The regulatory framework for social housing in England from April 2010

Analysis of respondents' views

TSA

TENANT SERVICES AUTHORITY

March 2010

The regulatory framework for social housing in England from April 2010

Analysis of respondents' views

March 2010

Decision statement

This document is published to support The Regulatory Framework for Social Housing in England from April 2010, which is the TSA's decision document on its new regulatory framework, published March 2010.

If you have any queries about this document please contact:	The Customer Service Team The Tenant Services Authority 4th floor, 1 Piccadilly Gardens Manchester M1 1RG Telephone: 0845 230 7000 Email: enquiries@tsa.gsx.gov.uk
The main decisions of the TSA recorded in this document	No formal decisions are contained within this document. It sets out a summary of stakeholder views on the TSA's statutory consultation on its new regulatory framework (published in November 2009). It also sets out some commentary from the TSA on how we have taken the responses into account in developing our decisions, which are published in The Regulatory Framework for Social Housing in England from April 2010 (TSA, March 2010).
Who has been consulted	The TSA has undertaken an extensive process including three stages of consultation. These were supplemented with many bilateral meetings and specific stakeholder events. To support our engagement, we established a sounding board of stakeholders and three advisory panels representing providers, tenants and advisors. Membership of these panels was set out in subsequent consultation documents. The first stage of engagement was our National Conversation from January to May 2009. Aimed at understanding the views and priorities of tenants across the country, it included national and local events and detailed research and surveys. This was arguably the largest ever discussion with tenants in England, introducing 'local conversations' to support innovative ways for tenants to get together and contribute their views on our proposals. As a result, we received 27,000 responses to our questionnaire. We published the main conclusions from the National Conversation in June 2009. This informed a second stage with the publication of a discussion document in June 2009. This described ideas and some proposals for the new regulatory framework. We received 325 written responses to this document. It posed ten key questions on which we wanted feedback before making decisions. A summary of responses to this document was published in October 2009. All non-confidential

	responses are available from our website. The final stage was the publication in November 2009 of our statutory consultation document. This set out our formal proposals on the new framework. It was supported by the publication of two supplementary consultation documents on our use of powers and consents for disposals. We received 491 written responses to our statutory consultation. This document contains a summary of these responses and how we have taken them into account in coming to our decisions. It is not designed to be exhaustive and all non confidential individual responses can be viewed on the TSA's website. The following gives a breakdown of the 491 responses: • 47 from tenants or tenant representatives • 163 from currently registered housing associations and their representatives • 92 from councils or local authority representatives • 33 from ALMOs or ALMO representatives • 73 from current housing associations owning less than 1,000 units and their representatives • 69 from other respondents • 14 from members of our sounding board
Context for this document	The Housing and Regeneration Act 2008 followed the 2007 Cave Review of social housing. The Cave Review made a clear case for reform, to introduce greater protection, choice and involvement for tenants of social housing in England. The government has issued two documents that are relevant to the TSA decisions. The first contained its Directions to us on three particular standards (Directions to the Tenant Services Authority, November 2009, CLG). These relate to rents, quality of accommodation and tenant involvement. Our standards must comply with these directions. The second contained the government's statement of policy intent in terms of our powers in relation to local authorities (The Housing and Regeneration Act (Registration of Local Authorities) Order 2009 Consultation, November 2009, CLG). Parliament approved this order[1] in March 2010.
Other versions of this document available	We can provide this document on request in large print and translated into the five languages that, apart from English, are most commonly spoken by social housing tenants in England. These are Arabic, Urdu, Bengali, Somali and Turkish. These are available on request from our customer service team (see contact details).

[1] Laid as Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010.

1. The TSA's approach to co-regulation from 1 April 2010

Introduction

1.1 In our November 2009 statutory consultation document, we set out the rationale for regulation of social housing, our approach to reducing burdens, our description of co-regulation and our approach to standards (national and local). We asked stakeholders the following questions:

> (Q1) Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?
>
> (Q2) Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?
>
> (Q3) Does it seem reasonable to extend the same approach to those providers owning less than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?
>
> (Q4) Does our approach to the regulation of councils seem reasonable?

(Q1) Principles for co-regulation from 1 April 2010

1.2 Overall there was strong support expressed by respondents including our statutory consultees for co-regulation being the operating principle of the TSA from 1 April 2010. There was also general support for how the TSA sees this working in practice as expressed in its ten principles for co-regulation set out in the November 2009 document. Many respondents raised a number of issues to help refine the TSA's approach.

<u>"Capacity" for co-regulation, tenant empowerment and TSA's role in good practice</u>

1.3 Several stakeholders noted that for co-regulation to operate effectively both tenants and governing bodies would need to build capacity over time. TPAS, NTV[2] and TAROE all suggested that although there was significant appetite among tenants to make co-regulation work this would need to be supported by capacity building and resources that included training and development. NTV suggested this would require a culture change on behalf of many providers. Many respondents asked the TSA to bear this in mind in its view on the timetable from 1 April 2010 and what could reasonably be expected by when.

1.4 TPAS felt that the central role for tenant scrutiny should be emphasised and this was more than simply monitoring performance against the standards. A joint response from TAROE, NFTMOs and CCH pressed the TSA to bolster the emphasis on tenant empowerment in the standards. However, an opposite view was given by some providers, (including the G15), who expressed concern about the emphasis given to the notion of empowerment, which they felt was ill-defined. Generally speaking these

[2] Annex 1 contains a key to organisations' abbreviations that are referred to in this document.

providers would prefer the TSA to use the term involvement or engagement in preference to empowerment. Some also pointed out the TSA's fundamental objective in the 2008 Act is phrased in terms of opportunities for involvement rather than empowerment.

1.5 Some tenants and providers asked the TSA support the co-regulatory process with its work on good practice, in order to demonstrate its role as an improvement focussed regulator. In particular it was suggested (eg by the NTV) that the TSA should promote tenant involvement by defining and drawing up examples of good practice particularly, but not exclusively, around tenant engagement. This role also received some support from providers. In addition to landlord led good practice it was suggested that tenants should be encouraged to identify their own examples of good practice, thereby ensuring a bottom up/top down approach. However, some caution was expressed about the TSA's role in good practice. The CIH suggested that the TSA should not have a role in identifying and communicating best practice, preferring this to be left to the sector because of the risk of it being seen as 'rules' from the regulator and blurring the distinction with regulation. Stakeholders in general however saw a positive role for the TSA in providing leadership in good practice, and particularly in ensuring good practice is accessible to tenants.

Identifying providers with performance challenges

1.6 Many providers wanted clarity about what constitutes a 'poor performer' and on the approach that the TSA would use to grade (or otherwise) its judgements on providers performance. More detail on the penalties for non-compliance with the national standards was also required – some suggested that the outcome focus was too broad and that the TSA should clearly define poor performance and inspection/intervention triggers/thresholds.

Inspection and the Audit Commission

1.7 A large number of respondents including NHF, LGA and NFA, asked for greater clarity about how the inspection regime will operate in practice after 1 April and the TSA's input to Comprehensive Area Assessments (CAA). Many housing association providers expressed concern that the inspection methodology (currently called Key Lines of Enquiry, or KLoE) should not become a regulatory code of practice by the back door. It is important that the inspection regime is aligned to the outcome focussed standards. Some asked the TSA to avoid inspections in the interim period before the new inspection arrangements are due to come into effect, currently planned for October 2010.

Transparency of performance reporting

1.8 The principle of transparency in performance reporting was generally welcomed however some providers said that commercially sensitive information should be excluded. Many respondents pointed to the tension between local standards and comparable information with many asking the TSA to work with the sector to develop more benchmarking. Many providers suggested that the TSA could rely on other accreditation schemes to provide regulatory assurance eg customer service excellence, international standards (ISO) etc. Whilst external validation was welcomed there was a general feeling that more information is required and that this

should not be seen as a "consultants gravy train" for those without existing systems or the capacity to build them internally.

1.9 Many councils welcomed the TSA's commitment to rely on existing data sources and avoid any additional data burdens in the first year of operation. Some, however, requested clarity for what might happen after the first year. Many respondents suggested that the TSA should develop some key domain wide relevant performance indicators.

1.10 The deadline for the production of the annual report for tenants was a common theme with most respondents on this issue suggesting that an October reporting deadline would be better than July as this would both better align with financial reporting timescales and give an opportunity for up to date comparative performance information to be used in the report.

Equality and diversity

1.11 A number of respondents including TPAS felt that equality and diversity issues were not articulated strongly enough in the TSA's approach despite being described as a cross cutting theme. One of the co-regulatory principles describes six diversity streams and a number of respondents suggested that there are in fact seven streams. More specifically some respondents said that when providers and tenants agree local standards they must be reconciled with interests of minority groups and the seven equality strands.

Incentives for continuous improvement

1.12 Some respondents, including the NFA, Audit Commission and a number of ALMOs, questioned whether our approach to co-regulation could blunt the incentives for continuous improvement especially if our resources, such as commissioning inspections, are targeted at identifying those providers with the greatest performance challenges. Some ALMOs in particular thought the standards are no more than is expected of a 2* organisation and could appear to lack ambition. There were concerns expressed that unless there are credible incentives to continually improve, some providers may 'coast' or worse still lower the standard of service.

Approach to de-regulation and codes of practice

1.13 There was general support for our proposals to remove the existing Housing Corporation circulars and good practice notes, and avoid developing TSA codes of practice to support the standards from 1 April 2010 (including support from NHF and LGA). Some stakeholders asked us to set out a full list of these circulars. Some providers did, however, express concern about the removal of the 'good practice' information (as distinct from the regulatory obligation) in the guidance notes. Some also asked for greater clarity in what was expected against the standards.

1.14 CML said that whilst it supported the general thrust of the TSA's approach it was keen to ensure there was comparability in viability assessments. It was concerned about the removal of the treasury management good practice note.

Periodic review

1.15 Some responses said the framework should be reviewed after a time (suggestions from one year to three years) to agree lessons learned and implement any necessary change.

Appeals

1.16 Some respondents including the NHF and G15 asked the TSA to set out clearly how providers could appeal against its judgements and decisions when the new framework comes into effect from 1 April 2010.

(Q2) The TSA's general approach to setting national and local standards

National standards

1.17 A large number of respondents said that the areas in which the TSA had developed standards were appropriate. For example, the HCA said it generally supported our approach, which was well thought-out and justified, with balance between ensuring a well-run sector and the need to enable providers to run businesses without unnecessary intervention. The Audit Commission felt that we had developed a rational set of national standards and our proposals were logical and easy to understand. TAROE agreed with the scope and design of the standards. Support in principle was also received from our statutory consultees such as TPAS, the Charity Commission and CML. The majority of respondents from tenant bodies, housing associations (including smaller providers), councils, and ALMOs either expressed support for our approach or support in principle subject to some comments on how to refine or improve the standards.

