EXPLANATORY MEMORANDUM TO

THE HOUSING (RIGHT TO MANAGE) (ENGLAND) REGULATIONS 2008

2008 No. 2361

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. Description

2.1 The Regulations provide for a procedure to enable tenant management organisations to enter into management agreements with local housing authorities to provide housing management services in the area identified in the agreement.

2.2 The Regulations set out, amongst other matters, what is a tenant management organisation (TMO), what criteria the TMO must meet in order to take over the housing management services, what assistance the local housing authority must provide to the TMO.

2.3 The Regulations also require the appointment of an Approved Assessor to assess the feasibility of the TMO's proposals and to provide advice on how the TMO can progress to ensure that it is able to take over the management of housing services.

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

3.1 None

4. Legislative Background

4.1 The Regulations replace the Housing (Right to Manage) Regulations 1994 (No 627).

4.2 They reduce the two ballots / tests of opinion to one ballot only, and provide for a simpler system of balloting residents in the area of a proposed management agreement. Under the 1994 Regulations, a majority of the tenants in the area of the agreement had to agree to the transfer of the management services in order for the agreement to proceed. The 2008 Regulations require that a majority of those voting is sufficient to enable the agreement to proceed, bringing the ballot rules in line with those normally used on stock transfers.

4.3 The 1994 Regulations require an 'Approved Person' (approved by the Secretary of State) to carry out a feasibility study and support the tenants' group through a development stage. The same Approved Person also is required to certify the group's competence before the final ballot. In the 2008 Regulations tenants' support need not be carried out by an Approved Person, and the competence of the tenants' group will be assessed by an independent 'Approved Assessor'. This Approved Assessor will not have been involved in providing support and training to the group.

5. Territorial Extent and Application

5.1 This instrument applies England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. Section 27AB of the 1985 Housing Act sets out the legal framework for local housing authorities to delegate control of housing management to Tenant Management Organisations (TMOs). It provides that the Secretary of State may issue regulations creating a right for TMOs to take over housing management functions.

7.2. The Housing (Right to Manage) Regulations 1994 set out the processes and requirements for TMOs exercising this right. Over 200 TMOs now manage around 85,000 homes. Most of these have used the 1994 regulations.

7.3. The Department has a grant programme – the Tenant Empowerment Programme – part of which is designed to support tenants exploring and developing tenant management. Since April 2006 the grant programme has been managed on the Department's behalf by the Housing Corporation.

7.4. From the Department's regular contact with tenants, local authority staff, and agencies working to support tenants, we became aware that the regulations and processes are too complicated, too long, and are often adversarial. We therefore wish to produce new regulations.

7.5. The new regulations are part of a package of measures that includes

- guidance on the new regulations
- guidance setting out a voluntary process of tenant management for all social landlords and tenants
- promotion of the positive aspects of tenant management, particularly to housing associations
- changes to the parts of the Tenant Empowerment Programme that support tenant management.

7.6. We consulted on the package of measures including the proposed new regulations in a Tenant Empowerment consultation between June 19th 2007 and 11th September 2007. We asked for overall views on the proposed new regulations and timescales, and on four specific areas. We had 87 responses to the consultation.

7.7. We asked whether or not there were other things we could do to speed up the process. 65% of respondents agreed with our proposals and said that nothing more could be done. Of those who felt that more could be done to speed up the process, suggestions included making guidelines clearer for tenants wishing to set up TMOs. Some respondents stated that there should be no compromise on the quality, commitment or safeguards required to set up a TMO.

7.8. In response to this, we plan to extend the role of the independent Approved Assessor introduced in the new regulations. Where a tenants' group wants Tenant Empowerment Programme grant support to develop tenant management, grant guidelines will require them to have a viable action plan endorsed by an Approved Assessor before they can receive grant. We also plan to produce new guidelines for tenants wishing to set up TMOs.

7.9. We also asked if our proposals for revising the ballot arrangements could be improved. 59% of those answering this question supported our proposals and said that there was nothing more that could be done to improve the proposed arrangements. A significant minority (41%) expressed the view that the arrangements could be improved. The main concerns were around the possibility of a low turnout in the ballot meaning tenant management would go ahead with the support of a minority of tenants.

7.10. Our response explained that we want to bring these arrangements in line with other ballots (for example on stock transfer) and ensure consistency and fairness. We do not intend to impose a requirement for minimum turnout, however guidance will advise that all those who have the right to vote must have the opportunity to do so and be kept informed of the issues raised. The independent assessment by the Approved Assessor will include an assessment of how the tenants' group communicates with and involves tenants within its area.

7.11. We asked if support and training for developing TMOs should be opened up to any organisation and not just limit this to Approved Persons as per the current Regulations and Tenant Empowerment Programme grant guidelines. 70% of those who responded to this question felt that we should open up support and training for developing TMOs to any organisation. We are providing for this in the new regulations and grant guidelines.

7.12. Finally, we asked if there was a case for ending the Approved Persons role in assessing the competencies of the tenants' organisation, and if there is an alternative. There was an even split of opinion on this. A recurring theme was the issue of consistency of standards and the need for independent assessment of the competencies of a TMO.

7.13. In response, we have agreed we will maintain the requirement for a competence assessment of a TMO before it can take responsibility for management. This will occur before the ballot of tenants. The assessment will be carried out by an Approved Assessor operating to an agreed national standard. The Approved Assessor will be independent of persons who have provided the support and training to the TMO. As stated in paragraph 7.8 above, we are also proposing to involve the Approved Assessor at an early stage in the process, to approve the action plan for the tenants' group to achieve the required competency level.

7.14. The process now envisaged will be as follows;

- Tenants' group can seek support from an advisor, with Tenant Empowerment Programme grant available to support this
- Tenants' group serves right to manage notice on its landlord (for local authority tenants) or agrees with the landlord a voluntary process for tenant management (local authority and housing association tenants)
- If a right to manage notice is served, the local authority has to accept the notice unless a similar notice covering at least half the same properties has been served in the previous two years; or the tenants' group serving the notice hasn't complied with requirements set out in the Regulations
- Tenants' group applies for and is allocated an Approved Assessor
- Approved Assessor endorses an action plan for tenants developing tenant management
- Tenants' group receives support and training as per the action plan
- At the end of the programme of support and training, when the tenants' group is clear about what management responsibilities it wants to take on, the Approved Assessor assesses the competence of the tenants' group to take on the proposed responsibilities
- Approved Assessor can set out a plan of action required for the group to achieve the competence level if the group isn't ready
- If Approved Assessor deems the group competent, the landlord organises a ballot of all tenants covered by the proposed agreement
- If ballot successful, the tenants' group and landlord complete the development of a management agreement setting out the responsibilities of the tenant management organisation and the landlord
- If a right to manage notice has been served, the Regulations set out time-scales for the different stages.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum

9. Contact

Richard Crossley at the Communities and Local Government Department Tel: 0207 944 8316 or e-mail: Richard.crossley@communities.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title: Impact Assessment of The Revision to Housing (Right to Manage) Regulations 1994	
Stage: **Final Proposal**	Version:	Date: August 2008
Related Publications: **Tenant Empowerment - A Consultation Paper and Tenant Empowerment: Analysis of Consultation Responses**		

Available to view or download at:

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

Contact for enquiries: **Katy Brookes-Duncan** Telephone: **0207 944 3120**

Local authority tenants have the statutory right to manage their homes. The provisions are set out in the Housing (Right to Manage) Regulations 1994. The RTM regulations have been used to good effect within the local authority sector (There is no equivalent statutory Right to Manage for RSL tenants). However, it is generally accepted by all parties that the RTM and associated procedures take too long and are too complicated.

