**EXPLANATORY MEMORANDUM TO**

**THE HOUSING AND REGENERATION ACT 2008 (REGISTRATION OF LOCAL AUTHORITIES) ORDER 2010**

**2010 No. [XXXX]**

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

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

## 2. Purpose of the instrument

2.1 Part 2 of the Housing and Regeneration Act 2008 ("the Act") establishes a new regulatory regime for English providers of social housing but excludes local authority providers by making them ineligible to apply for registration. The Order changes this by requiring English local authority providers of social housing to be registered under the new regime.

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

3.1 None.

## 4. Legislative Context

4.1 Part 2 of the Act establishes a new regulatory regime for the provision of social housing by English bodies under the Regulator of Social Housing (also known as the Tenant Services Authority). Local authorities are excepted from regulation by making them ineligible for registration. Section 114 was included to enable local authorities to be brought into the new regulatory regime. This is the first use of section 114.

4.2 The Government intends to bring Part 2 of the Act fully into force on 1st April 2010 through a separate Commencement Order. The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (which is being laid in parallel with this Order) will make consequential amendments to primary legislation. A further order will be made to make consequential amendments to secondary legislation.

4.3 The Order is being made so that local authorities will be regulated under the same regime as other providers of social housing (defined as private registered providers) from the start of the new regime. This fulfils a number of commitments made to Parliament during the passage of the Housing and Regeneration Bill, specifically at Report stage of the House of Lords (9th July 2008, column 752), and Third Reading in the House of Lords (Hansard 17th July 2008, column 1342). A Parliamentary Question was asked regarding the timing of the registration of local authorities with the regulator (Hansard 23rd March 2009, column 79W)

## 5. Territorial Extent and Application

5.1 The requirement to register applies to English local authorities though any amendment or repeal made by the Order has the same extent as the provision to which it relates.

## 6. European Convention on Human Rights

The Minister of State for Housing and Planning, The Rt. Hon. John Healey MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009 are compatible with the Convention rights"

## 7. Policy background

*Scope of the policy*

7.1 The policy will affect 180 of the 326 local authorities in England i.e. those who have retained housing stock either managed in-house or via another management body.

7.2 It is important that the regulator can design and implement a set of common standards that will apply across the social housing sector. The principle of having a single regulator for all social housing has received consistent and widespread support from both the housing sector and tenants.

*The Cave Review*

7.3 In December 2006 the Government asked Prof. Martin Cave to carry out an independent review of the regulation of the social housing sector. This was published in July 2007 as *Every Tenant Matters: A review of social housing regulation* and has become known the 'Cave Review'.

7.4 The Cave Review recommended the creation of a stand-alone, independent regulator with clear statutory objectives to put tenants at the heart of regulation, ensuring that social landlords involve their tenants more in the management of homes. The review also recommended that the new regulator should have wide powers to set and enforce clear performance standards for landlords and that a similar approach to regulation of social housing be taken across the private and public providers of social housing, i.e. for both housing associations and local authorities. This has become commonly known as 'Cross Domain Regulation'.

*The Cole Panel*

7.5 The Government accepted Prof. Cave's recommendation to set up a single regulator for all social housing and that the new regulator ought to put the experience of the tenant, no matter who their landlord, at the heart of the regulatory system so that the service received by social tenants should, therefore, be as similar as possible across the domain.

7.6 The Government was clear that any new regulatory system which applies to local authorities must deliver for tenants and support the principles of the Local Performance Framework (announced in the Local Government White Paper 2006) now in operation. It is important to recognise that, while all providers of social housing deliver common core management services to tenants, within the local authority sector, housing is just one of a diverse range of services delivered by local authorities. As such, it is important that the regulator regulates local authorities in respect of their landlord service in a manner which supports authorities' performance management.

7.7 The Government also recognised that it must take account of differences between the types of landlords. Prof. Ian Cole was appointed to chair an advisory panel tasked with producing recommendations for Government on how to deliver a cross – domain approach to regulation. The panel included representatives from a wide range of stakeholders, including local authorities and tenants.

7.8 Prof. Cole submitted his recommendations to Government in September 2008. Those recommendations helped inform development of the Housing and Regeneration Act 2008

(Registration of Local Authorities) Order 2009. Copies of Prof. Cole's recommendations are available in the library of both Houses of Parliament or at;

www.communities.gov.uk/documents/housing/pdf/thecolereport

*Policy objectives of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009*

7.9 The new regulatory framework as provided for by the Act has standards at its core. The Act allows the regulator to set standards as to the nature, extent and quality of accommodation, facilities or services provided by a registered landlord in connection with social housing. Standards will describe the outcomes the regulator wants to see delivered as well as the specific requirements the regulator will expect providers to comply with in meeting those outcomes.

7.10 The Act provides the regulator with the regulatory powers it requires in order to reach an informed judgement on a provider's performance against those standards which apply to it, for example, the regulator may require information of a provider, order an enquiry or commission an inspection. Where the Regulator establishes that there has been a breach of standards or general mismanagement the Act provides it with a range of enforcement powers to help ensure tenants receive an acceptable level of service.

7.11 The policy intent underpinning the Order is that regulator should apply a common regulatory framework across all providers registered with it wherever practicable. Our aim has been to minimise substantive amendments to the Act to those cases where this is necessary or desirable in addressing fundamental differences between local authorities and private providers. Where differences do arise with regard to their role, governance and wider performance management our aim has been that these should be addressed by the regulator through application of its regulatory framework wherever possible rather than through tailoring of the Act by type of provider. However, some tailoring of the Act (and other legislation as appropriate) is necessary in connection with the registration of local authorities. These are out lined below (para 7.23 to 7.27)

7.12 The Order provides that all local authorities which currently retain ownership of social housing stock (regardless of their management arrangements) would be registered with the regulator from the outset. This will affect 180 of 354 local authorities in England. All types of social housing owned by a local authority would be subject to regulation, including shared ownership. Existing local authority landlords would therefore not need to apply to be placed on the register.