1.18 Some of the concerns raised about the approach to national standards included:

- detail of the national standards. Some respondents such as the LGA suggested that the national standards contained too much detail and prescription and some aspects related to processes. They pressed the TSA to ensure standards were clear, concise and with all aspects relevant to outcomes that matter. TAROE warned, however, that too little detail in the standards and absence of further TSA-prescribed guidance may not provide enough direction to landlords on what is acceptable practice
- balance between outcomes and specific requirements. Several stakeholders such as the LGA and NHF said that the specific requirements, albeit in many cases sensible things for providers to do, should not be made mandatory and it should be possible for providers to meet the outcomes without necessarily meeting the specific requirements. This would encourage innovation
- degree of aspiration in the standards. Some respondents such as NTV, the NFA and some ALMOs queried whether the 'pitch' of the standards was more akin to a minimum and how this would encourage providers to aspire to better services
- clarity. Several respondents including the LGA challenged the TSA to express the standards in a manner and format that was accessible to tenants

Local standards

1.19 The vast majority of respondents expressed support for the principle of local standards and our proposals. Many tenants and providers pointed out that local

standards, arrangements and agreements are already in place in many areas and the TSA should build on this good practice and not frustrate it inadvertently.

1.20 There were a significant number of responses who challenged the TSA to provide greater clarity about the requirements around local standards or who had specific concerns about how local standards should be regulated. Among the main points raised by respondents were:

- regulating the delivery of local commitments. Tenant bodies such as TAROE and TPAS tended to argue for the TSA to adopt a more assertive stance towards the regulation of local standards given the underlying lack of market power of tenants. TAROE argued that it was imperative that the TSA regulate where landlords failed to deliver local standards. Others including the Audit Commission said that the TSA should have a more active role when there was evidence of local standards not being delivered, as the requirement of 'self-policing' may not be appropriate in all cases. This was balanced by some provider bodies such as the LGA and NHF who argued that the TSA was taking an overly prescriptive approach and it should avoid setting out the areas upon which local standards should be agreed and should not regulate the delivery of local standards
- interplay with TSA's six national standards. Many respondents, including the CIH, sought greater clarity on the relationship between the six national standards and the requirements for local standards. Some providers argued that the distinction between national and local standards was arbitrary given most providers would seek to discharge their obligations to a number of national standards through some form of local tailoring: there would not be two standards running concurrently in areas. A number of respondents, including the LGA, questioned whether it was possible for tenants and providers to agree a local requirement that did not meet national standards where this was a reasoned decision that took into account the prioritisation of resources. Some respondents asked for greater clarity from the TSA as to how we will use our resources in practice to encourage and monitor local standards (including CML who was concerned about TSA resources being diverted from work on governance and viability)
- language. The NHF and a number of housing associations (including the G15) argued that it would be better to frame the requirement for local standards as a local arrangement, local agreement, or local priorities, which identified how standards will be delivered following a local consultation and involvement process. Some respondents considered that the terminology for local standards ought to be decided by providers with their tenants; the important element was the requirement to involve tenants
- definition of 'local'. Some tenant bodies including TPAS argued that tenants should define local. A number of local authorities, principally, but not exclusively in London argued for the ability to set and monitor local standards – a view shared by TPAS in relation to some of the standards that require partnership working such as anti-social behaviour (ASB). A significant number of housing association respondents stressed that definition of local must be a matter for the landlord with its tenants. They expressed concern that local standards should not become a vehicle by which local authorities imposed authority-wide standards and take on regulation functions. Some respondents, including the NFA, were concerned about the ability for housing associations with dispersed stock to have their own view on 'local'. Although the G320 agreed with the proposals in principle, it argued that there may, especially for small or specialist providers, be ways of developing more tailored service offers that are not demarcated by

geography, such as related to the demographic of the tenants (eg older tenants). This tailoring needs to be seen as legitimate

- reaching agreement. Some respondents such as NTV were concerned about how an impasse would be resolved where a landlord and tenants could not agree a local standard. Some tenant bodies felt mediation was a weak solution. On the other hand some providers expressed concerns about whether the standards mandated that agreement must be reached, which took no account of whether the demands were reasonable and could be afforded
- timetable. A number of respondents, including the LGA, London Councils and the NHF, argued that the proposed timetable for developing local standards was challenging and makes unrealistic assumptions about the capacity of tenants and, in some cases, providers to meet these dates. In particular, the July timetable for publishing annual reports does not allow substantial time for involving tenants through consultation or scrutiny, nor does it synchronise with other annual reporting processes (such as accounts and other existing performance reporting) and will therefore be burdensome – this is likely to be a particular challenge for smaller providers. However, some respondents including CIH thought the timetable was reasonable
- leaseholders. Some respondents both representing tenants and providers said that in practice it would not be appropriate to exclude leaseholders from the development of local standards
- existing contractual arrangements. A small number of respondents asked how our standards framework and the requirement for local standards would interact with certain types of existing contractual arrangements for the provision of social housing, particularly those developed under the private finance initiative (either by local authorities in relation to existing or new social housing, or by housing associations that had developed social housing for particular types of client groups such as key workers or students under agreements with third parties such as NHS Trusts or education institutions). These contracts will often provide for the delivery of different elements of housing service to clear specifications and performance targets

(Q3) Providers owning less than 1,000 units

1.21 Providers owning less than 1,000 units and their representatives such as the G320 were generally supportive of the TSA's co-regulatory approach. There was strong support for the standards to apply no matter how many units the provider owned including support from many of the TSA's statutory consultees. The principle that every tenant mattered should not be dropped simply because a provider had fewer units than another provider. Also some councils suggested that in their strategic place-shaping role, it was important that providers in their areas owning less than 1,000 units should not be outside the regulatory framework. Others, including TPAS, mentioned that timescales could be longer for the smaller providers given their limited resources.

1.22 Some providers with less than 1,000 units raised queries about how the principle of proportionality could be applied in practice especially in relation to reporting requirements and burdens and the costs of benchmarking for very specialist/niche providers. They were also keen for the TSA's requirements not to duplicate the requirements of other regulators eg Care Quality Commission. The NHF and some others questioned whether there should be a distinct category for the very small providers owning less than 50 units. Smaller providers broadly supported the

principles in our proposed approach to them, as did other types of respondent. However there were some important qualifications to this.

1.23 It was emphasised that smaller providers are a diverse part of the sector but with the main common feature being that their size meant that they generally had a much smaller corporate resource to service the range of regulatory requirements that we and other regulators required of them. Ensuring that our requirements were genuinely proportionate and realistic for small providers was a very strong theme.

1.24 Smaller providers, particularly the very smallest, were also concerned that the distinction between local standards and national standards was largely redundant given their size, and that many of the very small providers were run entirely by voluntary board members or trustees.

1.25 Some respondents noted that the 1,000 home threshold was not in itself sufficient to determine the risk profile of an organisation or its complexity.

1.26 This was a point reinforced by some council respondents, including the LGA and London councils which observed that smaller providers were in some cases significant social housing providers in particular local authority areas, and they were concerned to ensure that the threshold did not inappropriately reduce the visibility of the role of those providers in particular areas.

1.27 Several respondents argued that we should not de-regulate associations with less than 1,000 properties – their tenants deserve the same 'deal' and they can be some of the more risky associations. The CCH has argued that most co operatives are 'small' but achieve high standards of tenant engagement/satisfaction and they should be better supported by regulation.

1.28 A number of specialist providers, particularly of supported housing, observed that they had already to comply with other regulatory regimes and that these should be taken account of in our activities, and that our requirement for local standards was often hard to apply where they provided short term, high turnover housing for particular groups.

(Q4) TSA's approach to regulating councils

1.29 The LGA welcomed the establishment of cross-domain regulation and the TSA's commitment to operate within the local performance framework. However, it pointed to a number of areas where it was concerned this might not be the case in practice (such as the whether local standards required local targets, and the potential overlap between the value for money standard and the Audit Commission's use of resources assessment). Others expressed support for the TSA's position including the Audit Commission and CIH. London councils expressed support for the TSA's approach and were particularly keen to work with the TSA to ensure regulation supported councils' strategic place shaping role. Individual council responses were largely supportive of the TSA's approach though some said that the TSA needs to do more to understand councils and their governance and financial contexts.

1.30 The NHF and some housing association providers argued that the TSA's proposals appeared too lenient towards councils and gave the impression that the playing field was not level across the domain. This concern about an unlevel playing field was also

raised by TPAS, TAROE, NTV and NFA. However, these respondents appreciated this was based on decisions the government had taken in setting up the statutory remit for the TSA rather than the TSA's regulatory policy itself. These respondents, in particular, mentioned the absence of the TSA's power to set standards for council providers in relation to governance and financial viability and the difference in the formal intervention powers available to the TSA in the event of failure to meet the standards.

1.31 The LGA, CWAG, NFA and some individual councils and ALMOs asked for greater clarity about how the regulatory relationship would work between the TSA, the council and its ALMO. LGA and CWAG supported the principle that ALMOs should not be treated any differently by the TSA to how it deals with housing associations' managing agents.

TSA commentary on responses

(Q1) Principles for co-regulation from 1 April 2010

"Capacity" for co-regulation, tenant empowerment and the TSA's role in good practice

1.32 We have been pleased with the degree of support from stakeholders for our co-regulatory approach. There has been strong support for the principle that the prime responsibility for meeting the TSA's standards must lie with boards and councillors of providers and in doing so they must involve tenants in decision-making and scrutiny in a way that compensates for tenants' lack of 'market' power.

1.33 We consider that there is a strong platform among many providers for making co-regulation work. Nevertheless, we accept the point raised by some respondents about the need to develop further capacity within some tenant bodies and providers to make co-regulation work effectively. Our 2008 tenant research survey found that whilst 53% of tenants were satisfied that they had opportunities to be involved in decision-making, around 18% felt that their providers took no account of their views.

1.34 To help develop tenant capacity for co-regulation, we have established clear expectations of providers in our tenant involvement and empowerment standard of the outcomes we expect to see regarding tenant involvement and capacity building. The importance of this is underlined by the Direction we have received from the government.

1.35 In the early stages of the new regulatory framework we consider that there is a further role for the regulator to support effective capacity building to make co-regulation a success. In doing this we are clear that our role should be to act in a strategic way to identify some required priorities and then work effectively with others within the sector to support their development of material and support.

1.36 We intend to use our tenant excellence fund to identify, support and share good practice among tenants and providers. We want to work closely with representative organisations to identify and share good practice rather than the TSA being the 'owner' itself of such good practice.

