneration: Communities England and the future of social housing regulation*). This consultation concluded in September 2007, and in January 2008 a summary of responses to this consultation exercise was published.

8. Consultation outcome

8.1 There were 187 responses to this consultation exercise. Respondents were generally supportive of the proposal to create a new housing and regeneration agency and a new social housing regulator. These two new bodies (known as the Homes and Communities Agency and the Tenant Services Authority) were created by the 2008 Act.

9. Guidance

9.1 We do not propose to issue any guidance for this instrument.

10. Impact

10.1 This Order arises directly from the passing of the 2008 Act. A final Impact Assessment for the 2008 Act was published in December 2008. This included a specific Impact Assessment for the creation of the new social housing regulator, which is attached below.

11. Regulating small business

11.1 As set out in the Impact Assessment, we do not expect a net impact on small business.

12. Monitoring & review

12.1 The Tenant Services Authority's overall performance against the achievement of its objectives will be reviewed twice a year, in addition to the formal annual report and submission of accounts required of a public body.

12.2 In addition the regulator's status will be formally reviewed every five years. The date of the next formal review is 2013.

13. Contact

13.1 Alec Taylor at the Department for Communities and Local Government
Tel: 0303 444 3779 or e-mail: alec.taylor@communities.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
CLG	Impact Assessment of Implementation of Cave Review of Social Housing Regulation	
Stage: Final	**Version:** 2	**Date:** July 2008
Related Publications:		

Available to view or download at:
http://www.communities.gov.uk

Contact for enquiries: Elizabeth Knapp **Telephone:** 020-7944-3635

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

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

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

What are the policy objectives and the intended effects?

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

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

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

1) Do nothing

2) Make the regulator of Registered Social Landlords (RSLs) a standalone body - the Tenant Services Authority. We consulted on this as part of the Housing and Regeneration consultation. A majority of responses favoured a new standalone body, as the most likely to give continuity and certainty to regulation, and confidence to lenders to the RSL sector. We also set up an independently chaired advisory group to consider how to bring LAs into the regulator's remit, ensuring compatibility with the new local government performance framework.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Within 3 years of implementation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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

Signed by the responsible Minister:

IAIN WRIGHT .....Date: 6 October 2008

Summary: Analysis & Evidence

Policy Option: do nothing	Description: status quo

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	
£ 0	
Average Annual Cost (excluding one-off)	
£ 0	**Total Cost** (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups' Contributors to the Cave review and consultation would be affected, including tenants, RSLs and local authorities – for example, tenants would not be given more say in the service they receive, and this would not ensure that RSLs engaged with local authorities in their place-shaping function.

BENEFITS

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

Other **key non-monetised benefits** by 'main affected groups' Initially less cost and risk than from transition to a new system.

Key Assumptions/Sensitivities/Risks

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

What is the geographic coverage of the policy/option?				England
On what date will the policy be implemented?				n/a
Which organisation(s) will enforce the policy?				CLG, Housing Corp
What is the total annual cost of enforcement for these organisations?				£ 20m
Does enforcement comply with Hampton principles?				No
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£ 0
What is the value of changes in greenhouse gas emissions?				£ 0
Will the proposal have a significant impact on competition?				Yes/No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

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

Increase of £ 0 Decrease of £ 0 **Net Impact** **£** 0

Key:	**Annual costs and benefits: Constant Prices**

Summary: Analysis & Evidence

Policy Option: Standalone Regulator	Description:

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	Average annual cost and total cost reflects the additional cost of the standalone regulator, compared to the do nothing option, over the period 07/08 to 11/12.
£	
Average Annual Cost (excluding one-off)	
£ 3.2m	**Total Cost** (PV) **£ 9.3m**

Other **key non-monetised costs** by 'main affected groups' Business as usual - day to day operations need to be maintained whilst in this period of flux.

BENEFITS

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

Other **key non-monetised benefits** by 'main affected groups' Major social benefits for many of the most vulnerable in society: better quality services more responsive to the needs of social tenants, tenant empowerment and involvement in shaping service, greater diversity of providers leading to greater innovation; more choice of high quality homes, and better community facilities.