7.13 The Order extends the Act to compel local authorities who are not subject to compulsory registration from the outset (i.e. those local authorities that did not hold social housing stock at the point of initial registration) to notify the regulator should they intend to become a provider of social housing. This would result in their registration with the regulator where they do become such a provider.

7.14 The Order also amends the power relating to the setting and charging of fees on initial registration and annually for continued registration. The regulator can charge such fees, following consultation, for all registered providers. However the Order amends this section to include a specific clause so that ongoing and continued registration for local authorities is not dependent on payment of fees.

7.15 Whereas the regulator can use de-registration as a sanction against non payment of fees for private registered providers this is not applicable for local authority providers. Private registered providers are free to choose whether to register with the regulator, local authorities are not. Therefore the de-registration of a local authority provider can only happen if they have disposed of their social housing stock and not for any other reason. This ensures that all publicly owned social housing is, and continues to be, subject to regulation.

7.16 The Order inserts a new duty on the regulator so that it will cooperate with the Audit Commission and, in particular, consult with the Commission on matters relating to local authorities. This is to ensure that the regulator has access to information regarding the wider performance management of a local authority through the Local Performance Framework, including Comprehensive Area Assessment. This information will be important in informing its regulatory approach and decisions on what action might be appropriate where performance issues are identified.

7.17 The Order also amends the provisions on submitting accounts to the regulator. Although the regulator is barred from directing local authorities on the preparation of their accounts through the Order, local authorities will be obliged to submit their accounts to the regulator that relate to their housing or landlord functions. Although the regulator will not set standards for local authorities on financial management and other affairs (see para 3.13 below) it may consider resources committed and value for money as part of its assessment of whether a local authority is meeting standards regarding the provision of social housing .

7.18 The Order inserts two new clauses regarding the sections of the Act that relate to insolvency and restructuring and dissolution that disapply these powers with regard to local authorities. These sections of the Act are designed to ensure the protection of public investment in the event that a private registered provider is declared bankrupt and are therefore not appropriate to local authorities. .

7.19 The Order does not apply the power in the Act that enables the regulator to set financial management standards for private providers. This is on the basis that the financial governance of local authorities is already subject to regulation through Comprehensive Area Assessment.

7.20 The intervention powers granted to the regulator in the Act provide a suite of powers that it could use to address poor performance in the housing association sector. It is our intention that the same powers should apply to the regulation of local authorities but only where those powers match those powers the Government holds in order to intervene in serious cases of underperformance.

7.21 In accordance with the principles above the Order provides that the powers below should not be provided to the regulator with regard to local authority providers:

- powers to impose fines on providers and order a landlord to pay compensation to tenants;
- powers to place restrictions on dealings;
- power to suspend and remove officers.

7.22 The Order also amends the Act to make specific provision in relation to the intervention powers on directing a local authority to tendering and compulsorily transferring the management of its housing stock to a different provider and how those powers relate to a local authority. For example, if a local authority already has an existing management agreement in place the regulator may still direct under these powers.

7.23 The Order also amends the Act to give the regulator specific powers in relation to local authority providers on the appointment of advisers and censure of employees. These allow the regulator to;

- Appoint an advisor or advisors to work with a local authority to help it to improve its services (either as a first step or to accompany other types of intervention); and
- Notify an authority in confidence where it believes an individual employee or group of employees is at fault (during or following an inquiry).

7.24 The appointment of an advisor for a local authority would help any underperforming authorities to improve ahead of any formal intervention or to assist them in responding to other intervention or enforcement powers. In the case of censure the local authority would retain discretion in dealing with its employees. If any offence has been committed or a civil liability arises this would be for the authority's misconduct procedures. The Order compels a local authority to respond to a censure notice within 28 days explaining what action (if any) they have taken of propose to take in relation to the employee or agent or why they disagree with the censure notice.

## 8. Consultation outcome

8.1 The consultation on the *Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009* ("the Order") opened on the 7th of August and closed on the 30th of October, lasting 12 weeks. 54 responses were received during the consultation period from the following groups;

- Local authorities and ALMOs – 32 responses (59 per cent)
- Representative housing bodies – 8 responses (14 per cent)
- Tenant organisations – 6 responses (11 per cent)
- Others – 5 responses (9 per cent)
- Housing associations – 3 responses (5 per cent)

8.2 Respondents included all the key housing and tenant representative bodies e.g. the Local Government Association, the Tenants and Residents Association of England, the Chartered Institute of Housing, The Tenants Services Authority, the Audit Commission &c. A full list of respondents is at **Annex A**

8.3 The consultation asked 10 specific questions regarding the Order; 7 on the draft Order itself and the proposed powers and 3 on the Impact Assessment that accompanied it. The majority agreed with the Cross-Domain Order and the policy principles underpinning it – between 61% and 79% of respondents agreed with questions 1 – 7. A list of the questions included in the consultation is at **Annex B**.

8.4 A number of comments were received on all the key aspects of the regulatory framework on which we invited views. A large number of these comments addressed concerns about how the Tenant Services Authority would regulate under the powers we propose to give it through the Order rather than the substance of the Order itself.

8.5 The Government published its summary of responses to the consultation on the 10th of November 2009. This was only published on the Department of Communities and Local Governments' website;

www.communities.gov.uk/publications/housing/crossdomainorderresponse

8.6 Having reviewed all the responses carefully the Government considered that the Order provided a statutory framework that allows the TSA to strike the right balance on the issues raised by respondents. For example groups representing local authorities and authorities themselves were clear that they wanted to see the regulator regulate in a manner which supported the broader performance management of local authorities (the Local Performance Framework). Whilst other respondents (representative bodies and tenant organisations) were mindful of the need to tailor the nature of regulation where appropriate, they were concerned to ensure that there is common treatment of all providers and that tenants can expect the same regulatory protections no matter who their landlord.