1.37 In 2010-11 we shall communicate the results from the work we have supported on tailoring the standards to local priorities (known as “local standards pilots”). We shall also work with others on developing and communicating good practice in effective tenant scrutiny approaches. We also want to work with others to help refine the definition of terms such as involvement and empowerment given the feedback we received.

1.38 The TSA’s standard in relation to tenant involvement and empowerment has to comply with the government’s Direction to the TSA on tenant involvement. The overall policy aim behind the direction was to ensure that social landlords offered the full range of opportunities for tenant involvement and that tenants were equipped with the skills needed to make use of them. The government labelled its Direction ‘tenant empowerment’ to allay any fears that the use of the term ‘involvement’ represented a shift in the government’s fundamental policy aim in setting the Direction. In addition, the part of the Direction dealing with tenant capacity building is phrased in terms of supporting ‘empowerment’. The government notes there are no firm definitions of what constitutes the terms involvement and empowerment (and their meaning is sometimes contested) although it recognised that the latter was commonly held to imply a greater degree of influence and control over the management of homes.

1.39 We understand that there is some degree of confusion among stakeholders as to what the term empowerment means. Our view is that involvement and empowerment are complementary and:

- empowerment requires information, the ability to be heard, to hold providers to account, to influence service delivery and the decisions that providers take. Tenant empowerment can operate at both an individual and collective level and requires a proactive approach by providers to support tenants to share power with them over the decisions that impact on the things that matter to them
- tenant involvement is the process by which tenant empowerment is enabled. To be empowered tenants need to be able to be involved – to have their voice heard and to be consulted on issues that affect them and to know how their landlord will listen to their views. Effective involvement must take into account equality and diversity issues and use a variety of approaches that design in different appetites and abilities to be involved ‘from the doorstep to the boardroom’. Effective involvement also avoids discriminatory processes to ensure all tenants have an opportunity to contribute and to be heard

1.40 Nevertheless, we do not think it is helpful at this time for us to ossify a definition for these terms into the standards when they may have legitimately different interpretations at the local level.

1.41 Co-regulation is much more than tenant involvement in decision-making and scrutiny of performance. Boards and councillors who govern providers – who have the prime responsibility for meeting the TSA’s standards – will need to assure themselves that they have the requisite skills, processes and systems for meeting the outcomes in all the TSA’s standards. They will also need to be comfortable in assuring themselves they have transparent, objective, and where appropriate independently validated performance scrutiny.

1.42 Our governance and financial viability standard sets out the outcomes we expect to see but it does not seek to put the regulator in the role of a 'shadow board' member. Although a small number of providers have asked the TSA to set out more detailed requirements, we consider that doing so could pose risks in terms of undermining the principle of accountability of those individuals with the responsibility of managing and governing organisations. It would also undermine the central co-regulatory message which is that the principal relationship for discussing service priorities and scrutinising performance should be between providers and their tenants rather than between providers and the regulator.

Identifying providers with performance challenges

1.43 Given the volume of feedback on this point, we have set out in more detail in section 3 of the main regulatory framework document our approach to compliance and identifying those providers with the greatest performance challenges.

Inspection and the Audit Commission

1.44 We recognise that our approach to inspection and our relationship with the Audit Commission was a key theme from the responses and from our engagement with stakeholders. Accordingly, section four in the main regulatory framework document sets out our approach to inspection, relationship with the Audit Commission and our role in CAA. It also sets out the timetable for the joint review of the inspection methodology in 2010-11.

Transparency of performance reporting

1.45 We are pleased with the feedback supporting our approach to data requirements for 2010-11. We are keen to rely on information that is 'used and useful'. Our draft corporate plan published in February 2010 includes a commitment to work with the sector to review the long-term data requirements with the aim of meeting the 2007 Cave Review aspiration of 'less information but of more value'. Additionally, we shall further develop our web portal over time to help make available useful information to tenants and providers about the performance of providers in the local area.

Equality and diversity

1.46 We accept the feedback to our consultation that we ought to make it clearer that providers must take into account equalities and diversity and tenants with support needs in all their activities relating to the standards. The tenant involvement and empowerment standard has been amended to reflect this. There is now a separate requirement relating to diversity which makes our expectations clear in relation to the seven equality strands and to tenants with care and support needs. The regulatory framework document expresses our commitment to the importance of equality and diversity in all our work.

Incentives for continuous improvement

1.47 We agree with those who argued that continuous improvement is an important issue especially for those providers whose performance is not so poor so as to risk regulatory intervention but nonetheless fail their tenants by offering either the bare minimum or a mediocre service.

1.48 The question is how we use our regulatory levers to encourage continuous improvement in a way that meets the better regulation principles – specifically in a way that is targeted, proportionate, accountable and consistent. Based on feedback from our various consultations we are not convinced that inspection should be the sole or main lever to achieve this. We note the support from various stakeholders on our approach to targeted inspections.

1.49 We have considered a range of ways in which we can support provider-led continuous improvement; our approach is set out in section three of the regulatory framework document.

Approach to de-regulation and codes of practice

1.50 Having reflected on responses, our regulatory framework document reaffirms our position that there will be no TSA codes of practice coming into effect on 1 April 2010 to support the new standards. On treasury management, we consider that this is an area of risk management for boards and our expectations through the governance and financial viability standard are that they will ensure they have sufficient skills, knowledge and advice to make informed decisions. The TSA's good practice guidance on treasury management (May 2009) remains available for reference by providers, in addition to any further good practice that may in future come forward from interested sector bodies.

1.51 Annex 2 of the regulatory framework document sets out the full list of existing circulars and guidance notes that will be withdrawn from 1 April 2010.

Periodic review

1.52 We agree with those respondents who argued for a periodic review of the regulatory framework, however, this should not set 'in stone' various aspects before then if learning from experience demonstrates a compelling reason to change. Our approach is set out in section one of the main regulatory framework document.

Appeals

1.53 We agree with those respondents who argued that there should be a policy on appeals against regulatory judgements and decisions, that operates in a more proportionate manner before the statutory routes of redress in the 2008 Act are triggered. Our regulatory framework document includes a commitment to set out a statement on our approach by summer 2010.

(Q2) TSA's general approach to setting national and local standards

TSA 'national' standards

1.54 We are pleased that respondents largely validated the areas on which we wanted to establish national standards and our final decision has reflected this. Given the extensive period over which we have been consulting and the strong degree of sector support for our proposals (and the fact that there is limited time between the publication of the regulatory framework document and commencement of the new

framework on 1 April 2010), we have been keen to maintain continuity with the November proposals except where there is a good reason for departure.

1.55 In finalising the standards we have reviewed each of the requirements to ensure they are the minimum necessary to enable us to meet our fundamental objectives in the 2008 Act, in particular to be able to identify and tackle those providers with performance challenges where tenants are being let down. Section two of the main regulatory framework document sets out our revised standards.

1.56 We agree with the NHF and LGA that there may be some standards where it is possible to meet the required outcomes without necessarily meeting the specific expectations. This cannot be the case for some standards, for example the tenancy standard relating to the government's formula for the maximum applicable rent levels. However, for other standards, there may be circumstances where a provider could meet the required outcome without necessarily meeting the specific expectations (for clarity, we have adopted this expression in preference to "specific requirements"). Our approach set out in section one of the main regulatory framework document reflects this.

Local standards

1.57 We have been pleased that the principle of local tailoring of service delivery has received widespread support from our stakeholders. Its interplay with the TSA standards and regulation is complex and we have reviewed our approach in light of responses.

1.58 We do not agree with those that argued that local standards should be entirely voluntary. The risk is that this leaves tenants unprotected in the event that a provider chooses not to listen to and respect local needs and priorities. Equally we do not consider that the TSA regulating the quality of all local standards is an appropriate step, given the risk this would interfere at the local level in discussions that are best undertaken between providers and their tenants.

1.59 We do, however, accept that the simple presentation of 'national' and 'local' standards as previously proposed may imply two standards in operation concurrently and this may not sit well with what providers and tenants will do in practice which is to tailor the provider offer against TSA (national) standard in a manner that reflects local priorities and has been agreed with tenants. The language of "local standards" might also lead to some confusion.

1.60 There is no option that has been put forward that meets all stakeholder views. After considering the range of options we think the most appropriate way forward is to keep largely to the approach we developed in the November proposals but with various amendments to reflect, such as:

- avoiding the simple distinction between national and local standards to respect the fact that providers will want to tailor their obligations to meet local priorities. Providers are required to act reasonably when discussing local tailoring with tenants, though they should take into account the context of the resources available and their other obligations such as under the value for money standard

- 'local offer' would appear a slightly better term than 'local standard', but we consider the nature of the engagement and regulatory requirement is more important than what it is called. Different providers and tenants may have views on what, to them, is the most appropriate terminology
- providers being required to set out for their tenants what their offer is in relation to the service delivery standards and then to meet these commitments
- in response to some concerns expressed by providers, the drafting of our standards does not mandate 'agreement' of local standards as we cannot regulate for the degree of acceptance by tenants. The standards are framed on the provider making a reasonable offer rather than reaching 'agreement' as such

1.61 Although in general leaseholders[3] are not formally covered by the 2008 Act we consider that providers, especially in multi-tenure areas, will be able to better reflect the diversity of its consumers where leaseholders are involved in the discussions around local standards. We consider that this is a matter for boards and councillors to consider in determining their approach.

1.62 The issue of local offers where there are detailed existing contractual specifications is not straightforward. We are mindful of the risks of interfering with contracts freely entered into and in compliance with the regulatory framework that applied at the time. In particular, we do not want to introduce uncertainty into these arrangements or unwittingly trigger provisions or negotiations that will lead to additional costs for providers and their tenants, particularly where the terms of contracts for specifying and measuring quality in housing service delivery were subject to consultation with tenants at the time.

1.63 Where local authorities or housing associations are party to these contracts in relation to low cost rented housing, our overall position is that these contracts should be the basis on which they report to their tenants in respect of how they meet national and local standards. Where, in consultation with tenants, it becomes clear that they do not form an adequate basis for defining local offers or do not provide for services that meet the TSA's standards, providers should discuss with the TSA in the first instance the options available for remedying this position.

1.64 Section one (especially figure two) of the main regulatory framework document sets out our approach to regulating local offers within the broader standards framework.

