

The regulatory framework for social housing in England from April 2010

Annexes to the TSA's regulatory framework
document



TSA

TENANT
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AUTHORITY

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Annex 1:

Guidance notes on use of powers

These notes constitute guidance as specified in Section 215(1)(b) of the Housing and Regeneration Act 2008, or are issued under our general powers in section 93 and our power to publish information, advice etc under section 97 of the Housing and Regeneration act 2008.

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Reference index for powers

Power in the 2008 Act	Reference in the 2008 Act	Relevant section where guidance can be found	Separate detailed guidance	Guidance note number(s)
Setting standards for provision of social housing	Chapter 6 (section 193)	Section 2 of the main regulatory framework document	No	
Setting standards for management	Chapter 6 (section 194)	Section 2 of the main regulatory framework document	No	
Codes of practice	Chapter 6 (section 195)	Section 1 of the main regulatory framework document	No	
Arranging a survey	Chapter 6 (sections 199 - 200)	General principles contained in section 6 of the main regulatory framework document	Yes	8
Arranging an inspection	Chapter 6 (sections 201 - 203)	General principles contained in section 6 of the main regulatory framework document, and specifically for Audit Commission inspections, section 4 of the main regulatory framework document	Yes	9
Performance information	Chapter 6 (sections 204 - 205)	Section 3 of the main regulatory framework document	No	
Conduct an inquiry	Chapter 6 (sections 206 - 209)	Section 6 of the main regulatory framework document	Yes	10
Arrange an extraordinary audit	Chapter 6 (section 210)	Section 6 of the main regulatory framework document	Yes	10
Changes to non-profit providers management and constitution	Chapter 6 (sections 211 - 214)	General principles contained in section 6 of the main regulatory framework document	Yes	1

Power in the 2008 Act	Reference in the 2008 Act	Relevant section where guidance can be found	Separate detailed guidance	Guidance note number(s)
Complaints to us	Chapter 6 (section 215)	Section 5 of the main regulatory framework document	No	
Operate an accreditation scheme	Chapter 6 (section 217)	Not contained in these documents as we will work with the HCA to review the requirements for accreditation after 1 April 2010	No	
Enforcement notice	Chapter 7 (sections 219 - 225)	General principles contained in section 6 of the main regulatory framework document	Yes	11
Impose fines	Chapter 7 (sections 226 - 235)	General principles contained in section 6 of the main regulatory framework document	Yes	12
Award compensation	Chapter 7 (sections 236 - 245)	General principles contained in section 6 of the main regulatory framework document	Yes	13
Management tender	Chapter 7 (sections 247 - 248)	General principles contained in section 6 of the main regulatory framework document	No. Detailed guidance will be published at a later date.	
Management transfer	Chapter 7 (sections 249 - 250)	General principles contained in section 6 of the main regulatory framework document	No. Detailed guidance will be published at a later date.	
Appointment of manager	Chapter 7 (sections 251 - 252)	General principles contained in section 6 of the main regulatory framework document	Yes	14

Power in the 2008 Act	Reference in the 2008 Act	Relevant section where guidance can be found	Separate detailed guidance	Guidance note number(s)
Transfer of land	Chapter 7 (sections 253 - 254)	General principles contained in section 6 of the main regulatory framework document	Yes	15
Amalgamation	Chapter 7 (section 255)	General principles contained in section 6 of the main regulatory framework document	Yes	16
Restrictions on dealings	Chapter 7 (sections 256 - 258)	General principles contained in section 6 of the main regulatory framework document	Yes	17
Suspension and removal of officers during or following an inquiry or audit	Chapter 7 (sections 259 - 265)	General principles contained in section 6 of the main regulatory framework document	Yes	17
Removal of officers other than following an inquiry or audit	Chapter 7 (sections 266 - 268)	General principles contained in section 6 of the main regulatory framework document	Yes	18
Appoint new officers	Chapter 7 (section 269)	General principles contained in section 6 of the main regulatory framework document	Yes	19
Appoint adviser to a local authority provider	Section 252 A (domain order)	General principles contained in section 6 of the main regulatory framework document	No. Detailed guidance will be published at a later date.	
Censure of local authority employees or agents during or after an inquiry	Section 269 A+B (domain order)	General principles contained in section 6 of the main regulatory framework document	No. Detailed guidance will be published at a later date.	

1. "Domain order" in this context means the order laid as The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010.

Guidance note 1

Guidance for constitutional consents (sections 212 to 214), restructuring and dissolution (sections 160 to 165)

This document gives general advice and guidance on how the Tenant Services Authority (the TSA) may exercise the power to give consent to requests to rule changes made by Industrial and Provident Societies, changes to objects by charities and article changes from companies. The specific provisions are set out in chapter six, sections 212 to 214 of the Act and relate only to non-profit registered providers. The provisions are included at the end of this note.

Our proposals for using this power

When considering applications for changes to constitutions the TSA will balance a range of factors, including the need to safeguard tenants' rights, relevant legislation, our duties as a public body, our fundamental objectives and the standards we expect registered providers to meet. Our expectation is that non profit registered providers' objects will include the following clauses:

- not for profit
- the provision of social housing
- non distribution of assets to members

Dealing with 'group structures'

Groups structures are not defined in the Act, but we treat registered providers as being in a group structure where any combination of two or more organisations are working together and where one, the parent, has constitutional control of the other(s), subsidiaries.

The term "subsidiary" and "associate" are defined in section 271 of the Act.