8.7 The Government recognised that whilst there were a few exceptions, the vast majority considered that the proposals would give the regulator the necessary powers to achieve its objectives.

8.8 The Government therefore does not propose any substantial changes to the draft Order that was consulted on. Two minor modifications of a technical nature were proposed and these are set out at **Annex C**

## 9. Guidance and publicity

9.1 The Government has, following consultation, issued directions to the regulator to set standards on rents, quality of accommodation and tenant involvement. The directions relate to private registered providers only. Subject to the passing of these regulations, the Government intends to issue similar directions in relation to local housing authorities on quality of accommodation and tenant involvement (the direction on rent levels will only apply to private registered providers).

9.2 The Government does not have any plans to issue specific guidance to the regulator on how it will use the powers conferred on it by the regulations. It is for the regulator as an independent public body to design and consult on a new regulatory system for social hosing and to ensure that those subject to it are fully aware of its implications and their obligations to comply with it.

9.3 The regulator has conducted a series of informal and formal consultations on its proposed approach to regulation, and is currently conducting a statutory consultation on the draft regulatory standards that it proposes to put in place.

## 10. Impact

10.1 The impact on businesses, charities, or voluntary bodies is none. The Order will allow the regulator to regulate local authority landlords of social housing.

10.2 The impact on the public sector is two fold. It will allow the regulator to design a system to include the regulation of local authority social housing in addition to housing associations; and will place new requirements on local authorities in complying with the new regulatory system. The potential costs and benefits are set out in more detail in the Impact Assessment attached at **Annex D** but overall we expect the new regulatory regime to produce long term benefits in terms of cost and reduction of admin and regulatory burden.

10.3 An impact assessment is attached to this memorandum at **Annex D**.

## 11 Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 The regulator's performance will be reviewed twice a year. The regulator will publish an annual report of its activities together with its audited accounts after the end of each financial year.

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

## 13. Contact

Peter Fenn at the Department for Communities and Local Government tel:0303 444 3652 or email: peter.fenn@communities.gsi.gov.uk can answer any queries regarding the instrument.

**Annex A**

**List of respondents to the consultation on the *Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009***

Local authorities[1] and ALMOs

A1 Housing Bassetlaw Ltd.
Basildon District Council
Berneslai Homes
Bolton at Home (joint response with Bolton Council)
Bolton Council (joint response with Bolton at Home)
Bournemouth Borough Council
Bury Council (joint response with Six Town Housing)
Cannock Chase Council
Chesterfield Borough Council
Dartford Borough Council
East Lindsey District Council
Gateshead Housing Company
Gloucester City Council (joint response with Gloucester City Homes)
Gloucester City Homes (joint response with Gloucester City Council)
Lancaster City Council
Leeds City Council
Leicester City Council
London Borough of Hackney
London Borough of Islington
London Borough of Southwark
London Borough of Wandsworth
Maidstone Borough Council
Melton Borough Council
Newark and Sherwood Homes
Newham Homes
North Kesteven District Council
Northampton Borough Council
Nottingham City Council
Nottingham City Homes
Six Town Housing (joint response with Bury Council)
South Holland District Council
South Tyneside Council
Suffolk Coastal District Council
Wealden District Council
Westminster City Council

Representative housing bodies

Agencies and Trainers for Involved Communities
Chartered Institute of Housing
Councils with ALMOs Group
Housing Law Practitioners Association
Local Authority Co-op Officers Group
London Councils
Local Government Association

[1] This includes unitary and district councils

National Housing Federation

Tenant organisations

Ashford Borough Tenants Forum
Confederation of Cooperative Housing *
Making Communities Work: Tenants Workshop
National Federation of Tenant Managed Organisations *+
Tenants and Residents Associations of England *+
Wycombe Tenants and Leaseholders Committee

* These three bodies provided a joint response
+ These two bodies provided individual responses as well as a joint response

Others

Audit Commission
Chartered Institute of Public Finance and Accountancy
Local Government Ombudsman
Tenant Services Authority
Trowers and Hamlin LLP

Housing Associations

Harvest Housing Group
Home
Circle Anglia

**Annex B**

**Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009: Consultation Questions**

**Question 1:** Do you consider that the Government's proposals would provide a framework to allow:

- The Tenant Services Authority to regulate Local Authority landlords in an effective and proportionate way?

- The Tenant Services Authority to regulate in a manner which ensures it can achieve its fundamental objectives?

**Question 2:** Do you agree that all local authorities who currently retain ownership of social housing stock (regardless of management arrangements) should be subject to registration with the Tenant Services Authority? This would mean that organisations such as ALMOs who manage rather than own social housing stock would not be registered with the regulator directly.

**Question 3:** Do you agree that all social housing stock owned outright or acquired on a long-lease by a local authority should be subject to regulation by the TSA?

**Question 4:** We propose that information burdens arising from the new regulatory framework should be minimised through making best use of information already in the system (information already produced by local authorities for public reporting and internal management purposes). Do you agree that this approach will enable the TSA to gain a good understanding of performance without adding burdens to local authorities?

**Question 5:** We propose that the TSA would have the same power to set standards for Local Authorities on matters of housing management as for Housing Associations. Any nationally applied performance indicators would need to be set by Government and included in the National Indicator Set when next refreshed. Do you agree that this approach would provide the TSA with the necessary powers to set standards across all providers of social housing?

**Question 6:** Do you agree that the proposed regulatory and intervention powers will be sufficient to enable the TSA to promote high standards for tenants?

**Question 7:** Do you agree with our proposals to pass the power to grant consent from the Secretary of State to the TSA in situations where local authorities wish to enter into a management agreement with another body to take over management of all or part of its housing stock?