(Q3) Providers owning less than 1,000 units

[3] Section 68 of the 2008 Act results in some leasehold properties being included within the legal definition of 'social housing'. These are mainly shared ownership properties. It also includes (1) those housing association properties where grant (including as defined in section 77(3) of the Act) has been paid and where the leaseholder owns 100% of the equity in their dwelling or (2) it is owned under equity percentage arrangements. None of our standards under section 193 apply to these two groups. We call these "100% ownership leaseholders" for the purpose of this document. Relevant powers in the act focus on the tenants of low-cost rented accommodation and low-cost home ownership, not 100% ownership leaseholders. This reflected the government's view that these leaseholders had a degree of choice to move out of their homes, unlike most tenants in the sector, and are protected by contract and other legislation. We recognise that many areas of social housing have a mixture of tenures and our regulation, designed to improve outcomes for tenants, may well have positive effects for leaseholders.

1.65 Based on the feedback we have received we have developed an approach for smaller providers that is based on the standards applying, continued monitoring from our dedicated resource (currently called our RASA team), and reporting requirements that are proportionate to the scale and diversity of the operation of the provider. Section three of the main regulatory framework document sets out more detail on the reporting requirements.

(Q4) The TSA's approach to regulating councils

1.66 We understand the view that the legal framework governing regulation makes distinctions in various places with regard to type of provider. The government has consulted on our powers in relation to councils throughout the course of 2009 and strongly supported the principle of cross domain provisions as far as possible except where the legitimate democratic and financial differences of councils warrants a different approach.

1.67 We are clear that in setting our policies we are 'provider neutral' and the only differences that arise have their origin not in a policy choice made by the TSA but in the limit of perfect consistency in our powers. We note that the principle of the TSA concentrating on securing broadly comparable outcomes regardless of provider has received strong support throughout our consultations. Although we do not have specific powers to set standards for governance and financial viability for local authority providers and ALMOs, given the strong link between service delivery and good governance, we will work closely with the Audit Commission in their role overseeing local authorities' leadership and financial matters, with a shared aspiration of helping to ensure all tenants receive quality services.

Our conclusion – our approach to co-regulation

1.68 The TSA's decisions in relation to the principles that will influence our regulation from 1 April are set out in section one of The Regulatory Framework for Social Housing in England from April 2010 (TSA, March 2010).

2. The text of our standards

Introduction

2.1 In our November 2009 consultation document, we asked:

> Does the proposed text for the standards:
>
> (Q.5 a-e) - address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct business?
>
> (Q.5 f) - for the governance and financial viability standard, allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?
>
> (Q.5 a-f) - express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

2.2 This section sets out some of the key issues that have been raised by stakeholders and our views on these responses.

Summary of responses

Tenant involvement and empowerment standard

2.3 There was general support among respondents for the objectives in this standard, with responses focusing to a greater degree on the requirements for involvement and empowerment and (to a lesser degree) responding to complaints than on customer service and choice. Respondents expressed broad support for the TSA's direction of travel, but some tenant groups expressed the view that more prescription and more exacting requirements were needed, whilst some providers, including the NHF, felt that the standard was not sufficiently outcome focused and that there were elements of prescription of process. The NFA felt that the standard required was not high and represented the minimum that a landlord should aim for and were concerned that there is little in the standard to incentivise excellence in this area.

2.4 Many respondents commented in relation to the requirements on local offers (covered in section one). Some respondents pointed to some potential for duplication in the drafting.

2.5 A relatively small proportion of responses commented on the customer service and choice element, but those that did generally supported the proposal. However a number of respondents, particularly providers, emphasised that an ability to offer choices had to be framed within the limited resources available to them.

2.6 A number of respondents suggested that there should be reference to or a requirement for providers to undertake impact assessments of their approach to involvement and empowerment.

2.7 Some respondents, including TAROE, believed that we were taking a backward step on the role of tenant board members and representatives on governing bodies. The requirement to consult tenants at least once every three years on how many tenant members there could be might be seen as a green light by some providers to remove current tenant board members. Conversely some providers, particularly some stock transfer associations, were concerned that this would require them to make constitutional changes, and a wider point was made by a range of respondents that prescribing a review on a three-year basis was not 'co-regulatory' in nature.

2.8 The NFA, TAROE and some tenant groups said that the standard should compel providers to hold a ballot of tenants where there were significant changes in management and landlord, especially where there was a ballot in order to establish the present arrangements.

2.9 TAROE asked that the standard recognises the formal role of official tenant representative bodies.

2.10 As noted in section one, some respondents said that the standard should require providers to involve residents from tenures other than social rented homes, especially leaseholders, in discussions about local offers.

2.11 Some councils said that they were already under obligations to produce tenant participation compacts which our requirement in this standard duplicates.

2.12 One respondent asked about how the application of the requirement for local offers should be interpreted where registered providers had contracted with organisations such as education establishments or NHS Trusts and performance standards are specified in that contract.

2.13 On the requirements for complaints handling, the main issue raised by respondents was the need for clarity on the interaction of TSA with the role of ombudsman schemes which providers must be members of. There was particular concern that TSA should avoid overlapping responsibilities with ombudsman schemes.

2.14 Some tenant groups, including TAROE, expressed disappointment that the proposals did not establish what is termed as a "tenant trigger" which we understand to be a specifically designed process which enables tenants to initiate investigation by TSA where tenants believe there has been a failure by their landlord to meet standards.

Home standard

2.15 The majority of respondents were supportive of this standard and considered that it addressed priorities for tenants whilst taking into account the requirement for registered providers to be free to choose how to provide services and conduct business.

2.16 A number of respondents reiterated a theme from the consultation on the earlier TSA discussion document that the Decent Homes Standard (DHS) is very limited in its requirements and that the TSA's standard should be more ambitious, including in respect of sustainability of homes and reductions of carbon emissions.

2.17 A number of respondents asked in a general sense about what approach TSA would take where tenants indicated that they would accept a lower level than the national standard. This is particularly relevant as we have specified in the quality of accommodation standard that a lower standard is not permitted as part of a local deal.

2.18 A number of respondents, but particularly councils, wanted greater clarity on how we would reach a judgement on agreeing extensions to the deadline for delivering the decent homes standard by 31 December 2010. A few responses suggested that providers, when given an extension, should explain the reasons to their tenants.

2.20 Related to this, some providers made the point that although they and other providers might reach that deadline, their plans for doing so within the current policy framework had not assumed that they could fund ongoing compliance with the standard beyond that deadline, and stock condition as defined by DHS meant that individual homes would become non-decent on an ongoing basis as components aged or failed.

2.21 On repairs and maintenance, a number of respondents asked for further specification of the meaning of 'choice', particularly as this proposed standard included the phrase "offers tenants choice (for example about appointment times for carrying out repairs)". The NHF and a number of providers called for the removal of text referring to an example as they felt this would be interpreted as a requirement. The CIH commented that the phrasing of the standard needed to be more outcome-focused and less prescriptive. Again, a number of providers supported the CIH response.

2.22 A number of responses asked for greater clarity about what choices should be offered, for example whether it would extend to choice of contractor. One smaller provider expressed concern about the balance between choice and cost, since for small organisations there could be large budget implications in having to offer choice of repairs appointment times.

Tenancy standard

2.23 In relation to allocations, the principal feature of responses was that there was support for the outcomes broadly as expressed. However, providers expressed some concerns about specific requirements.

2.24 The NHF were concerned that the specific requirements focused on processes or were too detailed. They with a number of providers were concerned that reference to choice based lettings (CBL) schemes specified a mechanism rather than the objective for its use. A number of providers had specific reservations about participation in CBL including because they felt that the homes they provided were not amenable to inclusion in such schemes and that retaining control over lettings policy is the legitimate decision of their governing body.

2.25 Views from councils and their representatives largely focused rather on the desirability of greater consistency in allocation policies between providers at a local level, and the need to be clearer about the extent to which the TSA does or does not have a regulatory remit over the element of allocations activity which is within their strategic housing function.

2.26 Some respondents were concerned that the proposed requirements in relation to under-occupation assumed that under-occupation was a problem even where this was fundamentally an expression of a tenant's preference to continue to live in what is their home, and that it was a permission to landlords and councils to put pressure on older tenants to move.

2.27 The NHF and some providers observed that minimisation of void times was in tension or contradiction with an approach that was responsive to the needs of individual tenants and potential tenants, and with more intelligent approaches to mobility including managing transfers that would meet the needs of a larger number of households.

2.28 On rents, although the NHF and some providers were concerned about the definition of the rent restructuring regime on which the standard is based, including the specific concern about whether the original guidance on which the standard is based does permit rent decreases, respondents generally accepted the basis on which the rent standard was defined and that this needed to follow the terms of the direction issued by government.

2.29 Most respondents did not make any comment on the issue of tenure or security of tenure but several tenant groups suggested that more reassurance was needed on the issue of security of tenure. Although the narrative stated that there were no changes in policy, the exact drafting of the standard could be read by some providers with perhaps more flexibility than the TSA had intended. One housing association provider queried whether the draft text would allow it more discretion in its approach to security of tenure. TAROE considered that additional protection should be introduced to the standards to ensure that landlords did not make unilateral amendments to tenancy agreements. A significant number of respondents wanted clarification on the issue of starter and introductory tenancies and suggested that this needed to be addressed in a revision to the proposed wording of this part of the standard.

2.30 The NHF and a number of housing associations made the point that the primary formal mechanism which defined the relationship between landlord and tenant is the tenancy agreement, and it is the form of agreement which defines the respective rights and responsibilities of both landlord and tenant.

2.31 Some supported housing providers were concerned about a lack of flexibility in respect of tenure in supported housing schemes.

2.32 The LGA were concerned that the tenure obligations are written from the perspective of housing associations. They suggested that it may be better to frame this requirement by exception which is to say that assured shorthold tenancies, or less secure forms of tenancy, should only be used where there is an explicit specified reason.

Neighbourhood and community standard

2.34 Not all responses specifically addressed this standard. Of those that did, the majority were supportive of the proposed standard.

2.35 Some respondents, including the CIH, suggested that the partnership nature of the neighbourhood management element and the necessity of this being managed effectively to deliver the required outcomes needed greater emphasis, although some providers were concerned that this aspect of delivery made it difficult for providers to meet this standard if other partners were ineffective or uncooperative.

2.36 Similar issues were raised in respect of the local area cooperation part of this standard.

2.37 CLG asked that the anti-social behaviour element of our standard refer to revised core commitments of the respect standard. Although it has not formally consulted on changes to its respect standard, CLG has discussed these core commitment revisions with sector representative bodies. CLG asked that rather than reference its publication it would prefer that the basis for the revised core commitments is included directly within TSA's standard.

2.38 Although viewing the revised core commitments to the respect standard as a sensible step, several provider bodies such as the NHF and G15 raised concerns about the principle of 'policy passporting' in respect of this standard generally.