Applications for registered providers becoming or ceasing to be a subsidiary or associate of another body will be considered in the context of the TSA's fundamental objectives, the TSA's eligibility criteria and conditions for registration and the standards for social housing providers. Factors that we will, therefore, take into consideration when appraising applications include:

- the overall business case
- the level and quality of consultation with tenants and relevant stakeholders in particular local authorities and lenders
- evidence that the new structure will improve services to current and future residents
- rationalisation of stock holding and management issues
- value for money of the proposal
- simple, clear and straight forward governance structures
- desirability of maintaining a choice of providers and competition in a region

Procedural guidance

To help applicants in this process, the TSA will publish in due course a detailed procedural note for registered providers to follow when amending their constitutions. The note will include the specific requirements and arrangements for Industrial and Provident Societies, registered companies and registered charities which are not also registered companies. The note will include details of:

- who the note applies to
- what documentation we will require
- where applications should be sent
- how long it will take us to deal with your application
- contact details

Chapter 4 of the Act includes some general provisions relating to **non-profit registered providers**. The following processes are only effective if the TSA has first consented:

Restructuring and dissolution

Section 160 company arrangements and reconstructions

Section 161 company conversion into an industrial and provident society

Section 162 company winding up

Section 163 Industrial and Provident Society restructuring

Section 164 Industrial and Provident Society winding up

Section 165 Industrial and Provident Society dissolution

Although these processes are not governed by the requirement to issue guidance under section 215, the TSA thinks it will be helpful to applicants to publish guidance on these processes so that they can see how they will work. As in the case with constitutional consents the TSA will publish a procedural note for registered providers to follow when applying for any of these processes.

When considering applications the TSA will have regard to residents' rights, relevant legislation, our

duties as a public body, our fundamental objectives and the standards we expect registered providers to meet.

Applications for these processes will be considered in the context of any ring fencing arrangements and policy constraints the TSA has in place. Factors that we are likely to take into consideration when appraising applications include:

- the overall business case
- the level and quality of consultation with tenants and relevant stakeholders in particular local authorities and lenders
- evidence that the new structure will improve services to current and future residents
- rationalisation of stock holding and management issues
- value for money of the proposal
- simple, clear and straight forward governance structures

Relevant sections of the Act:

211 Non-profit providers only

This group of sections applies only to non-profit registered providers

212 Industrial and Provident Society: change of rules

- (1) This section applies to an Industrial and Provident Society
- (2) An amendment of the society's rules requires consent if it:
 - (a) alters the society's objects
 - (b) makes provision about the distribution of

assets to members, or

- (c) enables the society to become, or cease to be, a subsidiary or associate of another body
- (3) An amendment of the rules which requires consent is effective only if the regulator has first consented.
- (4) The regulator may not consent to an amendment which it thinks would turn the society into a profit-making organisation.
- (5) The society must notify the regulator of an amendment of the rules which does not require consent.
- (6) In relation to an amendment which requires consent the requirement in section 10(1) of the Industrial and Provident Societies Act 1965 (c 12) (sending copies of amendment of rules to FSA) is satisfied only if the copies are accompanied by a copy of the regulator's consent.
- (7) The preceding provisions of this section shall be treated as if they formed part of that Act as well as of this Act.
- (8) The Secretary of State may by order amend the list in subsection (2).

213 Charity: change of objects

- (1) This section applies to a registered charity which is not a registered company.
- (2) An amendment of the charity's objects is effective only if the Charity Commission has first consented.
- (3) Before giving consent the Charity Commission must consult the regulator.

214 Companies: change of articles

- (1) This section applies to a registered company.
- (2) An amendment of the company's articles of association requires consent if it:
 - (a) alters the company's objects
 - (b) makes provision about the distribution of assets to members, or
 - (c) enables the company to become, or cease to be, a subsidiary or associate of another body
- (3) An amendment of the articles of association which requires consent is effective only if the regulator has first consented.
- (4) The regulator may not consent to an amendment which it thinks would turn the company into a profit-making organisation.
- (5) The company must notify the regulator:
 - (a) of an amendment of the articles of association which does not require consent, or
 - (b) of a change to its name or registered office.
- (6) In relation to an amendment which requires consent the requirement in section 30 of the Companies Act 2006 (c 46) (sending copy of resolution to registrar) is satisfied only if the copy is accompanied by a copy of the regulator's consent.
- (7) The Secretary of State may by order amend the list in subsection (2).

Guidance note 2

Guidance on section 95(3): financial assistance

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power relating to the provision of financial assistance to a registered provider. This is a general power and is set out in chapter 2 section 95(3) of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to non-profit or for-profit private registered providers but not local authority providers. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Background and context to the use of power

- 2 A registered provider is expected to manage its business affairs to ensure that it remains viable in the short, medium and long terms. It should take appropriate steps to ensure that it has access to the finance necessary to meet its ongoing commitments. The TSA is not a funding authority and does not hold budgets to enable it to act as one. Its powers to provide financial assistance are ancillary to its main powers, and the TSA considers that it would only propose their use in exceptional circumstances.

The power

The circumstances in which the power can be exercised

- 3 The power can be exercised where the TSA thinks it advances one or more of the fundamental objectives of the TSA set out in section 86 of the Act. It is restricted by the fact that financial assistance can only be given with the consent of the Secretary of State which in turn must have the approval of the Treasury. Financial assistance under this section can be in the form of a loan, a guarantee or an indemnity.
- 4 The TSA envisages seeking consent to use this power only in exceptional circumstances. Examples might be where tenants are in danger of losing their homes or their health and safety is at risk, or where temporary support protects existing public investment while a rescue plan is being developed. The TSA would only consider a case for such support where all other possible avenues for obtaining finance had been exhausted. Any case would have to demonstrate that TSA assistance would facilitate a strategy for permanent resolution of the underlying problem, and financial plans would have to make provision for repayment of any TSA loan or recovery of a guarantee or indemnity.