To encourage more tenants to become involved in the management of their homes. Evidence shows that when tenants take over management of their homes satisfaction levels increase and sometimes they can manage services more effectively than their landlord. We will simplify the regulations to make it easier to establish tenant management organisations (TMOs), reduce the timescales for development of a TMO from 37 months to 24-30 months and reduce the cost of setting up each TMO.

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

The Local Government White Paper committed us to ensuring that citizens and communities are effectively empowered to influence public policies and services, to assist with this one of the Department's proposals was to build upon the success of tenant management.

- **OPTION A**: Do Nothing
- **OPTION B (Our preferred option):** Revise the regulations: Our proposals streamline the process and will encourage tenant involvement which will meet the policy objectives of the Local Government White Paper. The two key changes to the regulations are to: reduce the number of ballots from two to one and to align the ballot process for the RTM Process with that of the stock transfer ballot system; and to create the role of an independent "Approved Assessor".

There will be a formal evaluation of the new procedures three years after the regulations coming into force. The Approved Assessors will be evaluated after 9 months.

4th September 2008

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

Summary: Analysis & Evidence

Policy Option: B	Description: Revise the Regulations

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 120,000.00	1

Average Annual Cost (excluding one-off)

£ 0

Description and scale of **key monetised costs** by 'main affected groups'

The transition costs include preparation of new guidance and costs in setting up the new approved assessor services. These costs will be funded by the existing Government grant programme. The changes in the regulations should be cost neutral overall. We anticipate there will be some savings per new TMO but these will be offset against an expected increase in the number of TMOs in development when it becomes easier under revised regulations.

Total Cost (PV) £ 120,000

Other **key non-monetised costs** by 'main affected groups'

There may be some minor costs to people currently set up as Approved Persons in becoming Approved Assessors and Lead Advisors.

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ 0	

Average Annual Benefit (excluding one-off)

£ 5.2m

Description and scale of **key monetised benefits** by 'main affected groups'

There will be savings in terms of greater efficiency in service management. TMOs performance is comparable with the best performing local authorities. Assuming a 25% increase in homes being managed by TMOs the annual benefit could be £5.2m

Total Benefit (PV) £ 16m

Other **key non-monetised benefits** by 'main affected groups'

We consider there are likely to be environmental benefits from the improved maintenance of council homes. There will also be significant social benefits from more empowered communities and increased satisfaction with housing services.

A decrease in time taken to set up a TMO will lead to a directly proportional decrease in costs. We have assumed funding will only continue for 3 years, as is currently committed as it is difficult to predict funding in this area after this time. There will be an increase in demand to set up TMOs from the simplification of the process

Price Base Year 2008	Time Period Years 10	**Net Benefit Range** (NPV) £ 11m - 20m	**NET BENEFIT** (NPV Best estimate) £ 16m

	England
	October 2008
	The Law Courts
What is the total annual cost of enforcement for these organisations?	£ N/A
	Yes
	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£
	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	Yes/No	Yes/No		

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.]

Objective

Simplify the 'Right to Manage' (RTM) process, reducing the time it takes to set up a Tenant Management Organisation (TMO), by reducing the number of ballots required from two to one, and introducing and independent Approved Assessor role.

The Government's overall vision is that the state should empower citizens to shape their own lives and the services they receive. Our aim is for an increasing number of council housing tenants to have the confidence, skills and power to set up a TMO. The right to manage is particularly important where tenants are not satisfied with the services their landlord is providing.

Background

The Housing (Right to Manage) Regulations 1994 were introduced for two reasons: to give a clear framework for the development of tenant management within local authority housing; and to ensure that tenants who wanted to explore and develop tenant management could not unreasonably be prevented from doing so by the local authority.

Under these regulations TMOs may take on the running of council housing services such as repairs and maintenance, letting vacant properties and collecting rents and service charges. Tenants do not have to carry out these tasks themselves. They can employ staff, contract council housing staff or employ a managing agent. The TMO becomes a partner with the council in providing services to the local community. The local authority delegates management functions in accordance with Section 27AB of the 1985 Housing Act. The Secretary of State has approved a Modular Management Agreement for this purpose.

The Tenant Empowerment Programme (TEP) is a CLG grant programme, part of which supports the development of tenant management for local authority tenants. The programme grants are administered on the Department's behalf by the Housing Corporation. This will be administered by the new social housing regulator the Tenant Services' Authority after 1 December 2008. TEP grant is currently available to fund three stages of the process of developing tenant management.

- **Options Study or Pre-Feasibility Study:** an Options Study allows a tenants group to work with an agency of their choice to explore their options, and see if tenant management is the right option for them. Grant requirements are that the agency is approved by the Secretary of State (called Approved Persons in the 1994 Regulations). If a group has already decided on tenant management, an agency can work with them (using a Pre-Feasibility study grant) to assist them serve the right to manage notice.

- Initial Feasibility Study (commonly known as the **Feasibility Study stage**): after a notice has been served and accepted by the local authority, the tenants group is required to appoint an agency (Approved Person) to work with them to test in greater depth the feasibility of tenant management. If the agency reports that tenant management is feasible, the local authority is required to organise a ballot or poll of tenants.

- Full Feasibility Study (usually known as the **Development Stage**): if the ballot or poll shows that there is support from tenants to develop tenant management, the tenants group has to appoint an approved agency to work with them to develop tenant management. They can apply for and receive TEP funding for this. In this stage the plans for tenant management are worked up in detail. If the agency reports it is reasonable to proceed, the local authority is required to conduct a ballot. To go forward, the proposal has to have the support of a majority of tenants and a

majority of secure tenants living on the estate voting in favour. If positive, a management agreement is signed between the TMO and the local authority.