Value for money standard

2.39 Several providers and their representatives such as the LGA and NHF argued that we should not set a standard in relation to value for money. Some argued that this was not a role for the TSA to regulate; it was the role of the boards and councillors responsible for governing the delivery of services. The NHF also argued that this was a process and not in the spirit of the TSA's outcome focussed approach.

2.40 CML said that the drafting was focused very much towards influence and involvement of existing tenants but many decisions required in relation to value for money are about meeting the needs of future tenants, and this should be recognised in the standard.

Governance and financial viability standard

2.41 Most respondents supported the objectives and approach proposed by TSA for this standard. TAROE however were concerned that there should be greater prescription in defining what constituted acceptable governance arrangements.

2.42 As noted in other areas there continues to be disappointment on the part of housing associations and their representatives that this standard does not apply to council providers, and that ALMOs would prefer the standard was applied to them.

2.43 Conversely, councils and the LGA are clear that it is correct that the standard should not apply and would be duplicative of other regulatory requirements on their governance and finance arrangements.

2.44 The proposals in relation to financial viability were generally seen to be sensible other than concern expressed by some housing associations and ALMOs about its non applicability to local authority providers.

Our commentary on responses

Tenant involvement and empowerment

2.45 We recognise comments made specifically about this proposed standard, and more generally, that our standards could be made more concise and easier to understand by eliminating any duplication and enhancing the clarity of our intentions. We have therefore taken this opportunity to review the way the tenant involvement and empowerment standard, in particular, is expressed.

2.46 We have neither added to nor removed any of the significant outcomes or objectives that were proposed for this standard. However, we have:

- consolidated our requirements for customer service, choice and complaints into a single coherent statement of outcomes rather than the previous approach which treated complaints under separate outcomes and resulted in some duplication
- re-stated as a required outcome that providers must understand and respond to the diverse needs of tenants. This responds to various stakeholders who considered that our commitments to equality and diversity and tenants with support needs, although clearly identified as crosscutting themes, were not sufficiently well expressed within the standards. We have taken this approach, making it more explicit in the tenant involvement and empowerment standard, as this standard applies to the way providers must deliver all the standards. This approach also enables duplication in some other standards to be streamlined

2.47 We have also taken a more coherent approach to how the standard expresses the involvement of tenants in the design and delivery of services, which will include the way a provider meets the standards, which had previously been separated between the customer service and choice outcomes and those specified under involvement. There is now therefore a more holistic recognition of the value of tenant influence in delivering the TSA's standards and assessing the extent to which there is good customer service at the point of service delivery as well as the way it is planned.

2.48 Following our conclusion on the approach to local offers, we have inserted a common requirement into all the standards (including tenant involvement and empowerment but excluding governance and financial viability) for the annual report to tenants. There is further information elsewhere in this document, as well as in section one of our main regulatory framework document. This has also enabled us to remove from some standards the duplicative requirements relating formerly to 'local standards'.

2.49 We have not incorporated specific reference to impact assessments in our specific requirements. Although we believe impact assessments have a valuable role to play in supporting the delivery of the tenant involvement and empowerment standard, we want to leave it for tenants and providers to agree the best way in which the effectiveness of involvement and empowerment policies are captured and assured. We will support good practice that allows providers and tenants to learn from best approaches to impact assessments.

2.50 Whilst respecting TAROE's view on our approach to board members, we maintain that our concern should be on the outcomes from involvement rather than specific

mechanisms, such as number of tenants on boards. That said we recognise that tenants have a point of reference at present in relation to board membership, although this precise terminology does not resonate with council housing governance arrangements. We have modified our original proposed wording so that our expectation is that, should a provider use the standard to review its approach to involving tenants in the governance and scrutiny of the organisation's housing management service, it should ensure that any changes will lead to an enhancement of the overall effectiveness of their approach to tenant involvement.

2.51 We cannot confer to tenants through the standards certain decision making rights such as ballots where this is not permitted by the 2008 Act or other legislation. Nevertheless we understand the depth of feeling from tenants about this issue. Anxiety over the benefits of group structures was a key message in our National Conversation with tenants. We have refined our approach slightly by making it clear that change of landlord as well as significant changes of management arrangements requires consultation with tenants. Before granting consent to such changes we would expect the provider to demonstrate that it has done this and had regard to the results.

2.52 We understand TAROE's view about the lack of explicit recognition of tenant representatives in the standards. There is a careful balance to be struck here. On the one hand, many tenant bodies are highly effective and they are the established and legitimate vehicle for tenant views and representation. On the other hand, our approach to co-regulation places emphasis on the principle of 'every tenant matters' and encouraging providers to develop a wide range of opportunities for involvement. Explicit reference to current groups in the standards runs the risk of preserving and requiring no more than the status quo. We do not propose making specific changes but note that existing tenant organisations and bodies have a critical role to play in the delivery of effective co-regulation.

2.53 Our consultation specifically proposed that occupiers of low cost home ownership homes and intermediate rent properties should be involved in the establishment of local priorities. We agree that other occupiers of homes besides those in social housing (as specified in the summary of key terms in our main regulatory framework document) could benefit from this standard where it is relevant to them, including being involved in discussions about local offers. We do not think that it is the role of standards to mandate specific requirements for involvement for residents of homes that are not social housing.

2.54 There is not a specific statutory requirement for tenant participation compacts, although they became an established policy requirement of CLG (then the Office of the Deputy Prime Minister, or ODPM) within the best value framework. The current effectiveness of these compacts is the subject of an evaluation exercise. We certainly accept that where local authorities have used this framework effectively, it can be readily adapted and applied to meet our requirements. However, we therefore conclude that our standard is not duplicative in the sense proposed, and that the introduction of our standard offers an important opportunity for local authority providers to review the effectiveness of their arrangements and to update and improve them to meet the requirements of the standard.

2.55 The approach that we take to local offers where homes are provided for particular groups in association with and under contract to other organisations such as

education institutions or NHS Trusts is set out within our commentary on local offers, earlier in this document. There is not a simple answer to this because there is a wide range of terms for these contracts and it is this that will determine the extent to which compliance with our requirement for local offers is reasonable.

2.56 We have set out our commentary on what has been referred to as a "tenant trigger" in section three of this document, which describes the TSA's role in dealing with complaints made to us about providers' performance.

Home standard

2.57 The text of this standard reflects the terms of the Direction issued to the TSA by the Secretary of State. We set out how we propose to approach the question of making judgments on achieving decent homes within our regulatory framework document in the section on assessing compliance.

2.58 Whilst we acknowledge that many providers have improved and maintained their homes to a higher standard than DHS, the terms in which we have been directed must be established in the standard. The Direction from government does not provide for us to set a higher standard and our standards cannot provide funding for providers to meet higher standards.

2.59 We have clarified the intention for the required outcome for this standard, which on reflection we considered to be scoped inappropriately widely in our proposals. The terms we now use in the required outcome are exactly the same as those used by CLG to describe what is necessary for a home to be decent and directly cross reference the decent homes guidance as specified in the Government's Direction to the TSA. We have taken the view that it is preferable to avoid the risk of appearing to modify or refine the definition of this standard by ourselves using identical terms and definitions. We will therefore avoid creation of uncertainty as to what is meant by this standard (even if there is an objectively correct view that those terms and definitions could be improved or clarified).

2.60 We accept that the level of insulation or other improvement works which are required to meet the thermal comfort criterion in the decent homes standard are relatively low and the average energy efficiency of the social housing stock is significantly higher than the bare minimum level that the DHS implies. However the Direction does not provide for us to mandate higher requirements within the standard. We do make clear that in tailoring standards to local priorities, providers should have regard to section six of the Decent Homes Guidance, which includes guidance on the standard of work to be carried out and the timing and packaging of works. We think that this provides sufficient clarity on the discretion available to providers on the requirements of this standard, and that it is within the terms of the Direction.

2.61 We do not think that it is sensible to permit a lower standard for quality of accommodation even where existing tenants may accept this. There are risks to the viability of social housing providers, and the operation of the housing revenue accounting system for council providers, such that the accumulation of repairs backlogs that would arise from allowing lower standards could lead to unacceptable deterioration over a period of time in the quality of housing supply. Some providers may want to discuss with tenants whether there are good asset management reasons for doing work over a longer period observing the guidance in section six of the

decent homes guidance, and in such circumstances we would consider whether an extension would be reasonable.

2.62 In such cases the question we will consider is not whether we will accept a lower local standard than the national standard, but whether we will agree an extension to the deadline for reaching the national standard.

2.63 On repairs and maintenance, we have retained both the objective of aiming for repairs to be completed 'right first time', and to offer choices to tenants. We have removed the specific example noted in respect of choice over appointment times, following comment by the NHF, CIH and a number of providers. We agree that it was inconsistent given that we do not adopt the approach of giving examples in other standards, and that we should retain clarity about the outcomes required without specifying details that some may misinterpret as mandatory. Also, we do not want this aspect of choice to become the only choice offered because it is the only one explicitly identified in the standard.

2.64 We have modified the specific expectation (now 2.1) to make clear that the requirements for the repairs and maintenance service apply to homes and communal areas. The previous requirement that providers should communicate with tenants about progress on works has been consolidated into the specific expectations within customer service, choice and complaints (1.1 of the tenant involvement and empowerment standard).

2.65 In modifying the way we have expressed the requirement for local standards in the tenant involvement and empowerment standard, and the annual report requirement in all section 193 standards, we have removed the specific reference to a local standard in this section.

Tenancy standard

2.66 We have made some changes to the required outcome for allocations, including reference to clear application as well as decision making and appeals processes.

2.67 Our approach to choice based lettings does not require participation in circumstances where it would be unreasonable to do so. Rather it expects that there should be transparency in justifying why providers decide not to participate.

2.68 We do not regulate the allocations function of local authorities in their strategic function.

2.69 Our requirement in relation to under-occupation and overcrowding is not a mandate for coercion of under-occupying tenants. As with a number of the requirements in our standards, we are putting the onus on providers to understand the profile and individual position and needs of their tenants, and to actively develop services and choices that will meet their needs and preferences. For some tenants, this will include options to move to homes that better meet their needs.

2.70 In respect of minimising void times, we accept that there is a tension in reconciling the headline efficiency of void management with more considered approaches which ensure that there is good customer service. That is why we have qualified the

requirement by making clear that the circumstances of tenants to whom properties have been offered should be taken into account.

2.71 There are no changes to the part of the proposed standard relating to rent.

2.72 We agree that the form of tenancy agreement is the principal legal basis for defining the contractual relationship between landlord and tenant. The purpose of establishing standards within the new framework, including this standard, is to ensure that the terms on which those services are provided is not limited to the bare minimum statutory obligation and that provision of homes and services reflects and protects the purpose for which public subsidy has been invested in social housing.