Consultation

- 5 Apart from the need to obtain the necessary consents the Act does not require the TSA to consult relevant persons in exercising its power under Section 95(3). However, depending on the particular circumstances of the case, the TSA is committed to any consultation that is necessary with relevant stakeholders such as lenders and local authorities.

Guidance note 3

Guidance on section 106: Direction to the HCA

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power to direct the Homes and Communities Agency (HCA) not to invest in a registered provider of social housing. This power is set out in chapter 2 section 106 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to a registered provider in the specific circumstances set out in the section of this guidance describing the scope of the power. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.
- 3 In circumstances where one or more of the actions that might trigger a Direction have taken place, the TSA will assess the most appropriate course of action and in particular, whether it is necessary to issue such a Direction to the HCA. If there is a significant risk to the public funding that the HCA has committed to the provider previously, or may commit to the provider in the future, the TSA may issue a Direction.
- 4 The TSA would not normally issue a Direction in relation to projects where the HCA has issued a grant confirmation and the provider has entered a contractual commitment. It will also take account of the potential impact on the provider's financial viability and on its services to its tenants.

Potential triggers to the exercise of the power

- 2 Section 106 of the Act sets out three specific circumstances in which the TSA may exercise the power to direct the HCA not to give financial assistance in connection with social housing to a specified registered provider. They are where:
 - the TSA has decided to hold an inquiry into the affairs of the provider under section 206 of the Act, and the inquiry has not been concluded
 - the TSA has received notice in respect of the provider under section 145 of the Act (the moratorium powers)
 - the TSA has appointed an officer of the provider under section 269 of the Act and the person has not vacated office

Scope

- 5 The power may be exercised in relation to:
 - all providers including a non-profit private registered provider, a for-profit private registered provider or a local authority provider where an inquiry under section 206 of the Act is the trigger
 - registered providers, with the exception of local authority providers, where a notice under section 145 of the Act is the trigger
 - a non-profit private registered provider where the appointment of a new officer under section 269 of the Act is the trigger

The Direction

- 6 A Direction may prohibit the HCA from giving assistance of a specified kind. However, a Direction may not prohibit grants to a provider where these are payable by the HCA in respect of statutory discounts given by the provider on disposals of dwellings to tenants. The TSA will review the need for the Direction on a regular basis, but it will remain in effect until it has notified the HCA that it has been withdrawn.
- 7 The TSA will inform the provider and the HCA of the reasons for the Direction, and all communication between the TSA and the HCA will be in accordance with the terms of the memorandum of understanding between the two organisations.

Guidance note 4

Guidance on sections 107 and 108: information

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power on the collection of information and documents. This is a general power and is set out in chapter 2 sections 107 and 108 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to all registered providers. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to all providers, including a non-profit private registered provider, a for-profit private registered provider and a local authority provider. It may also be exercised in relation to anyone who has applied to become a registered provider.

Background and context to the use of the power

- 3 The TSA needs to collect and hold reliable information so it can undertake its functions as an effective regulator. The TSA will use this information to assess compliance with the standards framework. The TSA is committed to minimising the additional burden of its information requirements through the best use of information that is already available. This may include information produced by providers for

public reporting or for internal management purposes. The TSA expects providers to produce the information and documents it requires on a regular and timely basis under this general power. However, It may be necessary for the TSA to exercise this power in circumstances where providers are unable or unwilling to provide the documents or information that the TSA requires routinely to carry out its functions, or where it believes there may have been a breach of the standards. This guidance set out how the TSA would use the power in those circumstances.

Potential triggers to the exercise of the power

- 4 Sections 107 and 108 of the Act set out the circumstances in which the TSA may exercise the power to collect information. The TSA may, for a purpose connected with its functions, require a person to provide a document or information which it believes is, or may be, in the person's possession and which relates to:
 - the financial or other affairs of a provider
 - activities which are, or may be, carried out by a person who is, or who has applied to become, a registered provider
- 5 The TSA is most likely to exercise the power where:
 - there is a potential failure against a standard
 - the provider has failed to produce the information and documents required on a routine basis by the TSA

- the provider is either slow or unwilling to produce additional information and documents requested by the TSA when the TSA has grounds to believe that there may be a problem with a provider's performance and needs to undertake further regulatory scrutiny
- the provider has failed to honour a voluntary undertaking to the satisfaction of the TSA
- the provider has failed to deal with previous regulatory interventions to the satisfaction of the TSA
- it is necessary to collect information or documents as part of the exercise of the TSA's wider regulatory or investigatory powers such as an inspection or an inquiry

This is not an exhaustive list and the TSA may conclude that it is necessary to exercise the power in other circumstances to those set out above.

The power

Who can be required to provide documents and information?

- 6 The application of the provisions of sections 107 and 108 of the Act is not restricted to a provider. The TSA can require a document or information from any person who is, or may be, in possession of it. This may include any person who is, or has been an officer, member, employee or agent of a provider or anyone providing goods or services to a provider. A requirement may be imposed on a person other than a provider only if:

- the provider has been asked to produce a document or information but has failed to do so
- the TSA concludes that the provider is unable to produce it

- 7 The provisions of the Act do not require a person to produce anything which they would be entitled to refuse to disclose on the grounds of legal professional privilege in proceedings in the High Court.

- 8 The provisions of the Act do not require a banker to breach a duty of confidentiality owed to a person who is not the provider to whose affairs or activities the documents or information relates, a subsidiary of the provider or an associate of the provider.