There are currently around 230 TMOs managing approximately 85,000 homes. Most of these have been developed using the Right to Manage regulations. A small number were operational prior to the introduction of the regulations, often known as Estate Management Boards or Co-operatives. Many of these have now updated their management agreements in line with the modular management agreement.

An Oxford Brookes Evaluation of Tenant Management Organisations entitled `Tenants Managing: An Evaluation of Tenant Management Organisations'[1] surveyed English local authorities and all established TMOs and carried out 16 in-depth case studies. It shows that TMOs are most frequently set up because tenants: have a wish for more say (76%), are dissatisfied with the repairs and maintenance service (69%), have poor housing management (51%) or dislike the physical appearance of an estate (42%).

Therefore it was not surprising that the study concluded that TMOs often manage their housing more effectively than their landlord. However, the study also showed the when comparing the TMOs' performance it equalled or surpassed the top 25% of local authorities. TMOs, being 'on site' and having detailed local knowledge, tend to be able to act sooner and more effectively when dealing with tenancy management problems. Examples of improvements identified by the study are listed below.

Repairs
Most of the case study TMOs equaled or surpassed the top 25% of local authorities in the average time taken to complete non-urgent repairs, and the percentage of urgent repairs completed within government timescales. In the Survey of English Housing 2000/2001, 69% of tenants were satisfied with the way the TMO carried out repairs and maintenance, compared with 59% of council tenants. Many TMOs directly employ repairs staff. This contributed to improving the quality and responsiveness of repairs, while also reducing costs in comparison with council contractors.

Lettings
Most of the case study TMOs equaled or surpassed the top 25% of local authorities in 2001 in terms of the average time taken to re-let a property.

Rent collection
All of the TMO case studies with responsibility for rent collection were doing as well as the top 25% of local authorities in 2001 in terms of the percentage of rent collected. Some TMOs were involved in credit unions as part of a preventive approach to rent arrears.

The need for change

The need to streamline the Right to Manage regulations was identified as long ago as 1998 in a study conducted by Salford University[2] to assess the implementation of the Regulations. Their findings were that the Regulations were welcomed by tenants and some local authorities. But they also concluded that there was a need for "greater flexibility in organising the timetable for the Right to Manage process", to take account of the variation in the circumstances of tenants groups and responsiveness of local authorities.

The current RTM process is prescriptive and relatively long and costly - currently it can take up to 77 months at a cost of £295,458 (although this does vary depending on the size of the area the TMO will cover and the services they may take on) to go through the whole process. When a group of tenants decide to invoke their "right" they must follow a set procedure. This has a number of stages which must be adhered to before the TMO actually takes over the management of pre-defined housing services. The current process together with the proposed new process is set out at **Annex A.** The current timescales and costs in forming a TMO can be a deterrent to tenants groups even when they want to become involved and improve the housing services they are receiving from their landlord.

[1] Tenants Managing: An Evaluation of Tenant Management Organisations in England. ODPM housing research summary no: 174, 2002. research carried out by Oxford Brookes University

[2] An assessment of the implementation of the Right To Manage. ODPM research summary 082. research carried out by Salford University

Policy Context

61% of people believe they have no influence over decisions affecting their local areas[3]. A key objective of the Local Government White Paper "Strong and Prosperous Communities" published in 2006 was to empower citizens and communities to have more say in their localities and local services. It set out our commitment to ensuring that citizens and communities are effectively empowered to influence public policies and services, and proposed to build on the success of tenant management. The Right to Manage allows those local authority tenants who wish to do so, to take collective responsibility for the direct management of a key service. By revising the regulations we hope to increase the opportunities for tenants to take advantage of this provision.

Empowerment is a core ingredient of any vibrant democracy, and there is considerable evidence to suggest that it is also associated with higher public satisfaction, better services, reduced crime, better cohesion, more effective dialogue with authorities, joint working between the third sector and public agencies, and lifting areas of multiple disadvantages. Disempowered communities undermine local democracy and cohesion. We know that the more opportunities people have to make a difference, the better they feel about the services they have helped to shape and the better they feel about the institutions providing them.

TMOs can work well in socially excluded communities and many TMOs are involved in wider community activities and play an important part in neighbourhood regeneration. Furthermore, the majority of TMO tenants say the TMO helps to increase community spirit and improve the quality of life. A 'Report on the consultation with tenants on the future of social housing at Trafford Hall'[4] prepared as part of the Hills review concluded that tenants felt: `how things are run, how an area is repaired, cleaned, policed ,controlled, beautified, serviced matters greatly to peoples lives'. The Hills Report[5] recorded that one in four social housing tenants is dissatisfied with the standard of repairs and maintenance and one in five with their landlord. Increasing in the number of tenants involved in management of housing services is one way of increasing tenant satisfaction.

Consultation

As part of our review of the Right to Manage, we established a steering group in December 2006 including representatives from the organisations listed below:

Local Government Association (LGA)
Housing Corporation
Local Authority Co-op Officers Group (LACOG)
National Housing Federation (NHF)
National Federation of Tenant Management Organisations (NFTMO)
Tenants and Residents Organisations of England (TAROE)
Association of Tenant Involvement and Control (ATIC)

Regular meetings were held and the views of the group fed into the development of the revised regulations.

We consulted publicly on our proposals in June 2007 (closing date 11th September 2007). 87 responses were received (76 received before the closing date). Not all respondents commented on or responded to every question raised as part of the consultation exercise: A number of respondents only responded to those questions that affected them directly or where they felt they had adequate knowledge to be able to respond. Generally people were supportive of our proposals. Annex C sets out the consultation questions and summarises the responses.

The Options

[3] Citizenship Survey, 2006
[4] Report on the Consultation with tenants on the future of social housing at Trafford Hall by Anne Power
[5] "The Future Roles of Social Housing in England" John Hills February 2007

Option A - Do nothing

The Government has publicly stated its commitment to building on Community Empowerment, emphasised in the recent White Paper 'Communities in Control'. If we did nothing to review the regulations and make changes to encourage more people to become involved we would not meet the objectives set out within the Local Government White Paper, nor would we contribute to the Governments aim to empower communities and encourage activism.

We know that it can take up to 77 months to set up a large operational TMO at a cost of around £295,458. To do nothing would mean that this does not change and no savings on the time and cost of developing each TMO realised. To not change the process would mean that it continues to be off-putting to those who wish to be involved but who find the process intimidating.

The Hills Review[6] found that one in four social housing tenants is dissatisfied with the standard of repairs and maintenance and one in five with their landlord. Doing nothing is unlikely to facilitate an increase in the number of tenants involved in management of housing services, which we believe is one way of increasing tenant satisfaction.