**Question 8:** Do you think that the impact assessment broadly captures the types and levels of costs associated with the policy options?

**Question 9:** Do you think that the impact assessment broadly captures the types and levels of benefits associated with the policy options?

**Question 10:** Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options?

**Annex C**

Proposed changes to the draft Order after consultation

Powers to Dispose: The Order should be updated to amend Section 171(2) of the Housing and Regeneration Act 2008 to allow a landlord's interest to be disposed of under a secure tenancy to a local authority as well as to a housing association.

Appointment of auditor during extraordinary audit: The Order should amend Section 210 of the Housing and Regeneration Act 2008 which deals with the event of an extraordinary audit being arranged by the regulator. The regulator would be able to request a report from the local authority via the Audit Commission who will, in turn, request the report from the Auditor who has already been appointed to audit the local authority's general accounts.

# Summary: Intervention & Options

| Department /Agency: | Title: | |
|---|---|---|
| **Communities and Local Government** | **Impact Assessment of extension of Tenant Services Authority to include Local Authority Housing** | |
| **Stage:** Final | **Version:** Final | **Date: 8 January 2010** |

**Related Publications:** Consultation on H&R Act 2008 (Registration of Local Authorities) Order 2009; H&R Act 2008 (Registration of local authorities) Order 2009: Summary of responses

**Available to view or download at:**

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

**Contact for enquiries:** Simon Huish/ Peter Fenn **Telephone:** 0303 444 3653/3652

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

Extension of the Tenant Services Authority's (the regulator) remit to include local authorities (LAs) that own social housing as well as the regulation of private providers. Social housing is provided at below market rents and demand is very high. Tenants' ability to switch between providers is limited and providers face few pressures to offer good service and choice. Government intervention is necessary to raise standards and improve performance by making local authority providers of social housing subject to a common regulatory environment.

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

The objective is to create a common framework of regulation across the social housing domain. By extending the regulator's remit to include LAs we aim to bring about a framework to provide consistent approaches to regulation across all providers of social housing. Tenants can expect the regulator to establish common expectations across the domain, encouraging greater tenant choice, influence and protection when problems are identified.

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

Option 1: a tailored regulatory framework for local authorities in line with the performance framework. This is preferred because it allows consistent standards to be set across registered providers and local authorities without complicating arrangements for monitoring LA performance.

Option 2: the regulator would set standards and new national performance indicators for LAs.

Option 3: the regulator would not have powers to set and monitor standards of any type for LAs.

Option 4: do nothing; regulatory activities remain the responsibility of CLG and Audit Commission.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The regulator's performance will be reviewed twice a year. The regulator's status will be reviewed every five years. The date of the next review is 2013.

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

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

Signed by the responsible Minister:

.....Date:

# Summary: Analysis & Evidence

| Policy Option: 1 | Description: **Tailored regulatory framework for LAs, in alignment with the performance framework, allowing consistent standards to be set.** |
|---|---|

**COSTS**

| ANNUAL COSTS | |
|---|---|
| **One-off** (Transition) | **Yrs** |
| **£ 0** | 10 |
| **Average Annual Cost** (excluding one-off) | |
| **£ 2.1m** | |

Description and scale of **key monetised costs** by 'main affected groups' Extending the regulatory remit of the TSA is expected to cost that organisation £2.1m per annum. Our upper estimate is that costs could be as high as £6.4m p.a (20% of the the TSA's existing budget). The total cost could be £18m - £55m over the period to end 2019/20.

**Total Cost** (PV) **£ 18m**

Other **key non-monetised costs** by 'main affected groups' LAs are likely to incur one-off costs when familiarising themselves with new procedures. Ongoing costs might also arise if regulation entails more adminstrative or engagement activities in order to raise standards. Costs will vary across LAs depending on size and management arrangements.

**BENEFITS**

| ANNUAL BENEFITS | |
|---|---|
| **One-off** | **Yrs** |
| **£ 0** | 6 |
| **Average Annual Benefit** (excluding one-off) | |
| **£ 15m** | |

Description and scale of **key monetised benefits** by 'main affected groups' Greater efficiency in management of the local authority housing stock should produce significant financial gains. We have estimated that TSA regulation could lead to savings of 0.2% - 0.4% beginning after the first four years of operation. Benefits could total £48 - £96m by end 2019/20.

**Total Benefit** (PV) **£ 72m**

Other **key non-monetised benefits** by 'main affected groups' Better services and greater choice for tenants leading to higher levels of satisfaction, improved standards in social housing stock, more efficent regulation of LAs landlord functions.

Key Assumptions/Sensitivities/Risks The central estimate assumes that the TSA can regulate local authority social housing at a cost of just £2.1m per annum but outturn costs could be more, reducing net benefits. Benefit estimates are sensitive to uncertainties around the scale of efficiency improvements that might result from the changes.

| Price Base Year 2009 | Time Period Years 10 | **Net Benefit Range** (NPV) **£ -7m to £78m** | **NET BENEFIT** (NPV Best estimate) **£ 54m** |
|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | England | |
| On what date will the policy be implemented? | | | April 2010 | |
| Which organisation(s) will enforce the policy? | | | N/A | |
| What is the total annual cost of enforcement for these organisations? | | | £ N/A | |
| Does enforcement comply with Hampton principles? | | | Yes | |
| Will implementation go beyond minimum EU requirements? | | | No | |
| What is the value of the proposed offsetting measure per year? | | | £ N/A | |
| What is the value of changes in greenhouse gas emissions? | | | £ N/A | |
| Will the proposal have a significant impact on competition? | | | No | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large |
| Are any of these organisations exempt? | No | No | N/A | N/A |

**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**

# Evidence Base (for summary sheets)

[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.]