Process

A requirement

- 9 The TSA will send a notice, or a requirement, to the provider which will:

- clearly state that the information is required under this power
- specify the document or information required
- the form and manner in which the document or information is to be provided, which may include the provision of a legible copy of information stored electronically
- when and where the document or information is to be provided

Response

10 The TSA expects the provider or other person to produce the document or information in accordance with the terms of the requirement. If the provider or other person does so, the TSA will acknowledge receipt. The TSA may copy or record the document or information produced.

- a provider or other person fails without reasonable excuse to comply with a requirement
- a provider or other person intentionally alters, suppresses or destroys a document or information to which a requirement relates

14 Where information has been altered, suppressed or destroyed, the TSA may consider using one or more of its other powers.

Failure to comply with a requirement

11 If a provider or other person fails to comply with a requirement without reasonable justification, the TSA will consider whether further action may be necessary. If a provider or other person is unable to produce the document or information, they may give the TSA a written explanation setting out the reasons for the failure to comply with the requirement. Any such representations will be considered by the TSA and taken into account in deciding whether or not to take further action.

Further action

12 The TSA may apply to the High Court to make an order to remedy the failure to comply with a requirement. In such circumstances the TSA may seek to recover its costs.

13 The Act makes provision for the TSA or the Director of Public Prosecutions to bring proceedings, or to consent to proceedings, in circumstances where:

Guidance note 5

Guidance on sections 144 to 159: insolvency etc

Purpose

- 1 This document gives general advice and guidance on how the TSA envisages the power relating to the potential insolvency of a registered provider working. This is a general power and is set out in chapter 4 sections 144 to 159 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to non-profit or for-profit private registered providers but not local authority providers. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Background and context to the use of the power

- 2 Where a registered provider identifies a potential problem with, or threat to, its viability, for whatever reason, the TSA expects the provider to notify it immediately. The TSA will intervene as it sees fit with the objective of ensuring that viability is maintained. It may be possible to avert a potentially damaging situation without the need for formal insolvency powers to be employed. Many of the actions required in a potential insolvency are specified in the Act and the TSA does not have discretion as to their application.
- 3 The purpose of the TSA's insolvency power is to allow the TSA a period of time in which to seek a solution to the provider's viability problem,

thereby protecting the interests of the provider's residents and safeguarding any public funds invested in the provider. The power should not be construed as implying that the TSA will underwrite the provider's financial position in any way. The TSA will make every effort to make proposals acceptable to the secured creditors for the future ownership and management of the provider's land, with a view to ensuring continued management of housing property by a registered provider. The future owner or manager might not be the existing provider. The TSA will attempt to ensure that the interests of all the provider's creditors are protected in any solution.

The power

The circumstances in which the power can be exercised

- 4 Section 145 of the Act specifies six actions, described in the act as "steps", any one of which would trigger the use of the TSA's insolvency power. They are:
 1. Any step, of a kind prescribed for the purposes of this section by the Secretary of State, to enforce a security over land held by a registered provider
 2. The presenting of a petition for winding up a registered provider (but not if the TSA presents a petition under section 166 of the Act)
 3. The passing of a resolution for the winding up of a registered provider (but not where the TSA's consent is required for a resolution under sections 162 and 164 of the Act)

4. A decision by the governing body of a registered provider to present a petition for its winding up
5. The making of an administration order in respect of a registered provider which is a registered company
6. The appointment of an administrator in respect of a registered provider that is a registered company.

The effect of action under section 145

5 If an action under section 145 is taken in respect of a registered provider, a moratorium on the disposal of land¹ by the provider begins. The initial period of moratorium is 28 working days. During a moratorium the TSA may:

- appoint an interim manager of the registered provider
- make proposals about the future ownership and management of the registered provider's land with a view to ensuring that the property will be properly managed by a registered provider

If the TSA makes proposals, those proposals only have effect if they are agreed by each of the provider's secured creditors, as the TSA is able to locate after making reasonable enquiries. The Act enables a manager to be appointed by the TSA to implement those proposals. The powers which may be conferred upon the manager are set out in the Act. The TSA has the power

under section 158 of the Act to give financial or other assistance to a registered provider for the purpose of preserving its position pending the agreement of proposals, or to a registered provider or an appointed manager to facilitate the implementation of agreed proposals. Certain forms of financial assistance require the prior consent of the Secretary of State.

Notice to be given to the TSA

6 The relevant provisions of the Act are triggered when a "step" is taken. Section 144 provides for notice to be given to the TSA before any such step is taken, otherwise the purported action is ineffective. The Act makes no provision as to when the prior notice must be given or the form that such a notice should take. However, receipt of prior notice might allow the TSA an opportunity of assisting in the resolution of the problem, thus rendering the actual taking of the step unnecessary.

7 On receipt of a notice under section 144 the TSA will contact the person who gave the notice to gain an understanding of the problem. The TSA is likely to seek an early meeting with the registered provider to explore options for resolving the problem. The action to be taken will depend on the circumstances of the case, and may include use of another of the TSA's statutory powers, such as the power to make appointments to the governing body of the provider. At this stage it may also be necessary

1. "Land" has the meaning given by section 205(1) of the Law of Property Act 1925 and includes housing or other buildings.

for the TSA and/or the provider to commission an independent accountant's review of the provider's financial position. The TSA will keep the person who gave the notice informed throughout the period of its discussions with the provider and, in particular, will advise that person immediately in the event that resolution does not appear to be possible.