Option B – Revise the Regulations

We want to encourage tenant management. As part of the Survey of English Housing, a nationally representative sample of social tenants is asked a module of questions about relations with their landlord. There is a clear relationship between whether tenants feel that the landlord takes account of their views when decision making and overall tenant satisfaction. Of those who feel that the landlord takes `a lot' of account of their views, 60% are satisfied overall. This drops to 20% for those whose landlord takes just a little account of their views and to just 9% for those whose landlord takes no account of their views.

These results were similar to those for 2000/01: the general pattern has remained the same. We want to increase tenant satisfaction by encouraging the development of more TMO's by simplifying the regulations.

We also want to realise savings on the time and costs of establishing a TMO by streamlining the process a group of tenants needs to go through.

There are a number of changes to the regulations that are proposed which are summarised in the table below.

Stage	**Current Regulations**	**New Regulations**
Requirements on Tenants Organisation (TO) serving notice for right to manage	Inform all tenants. Satisfied that members support proposal and has membership of at least 20% of tenants and 20% of secure tenants.	No changes except to simplify wording.
Serving a notice	Various requirements on serving a notice	No changes except to simplify wording.
Accepting a notice	Local authority (LA) has to refuse or accept the notice within 28 days	No changes except to simplify wording.
LA support for TO following notice	LA has to respond to request for support within 2 months	LA has to respond to request for support within 28 days
Feasibility stage	Carried out by an 'approved person' within 9 months	No requirement for work to be carried out by an 'approved person' Feasibility and development stages rolled into one stage to be carried out within 15 months
Assessment of TO's competence	Currently carried our by the 'approved person'	Process the same but carried out by an approved assessor (see below)
End of feasibility	Can only go to development stage if there is	Ballot requirement removed.

[6] 'Ends and Means: The Future Roles of Social Housing in England" John Hills Feb. 2007

study ballot	clear support through a ballot or poll	
Development stage	Support provided by an 'approved person'. Development report within 2 years	No requirement for support from an 'approved person' Feasibility and development stages rolled into one stage to be carried out within 15 months
Assessment of TO's competence	Currently carried out by the 'approved person' – the same 'approved person' who has provided support	Process the same but carried out by an independent approved assessor (see below)
Summary of proposals sent to all tenants	LA has to do this within 2 months of 'approved person' report	LA has to do this within 3 months of competence assessment
Ballot	LA has to conduct ballot within 2 months. Proposals have to have approval of majority of tenants and majority of secure tenants living in the area.	LA has to conduct ballot within 3 months. This brings the process into line with other tenant ballot processes. Proposals have to have the approval of majority of tenants and secure tenants voting.
Implementation	LA must enter into the management agreement within 2 months of a positive ballot.	LA must enter into management agreement within 9 months of a positive ballot. The overall timetable is still reduced by the removal one stage.
Timescales	All timescales can be extended by mutual agreement	No change

There are two changes in particular that should be noted as they will make a significant contribution to the benefits we anticipate in streamlining the regulations.

Approved Assessors

It was considered that the role of the approved persons needed review. Local Authority officers particularly have questioned the independence of the system where the agency assigned to work with a group of tenants doing through the RTM process (developing TMO), is then required to test the competency of that group to take on management functions. Effectively it could be said that the agency are measuring their own performance: their effectiveness in the advice/training they have given the developing group.

The public consultation asked for views on the case for ending the role of approved agencies in assessing the competencies of the tenants' organisations. The general view was in favour of removing the role of the approved person. In future a group can be supported during its development by any suitable person or agency. However, we will maintain the requirement for a competence assessment of a TMO before it can take responsibility for management, this will be carried out by an `approved assessor'. Approved assessors will be independent of persons who have provided the support and training to the TMO. This will give more confidence in the competence of the group as they will have been independently assessed by a third party not by someone closely involved in the work programme.

Currently Approved Persons access Tenant Empowerment Programme (TEP) funding to carry out the 'Options Study' and 'Feasibility Study' stages. The tenants group can access TEP funding to engage an Approved Person to support them through the 'Development' stage and produce a report on the competence of the group to take on the management functions they wish to take on. The grant allowed is based on the number of properties. In addition to the benefits of having an independent assessment of a group's competence, the creation of the 'Approved Assessor' role presents an opportunity to introduce an Assessor soon after a notice has been served to assess the needs of the group prior to an application

for TEP grant. The main benefit that will accrue from this is that the grant paid can be tailored to the needs of the group rather than on a formulaic basis. This will result in some savings.

An assessor service will be set up by the grant administrator (the Housing Corporation) to manage this. This will be funded from the Tenant Empowerment Programme.

We do not forsee the changes to the regulations presenting any problems to the people and agencies currently on he approved persons list because they can continue to work with developing TMOs in future and/ or can apply to become approved assessors under the new regulatory regime.

Changes to Ballots

One example of a negative effect the current process can have on the successful development of TMOs is in the arrangements for testing the opinion of tenants. The current regulations require two separate ballots, and in the final ballot a requirement to have a majority of all tenants in the area voting in favour. Some TMOs have failed at this final hurdle, not because tenants didn't support the idea, but because a number of tenants were not physically resident at the time of the ballot and under these ballot rules were effectively counted as being against the proposals. This meant a waste of significant time and resources in developing the proposals.

By removing the need for two ballots, we can combine the current 'Feasibility' and 'Development' stages into one stage. This, together with the independent Approved Assessors as described above, will enable resources to be more focussed, and will reduce the time of this stage (we estimate from 33 months to 15 months – but with some additional time after the ballot) We expect to see fewer failures and less waste of time and resources.

Our proposals also align the ballot process (for the RTM Process) with that of the stock transfer ballot system. The current regulations require a majority of tenants on the estate and a majority of secure tenants on the estate voting in favour. On estates where there is a high level of absentee leaseholders and tenants this can be very hard to achieve. Under the proposed regulations the result will depend on a majority of tenants and a majority of secure tenants of those who vote voting in favour. This is in line with ballots for stock transfers. One of the competencies the independent assessor will assess is the ability of the tenants group to communicate and involve the wider body of tenants on the estate. This will be a safeguard against a small group of tenants not accountable to the wider body of tenants having their proposals accepted on a very small turn-out.

Under the current and the proposed regulations, it is the local authority responsibility to organise the ballot.

Costs and Benefits

Sectors and groups affected

The groups most affected by proposals are:

- Unitary and District Local Authorities responsible for housing services
- Tenants Groups
- Tenant Management Organisations
- Approved Agencies

Breakdown of costs and benefits

We have made assumptions about the likely level of impact of the new regulations on encouraging more TMOs to be developed and relied on assumptions about TMOs performance and read across from other data sources to assess their impact. The cost benefit models have low levels of sensitivity because of the broad assumptions that have been made. The main risk is that the assumptions are proven to be incorrect.