Problem under consideration

1. The Housing and Regeneration Act 2008 (H&R Act) established the Tenant Services Authority ("the regulator"). This took over the regulatory role for Registered Social Landlords (to be known in future as 'Private Registered Providers') previously administered by the Housing Corporation on December 1st 2008. The H&R Act gained Royal Assent in July 2008. The regulator is currently on schedule to begin regulation under its new powers in 2010.

2. In October 2007, in response to the review by Professor Martin Cave 'Every Tenant Matters', the Government stated its intention that cross-domain regulation should be in place within two years of the new regulator becoming the regulator of registered providers. We are aiming to ensure local authorities (LAs) are covered by the regulator's remit by April 2010.

3. The Government accepted and supported Cave's recommendation on the basis that, from the perspective of the tenant, it matters less who the landlord is and more that they are receiving a high quality service that meets their needs. A single regulator across the domain would help ensure that common expectations can be set. However, while the experience of the tenant remains central, Government also recognises that housing is one of a diverse range of services delivered by local authorities. The Government has introduced major reforms to the local performance framework, intended to help deliver local priorities more effectively and to improve quality of life.

4. The new Local Performance Framework came fully into effect from April 2009. National priorities, focusing on cross cutting outcomes, have been identified. They will be tracked by a single national set of 188 indicators, covering those functions which local authorities are responsible for securing - either on their own or in partnership with others. This significantly reduces burdens on reporting (the 188 replace around 1200 measures that were previously used). New Local Area Agreements (LAAs) form the heart of the new performance framework. Each LAA includes a set of local improvement targets. Up to 35 of these have been selected from the 188 indicators. Local partners are free to include other targets in an LA beyond the 35 priorities agreed with central government. Local authorities understand the Government's need for assurance that robust performance management processes are in place with the objective of ensuring that public money is spent effectively and efficiently and that outcomes for local people are improving. There needs to be an independent assessment of progress which will be led by new Comprehensive Area Assessments (CAA).

5. The Government and the TSA are both clear that any new regulatory system for housing must be consistent with the principles of the local performance framework. There were a number of complex issues to be addressed on how this could work in practice and it was essential that we called on the expertise and experience of stakeholders in seeking to resolve them. To this end the Government appointed Professor Ian Cole to chair an advisory panel tasked with producing recommendations on how best to proceed. The panel published its final report –

including its recommendations – on 11th September 2008 (http://www.communities.gov.uk/documents/housing/pdf/thecolereport).

6. In relation to providing the TSA with the powers necessary to allow it to register and thus regulate the local authority landlord sector, the Government included an 'enabling' power in the Housing & Regeneration Act 2008 to introduce these measures through secondary legislation.

Why Government intervention is necessary

7. The Cave Review made a number of recommendations as to why it would be desirable to introduce cross-domain regulation. Central to this is the recommendation that tenants should receive an equally good service across all parts of the domain (i.e. no matter who their landlord happens to be). This is more difficult to secure if providers are regulated by different bodies. More specifically Professor Cave put forward the following arguments in its favour:

   - Issues, such as access to housing and mobility between providers, need to be dealt with on a domain wide basis to ensure efficient outcomes.

   - Performance needs to be compared across all providers so that good practice can be spread and standards raised across the whole domain. A single regulator will have better access to the information required for this task.

   - There are a number of common failures across providers. These could be dealt with more effectively – and at lower cost – by a single regulator.

8. There is a strong trend to regulate on a domain wide basis, for example OFCOM for the communications industry and OFGEM for energy. Both of these regulators have seen real benefits delivered for the consumer as well as the energy and communications industries.

Policy objectives and intended effects

9. The number of homes owned by local authorities and housing associations is now broadly even (around two million units each). There are now around 180 authorities (out of 326) who have retained ownership of all or part of their social housing stock.

10. By delivering cross-domain regulation the intention is to achieve a coherent and consistent system of regulation across all providers. The Regulator will be empowered to set common standards across all providers, working with those landlords who struggle to achieve them to raise performance and reducing regulatory burdens for those who do. The regulator will work in line with its objectives to promote tenant choice and involvement - the needs and aspirations of tenants form a core part of its approach and activities.

What policy options have been considered?

11. A number of options for extending the remit of the regulator have been considered. These give alternatives for implementing a system of cross domain regulation that allows the TSA to regulate effectively whilst upholding the principles of the Local Performance Framework. The option chosen by Ministers was:

    - **Option 1** - a tailored regulatory framework for local authorities in alignment with the Local Performance Framework allowing consistent standards to be set across

all registered providers (housing associations and local authorities) that support the Local Performance Framework. The regulator (the TSA) will have the power to set standards for local authorities but any new performance indicators would be set by Government.

12. The other options were:

- **Option 2** - The regulator would set both standards and new performance indicators for local authorities outside of the National Indicator Set.

13. This option was not chosen as it would allow the regulator to threaten the commitments Government has made under the Local Performance Framework to avoid setting performance indicators outside of the National Indicator set. It would risk being too burdensome.

- **Option 3** – The TSA would undertake regulatory activities but would not have powers to set and monitor standards of any type for local authorities.

14. This option was not chosen as both the Government and stakeholders (the Cole Panel) were keen to ensure the regulator was provided with a power to set standards in order to allow it to set consistent expectations across the domain.

- **Option 4** – do nothing. Regulatory activities continue to be carried out by Communities and Local Government and the Audit Commission.

15. There are a number of reasons why not proceeding with this legislation is not a realistic option;

- The Government has accepted the rationale for cross –domain regulation having considered the arguments put forward in its favour both through the Cave report and subsequently by the vast majority of stakeholders, including tenants and local government.

- The current regulatory regime for local authority social housing and landlord services forms part of the CAA and is judged alongside a LAs overall performance against its numerous statutory responsibilities. A broadly similar regulatory system under a single regulator for all social housing tenants was one of Prof. Cave's key recommendations.