Key Assumptions/Sensitivities/Risks . Assumptions - creation of new regulator will not be delayed. Risks - loss of key staff, transitional change to structures.

Price Base Year 2007	Time Period Years	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) £

What is the geographic coverage of the policy/option?				England	
On what date will the policy be implemented?				2009	
Which organisation(s) will enforce the policy?				CLG / regulator	
What is the total annual cost of enforcement for these organisations?				£ 20m	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£ 0	
What is the value of changes in greenhouse gas emissions?				£ 0	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large	
Are any of these organisations exempt?	No	No	N/A	N/A	

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

Increase of £ Decrease of £ **Net Impact** £

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Purpose and intended effect of measure

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

Objective

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

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

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

Background

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

There have been several recent changes in the Housing Corporation's functions. Inspection of RSLs was transferred to the Audit Commission in 2003. The Housing Act 2004 introduced the ability of the Housing Corporation to grant fund non registered bodies, such as for-profit developers, for the provision of affordable housing. And the Housing Corporation has recently implemented reforms to deliver a risk-based regulation system to minimise burdens on good performers, following the Elton Review[1].

[1] *The Elton Review of Regulatory and Compliance Requirements for Registered Social Landlords*, Department for Communities & Local Government, April 2006.

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

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

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

Rationale for Government intervention

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

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

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

[2] *The Local Government White Paper - Strong and Prosperous Communities*, Department for Communities & Local Government, October 2006.

Consultation

Within Government

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

Public Consultation

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

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

Professor Cave's report, Every Tenant Matters was published on 19 June 2007:

http://www.communities.gov.uk/publications/housing/everytenantmatters

The Government consulted on Professor Cave's recommendations as part of the Housing and Regeneration consultation:

http://www.communities.gov.uk/publications/housing/deliveringhousingregeneration

Options

Option 1 – Do nothing

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

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

Costs and benefits

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

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

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

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

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

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

We consulted on Cave's proposals to:

Regulate Local Authorities as well as RSLs

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

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

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

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

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

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

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

Locating the regulatory functions in the Audit Commission would build on its existing strengths and consumer focus, and it could be implemented quickly. However our consultation document also recognised the benefits of a standalone regulator. In particular it would avoid housing regulation being led by an organisation primarily focused on the public sector, and as such, may be better at commanding the confidence of those who provide private finance for social housing. Building on the Housing Corporation's regulatory functions would enable a smooth transition. Given this balance of arguments, we consulted openly on this issue.

Although there was some support amongst consultation responses for making the Audit Commission the regulator, a majority of responses favoured a new standalone body, as the most likely to give continuity and certainty to regulation, and confidence to lenders to the RSL

sector. Also those tenant bodies which took a view (some remained neutral) favoured a standalone regulator, because of the opportunity for a fresh start, and a clear focus on consumers. Our decision is **therefore to establish the new regulator as a standalone body.**

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

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

Costs and Benefits

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

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

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

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

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

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

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

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

Devolution

These provisions apply only to England.

Sectors and Groups Affected

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

- Owners and managers of social housing (including those currently registered or those who could be registered in future) will be encouraged to manage stock better, if needed, and engage more with tenants

- Tenants of those landlords will benefit from improving the management of social housing and increasing their say in the regulatory system

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

- Local authorities (in their strategic function) will have more input into regulation, and providers will be under a duty to engage constructively with them

- For-profit developers can currently apply to develop, own or manage social housing under contract, but a clearer regulatory system may encourage more to be involved

- Lenders will wish to ensure that the new system provides certainty as regards RSL borrowing

- Potential social housing tenants may benefit from an increased supply of new social rented and low cost housing, which good regulation should encourage.

Monitoring & Review

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

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

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

Implementation & Delivery Plan

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

Summary & Recommendation

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

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

Specific Impact Tests

Competition Assessment

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

Small Firms' Impact Analysis

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

Legal Aid

No extra cost or benefit envisaged.

Sustainable Development

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

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

There are no anticipated social costs.

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

Carbon Assessment

No new costs or benefits envisaged.