We have modelled the costs over three years in line with funding and partly due to the complexity of the dynamic of demand for TMOs as the number of TMOs increases.

In 2007-08 The Government invested £2.64m on the TEP. Over the Comprehensive Spending Review period the TEP funding is £3.14m for each year between 2008-09 and 2010-11.The increase is for promotion of a voluntary RTM process for housing associations tenants and does not impact on the statutory RTM processes. The amount spent on all aspects of the RTM process, including support for groups, is about £1m per annum.

Option A - Do nothing

Costs

For the purposes of the tenant empowerment grant there are guideline costs for each stage. To illustrate this, the guideline costs for an estate of 500 properties, are as follows:

- Options Study / Pre Feasibility Study: £4620 for 25 dwellings plus £9 per additional dwelling (plus VAT)
- Feasibility Study stage: £9,680 for 25 dwellings, plus £19 per additional dwelling + VAT
- Development stage: £48,400 for 25 dwellings, plus £35 per additional dwelling. This is paid to the tenants group, so VAT is not added. The local authority is required to contribute 25% of the Development Stage costs.

Based on information from Archive records set up by ODPM (approx 1995) `DEVMon' we have used information relating to 48 successful TMOs for the Development Stage. This shows us that the average length of time for this stage was 37 months, at an average cost of £61,779. The average local authority contribution was approximately £15,444, probably spread over three years.

We have also tried to quantify the cost to a volunteer involved in the setting up of a TMO. TMOs are made up of tenants who are not paid a salary for their work in setting up the organisation. We have used a standard formula for calculating the cost of volunteers' time. Based on the national minimum hourly wage of £5.35[7], using information about the number of hours a volunteer inputs to establishing a TMO, we have included activities such as attending meetings, estate based training and awareness raising activities such as leafleting and door knocking. It is estimated that volunteers would give 268 days a year so: 268 days @ £5.35 = £10,755 per year or at total of £33,161 for an average TMO development project.

Using historical data we know 230 TMOs have been established since 1994, so each year an average of 16 TMOs would take on management responsibilities and 48 over three years.

The total average costs per TMO are £110,000 and so the average total cost for the development of 16 TMOs would be £1,766,000 .

Table 1: Current Housing (Right to Manage) Regulations 1994	
Average cost to Central Government	£62,000
Average cost to Local Authority	£15,500
Total cost to public purse	**£77,500**
Average cost in volunteer time	£33,000
Total cost	**£110,500**
16 per year	£1,768,000

We would expect no change in the costs of establishing a TMO if we did nothing.

We believe that there are no environmental costs associated with doing nothing.

There may be a social cost associated with doing nothing should the current regulations deter tenants' groups forming TMOs and taking on management responsibilities. The Hills review[8] , found that one in four social housing tenants is dissatisfied with the standard of repairs and maintenance and one in five

[7] Information from DTI website – National minimum wage as from 1 October 2006

[8] "The Future Roles of Social Housing in England" John Hills February 2007

with their landlord. Doing nothing is unlikely to facilitate an increase in the number of tenants involved in management of housing services which we believe is one way of increasing tenant satisfaction

Benefits

We see no cost benefit to retaining the current regulations: the examples above show the average cost of setting up a TMO. The average cost will remain the same.

There will be no major change in terms of benefit to the environment if the current regulations remain in place.

There are no clear social benefits associated with doing nothing.

Option B – Revise the Regulations

Economic

Costs*:*

We do not expect there to be any annual costs. The changes in the regulations should be cost neutral overall. In terms of costs to the Department, we anticipate that the overall effect of the regulations on the right to manage process will be neutral, as the amount of total grant available will remain the same. The Tenant Empowerment Programme is a fixed sum agreed by CLG, although we anticipate a reduction in the time and costs it takes for a TMO to develop we anticipate the savings being used to fund additional TMOs to be established.

We anticipate there will be some savings to the grant programme because of the greater flexibility in the new regulations and grant guidelines for development support for tenants not being restricted to Approved Persons. The changes to the processes described above, will reduce the time and costs it takes to develop a TMO but we anticipate an increased take-up of tenant management as a result of the changes. We are not able to accurately predict the levels of take up as the result of the revision of the regulations but we might reasonably assume around a 25% increase.

We expect there to be savings to each local authority in terms of the development costs they might spend in establishing a TMO but similarly this might be set against an increase in the number of TMOs in development we might expect when it becomes easier under revised regulations.

It can take up to 6 ½ years (78 months) to set up a TMO but the average time is 37 months. We estimate that under the revised regulations the process could be shortened to between 24–30 months for a typically sized TMO taking on most housing services. This could reduce the costs of developing each TMO by 20 – 30% i.e. an average of £12,356- £18,534 saving on the grant programme for an average TMO and saving of £3,089 - £4,633 for the local authority and £6,632 - £9,948 in the costs of volunteer time. This assumes that the expenditure in developing a TMO is spread evenly over the current timescale and any times savings from the new regulations will result in a similar proportion of savings in costs.

Based on historical trends over three year period 48 TMOs are established at an average cost of £61,779 to the grant programme if these costs were reduced under the new regulations by 20 – 30% we could fund 60 - 69 TMOs over a three years period for the same level of grant funding (£3m).

Table 2: New Housing (Right to Manage) (England) Regulations 2008

	High (20%) savings	**Low (30%) savings**
Average cost to Central Government	£49,000	£43,000
Average cost to Local Authority	£12,000	£11,000
Total cost to public purse	£61,000	£54,000
Average cost in volunteer time	£27,000	£23,000
Total cost	**£88,000**	**£77,000**
Number per year	20	22.86

Under the new regulations we will remove the requirement to appoint an approved person although they will be free to appoint an advisor (termed lead advisors. .Instead we will ensure there is an Approved Assessor appointed for each project. This will result in a change to the way that Guideline costs are calculated which should also result in some savings. The Approved Assessors will be required under the regulations to provide an independent assessment of the proposals prior to a ballot conducted by the local authority. This will allow us to require, as a condition of grant, an assessment by an approved assessor of the groups' competence shortly after they have served a right to manage notice. The grant they can apply for will be tailored to the group's needs, rather than being purely based on the number of properties.

The Approved Assessors will be approved by the Secretary of State. An Approved Assessor Service will be set up to manage the independent assessors and this will be managed by the Housing Corporation (who administers the Tenant Empowerment Grant Programme which will be used to pay for the Assessor Service and the Assessors.) These responsibilities will transfer to the Tenant Services Authority in due course. There will be transitional costs in setting up the new approved assessor services which will be £80,000. The approved assessor service will be relatively small scale with around a dozen approved assessors working on an ad-hoc part time basis. Any on-going costs will be funded from the grant programme which is a fixed sum, we anticipate that the cost of the service will be £50,000 p.a.