- Abandoning or unduly delaying implementation of cross-domain regulation would create the risk of there becoming a two-tier system of regulation between retained local authority social housing and housing associations which would further restrict movement and choice for tenants.

- While there will be a short interval between formation of the regulator and it taking on a cross –domain role we would not want this period to be unduly protracted. A number of stakeholders hold concerns that too long a gap could mean the regulator focuses it culture on registered providers making the transition process more problematic.

- Moving forward now has allowed the TSA to conduct a series of informal and formal consultations e.g. the 'national conversation' (an extensive and wide ranging dialogue and consultative process with tenants, providers and interested parties) on how regulation would operate across the domain.

16. All three options would allow for the regulator to charge fees for its services as well as collect an annual levy. The TSA must produce guidance and hold a formal consultation on their fees and levy structure. In terms of LAs this will be the subject of a New Burdens Assessment in line with Government policy and any additional costs to local authorities will be met by extra subsidy from CLG via the Housing Revenue Account.

Will the policy be reviewed to establish the actual costs and benefits and achievement of desired effects?

17. No formal review of this specific policy has been scheduled. However the TSA's overall performance against the achievement of its objectives will be reviewed twice a year in addition to a formal annual report and submission of accounts as is required by a public body.

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

Costs and Benefits

*Additional ongoing administrative costs*

19. The TSA Interim Corporate plan for 2009/10 had a baseline of £32m to cover the cost of its existing regulatory duties. The TSA expects that it will not require any additional funding above this amount in 2010/11 if its regulatory regime is extended to include local authority social housing. In the impact assessment that accompanies the TSA's formal consultation on the proposed new regulatory framework they state that *"We do not envisage the resources required by the TSA to deliver our regulatory activities in 2010-11 being any greater than the level of resources provided by CLG to the TSA in 2009-10".*

20. There will however, be some additional costs from extending the regulatory remit of the TSA. These will be met from within the TSA's existing resources. The regulator estimates that the regulation of local authorities will cost £3m, of which £2.1m result from new activities and the remainder is the cost of the inspection function which will continue under the TSA but is not as a result of the proposed new regulatory regime. There are two elements to this additional cost:

    - Risk and assurance, £1.5m; and
    - Tenant services, £0.6m

21. The regulator will continue to develop the standards framework as the new regulatory system is established. The aim is to bring about improvement for all tenants of social housing and the regulator's role and activities will evolve to reflect this. Consequently there is a possibility that further costs and burdens will arise as the system becomes established. The TSA will review any changes and consult fully on any proposals to refine the approach to regulation and the costs at April 2010 will form the baseline for any future review.

22. Until the standards framework is established and operational it is difficult to estimate costs with certainty. To illustrate the impact that higher regulatory costs could have we consider the possibility that these could turn out to be greater than the central estimate of £2.1m per annum from 2010/11 onwards. Our upper estimate is that costs might be £6.4m a year: equivalent to 20% of the TSA's budget of £32m for

2009/10. Over the period to end 2019/20 this gives a range of between £18m - £55m present value cost.

23. It is possible that not all of the costs of regulation detailed in this section will be additional since transferring the function of regulating social housing could lead to offsetting reductions in costs at CLG, which currently holds this responsibility. We have not been able to quantify the extent of these reductions. This means that net new costs could be lower than implied by the estimates presented in this document.

*One-off transitional costs*

24. As described above, the TSA does not expect to incur one-off costs from expanding its regulatory remit. It is considered likely that activities involved in moving to regulate local authorities can be carried out using existing staff and systems, but there is a risk that unforeseen changes are required.

*Fees*

25. s.117 of the Housing and Regeneration Act 2008 gives the regulator the power to charge fees on registration, an on-going levy and for inspections and/ or interventions. The legislation states that fees must be set in accordance with the TSA's principles which are designed to ensure that, so far as is reasonably practicable, fee income matches expenditure on the performance of functions, each fee is reasonable and proportionate to the costs to which it relates, and actual or potential registered providers can see the relationship between the amount of a fee and the costs to which it relates. No fees will be charged by the TSA in 2009/10.

26. In the case of local authority registered providers initial and continued registration are not conditional on payment of fees. If the cost of regulating local authority landlords ranges from £2.1 - £6.4m per year and this is disbursed amongst 180 LAs, then each might face a cost of around £12k - £36k each year after 2010/11. Between 2011/12 and end 2019/20 the total might range from approximately £100k to £310k per LA in present value terms. It is important to note that these costs are the same as those described under the 'ongoing administrative costs' section, not additional.

27. New requirements, and changes to existing requirements, on LAs and the Housing Revenue Account (HRA) will be subject to the new burdens rules. A New Burdens Assessment will be completed following formal consultation on any fees and levy structure proposed by the TSA. This assessment will determine whether the application of the new regulatory regime places additional costs on LAs above and beyond what is already reasonably expected of them through the current regulatory framework e.g. current costs of inspection etc. All net additional costs will need to be fully and properly funded by central government so there is no upwards pressure on council tax.

*Extra administrative costs to LAs*

28. The TSA intend to work within the Local Performance Framework and support its core principle to reduce the administrative burden on Local Authorities. We expect that the TSA's new regulatory role will be carried out by working with existing arrangements in terms of information and data collection when monitoring against cross-domain standards. So the change is likely to have a neutral or slight positive effect on LAs current administrative costs.

29. In the consultation stage Impact Assessment we surmised that although the new regulatory role will be either cost neutral or positive in the long term, initially at least,

LAs might need to reassign staff and familiarise themselves with procedures to respond to the new regulatory regime. We estimated this as an average cost of £5,000 per LA per year with the caveat that, in reality, extra administrative costs would of course vary from LA to LA.

30. At that stage we committed to reassessing this estimate once we had sought views on its validity. The actual cost to LAs will only become apparent once the new regulatory framework is in place and this figure was intended to be purely indicative.