Other Environment

No new costs or benefits envisaged.

Health Impact Assessment

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

Race Equality Assessment

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

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

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

Disability Equality

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

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

Gender Equality

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

In any case this suggests that women will not be disproportionately affected by our proposed changes. As stated above, the aim is to promote community cohesion and tenant empowerment, helping to encourage more choice of high quality homes, better community facilities and more economic opportunities for all RSL tenants.

Human Rights

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

Rural Proofing

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

Chief Economist statement

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

Specific Impact Tests: Checklist

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

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

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

Annexes

Cave Review recommendations

To the Secretary of State

1. A regulatory body should be established in statute, independent from Government, as the primary regulator of the ownership and management of social housing across the whole domain of social housing.

2. The regulator should have three principal duties:
   - To ensure the continuing provision and development of high quality social housing;
   - To empower and protect consumers; and
   - To expand the availability of choice among suppliers at all levels of the provision of social housing.

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

3. The regulator should:
   - apply common principles, where practicable, across the whole social housing domain and
   - reduce and manage the burden of regulation

4. Government should be entitled to issue directions to the regulator in relation to rents and the standards of housing provision. It should be for the regulator to transpose these into the regulatory framework. Therefore it is recommended that the regulator be given the statutory power to set rent levels across the domain.

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

6. All parts of the domain should have a statutory duty to cooperate with the convening and place-shaping role of local authorities. This obligation will be strongest where a provider has a significant number of homes in an area. This cooperation will require providers to engage constructively with local authorities and will often include a variety of local agreements and partnerships. Their terms are subject to agreement between the parties.

7. The regulator will implement a framework for the ownership and management of social housing, where the provider is regulated. Where long term ownership and management arrangements are integrated into supply contracts, the regulator must satisfy itself that the contract terms are in the long-term interests of tenants.

8. Restrictions on disposals and changes of use should remain, as should arrangements to prevent the leakage of subsidy for purposes that have not been approved. In future, there should be a note of the regulator's interest in grant on the land registry to ensure that disposals are correctly handled. Otherwise the new arrangements need to be more flexible and easier to administer.

9. Registration with the regulator should be open to 'for profit' organisations and subsidiaries of other organisations as owners or managers or both. The registration process must be proportionate to the scale of activity proposed by the new provider and would be analogous to the pre-qualification criteria for development bidding. Registration would entail a range of explicit obligations that would bring the registered organisation within the new style of regulation.

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

11. The voluntary TMO scheme being developed within CLG should be taken forward and available to all providers. Provided no conflict of interest is apparent, the regulator should take over, and be funded by the Government for this work.

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

13. Work on a standard form of tenancy should be brought to a conclusion so that tenancy terms can be explicit, understandable and easier to enforce for both parties. In principle, choice of tenure is supported although this must not reduce the protection that current tenants enjoy. It is therefore envisaged that substantial areas of tenancy agreements will be in common but that there will be defined areas that can be different.

14. There should be a single Housing Ombudsman for the whole domain. Further consultation of interested parties should be held to examine how the domain-wide Housing Ombudsman role should be organised.

15. The application of the Government's rent direction to providers across the domain should be a matter for the regulator. Within the direction, the regulator should have the power to cap annual increase in individual rents to protect tenants.

16. Where the difference between market rents and target rents in an area is less than 10%, it should be within the regulator's authority to de-regulate rents (which would continue to be constrained by Housing Benefit rent limits).

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

18. The regulator should have a general power over the domain to gather information but this should be subject to the twin tests of being 'used and useful'.

19. The regulator should have the statutory powers to apply a wide range of remedial and enforcement measures including:
    - Right to obtain information
    - Inspection
    - Improvement notice
    - Enforcement notice
    - Fines
    - Compensation
    - Rent increase cap
    - Appointment of additional board members
    - Tendering the housing management function
    - Appointment of independent manager
    - 28 day moratorium
    - Transfer of ownership and/or management

20. Almshouses with less than 100 homes should be de-regulated and revert to the Charity Commission as the primary regulator. Consultation should take place with Abbeyfields Societies through their national body with a view to the de-regulation of the smallest ones that have had no recent input of grant. In both cases, continued membership of the Housing Ombudsman service should be required as a continuing measure of protection for their tenants.