The transition costs also include preparation of new guidance and promotion of the new regulations which will cost £30,000 and up to £10,000 respectively.

Table 3: Transition Costs	
Revised guidance	£30,000.00
Promotion of new regulations and guidance	£10,000.00
Setting up approved assessor service	£80,000.00
Total	**£120,000.00**

We believe that there are no environmental costs associated with this option.

Non monetised costs
There may be a small cost in some Approved Persons becoming Lead Advisors. This will only affect a small number of people (aprox 30), and it will be possible for them to continue to assist groups who wish to become TMOs as Lead Advisors. They may be disadvantaged by this support to tenants being opened out beyond the current approved list. Some of these are likely to become Approved Assessors as well as Lead Advisors (though of course they will not assess groups where they or any agency they are connected with, act as Lead Advisor). ,.

Benefits:

One of the key benefits will be that the new regulations will introduce a more robust system of independent assessment of groups and therefore less wastage on developing groups unlikely to succeed in achieving tenant management. There will also be a less likelihood of tenant management proposals failing at a final ballot again reducing the amount wasted on development costs.

The changes in the regulations will mean that it will take less time and money to establish a TMO. This means that TMOs will come into operation earlier and more TMOs will be able to be funded through the grant provided in this area.

TMOs are often created in response to tenant dissatisfaction with landlord services. Therefore, they are frequently more efficient than LA management bodies. Research has been done on the average weekly cost of management and maintenance of housing. This showed the cost was £29.08 for LAs with lower than a 4* rating (on their CPA Assessment) compared with £33.88 for LAs with a 4* rating. The Oxford Brookes research found TMO performance was comparable with the top 25% of LA performance. Assuming the TMOs weekly management costs are comparable with the high performing LAs. This means a saving of £4.80 per house per week of being in a TMO compared to a poorer performing LA.

We have assumed that those areas of housing which apply for TMO funding will have a LA managing them that is below 4*s as they will see that there are benefits of organising their own management.

Earlier we assumed that there would be a 20 to 30% reduction in time taken to become a TMO. This will mean TMOs will form 7 to 13 months earlier, leading to 7 to 13 months of extra benefits of being managed by a TMO compared to an LA.

Given the figure of £4.80 per house per week and the average number of houses per TMO is 475, and on average 16 are funded a year then savings will be between £1m and £1.9m per year (based on completion 7 to 13 months earlier) (see table below).

Table 4: Savings from earlier completion

Savings per home per week	£4.80
Savings per TMO per week	£2,280
Savings from 16 TMOs per week	£36,500
Savings from 16 TMOs over 7 months (low estimate)	£1,021,500
Savings from 16 TMOs over 13 months (high estimate)	£1,897,000

These benefits are modelled over the first three years as we have not accounted for TMOs being set up after the funding currently committed finishes. However, it is important to note that this is no means a statement of intent on the funding of TMOs, purely an assumption in the model.

In addition to this the reduction in time will lead to a reduction in costs of setting up. This means that more TMOs will be able to set up per year. We estimate that in the first year there will be 3 to 5 additional TMOs, based on a 20 to 30% reduction in costs and assuming all transition costs are paid from the grant, thus slightly reducing the amount available for setting up TMOs. We estimate in years 2 and 3 there will be between 4 and 7 extra TMOs set up per year.

As more TMOs are able to be formed there will be similar benefits from more efficient management described above of £4.80 per house per week. The yearly benefit of a TMO is calculated below, and used to model potential savings.

Table 5: Savings from More TMOs	
Savings per TMO a week (from Table 4)	£2,280
Savings per TMO a year	£118,500
Year 1 - 3 to 5 extra	£356,000 to £593,000
Years 2 and 3 – 4 to 7 extra	£474,000 to £830,000

We have then modelled this effect over ten years. Benefits from year 1 start in year 2 as this is when the TMO may come into operation. This then follows for years 2 and 3.

Taking Table four and Table five together and modelling the benefits over 3 years and 10 years respectively this gives us a final present value range of between £11.5m and £20m

Non-monetised benefits

Empowerment is a core ingredient of any vibrant democracy, and there is considerable evidence to suggest that it is also associated with higher public satisfaction, better services, reduced crime, better cohesion, more effective dialogue with authorities, joint working between the third sector and public agencies, and lifting areas of multiple disadvantages.

Potentially an additional 21,000 households per annum could benefit from more proactive local management which makes their homes and local environment better places to live and improving the life chances of their residents. This cannot be quantified accurately.

Arguably there will be some environmental benefits if the regulations change as TMOs generally are high performing landlords and there will be more TMOs. 42% of TMOs were motivated to take on management because they dislike the physical appearance of an estate so it is likely that a significant proportion of new TMOs will tailor their work programmes to ensure the local environment improves. 69% of TMOs were dissatisfied with the repairs and maintenance service and therefore will look to improve performance in this area. Some of the repairs will mean more energy efficient homes.

Competition Assessment

Currently the Government maintains an `approved list' of some 14 organisations who have met criteria set to enable them to be classified as competent to carry out the role of independent (advice) agency. Our proposals to open support and development work on tenant management to anyone to become a lead assessor, (and maintaining an Approved List for independent assessment purposes) will increase competition for this type of work.

Small Firms' Impact Test (SFIT)

The role of an Approved Agency (which are the organisations which provide the approved persons) is to provide independent, professional information and advice to tenants and local authorities interested in extending tenant participation and setting up a tenant management organisation. In order to be eligible to receive funding, the agency must have 'Approved Person' status and be approved by the Secretary of State.

In order to consider the impact of changes on Approved Agencies we sent out a questionnaire to them. The TEP funds the development of TMOs and is paid in the initial stages of the process, to the Agency but in the later stages of the TMOs development grant is paid directly to the TMO (as part of the development process - this is designed to prepare them for handling their own sometimes large sums of money once they become operational).

A copy of the questionnaire is attached at ANNEX C. Analysis of the responses is below:

- 43 % of those questioned, responded.
- *Question 1:* 100% of those questioned agreed that the existing Right to Manage Regulations are becoming increasingly outdated and are in need of revision.
- *Question 2:* When asked if they believed our proposals would impact on them financially, 50% of respondents answered `yes', 33% thought 'no' impact and 17% were unsure.
- *Question 3:* Of those who answered 'yes' to question 3, 50% thought there might be a negative impact on them financially, 17% were not sure if the impact would be negative or positive, and 17% did not answer.
- *Question 5:* We asked if the `Approved Person' list serves a purpose. 100% responded `Yes'.

Legal Aid

There are no implications for legal aid.

Sustainable Development, Carbon Assessment Other Environmental Issues

Potentially there will be some environmental benefits if the regulations change as set above. Generally TMOs are high performing landlords and there will be more TMOs. We anticipate that new TMOs will in many cases make improvement to the local environment and increase the energy efficiency of the homes they manage.