- 8 Section 145 of the Act requires the persons specified therein to notify the TSA when a defined step is taken in respect of a registered provider. The taking of a step triggers a moratorium on the disposal of land, which lasts until the expiry of 28 working days after the TSA receives the notice (section 146). Failure to give the notice does not invalidate the step itself but does affect the start of the moratorium. As the purpose of the legislation is to give the TSA an opportunity to seek a solution to the problems faced by the provider, it follows that early notification under section 145 is essential.
- 9 A notice under section 144 or section 145 should be served in writing on the Executive Director, Risk and Assurance, Tenant Services Authority, Maple House, 149 Tottenham Court Road, London W1T 7BN. The notice should state clearly the step under which the person is serving the notice and the reasons why this action is being taken. The TSA will, as required under the Act, give the Homes and Communities Agency a copy of any notice received under section 145.

The moratorium

- 10 The moratorium on disposal of land by the registered provider lasts at least 28 working days from the taking of a step as defined in paragraph five, and, once the moratorium is in place, the taking of a further step by another party would not start a new moratorium period. Section 146 makes provision for the TSA to extend the moratorium with the consent of the secured creditors. The TSA is likely to seek consent to extend a moratorium where it believes that it can make acceptable proposals under section 152 about the future ownership and management of the provider's land, but it requires more time to finalise those proposals.
- 11 Section 146 makes provision for the TSA to cancel a moratorium if it is satisfied that it is not necessary to make proposals, and also sets out requirements for the TSA to consult the person who took the original step and to notify relevant stakeholders. In some cases the TSA may find that the problem is capable of being resolved without the need to produce a formal proposal. An example might be where the provider arranges a partnership deal with another financially strong registered provider. The TSA will then assess the capability and capacity of the provider for continued ownership and management of the land, and, if it is satisfied in this respect, the TSA will cancel the moratorium.
- 12 It is possible that, despite the best efforts of the TSA and other stakeholders, the problems

which first gave rise to the moratorium cannot be resolved. Alternatively, proposals put together by the TSA might not be agreed by the secured creditors. In those cases, the TSA is likely to stand aside and, at the end of the moratorium period, give formal written notice of this fact, including the reasons why proposals are not being pursued, to the provider and to its secured creditors. Those creditors will then be free to take action as they see fit (as will the provider itself). It should be noted that where a moratorium ends without any proposals being agreed, the taking of a further step within the next three years will not trigger another moratorium without the consent of the secured creditors of the provider (section 147).

Effect of a moratorium

- 13 During a moratorium the TSA's prior consent is required under section 148 to a disposal of the provider's land, clarified in the Act to include disposal of a present or future interest in rent or other receipts arising from the land. Section 149 outlines some exceptions where consent is not required, mainly covering specific types of lettings, 'right to buy' and 'right to acquire'. The Homes and Communities Agency (HCA) is prevented under section 148 from giving the provider a Direction in relation to recovery of social housing grant or enforcing any such Direction previously given, during a moratorium. The TSA will ensure that the HCA is advised of this restriction when it gives the HCA a copy of the notice received under section 144 (see paragraph six).

- 14 Section 150 contains another exception to the section 148 consent regime by permitting a non-profit registered provider to dispose of a single dwelling without consent if the provider believes that the buyer intends to use the property as the buyer's principal residence.

- 15 As a general rule, the TSA will not give consent to disposals during a moratorium. However, the TSA will consider each request for disposal on its merits, and may agree to provide consent where it believes that it is reasonable to do so. The most likely situation where TSA consent would be forthcoming is where a disposal would stabilise or improve the provider's financial position, thus giving time to facilitate the development of proposals for an overall solution. The TSA would consult with the provider's secured creditors before issuing such consent, and would have regard to the position of creditors in general. Any such consent may be given subject to conditions which would be dictated by the circumstances of the particular case.

Interim manager

- 16 Section 151 gives the TSA the power to appoint an interim manager of a registered provider during a moratorium. An appointment may relate to a provider's affairs generally or to specific affairs, and the terms and conditions of the appointment should be specified. An appointment lasts until the earliest of the end of the moratorium, or the agreement of proposals made by the TSA, or a date specified in the appointment. An interim manager may be given

wide-ranging powers in relation to the provider's affairs, but the Act forbids an interim manager from disposing of land or granting security over land. There is no provision in the Act for meeting the costs of an interim manager. The TSA anticipates that those costs will be met by the provider, but in cases where this is clearly not possible the TSA may underwrite the costs of an interim manager.

17 The TSA envisages appointing an interim manager in all cases where the moratorium is triggered. The purpose is to assist in controlling the provider's affairs and to maintain services to tenants, while the TSA considers making proposals. The skills and expertise required of the interim manager and the powers conveyed in the appointment will be determined by the circumstances in each case. The TSA anticipates that an interim manager will be a senior housing executive, a professionally qualified person, or an insolvency practitioner. In most cases the TSA expects to give the interim manager full executive powers over the provider's affairs, although this will depend on an assessment of the skills and expertise already available to the provider. The TSA will consult with the provider's secured creditors before making an appointment.

18 When it receives a notice under section 144 or section 145 the TSA will make an early assessment of the capacity and willingness of the registered provider's governing body to oversee its affairs during a moratorium. The TSA will consider taking steps to strengthen the governing body, probably by way of making

statutory appointments under section 269 of the Act (see separate guidance on such appointments).

Making proposals

19 Section 152 permits the TSA to make proposals about the future ownership and management of the registered provider's land with a view to ensuring that the property will be properly managed by a registered provider. The TSA must have regard to the interests of the provider's creditors as a whole and, so far as is reasonably practicable, avoid worsening the position of unsecured creditors. Section 152 also makes provision for protecting the status quo in respect of preferential creditors. Proposals may provide for the appointment of a manager under section 155 to implement all or part of the proposals (see paragraphs 29 to 33). Where the provider is a charity the TSA's proposals will not require it to act outside the terms of its trusts and will only provide for disposal of accommodation to another charity with similar objects.