31. Less than half of respondents to the consultation answered the three specific questions on the estimates of costs in the impact assessment (between 55% and 70% of respondents made no comment on those questions). Of those that did, the majority questioned the validity of this figure citing the lack of any robust evidence to support it and the differing size, complexity and nature of management of LA housing stock and landlord services.

32. No such evidence is available to make an informed estimate so this final version of the impact assessment makes no attempt to quantify the additional costs over and above that which is already committed by LAs on complying with regulation.

33. The TSA has recently been running a series of *Local Standards Pilots* to assess the impact - in terms of resources - on local authorities of complying with the proposed new regulatory regime. Although no formal data is yet available the early informal feedback shows, for example, that there is an extra cost in liaising with tenants effectively outside already established groups (i.e. tenants associations). However liaising with a wider range of tenants in new ways is also providing valuable information on services, including elements of services which could be reduced or stopped completely, therefore reducing costs. Further, many LAs already undertake numerous kinds of engagement activity with tenants, so might not incur additional costs from this type of liaison.

34. As the results and detailed analysis of the TSA's *Local Standards Pilots* becomes available then a more robust estimate can be made of any additional overall costs to local authorities.

35. The size of stock of individual LA and the management arrangements will create variations in costs across authorities. For example a smaller LA such as Ellesmere in Cheshire has just over 5,000 properties whereas Birmingham has nearly 65,000. Staffing cost will also vary from LA to LA e.g. staffing costs in London are considerably higher.

36. Setting locally agreed standards to support the national standards framework is key to the new regulatory system achieving real benefits for tenants and helping drive improvements in landlord services. The costs associated with setting and agreeing these standards will vary from LA to LA in terms of the size of stock but also in terms of how each LA interprets the local standards. For example a LA may set standards for all its social housing across the borough or district whereas they may set standards ward by ward or even bespoke to certain estates or streets. A lot will depend on what way works best for each individual LA and their tenants (some may choose a mixture of both).

*Benefits*

37. The benefits of the policy – at least in the short term – are largely non-financial. The core principle of social housing is that it is made available at affordable rents which are below market prices. This has created a system in which tenants' ability to switch

between providers is limited and the providers themselves face limited pressures to offer good service and choice.

38. This supports the case for regulation for all tenants by raising standards and therefore providing a driver for good performance that is missing due to the lack of market forces. One of the key recommendations of the Cave Review was that all tenants of social housing should expect the same level of service from their landlord.

39. The extension of the regulator's remit to cover local authority housing will enable it to raise the general standard of landlord services received by tenants across the whole domain regardless of who owns or manages the housing stock and give more power to tenants in influencing how their homes are managed.

40. The regulator published its statutory consultation on proposals for how the new regulatory framework would operate in November 2009 and this made clear that improving standards of service delivery for tenants is the key aim. The proposal is for the regulator to set standards for those landlord services on which tenants place the greatest importance e.g. repairs and maintenance, customer service and neighbourhood management.

41. Central to the new regulatory framework will be the promotion of effective tenant involvement and empowerment. The new standards will place tenant involvement and empowerment at their core with local standards, improved accountability, public reporting and tenant scrutiny. The regulator has made clear that providers that involve their tenants to deliver good services and have sound governance will not be subject to any unnecessary regulatory interference, giving them greater flexibility to innovate and benefit from this de-regulatory approach.

42. The majority of the respondents to the consultation did not answer the three specific questions on the impact assessment. The specific question on the potential benefits was only commented on by 41% of respondents and a third of those responses disagreed with our estimate of benefits – largely because it was unclear how these would be achieved.

43. Taking this on board we have re-assessed the potential financial benefits. It is more reasonable to assume that any benefits could be realised after 4 years of the TSA taking over the regulatory role for LAs as this would give the TSA time to;

- set standards (year 1)
- monitor against standards and instigate improvement action (year 2)
- assess if that improvement action has been effective (year 3)

44. The current cost to local authorities of managing, maintaining and undertaking major repairs is approximately £5bn per year. We expect that the impact of the new regulatory regime will be to produce an efficiency saving from year 5 onwards.

45. This IA assumes an efficiency saving of between 0.2% and 0.4% per year will be realised. As mentioned above, the TSA are currently undertaking a series of Local Standards Pilots to assess the impact - in terms of resources - on local authorities of complying with the proposed new regulatory regime. No formal data from the pilots is yet available however the anecdotal evidence suggests that complying with the new standards could bring about real benefits in terms of reduced admin costs.

46. For example, a local authority could provide housing advice to every new applicant for social housing helping applicants make more informed choices and reducing the administration involved in maintaining waiting lists.

47. On the basis of current expenditure, the overall discounted cost to LAs of providing social housing over the 10 years from 2010/11 to 2019/20 is likely to be £42bn. If we realise the efficiency savings of between 0.2% and 0.4% from 2014/15 onwards, then savings would be between £48m to £96m (average £72m). Although the improved regulatory environment is expected to drive better value for money outcomes, these estimates are uncertain given the lack of information about the exact sources of efficiency gains.

*Summary of costs and benefits*

48. The table below highlights the interaction between the two key assumptions regarding costs and benefits: the cost to the TSA of regulating LA providers of social housing, and the scale of efficiency savings that can be realised as a result of the new regulatory environment. The central estimate, a net monetised benefit of £54m, is highlighted.

| **Efficiency savings** (% of spend on social housing) | | **Additional cost to TSA** | |
|---|---|---|---|
| | | **Central estimate:** £2.1m p.a. | **Upper estimate:** £6.4m p.a. |
| | **Lower estimate:** 0.2% efficiencies | £30,000,000 | -£7,000,000 |
| | **Central estimate:** 0.3% efficiencies | £54,000,000 | £17,000,000 |
| | **Upper estimate:** 0.4% efficiencies | £78,000,000 | £41,000,000 |

49. These show that net benefits could be negative if outturn efficiency savings are at the lower end of the estimated range at the same time as the costs of regulating local authority landlords exceed £6.4m per year. However in the majority circumstances considered here, positive net benefits of between £17m and £78m can be expected. This does not take account of potential administrative costs to LAs, which have not been monetised and are therefore excluded from these estimates.