2.73 It is our assessment that the standard as drafted is clear that there is no discretion to offer less secure forms of tenancy or other type of occupancy agreement other than in cases where this relates to the specific purpose of the accommodation (eg the use of licences in some types of supported housing) and the sustainability of communities through for example the operation of introductory and demoted tenancies, and family intervention tenancies, as part of providers' antisocial behaviour strategies.

2.74 We have decided against any further amendment to the wording in this element of the standard although we inserted an explicit note that it supports the policy intent of no change on security of tenure. That remains a matter for government policy.

Neighbourhood and community standard

2.75 We have made some minor changes to the wording of both the neighbourhood management and local area cooperation elements of these standards to express more concisely the requirement to work in partnership with others where this is necessary to achieve the outcomes.

2.76 Given the degree of support CLG has gathered from stakeholders, we have included its proposed requirements for ASB within the standard rather than cross-reference an external document (CLG's 'respect standard').

Value for money standard

2.77 We are clear we have a role in relation to value for money. The 2008 Act requires us to ensure that providers are efficient. We believe that it is important that the TSA sets out its expectations on providers in this area in the form of a standard to ensure that providers take an active approach to delivering the best possible value for the communities they serve. We are therefore setting a standard on value for money under section 193 of the 2008 Act.

2.78 The standard is clear in linking the assessment of value for money with the standards in relation to services delivered and not to replicate an entity level assessment that might overlap for councils with the role of the Audit Commission.

2.79 We accept the view from the HCA and others that more emphasis could be given to future tenants and the role of new supply. Our fundamental objectives in the 2008 Act make it clear that we are charged with ensuring an appropriate degree of choice and protection for actual or potential tenants.

2.80 In modifying the way we have expressed the requirement for local standards in the tenant involvement and empowerment standard, and the requirement for annual report in all section 193 standards, we have removed the specific reference to a local standard in this section. Similarly we have removed the reference to annual governing body scrutiny, which only appeared in this standard and is now a requirement that relates to all standards through the annual report arrangements.

Governance and financial viability standard

2.81 In response to specific points from respondents, we have added in an explicit requirement in relation to effective risk management in the governance part of this standard. We have also made some minor amends to the drafting of the governance requirements, to remove some duplicative detail from the outcome (relating to "structures, systems and processes") and to better express the annual review as an outcome (a report on effectiveness) rather than as previously a process of assessment.

2.82 We have also amended the wording of the requirements for those providers who are part of wider corporate structures that are not regulated by the TSA, to ensure there are effective mechanisms (so-called 'ring fencing' arrangements) in place to ensure delivery of TSA standards and other regulatory requirements.

2.83 We have made no changes to the financial viability element of this standard.

2.84 We agree with CML's assertion that there needs to be consistency in our approach to undertaking viability assessments. Rather than include these processes directly in the standard, we consider that this is best discharged through our explaining how we assess compliance against the standard and the information we ask from providers (save for councils who are excluded from the governance and financial viability standard). For continuity we intend to maintain our current approach to viability assessment in 2010-11. We will consult with the sector on any changes to the process of assessment, grading and data during 2010-11.

Conclusion

2.85 The feedback from stakeholders has significantly helped us come to final decisions on the drafting of the standards. We consider that the rationale for the standards in our November 2009 consultation document has been largely validated by responses and this document has sought to respond to those specific concerns where this not the case. Section two of our regulatory framework document sets out the six standards for registered providers of social housing.

3. How we regulate in practice

Introduction

3.1 In our November 2009 consultation document, we outlined the way in which the TSA would:

- assess compliance against the standards and other matters based on co-regulatory commitments that support providers' self-improvement
- approach to intervention and enforcement
- approach registration and de-registration

3.2 Specifically, we asked stakeholders:

(Q6) Does our approach to monitoring and compliance against the standards and regulatory requirements seems a reasonable basis for 'how' we regulate in 2010-11?

(Q7) Does our approach to dealing with complaints seem reasonable?

(Q8) Is our general approach to using our formal regulatory and enforcement powers reasonable? Do the principles within the detailed guidance notes seem a reasonable basis on which we should use our powers?

(Q9) Do our proposals for establishing registration and deregistration criteria seem reasonable?

Summary of responses

Our approach to improvement and assessing compliance

Support for sector-led self-improvement

3.3 In general, there was widespread support from non-profit and council providers for our overall approach to regulating providers' performance. A small number of tenants or groups of tenants also commented on these proposals, for the most part in agreement.

3.4 Most stakeholders welcomed the co-regulatory approach, accepting that boards and councillors are responsible for their organisation's performance and self-improvement, and recognising that accountability to tenants through engagement, transparency and scrutiny is a fundamental element of the co-regulatory settlement. There was strong support, for example from the LGA, for the TSA to focus its regulatory interventions on poor performers, based on risk assessment.

3.5 The main issues raised by providers, and also by the Audit Commission, centred on practicalities of the approach, mainly:

i) how will it be possible to compare or benchmark performance (inconsistencies between different providers' current prescribed data sets is mentioned in this context, as is the future impact of local offers).

ii) how will good practice be identified and shared, to support peer review and incentivise innovation and continuous improvement.

3.6 Respondents mostly supported a pragmatic approach in the short term and felt that these issues were manageable pending the further evolution of co-regulatory capacity across the domain. Some cautioned that published data should be provided with some context or supporting information to ensure truly like-for-like comparisons could be made. A number recommended that cross-domain comparability is potentially available through the existing subscription benchmarking services. A minority looked to the TSA to provide solutions, suggesting for example use of inspection or TSA codes of practice as ways of verifying and sign-posting good practice.

3.7 The NHF and a small number of housing associations expressed a view that it was unreasonable to require non-profit providers to engage in peer review and sharing best practice, since there maybe commercial considerations in particularly competitive environments such as housing management and support service contracts. The G15 considered that it is legally inappropriate to insist on sharing best practice and peer review, since housing associations are independent bodies.

3.8 Tenant responses supported the principles of enhanced accountability and scrutiny, and also recognised issues with identifying best practice and consistency of data. TPAS explicitly recognised the new nature of the co-regulatory environment and expressed pragmatism about the system developing with experience. TAROE recommended that the TSA should maintain some contact with all providers in order to support best practice. A response from a tenant group said that some degree of imperfect comparability was 'a price worth paying' provided outcomes achieved for tenants are specific, measurable and drive improvement.

3.9 Where tenants were less supportive of the approach, they seemed to indicate a lack of trust in providers being able to deliver their co-regulatory responsibilities. NTV, for example, expressed concern about providers' self-assessments where these have not been validated. Two responses were received from tenant groups disagreeing strongly with our fundamental approach.

Annual report to tenants

3.10 The majority of respondents agreed with our proposals for an annual report by providers about their performance on standards. A minority thought that October 2010 as the date for the first report did not allow enough time to set up arrangements and engage with tenants effectively, although more respondents said that they were already thinking about how this might take shape after April 1. The LGA would prefer the time of publication to be determined by landlords with their tenants.

3.11 A significant number of providers from all parts of the domain, including the NFA, suggested that in subsequent years, rather than July, it would be more suitable and useful to complete the report by September/October to allow opportunities for collating more meaningful information, and link with other corporate consultation and reporting processes.

3.12 It was widely recognised that the principal audience for the annual report should be tenants, supporting the aims of transparency and accountability. Most also recognised this will be a key source for the TSA to set alongside all other specific and contextual information in arriving at our compliance assessments. This has led to requests from some providers for the TSA to be clearer about our requirements for the annual report, with some council and non-profit providers suggesting we should issue further guidance or a sample specification for what it should cover.

3.13 There were also comments raised from providers and the CIH about the length of the report and its format in order to be an effective means of communication with tenants. For example, a few providers suggested that if the full details of performance on local offers were to be included, in order to meaningfully complete the picture of performance, then a single written document might not be a very accessible medium. Some tenant groups were concerned that providers would focus on presentational style rather than substance, and were therefore supportive of some further stipulation.

3.14 For ALMOs, there were different views expressed as to whether the responsibility for producing the annual report should lie with the strategic local authority, recognising the legal responsibility for service delivery under the 2008 Act, or whether instead the report should be prepared by the ALMO itself since it has the direct relationship with its tenants (this latter approach was supported by at least one response from a tenant group).

Use of inspection

3.15 Many respondents, notably CIH, NFA and TAROE ask for greater clarity about relationships between the TSA, the Audit Commission and councils particularly with regard to CAA and inspection of ALMOs.

3.16 Most respondents acknowledged the TSA's announcement with the Audit Commission to complete a fundamental review of the inspection methodology by autumn 2010, with an interim approach from 1 April based on a slimmed down application of the existing Key Lines of Enquiry (KloE). Many expressed the importance in the fundamental review that the inspection methodology arrives at an outcome focus that supports TSA standards. For the interim period, most providers were supportive of an amended approach. However, by far the most frequent comment from all respondents asked for greater clarity about processes for the interim arrangements, particularly the criteria for identifying candidates for inspection.

3.17 CWAG asked whether it could be clear that before commissioning an inspection the TSA would give the provider an opportunity for improvement or to clarify performance where compliance is of concern. They expressed the view that inspection should not be used as "an investigatory tool of first resort".

3.18 The NFA said it would be concerned if in continuing with full inspections for decent homes in 2010-11, it also had to prepare for inspections against the standards. There was a risk of duplication, confusion and inspection 'overload'.

3.19 The NHF and CIH raised a significant concern that during 2010 providers could be working to multiple inspection methodologies, taking also into account on-going action plans from pre-April inspections. They highlight the risks of confusion for tenants and additional costs to landlords. The NHF's suggestions include allowing providers to review their current action plans in the light of the new standards,

including local offers, and that there is a case for suspending inspections until the new standards-based methodology is in place. The LGA suggested the interim methodology might have a narrow application, such as where there is suspicion of fraud or risk to tenants' health and safety.

3.20 At a more general level, there was a high degree of consensus from all respondents that is supportive of inspection being targeted where some cause for concern exists. However, some council and ALMO respondents raised concerns that this left a gap where a more broadly used approach might encourage continuous improvement and/or be a source of validated good practice. They urged that alternative ways should be found to fill this gap to meet the aspirations of tenants through support for continuous improvement.

Risk and compliance assessment

3.21 Most respondents welcomed our proposal not to introduce new data requirements at the outset of operating the new regulatory framework, responded positively to the intention that data be 'used and useful', and supported the principle that we should focus our resources on poor performance. However, many respondents raised questions about how in practice the TSA will assess performance against the outcomes in the standards, establish criteria for 'poor performance' and formulate our risk assessment to direct the targeting of our regulatory interventions. Associated with this is concern about how the TSA will grade and make judgements on providers' performance.