21. A Social Housing Regulatory Authority should be created by Act of Parliament with statutory duties relating to the regulation of the ownership and management of social housing. The Authority should take over the Audit Commission's housing inspection role.

22. The national voice for tenants should be established with minimum delay and should start within the National Consumer Council but with a remit and funding for the building of a strong tenant representational base.

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

To the regulator

1. The system for regulating social housing providers should be 'co-regulatory' in approach. Therefore many of the activities necessary to achieve the regulatory objectives will be undertaken by regulated social housing providers rather than directly by the regulator. The regulatory framework will, according to the nature of the objectives, require, permit or facilitate their delivery.

2. The social housing regulator should avoid duplicating the work of other regulators. In order to give effect to this, the regulator should enter into protocols with each abutting or overlapping regulator. These arrangements will need to be subject to periodic review.

3. Subject to any Government Direction on housing standards, the regulator should publish a clear definition of what constitutes the core housing service for the domain, in terms of both the quality of homes and of the management service provided. It is therefore proposed that there should be consultation on the core standards for social housing and that this should be an early focus for the new national tenant voice. The performance of service providers will be judged against the standards that are developed.

4. The regulator will have the authority to require all providers to deliver these core standards of service. As far as possible, this should be achieved by common ownership of the standards, self improvement mechanisms, regular tenant-led and other independent reality checks on progress and a continuous sharing of good practice. Responsibility to meet the standards falls on providers.

5. The regulator should encourage a plurality of mechanisms to be used by providers to drive them to achieve better outcomes for tenants. It is expected that empowered tenants would play a key role in assessing performance and holding landlords to account for weaknesses in performance. To these ends, it is recommended that all providers should establish formal arrangements to:
   - enable tenants to make periodic assessments of the quality of services provided
   - share benchmarking information about their performance and costs with other providers and publish this information to tenants and more widely
   - include an independent element in their performance assessment so that there is effective external challenge.

6. The regulator should remain in direct contact with the impact of services on tenants and with the range of practice on the ground, by commissioning or undertaking inspections, or otherwise.

7. The regulator should support the supply of new social housing by:
   - Establishing a regulatory framework that recognises the separate roles of owner and manager and reducing barriers to entry for development and ownership and management
   - Opening registered status as an option for private owners/managers
   - Encouraging the continued supply of private lending and capital for development and ownership by effective systems for monitoring viability and performance and, if necessary, by intervention
   - Encouraging a wider choice of public and private sector ownership options
   - Unlocking development capacity
   - Co-operating closely with Communities England on all matters of common interest

8. The regulator should monitor organisational viability (which will encompass both financial viability and governance) and intervene appropriately to protect the interests of tenants and taxpayers.

9. The regulator should introduce measures that stimulate competition for the management of social housing services across the domain. This should be designed to give tenants choice and improve service delivery.

10. Opening access to new providers and models of provision should be encouraged. The regulator should ensure that regulatory mechanisms are proportionate and equivalent as between those applied by virtue of registered status and those enforced by contract.

11. The regulator should develop and implement a strategy for managing information requirements on providers across the social housing domain. It is envisaged that this will cover data on financial viability and service performance in particular. Furthermore, the regulator should publish the top level of performance information that it receives from all providers on its website, in a fashion which makes

possible local comparisons. The publication of such information will be in the interests of consumers, a reward for good performers and a wake up call to poor providers.

12. The regulator should develop a range of ways of triggering interventions in consultation with providers, local authorities and the national tenant voice.

13. The programme of de-registration should be accelerated so that the smallest are freed of all regulation. A very light system of regulation should be applied to those with up to 1,000 homes – but on the basis of a risk assessment rather than on size alone.

Annex B

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

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

ANNEX 4

Impact of recommendations on intensity of regulation

Ref	Recommendation	Impact on policy costs	Impact on admin costs
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 authoritiess. 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 forebearance 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