20 In drawing up proposals the TSA will have regard to the interests of all stakeholders. It is not possible to outline the precise form that proposals would take. The particular circumstances of each case will determine the TSA's strategy. The TSA will dedicate resources throughout the moratorium period in seeking to devise a rescue plan. Meetings will normally be arranged with the provider itself and its secured creditors. Under section 153, before making proposals, the TSA must consult

with the provider and (so far as is reasonably practicable) its tenants, and with the Financial Services Authority or the Charity Commission as appropriate.

- 21 If the TSA makes proposals it must, under section 153, send a copy of those proposals to the registered provider, such of the secured creditors as the TSA is able to locate after making reasonable enquiries, and to any appointed insolvency office holder. The TSA expects to be able to agree a list of secured creditors with the provider at an early stage and will take legal advice as appropriate to determine which creditors might be deemed to have secured status. The TSA must also make arrangements to bring proposals to the attention of the provider's members, its tenants, and its unsecured creditors.
- 22 Proposals can only be taken forward for implementation if they have been agreed by all of the identified secured creditors. The TSA expects that, through its prior engagement with the secured creditors, it will know what proposals are likely to be acceptable. Section 153 makes provision for modifications to be incorporated in the proposals in order to reach agreement.
- 23 If proposals are agreed the TSA must send a copy of those proposals to the registered provider and its officers, the secured creditors, any appointed insolvency office holder, and the Financial Services Authority or the Charity Commission as appropriate. The TSA must also make arrangements to inform the provider's

members, its tenants, and its unsecured creditors. Any subsequent amendments to proposals must follow the same process as that for the original proposals.

- 24 The TSA's objective in drawing up proposals will be to seek to avoid the formal insolvency of the registered provider, while recognising that it may be difficult to satisfy the competing interests of all stakeholders. The TSA will seek to ensure that any proposals do not cause a conflict of duties for any appointed insolvency holder. Preserving the independence of the provider will not be a primary consideration. In many cases where a moratorium is in place, other registered providers are likely to be able to assist with a solution. The TSA will hold early discussions with such other providers as it believes may have the capacity and capability to provide the necessary assistance.

Effect of agreed proposals

- 25 Under section 154 the TSA, the registered provider, its creditors, and any appointed insolvency office holder must implement agreed proposals. The directors, committee members, or trustees of the provider are required to co-operate with the implementation of agreed proposals, with the proviso that they should not commit a breach of a fiduciary or other duty to the provider. The TSA will take enforcement action through the courts against any persons who do not comply with their obligations in respect of agreed proposals (see also paragraph 34).

Appointment of manager and related powers

- 26 Section 155 enables the TSA to appoint a manager when proposals are agreed and those proposals must make provision for the payment of the manager's reasonable remuneration and expenses. This is a separate power from the power to appoint an interim manager of a registered provider during a moratorium (see paragraphs 22 and 23). The TSA may give the manager general or specific Directions. If the provider is a charity the TSA must notify the Charity Commission that a manager has been appointed. Section 156 lays down a non-exhaustive list of powers which may be conferred on the manager. In general, these powers enable a manager to carry on the business of the provider while proposals are implemented. They include a power to appoint a solicitor, accountant or other professional to assist the manager. A manager must, so far as is reasonably practicable, consult and inform the provider's tenants about an exercise of powers likely to affect them.
- 27 The TSA considers that the appointment of a manager will be necessary in most cases but will look at each case on its merit. The appointment details and the identity of the manager will be included in the agreed proposals. The skills and expertise required of the manager and the powers conveyed in the appointment will be determined by the circumstances in each case. The TSA anticipates that a manager will be an experienced senior housing executive,

an experienced professional person, or an experienced insolvency practitioner. The manager may be the same person who acted as interim manager during the moratorium. The proposal will make provision for the payment of the manager's remuneration and expenses.

- 28 Section 157 gives the manager additional powers where the registered provider is an Industrial and Provident Society. Under this provision the appointment of a manager may confer on the manager power to take the legal steps necessary to amalgamate the society with another Industrial and Provident Society or to transfer its engagements.
- 29 The TSA believes that the power to amalgamate or transfer engagements is an effective power which is likely to find favour in making proposals. This is because the recipient registered provider would be chosen for its capacity and capability to resolve the problems. It would ensure that properties would be properly managed by a registered provider (as required under section 152), while the interests of tenants, public funding, and creditors would be protected.
- 30 The TSA would expect a manager to act expeditiously to ensure implementation of agreed proposals and to work closely with all interested parties to achieve this objective. A manager may apply to the High Court for Directions in relation to his or her actions, and High Court Directions would overrule any Directions given by the TSA on the same matter. The TSA would expect a manager to exercise the duty to consult or inform

tenants where any actions are likely to affect their continuing rights, their rents, or the level of services being provided.

Assistance by the regulator

31 Section 158 permits the TSA to give financial or other assistance to a registered provider for the purpose of preserving its position pending the agreement of proposals, or to a registered provider or a manager to facilitate the implementation of agreed proposals. In particular, the TSA may lend staff and may arrange for payment of the manager's remuneration and expenses. The TSA's power to provide financial assistance is restricted by the need to obtain the consent of the Secretary of State (SoS) to make grants or loans, to indemnify a manager, to make payments in connection with secured loans, or to guarantee payments in connection with secured loans.

32 The TSA expects agreed proposals to make provision for the payment of a manager's remuneration and expenses, but, in the unlikely event that without such provision a proposal would otherwise fail to be agreed, the TSA would consider underwriting the costs of a manager. The TSA does not expect to seek the consent of the SoS to other forms of financial assistance as, generally speaking, to do so would mean public funds taking the place of existing creditors. The TSA believes that there may be exceptional circumstance where, for example, an additional line of temporary credit is needed during a moratorium, it may be necessary for the TSA

to consider whether an approach to the SoS is warranted.