## Specific impact Tests

*Competition Assessment*

The extension of the TSA's remit to include Local Authorities should have a small positive impact on competition by improving the provision of information about performance and allowing better comparison between providers of social housing at the local level. The Cave review advocated diversity of provision under a single regulator. This could be beneficial for tenants in relation to the management of social housing in that it would help facilitate contracting of management to other providers or to management bodies. For example, 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.

*Small Firms' Impact Analysis*

No extra cost or benefit envisaged.

*Legal Aid*

No extra cost or benefit envisaged.

*Sustainable Development*

Social: Regulatory reform should encourage Local Authorities to manage their landlord services better, engage and empower tenants to have more say in how their homes are managed, and to continue and build on their current level of voluntary involvement in neighbourhood. The option chosen should therefore involve major social benefits for many of the 2 million households in the sector.

There are no specific environmental costs or benefits envisaged. The economic costs and benefits are set out above.

*Carbon Assessment*

No extra cost or benefit envisaged.

*Other Environment*

No extra cost or benefit envisaged.

*Health Impact Assessment*

There is evidence that suggests the quality of housing can have an impact on the health of residents. Improved regulation helps ensure good management and maintenance of homes.

*Race Equality Assessment*

The Government recognises that people from many BME groups are more likely than average to live in social rented homes (The Survey of English Housing in 2008 showed that of all people who held the tenure in Local Authority homes, 13.4% were from BME groups). *The H&R Act 2008 (Registration of Local Authorities) Order 2009* will not have any impact on the ratio of BME people in or accessing social housing.

*Disability Equality*

The Survey of English Housing for 2006/07 showed that 49% of LA tenants considered that at least one person in their household had a disability or serious illness. 2001 Census data show that 18% 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 are more likely to be tenants of Local Authority social housing.

*Gender Equality*

The Survey of English Housing for 2006 showed 56% of those people who held tenure in Local Authority homes were female. This suggests that women will not be disproportionately affected by our proposed changes to the regulatory regime.

*Human rights*

We believe the provisions to be compatible with ECHR.

*Rural proofing*

The extension of the TSA's remit will not have any negative effects on rural communities.

*Monitoring & Review*

The TSA’s overall performance against the achievement of its objectives will be reviewed twice a year in addition to a formal annual report and submission of accounts as is required by a public body. The regulator’s status will be formally reviewed every five years. The date of the next formal review is 2013.

*Implementation and Delivery Plan*

A detailed implementation plan will be produced by the regulator as part of the transistion process.

*Summary & Recommendation*

We recommend that the extension of the TSA's remit to cover Local Authority social housing goes ahead as this fulfils the recommendation made in *The Cave Review* that all social housing providers should come under the domain of a single regulator. A cross-domain model of regulation has gained widespread support among housing stakeholders, tenants and other interest parties.

# Specific Impact Tests: Checklist

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

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

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

# Annexes

**Annex A**

Background

1. Social housing is defined as accommodation that is offered at rents which are below market value. There are around 3.7m social renting households in England. We estimate 8.1 million people live in those households in England. There are four main categories of provider:

- Local authorities as owners and managers of social housing

- Arms Length Management Organisations (ALMOs), companies which are established by Local Authorities to manage their housing stock.

- Housing associations (not for profit private landlords)

- For profit providers (who do not currently own many homes but undertake some management)

2. The Housing Corporation was the previous statutory regulator of housing associations. On registering with the Housing Corporation, associations became Registered Social Landlords. This regulatory function was taken over by the Tenant Services Authority in December 2008.

*The Cave Review*

3. In December 2006, the Government invited Professor Martin Cave to head an independent review of social housing regulation – 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 findings of the review were reported in June 2007 in the publication "Every Tenant Matters: a review of social housing regulation''

4. The review recommended that a new system of regulation be based on the continued provision of high quality social housing, empowerment of tenants and increased choice at all levels. It also recommended that the two guiding principles were that a new regulator would achieve this with a minimum degree of intervention and to apply the same approach across all providers of social housing.

*The Tenant Services Authority*

5. The Government accepted the majority of the recommendations in *The Cave Review* and the Tenant Services Authority (referred to initially as *The Office for Social Landlords and Tenants*) has been established via

Part II of the Housing and Regeneration Act 2008. Initially the new body will only regulate Registered Social Landlords.

6. The Government offered supported for the principle of cross-domain regulation but signalled that they would have to examine how this would work in more detail, especially in terms of how it would fit with the Local Government Performance Framework and other existing regulation. To this end it was announced in October 2007 that the new regulator would initially only regulate Registered Providers and that an advisory panel – Chaired by Prof. Ian Cole would – was being appointed to look at the extension to cover Local Authorities.

*The Advisory Panel on Cross Domain regulation*

7. The panel was made up of a wide range for stakeholders from all sides of the social housing sector. They met four times between January and June 2008 and published their recommendations to Government in September 2008. The recommendations made by the panel have formed the basis of this consultation.

*The Housing and Regeneration Act 2008 and the enabling power*

8. The Housing and Regeneration Act received Royal Assent in July 2008. During the passage of the Bill the Government accepted the argument that it should include an enabling power in the Act that would allow the Secretary of State to repeal or amend parts of the Act to allow the TSA to regulate Local Authorities through secondary legislation.

9. This enabling power was included as s.114 of the H&R Act, which provides for an order to be made (and approved through the 'affirmative' Statutory Instrument route requiring debate in both houses) to amend the Act and to make other necessary provisions to allow the regulation of LA landlords.