3.22 The NTV, the Audit Commission, NHF and many providers ask for greater clarity on how the TSA will expect providers to demonstrate compliance with the standards, particularly given issues with non-standardised data returns across the domain, lack of detailed guidance from the TSA and potential gaps in current good practice. LGA encouraged our monitoring approach to give greater weight to local self-evaluation and self-assurance; some strategic local authorities suggested they could have a role in external validation of providers' performance. Tenants tended to want a clearer expression of the role of tenant scrutiny in our monitoring.

3.23 Many providers expressed a view that the TSA should work with providers to develop an approach that will evolve over time through the experience of operating the new standards regime and co-regulation.

3.24 Some respondents asked for specific clarity on how compliance with decent homes standard (DHS) would be regulated, given that there are constraints on funding which are not explicitly recognised in the standard. There were also some concerns about the way this might impact on a provider's decisions about resourcing new development.

3.25 The NHF, LGA and others asked us to set out a clear timeline of what we require from providers and when, which should also recognise the acknowledged differences between types of provider. CIH asked for clarity on whether or how the TSA would monitor local offers. TAROE stated that it was important for the TSA to retain regulatory oversight of the delivery of local offers.

Staff roles

3.26 Many providers asked for greater clarity about how our staff will engage with them and how our tenant services and risk and assurance staff will work together. Many non-profit providers wanted to know what "minimum intervention" will feel like, and

how different it may be to the existing approach. The G15 and NHF expressed concern about our tenant services teams having direct contact with their tenants.

3.27 Councils, ALMOs and TAROE expressed a particular lack of clarity about how we will engage with ALMOs and TMOs, and the potential read-across to other types of managing agent such as private finance initiatives (PFIs).

Approach to complaints

3.28 The TSA's role in complaints was raised by a significant proportion of respondents. Many of our statutory consultees, including TPAS, TAROE, NHF, LGA, NFA, and the Audit Commission pressed us to provide greater clarity in the distinctive roles of the tenant's provider, the relevant ombudsman, and the TSA.

3.29 NHF, G15, LGA, several individual housing associations and councils, and CML said that the TSA must respect the primacy of the landlord in the first instance and then the housing ombudsman or local government ombudsman as appropriate. The TSA must not undermine these legitimate and existing processes, nor confuse tenants that it is an alternative or final destination for individual complaints. Several said that following the November 2009 proposals, there was uncertainty within the sector on these points.

3.30 Many respondents representing tenants and providers wanted clarity on our role in relation to group or collective complaints. There was a view expressed from some tenant responses that they wanted an opportunity to raise with the TSA collective complaints where the provider's own complaints, involvement and co-regulatory procedures had broken down. Some respondents pressed the TSA to develop a 'route map' for complaints on various issues.

3.31 Several responses from councils argued that there ought to be a role for locally elected councillors acting as a legitimate advocate for their constituents. This should relate to complaints received by the provider or the TSA.

Intervention and enforcement

3.32 There was general consensus among respondents that our approach to using our formal regulatory and enforcement powers was reasonable. There was also consensus that the principles within the detailed guidance notes were a reasonable basis on which to use our powers. On inspection, as noted in responses to other questions, there was a request for greater clarity on practicalities such as the relative roles of the TSA and the Audit Commission and what levels of performance may trigger the use of this power.

3.33 Many respondents, including the LGA and the NFA, supported the TSA's intention to take account of self-improvement proposals by providers before taking enforcement action. Our intention to take a proportionate and graduated approach to the use of our powers was also supported but it was recognised, by the CML in particular, that where circumstances merit immediate action, a graduated approach may not be appropriate.

3.34 Some respondents, including the NHF commented that our enforcement powers should apply across the social housing domain. Some tenant respondents and tenant

representative groups, including TAROE thought that tenants should be consulted on use of our enforcement powers.

Registration and de-registration

Registration

3.35 There was broad support for the proposed registration criteria and of the timeframe for the review of the criteria from all stakeholders. A small number of respondents raised some detailed issues with the proposals.

3.36 The registration of ALMOs and TMOs is a concern for some ALMOs, TMOs, local authorities and representative bodies, with some confusion about when an ALMO would be eligible for registration. Some suggested that ALMOs that do not own stock should be eligible to apply for registration. Questions were raised about the nature of the TSA's regulatory engagement with an ALMO that was both the manager of local authority housing and a housing provider in its own right. Others welcomed the ability of stock-owning ALMOs to register and be regulated by the TSA.

3.37 The link between HCA funding and registration was a particular source of concern for the Almshouse Association who expressed a fear that the burden of registration was such that almshouses might not apply for funding from HCA with a consequential detrimental impact on stock condition.

3.38 A small number of housing associations voiced a concern that application of the criteria could be exercised by the TSA to introduce an un-level playing field between profit-making and non-profit providers, especially in making entry easier for the profit-making organisations. Specifically, it was noted that the TSA's proposed requirements on objects related only to non-profit making providers.

3.39 Another concern raised by a small number of non-profit registered providers was that the criteria enable registration of organisations that may not yet meet all the standards before coming on to the register. It was suggested that this might lead to a 'dumbing down' of the standards and cause a reputational risk to the sector. Clarity was also requested on how the TSA would exercise judgement on what constituted a 'reasonable path to compliance'.

3.40 Some respondents questioned how the TSA might gain effective and enduring regulatory assurance within a group structure where the parent was not eligible for registration. There was uncertainty from several existing providers and advisers about what this might mean for them and what the TSA's expectations were. Concerns were expressed about how any changes might impact on, for example, existing lending arrangements. The NHF considered that ring-fencing was a pragmatic solution whilst commenting, as did other stakeholders, that there were challenges in managing the transition for existing providers.

3.41 The interpretation of intention to provide also attracted comment. Some thought that there should be evidence of both land ownership and finance. Others suggested that the TSA should encourage those that have a credible business plan in place but does not yet have the evidence of land ownership or finance.

3.42 Various stakeholders sought clarity on any fees to be charged by the TSA for initial and ongoing registration with questions being raised on the timing of the introduction of fees, the amount of fees, the basis on which fees might be charged and how fee payers could hold the TSA to account.

De-registration

3.43 There was broad support for the proposed de-registration criteria and of the timeframe for the review of the criteria from all stakeholders.

3.44 Some concerns were raised that there was not sufficient guidance on how the TSA would apply the criteria in practice and that more clarity was required on this.

3.45 Some local authorities questioned how de-registration applied to them and asked that some clarity was provided on this.

Permissible purposes

3.46 One respondent suggested that guidance was needed on how the TSA would define 'purposes connected with and incidental to the provision of housing' which underpins whether a provider is categorised as profit-making or non profit-making on the register. It was suggested that the TSA should, as a minimum, allow for all the purposes permissible under the existing legislation to be considered as relevant purposes.

Commentary on responses

Our approach to improvement and assessing compliance

Support for sector-led self-improvement

3.47 We believe that stakeholders have strongly endorsed our general approach to how we will regulate providers. The responses indicate a wide appreciation of the principles that our monitoring approach will be based on risk, and our interventions will be targeted proportionately where there are performance challenges and supportive of the co-regulatory aim of self improvement by providers backed by effective scrutiny and accountability to tenants. We accept that this new approach relies on the outset on some degree of trust, and it will be for all stakeholders to rise to the challenge, through delivery and the evolution of co-regulatory ways of working, of earning tenants' trust where they may be initially sceptical.

3.48 We recognised that, in taking a measured approach to not introducing new data and reporting requirements, there may be a trade-off initially in the degree to which the national information sources could be benchmarked. However, we welcome providers' commitments to transparency, and to work with each other (for example through subscription benchmarking services) and their tenants to develop ways to make useful information available.

3.49 Our framework encourages providers to engage in sharing good practice and peer review where appropriate, as ways of supporting co-regulatory self-assurance and continuous improvement. We expect that providers' boards and councillors will be responsible for the approaches they adopt to assure themselves and their tenants of compliance with the standards.

3.50 We have also considered the TSA's role in best practice and incentivising continuous improvement, following respondents' support of proposals for our 'excellence' work. Our response is detailed in section three of our main regulatory framework document.

Annual report to tenants

3.51 We are pleased that the principle of transparency and letting tenants know how their provider is performing was supported overwhelmingly by the majority of responses.

3.52 We consider that the requirement to provide an annual report to be published for the benefit of tenants (and submitted to the TSA) is clearly supported by the majority of responses. We think it is fair to limit our requirements on its format to only high-level expectations of the sort of information that it should contain, which we have clarified in the main regulatory framework document.

3.53 We are very attracted to the suggestion that if the regulator sets only high level expectations on format, the sector representative and leadership bodies could collaborate to advise members on 'what good might look like'. If this process involved tenant groups in the spirit of co-regulation this could offer a good sector led solution to this issue.

3.54 We understand that a deadline of October 2010 for the publication of the first annual report poses some challenges especially for council landlords who may undergo a period of uncertainty before and after the local government elections. Against this, tenants are keen to ensure that they benefit from the new regulatory framework as soon as possible. Our regulatory framework document describes a pragmatic solution, which is to maintain the October 2010 deadline, but be prepared to offer extensions to those providers that can justify the reasons for doing so.

3.55 For future years, we accept the case put forward by a large number of responses from all parts of the domain, that there are benefits and efficiencies to be gained if the report is prepared for 1 October, rather than our original July proposal. The regulatory framework document sets out our position.

Use of inspection

3.56 We understand that stakeholders require further clarity on our relationship with the Audit Commission and in particular what will happen to the Audit Commission's Key Lines of Enquiry (KLoE). In December 2009 we announced jointly with the Audit Commission a fundamental review of the housing inspection methodology. This will conclude by autumn 2010 and will include before then a consultation document. This review is based on ensuring that the inspection methodology supports the new standards that are set out in our regulatory framework document.[4]

3.57 We have set out further detail in section four of our main regulatory framework document, which also specifically pays recognition to NFA's concerns about 'inspection overload' where there may be decent homes inspections.

Risk and compliance assessment

[4] This review does not cover the governance and financial viability standard, as the TSA does not have the same statutory relationship with the Audit Commission when we need to commission an inspection of the management and financial affairs for non-council providers.

3.58 Section three of the main regulatory framework document sets out our approach to compliance and identifying those with the greatest performance challenges. We are clear that as a general rule there may be no simple, or singular, criterion that automatically triggers regulatory action by the TSA, as this may be contrary to the principles of proportionality that must govern all our interventions. However, section three describes in more detail the range of information we consider relevant.

3.59 Following the requirement within the new framework that providers must set out to tenants how they will meet the objectives in each standard (apart from governance and financial viability), these commitments and the degree to which they are achieved by providers will form part of our compliance assessment.