Health Impact Assessment

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

Race Equality

The 1994 regulations Section 1 state that "A TMO in Section 27AB(8) of the Housing Act 1985, the conditions which a body must satisfy are that its constitution…"provides that in conducting its affairs the organisation shall avoid discrimination against any person on grounds of racial origin, gender, sexuality, disability or religion"

Within the revised regulations the race equality requirement will be updated in line with current policy. Our policy positively encourages inclusion of every citizen regardless of ethnicity or religious beliefs and highlights the requirement to ensure the inclusion of hard to reach groups. The TMO has to adopt a constitution and one of the conditions it must include is that the organisation will not discriminate on the grounds of racial origin, gender, sexuality, disability, or religion in anything it does.

Accompanying guidance will contain advice about and guidance on adopting methods of inclusion and ensuring consideration is given to factors which may affect individuals' ability to be involved.

Disability Equality
These regulations make no provisions in respect of disability but will not disadvantage people with disabilities in anyway. As more than twice the proportion of social tenant households contains a member with a serious medical condition or disability, than in owner-occupied or private-rented households[9], any benefits in terms of greater involvement and improved services will provide benefits to those with disability .

Gender Equality

These regulations make no provisions in respect of gender equality but will not disadvantage women in any way. Although we cannot quantify their involvement female tenants frequently become engaged in promoting tenants' interests and working with their landlords to improve the responsiveness of housing services to local needs and are usually well represented on tenant management organisations.

Human Rights
These regulations extended people rights over the homes they live in and do not conflict with human rights.

Rural Proofing

Concentrations of social housing tend to be found in more urban areas and TMOs are therefore more common in these areas. However, our proposals to make it easier to establish a TMO should reduce the hurdles for smaller collectives of tenants who want to pursue this option and will therefore make it more accessible and attractive to those in less densely populated areas.

Enforcement, Sanctions and Monitoring

Enforcement

It is for the courts to resolve issues brought to them by people who may feel disadvantaged by someone not carrying out requirements under the regulations.

Sanctions

[9] "The Future Roles of Social Housing in England" John Hills February 2007

Not applicable.

Monitoring and Review

The new regulations will enable us to establish Approved Assessors to give an independent assessment of each TMO development under the Right to Manage. These assessors will feed back to us information on the the implementation of the new regulatioms. We will consider an evaluation of the new procedures three years after the regulations coming into force. The Approved Assessors will be evaluated after 9 months.

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.

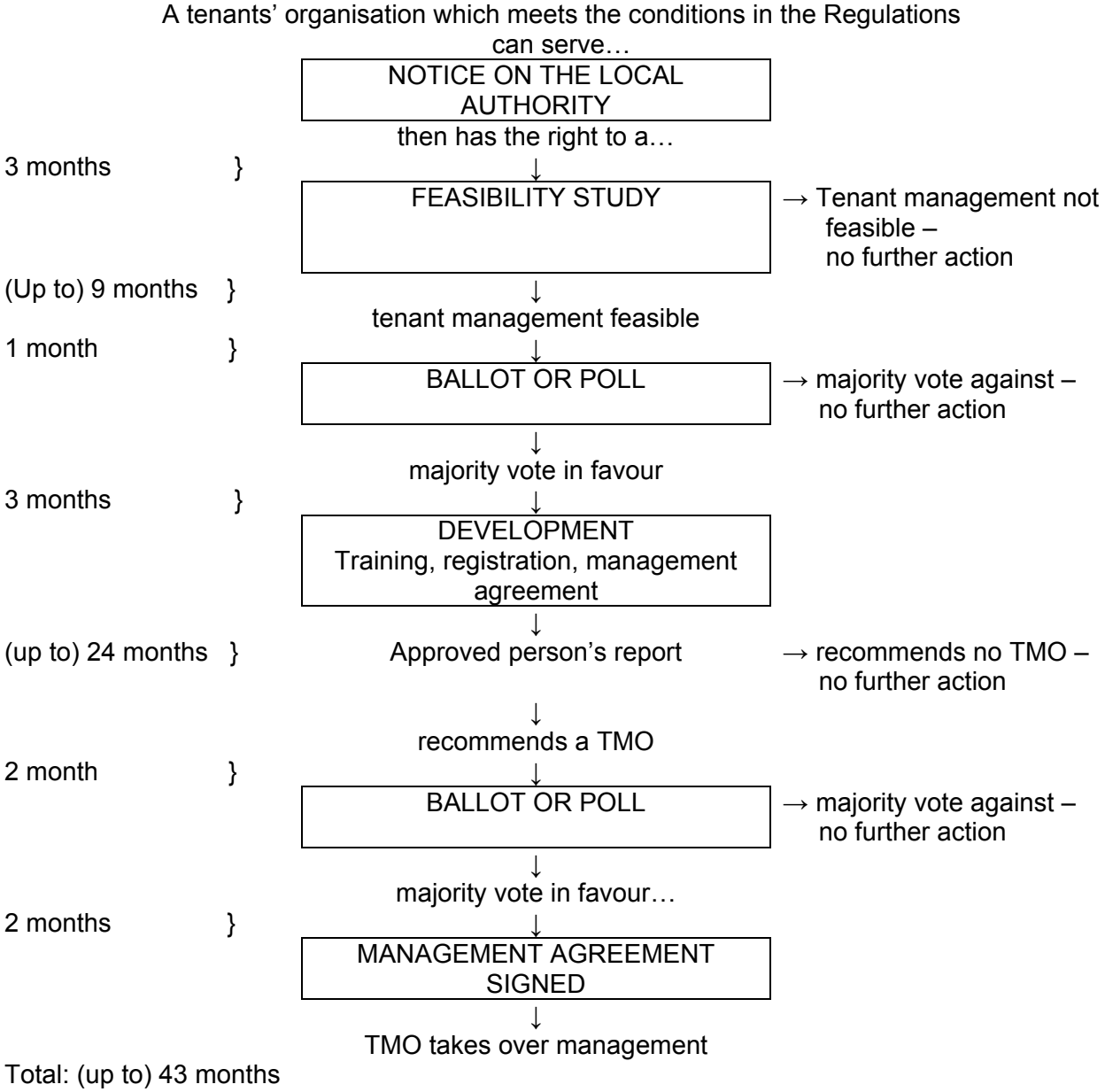
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No