Applications to the court

33 Once they are agreed, proposals are binding on the relevant parties as noted in paragraph 28. Section 159 makes provision for the registered provider or a creditor of the provider to make application to the High Court where they think that action by a manager is not in accordance with the agreed proposals. It also allows any party bound by the proposals to make application to the High Court where it thinks that action by another bound party is in breach of the obligation to implement agreed proposals.

What the TSA expects from the provider

34 The TSA expects a registered provider (including its officers and its directors, committee members or trustees) affected by sections 144 or 145 to:

- notify the TSA immediately where the provider identifies a potential problem with, or threat to, its viability, for whatever reason
- notify the TSA immediately where it has reason to believe that a step under section 144 or section 145 is about to be taken
- take legal and financial advice as to its trading position and duties under the Act and under insolvency legislation, to include specific advice to the provider's officers and its directors, committee members or trustees
- provide up-to-date details to the TSA of the

provider's officers and its directors, committee members or trustees

- provide such information and assistance as the TSA requires in order to identify all the secured creditors of the provider
- provide details to the TSA of any insolvency office holder appointed in respect of the provider's affairs
- supply relevant details, to be agreed with the TSA, to enable the TSA to bring information to the attention of the provider's members, its tenants and its unsecured creditors
- co-operate with any interim manager appointed by the TSA, and provide facilities and information to assist the manager to discharge his or her specified duties
- provide such information as the TSA requests, and access to relevant books and records, to enable an assessment of the provider's financial position to be undertaken
- co-operate fully with the TSA, and provide such support as the TSA requires, in the development of proposals for the future ownership and management of the provider's land
- co-operate fully with the TSA in its use of any other regulatory powers during the period of a moratorium
- co-ordinate a communications strategy on all matters relating to the use of these powers with the TSA, and ensure that no public statements are made without the TSA's agreement
- implement proposals agreed between the TSA and the secured creditors

Consultation

35 The Act requires the TSA, in exercising its insolvency powers, to consult relevant persons at certain stages and also to notify other identified persons. The TSA also recognises that regard would have to be paid to a number of legitimate interests and would consult or inform accordingly. Consultees may include:

- secured creditors – any proposals made by the TSA under section 152 can only be implemented with the agreement of the secured creditors (see also paragraphs 24 and 25). The TSA will work closely with the secured creditors throughout the process envisaged by the Act. The TSA will hold an early meeting with the provider and the secured creditors to agree an action plan, which will include a communications strategy
- tenants – the TSA recognises that any situation where insolvency powers are triggered could cause anxiety for tenants and leaseholders, and the TSA will take all steps it can to mitigate that anxiety. The TSA will ensure that the TSA itself and any manager appointed as part of proposals comply with the legal requirements for consulting and informing tenants. The nature of consultation will depend on the circumstances of the case and the timescales involved. It will not be practicable in some situations to make direct contact with each individual tenant. The TSA will use various techniques to consult and inform tenants including where appropriate, liaison with recognised tenant representative groups, appointment of a tenant adviser, telephone help-

lines, advertisements in local newspapers and tenant meetings

- the registered provider – the TSA will ensure that it complies with the legal requirements for consulting and informing the provider. The provider (including its officers and its directors, committee members or trustees) and its senior staff are likely to be involved fully from the outset. The TSA's expectations of the provider are outlined in paragraph 40
- any insolvency office holder – the TSA recognises that, in certain situations, an insolvency office holder could also be appointed in respect of the provider or its land. The TSA would want to facilitate the person appointed in the performance of his or her duties, and would hold an early meeting with that person to make appropriate arrangements. In cases where an insolvency office holder is in place, and the TSA wishes to appoint an interim manager, the TSA will consider, in consultation with the relevant parties, whether it would be appropriate to appoint that person as the interim manager
- unsecured creditors – the TSA must make arrangements for bringing proposals (both before and after their agreement) to the attention of the unsecured creditors. The TSA will require the provider to give the TSA a list of unsecured creditors for this purpose. If, for any reason, it is not possible to obtain contact details for all unsecured creditors, the TSA will make arrangements for advertising the proposals in an appropriate publication such as the London Gazette
- other regulators – the TSA will ensure that it complies with the legal requirements for consulting and informing the Financial Services Authority and the Charity Commission as appropriate. In addition to its formal obligations the TSA will keep these two bodies, as well as the Registrar of Companies (where the provider is a registered company), informed of the ongoing situation during a moratorium
- local authorities – the TSA recognises that local authorities in whose areas a registered provider operates may have various levels of interest in the provider's affairs. Where a local authority is a secured creditor its position is the same as other secured creditors as outlined above. In other situations the TSA does not have a legal duty to consult or inform local authorities, but the TSA will endeavour to keep local authorities informed as appropriate to the particular circumstances of each case
- central government – the TSA will keep relevant persons at the Department of Communities and Local Government (CLG) informed at all stages in the exercise of these powers and will agree with the CLG on a case by case basis which other government departments should also be kept informed
- cross-border regulators – where the TSA's insolvency power is triggered in respect of a registered provider which undertakes business activities or has operating subsidiaries in Scotland or Wales, the TSA will notify the Scottish Housing Regulator or the Welsh Assembly Government as appropriate