3.60 We acknowledge that many responses asked for further detail on the risk assessment methodology that will guide our engagement with providers across all the standards. We intend to finalise and publish further details in summer 2010, and will be in discussions with stakeholders before then to help us shape it.

3.61 Our initial focus for all providers in 2010-11 will be on key service areas - repairs and maintenance, and gas and fire safety – as well as continuing to ensure that larger non-profit providers are financially viable and well governed.

3.62 In response to concerns about the potential trade offs between the TSA enforcing decent homes versus the provider wanting to use resources to invest in new supply for future tenants, we note that many providers already comply and for present housing associations as a whole is expected to be about 95% by December 2010. The balance is mainly recent stock transfer organisations and they have agreed improvement programmes.

3.63 The situation with councils is more complex. The government's consultation on its direction to the TSA in relation to decent homes made clear that TSA standards cannot make provision for funding. In assessing compliance with the quality of accommodation standard, the TSA will take account of the extent to which providers require funding from government and when it is likely that such funding will be available. We have set out our approach to assessing compliance with decent homes in section three of our main regulatory framework document.

Staff roles

3.64 We acknowledge that many providers have asked for greater clarity on how our staff will engage with them. In response, section three of the main regulatory framework document establishes some principles for how we will do this, including a commitment that we will clearly set out at the time our reasons for considering that regulatory engagement is necessary. We will also write to all providers soon after 1 April 2010, clarifying for them what we expect to see in terms of regulatory or performance information during the year, and letting them know the nature of regulatory contact they can expect from us.

Approach to complaints

3.65 We accept that there was a lack of clarity in our proposed guidance, as was demonstrated by the volume of feedback from all stakeholders on this matter. To support our consultation and co-regulatory development of our final policy, we held a

workshop on complaints that was attended by approximately 40 key stakeholders including both ombudsmen, members of our tenant panel, representatives of landlords and stakeholder organisations and four TSA board members.

3.66 There was clear consensus at the workshop that service delivery complaints should be dealt with by landlords through their complaints policies with routes to escalate the complaint to the respective ombudsman, in line with the arrangements that currently exist (and forms part of the requirements in the tenant involvement and empowerment standard). The TSA would not deal with such complaints although we will receive information from the ombudsmen about issues that may indicate regulatory concern. In addition, there was an agreed principle that complainants should be signposted to the most appropriate route for resolution, by whoever receives their complaint.

3.67 The workshop also expressed consensus that the TSA should explain more clearly the routes of redress for complaints about providers' compliance with the standards, and that in our guidance we should create a clearer distinction that we do not deal with service failure complaints but that we do consider issues of regulatory concern.

3.68 Therefore, we have revised the guidance on how we deal with complaints to provide greater clarity on the respective roles of the provider, ombudsmen and the TSA and to state more clearly that we do not undermine the primacy of providers and the ombudsmen. The approach is set out in section five of the main regulatory framework document. It also makes it clear that the TSA is not a final or alternative avenue for complaints to these processes. Our approach makes it clear that although we do not investigate individual complaints we may upon receipt of complaints from tenants investigate any issues of regulatory concern arising from the complaint (eg evidence of failure against standards).

3.69 We wish to ensure that there is a clear, accurate and easily accessible 'route map' for tenants for how complaints should be handled. We are keen to work with partners such as the NHF, LGA, ombudsmen, TAROE, TPAS and CIH to this end rather than 'own' this route map ourselves.

3.70 Our revised approach accepts the argument that some people may be authorised on behalf of tenants to advocate on their behalf.

Intervention and enforcement

3.71 We are pleased that our approach to using our powers has received widespread support. The applicability of our powers to different types of provider was set out in the 2008 Act and is a matter for government rather than the TSA. The Act sets out which powers require tenant consultation and we have reflected this in our guidance notes. We have applied some minor drafting amendments to our guidance notes, to reflect further internal quality assurance.

3.72 We acknowledge the requests for greater clarity on how we shall commission inspection and our role in Comprehensive Area Assessments (CAA). Our response is set out in section four of the main regulatory framework document.

Registration and deregistration

3.73 We welcome the strong support from respondents for the proposed registration and deregistration criteria.

3.74 The issue raised most frequently by respondents was that of fees. The position on the introduction of fees remains that no fees will be levied on any providers until 2011 at the earliest. There will be full consultation on any proposal to introduce fees which will address all the issues raised by respondents to this consultation.

3.75 The situation with registration of ALMOs and TMOs is complex. Section seven of the main regulatory framework document sets out our approach, and we are keen to continue working closely with stakeholders such as CWAG and the NFA about how we can make this work effectively in practice.

3.76 We also need to provide some clarity on the link between financial assistance from the HCA and the need for registration. The 2008 Act provides that an organisation wishing to remain as landlord must therefore be registered but registration is not required when financial assistance is sought, rather it is required when the property is let for the first time. This latter point should meet the concerns of respondents who thought they would need to secure immediate registration in order to be eligible to apply for financial assistance. In response to the concerns raised by the Almshouse Association, there is no requirement in the 2008 Act for an organisation to be registered in order to seek or receive financial assistance other than for development. We note that the HCA has confirmed in its response that it will make it a condition of the provision of financial assistance for low cost home ownership that the landlord is a registered provider.

3.77 We note the concerns expressed about how the standards might be used to introduce an un-level playing field between profit-making and non-profit providers. This is not our intention and we will not use the registration criteria to make it easier for any category of applicant to get onto our register. The standards will apply equally to both profit-making and non-profit organisations and the registration criteria will be similarly applied. Where a difference is proposed (the objects that a non profit applicant must have) we have clearly identified that this applies only to one category of applicant and have set out our reasons for making a differential requirement. We note that this particular proposal received wide support.

3.78 The registration criteria do enable the registration of an organisation that does not yet fully meet all the standards. We have had to consider how to balance our objective to encourage diversity and new entry to the sector with our objective to protect tenants. We note that our proposals received wide support and that there were only a few respondents who thought that we had not got that balance right. In this context is it also worth noting that this is not a departure from existing practice as applicants may be registered now who do not meet all aspects of the existing registration criteria. We are confident that our proposals remain appropriate and that allowing for a reasonable path to compliance with a standard does not risk damage to the reputation of the sector, providing we exercise that judgement in line with the principles of a risk-based view on the level of compliance already achieved, the nature of the actions needed to achieve compliance and the proposed timescale for achieving these actions.

3.79 For providers whose controlling corporate structures are not regulated by the TSA, our standard in relation to governance and financial viability includes the requirement applying to providers who are part of a wider corporate structure or who provide services other than social housing within their organisation, to demonstrate sufficient assurances that effective mechanisms are in place that ensure its ability to meet

regulatory requirements and protect the security of the social housing assets. Accordingly, we have not duplicated this requirement in the registration criteria. We will be discussing further with the sector how these requirements can be implemented and may publish our more detailed expectations in due course.

3.80 We have reviewed our proposals for handling applicants from intending providers in the light of the comments received. The making of a distinction between an existing and an intending provider in the legislation means that organisations that are just entering the sector are eligible to apply for registration. We believe that we need to be satisfied that there is clear intention on the part of an organisation to become a provider. We remain satisfied that evidence of funding or land ownership remains appropriate but have amended our approach in our regulatory framework document to say that we will also accept a strongly evidenced and credible business plan.

Deregistration

3.81 We welcome the strong support from respondents for the proposed deregistration criteria and note that there was a limited number of substantive points raised on our proposals. No changes are proposed to the deregistration criteria.

3.82 Local authorities are not eligible to apply for deregistration under the legislation. However, a registered local authority which transfers all its social housing to another registered provider will be removed from the register. Should it subsequently re-acquire stock then it will be required to notify us of that and be registered again at that point.

Permissible purposes

3.83 In determining whether purposes are connected with or incidental to the provision of housing, we will have regard to the matters on which we can set standards, set out in section 193 of the Act, including the landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated. Currently there are permissible purposes established under section 2(4) of the Housing Act 1996 and subsequent statutory instruments. We will have regard to the list of permissible purposes but do not wish to replicate this approach without further review and so will clarify over time the purposes we consider are connected with or incidental to the provision of housing.

Conclusion

3.84 Our approach to regulating in practice will inevitably develop over the course of 2010-11 especially as the baseline for performance across the domain becomes more transparent. However, we are keen to give as much certainty as we can as to how we shall regulate in practice. This is set out in the main regulatory framework document with our decisions on monitoring compliance and supporting improvement (section three), inspection (section four), intervention and enforcement (section six), approach to complaints (section five) and registration (section seven).

3.85 In addition, helpful feedback was received from the Charity Commission and a small number of other respondents, on the TSA's potential role as principal regulator for 'exempt charities'. This is work we intend to explore during 2010-11 and will consult in due course.

Annex 1 - key to abbreviations used in this document

ALMO	Arm's-Length Management Organisation	An ALMO is a company set up by a local council to manage and improve part or all of the council's housing stock.
CCH	Confederation of Cooperative Housing	UK organisation for housing co-operatives, tenant-controlled housing organisations and regional federations of housing co-ops.
CIH	Chartered Institute of Housing	Professional body for people involved in housing and communities
CLG	Communities and Local Government	The TSA's Government sponsoring department
CML	Council of Mortgage Lenders	The trade association for the mortgage lending industry
CWAG	Councils with ALMOs Group	A grouping of local authorities that have set up ALMOs; a Special Interest group with the LGA
G15		A group of London housing associations
G320		A group of small (less than 1,000 homes) housing associations working in London
HCA	Homes and Communities Agency	The non-departmental public body delivering housing and regeneration
LGA	Local Government Association	The representative body for local authorities in England
NFA	National Federation of ALMOs	The trade body representing all 69 arms length management organisations
NFTMO	National Federation of Tenant Management Organisations	Representing tenant management co-ops, estate management boards and other forms of tenant management organisations in England.
NHF	National Housing Federation	The body that represents the independent social housing sector. It is the central representative, negotiating and advisory body for housing associations and other non-profit housing bodies in England.
NTV	National Tenants Voice	A body set up by government to ensure that tenants can shape and influence policy making at local, regional and national level.
TAROE	Tenants and Residents Organisations of England	A democratically run, accountable, national organisation which unites tenants' and residents' groups from social housing across England. TAROE is run by tenants for tenants to represent and campaign for their interests and to ensure that all have rights of access to well maintained, safe and secure homes.
TPAS	Tenant Participation Advisory Service	A national membership organisation representing over 1,000 tenant groups and 300 registered providers. TPAS promotes excellence in tenant and resident involvement through independent accreditation, training and guidance in best practice.
TSA	Tenant Services Authority	The regulator for social housing in England.