Annexes

ANNEX A

Right to Manage: current and proposed process and regulation for Council tenants

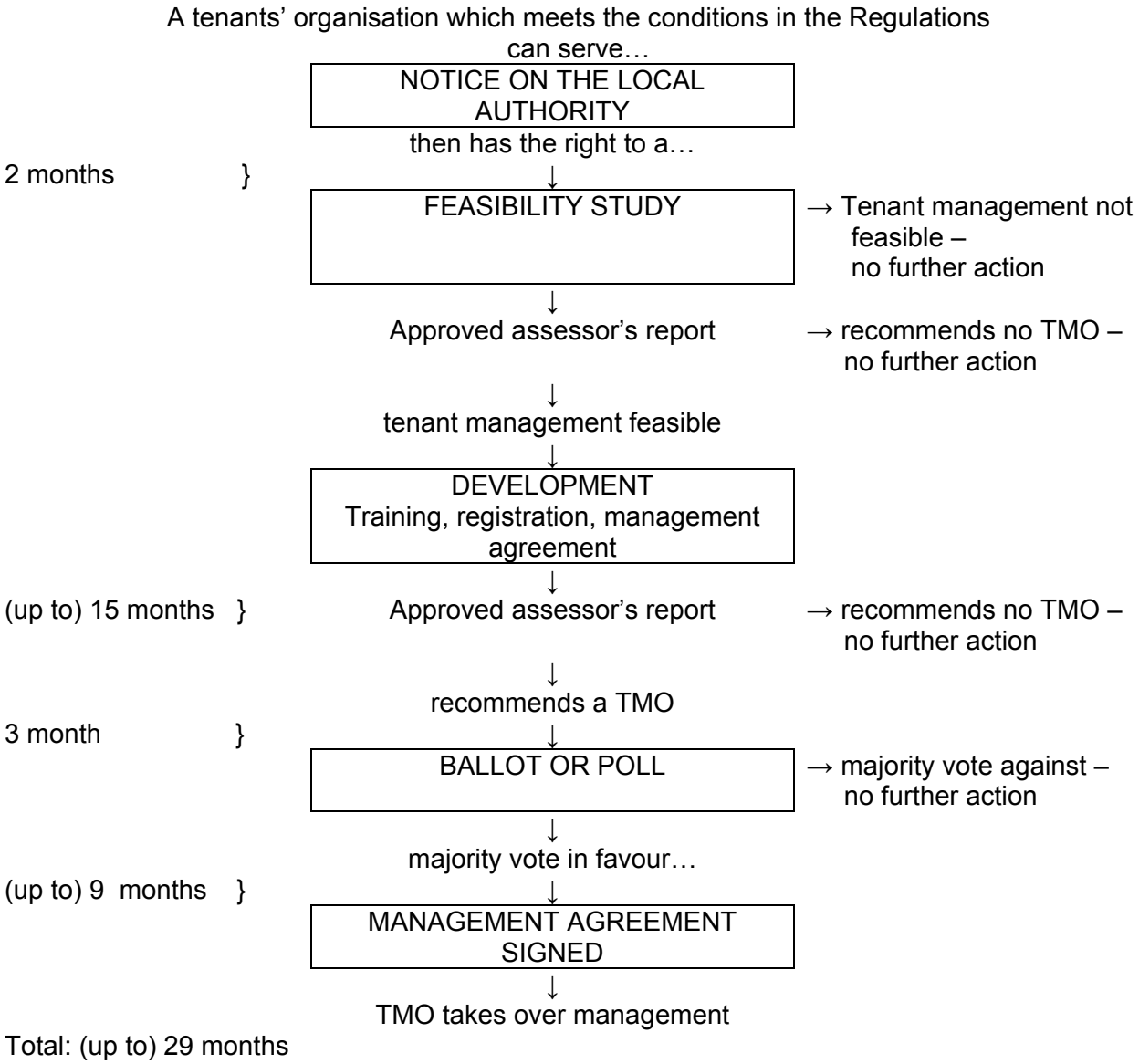
Current Housing (Right to Manage) Regulations 1994



Total: (up to) 43 months

Note: Timescales can be shortened if the TMO and council agree in writing, they can also be extended for a specific period

New Housing (Right to Manage) (England) Regulations 2008



Total: (up to) 29 months

Note: Timescales can be shortened if the TMO and council agree in writing, they can also be extended for a specific period

ANNEX B

Definition of Tenant Management Organisation

For the purpose of the definition of "tenant management organisation" in section 27AB (8) of the Housing Act 1985, the conditions which a body must satisfy are that its constitution-

a) specifies an area as being the area of the organisation in relation to which it may serve a proposal notice;
b) provides that any tenant of a dwelling-house in relation to which the organisation could serve a proposal notice may become a member of the organisation
c) provides that in conducting its affairs the organisation shall avoid discrimination against any person on grounds of racial origin, gender, sexuality, disability or religion: and
d) provides either that the affairs of the organisation shall be conducted by the members of the organisation at general meeting, or that they shall be conducted by a committee or board of directors elected by the members of the organisation

SI 627 1994. Housing, England and Wales. The Housing (Right to Manage) regulations 1994

Annex C

CLG Review of Right to Manage: Questionnaire to Approved Agencies

The questions listed below were sent to the following Approved Agencies:

Question 1: Do you agree that the existing Right to Manage Regulations are becoming increasingly outdated and are in need of revision?

Question 2: Do you believe that the proposals will impact financially on you as an "approved agency"?

Question 3: If you have answered 'yes' to the previous question can you indicate whether you believe the impact will be negative or positive?

Question 4: a) Can you expand your answer tot eh last question: If you believe that the impact will be detrimental (negative) financially to your agency, can you provide an estimate of the impact in monetary terms

Question 4: b) Can you expand your answer tot eh last question: If you believe that the impact will be beneficial (positive) financially to your agency, can you provide an estimate of the impact in monetary terms

Question 5: Do you think that the 'Approved Person' list serves a purpose?

List of Approved Agencies

Agency for Community Empowerment Ltd
Banks of the Wear Ltd
First Call Housing Consultants Ltd
Open Communities Ltd
Priority Estates Project Ltd
PS Consultants & Training Services Ltd
SOLON Community Network
Tenant Participatory Advisory Service Ltd
Anthony Collins Solicitors LLP
Birmingham Co-op Housing Services
Small Businesses
Partners in Change Housing & Community Ltd
PPCR Associates
SAFE Neighbourhoods Unit
Source Partnership

The relevant responses follow.

43 % of the agencies questioned, responded:

Response: 100% of those questioned agreed that the existing Right to Manage Regulations are becoming increasingly outdated and are in need of revision.

Response: When asked if they believed our proposals would impact on them financially, 50% of respondents answered `yes', 33% thought 'no' impact and 17% were unsure.

Response: Of those who answered 'yes' to question 3, 50% thought there might be a negative impact on them financially, 17% were not sure if the impact would be negative or positive, and 17% did not answer.

Response: 100% responded `Yes'.