Direction to the Homes and Communities Agency

36 Under section 106 of the Act, in circumstances where the TSA has received notice in respect of a registered provider under section 145, it may give a Direction to the Homes and Communities Agency (the HCA), which prohibits the HCA from giving financial assistance to the provider. As noted in paragraph 15 above the TSA will give the HCA a copy of any notice received under section 145. The circumstances applicable to each case will be different and the TSA will be mindful of its objective of protecting public funds. However, as a general rule, the TSA will not give a Direction to the HCA where to do so would worsen the financial position of the provider thus hastening the onset of insolvency. Therefore, the TSA envisages the use of the power to direct the HCA being restricted to financial assistance where a contractual commitment has not been entered into by the provider. In the absence of Directions from the TSA the HCA is, of course, free to take its own decisions about continued funding. At the outset of a moratorium the TSA will meet with the HCA to gain a full and detailed understanding of the position of the provider in respect of existing and proposed HCA financial assistance, and to ensure that the HCA is aware of the circumstances of the case. Further advice about the TSA's approach to the exercise of the power to direct the HCA is set out in the relevant guidance note.

Guidance note 6

Guidance on section 166: winding up petition by regulator

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power relating to petitioning for the winding up of a registered provider. This is a general power and is set out in chapter 4 section 166 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to registered providers with some exceptions that are set out in the section below on scope. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to a non-profit registered provider which is a registered company or an industrial and provident society. It cannot be applied to a local authority provider, a for-profit provider or to a registered charity, which is not a registered company.

Background and context to the use of the power

- 3 Where problems are identified with a provider the TSA will intervene as it sees fit to assist the provider to resolve those problems. The TSA has a number of intervention and enforcement powers which it can employ depending on the circumstances of the case. The TSA believes that the vast majority of problem cases will be resolved through timely and effective

intervention. However, in the unlikely event that problems cannot be resolved in the normal course of events and where particular conditions exist, the TSA can petition the court under the Insolvency Act 1986 to wind up a registered provider. The TSA considers this power to be a residual power that will only be used in rare and exceptional circumstances.

The power

The circumstances in which the power can be exercised

- 4 The power can only be exercised on any of three grounds as follows:
 - that the provider is failing properly to carry out its objects
 - that the provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986
 - that the TSA has previously directed the provider under section 253 of the Act to transfer all its land to another person

Failure to properly carry out objects

- 5 Under section 112 of the Act, in order to be eligible for registration with the TSA a body which is not a local authority must be a provider of social housing or intend to become a provider of social housing. The TSA therefore considers that carrying out objects in the context of section 166 relates solely to the provision of social housing.

Inability to pay debts

- 6 Section 123 of the Insolvency Act 1986 sets out the meaning of a company's inability to pay its debts. The TSA considers that it is highly unlikely that it would use this ground to petition for the winding up of a provider. This is because the prime responsibility for complying with the law in such a situation rests with the provider's officers, directors, committee members or trustees and with its senior staff. Also it is up to the creditors of a provider to take whatever action is open to them to enforce payment of monies due to them. Action taken by the provider or its creditors could trigger the use of the TSA's insolvency power contained in sections 144 to 159 of the Act (see separate guidance on that power).

Where land has been transferred

- 7 Where all of the land of a provider is transferred to another person following a Direction by the TSA under section 253, the provider will remain as a constituted body, although it will not be able to function as a registered provider. In that case, unless the provider's members take action to dissolve the body in accordance with its constitution, the TSA will petition the court to wind up the provider.

The effect of an exercise of the power

- 8 While the TSA can put a petition to the court it is entirely a matter for the court as to whether it grants an order for the winding up of the provider or not. If it does grant an order the court will give responsibility for putting the winding up into effect to the official receiver. The TSA will provide the official receiver with all the information and assistance the official receiver requires enabling his or her duties to be discharged. The TSA will consider whether it is necessary to use any of its other enforcement powers in order to facilitate a winding up. When the official receiver confirms to the TSA that a winding up is complete the TSA will remove the provider from its register and will liaise with other regulatory bodies as appropriate regarding removal from their registers.

Consultation

- 9 The Act does not require the TSA to consult relevant persons in exercising its power under section 166. In the limited circumstances which the TSA envisages using the power there are unlikely to be any significant legitimate interests remaining. The TSA is committed to as full consultation as is possible with any relevant stakeholders.

Guidance note 7

Guidance on section 167: transfer of property

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power relating to the transfer of property following the dissolution or winding up of a registered provider. This is a general power and is set out in chapter 4 section 167 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to registered providers with some exceptions, which are set out in the section below on scope. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to a non-profit registered provider which is a registered company or an Industrial and Provident Society. It cannot be applied to a local authority provider, a for-profit provider or to a registered charity, which is not a registered company.

Background and context to the use of the power

- 3 The principles behind the constitutional and operating frameworks of non-profit providers are such that any assets held by them should be applied in furtherance of their own objects or the objects of similarly constituted bodies. As any assets remaining after a provider ceases to

exist cannot be distributed to its members the Act provides assurance that those assets will continue to be used for their intended, or similar, purposes.

The power

The circumstances in which the power can be exercised

- 5 The power can only be exercised where a non-profit registered provider is dissolved under the Industrial and Provident Societies Act 1965 or is wound up under the Insolvency Act 1986. The power overrides anything contained in the Industrial and Provident Societies Act 1965, the Insolvency Act 1986, the Companies Act 2006 or the constitution of the provider.

The effect of an exercise of the power

- 6 Any surplus property that is available after satisfying the provider's liabilities must be transferred to the TSA or, if the TSA directs, to a specified non-profit registered provider. Where the provider that is dissolved or wound up is a charity its surplus property can only be transferred to another charity that has similar objects to those of the transferring charity. The Act gives the TSA the power to decide whether the objects of the two charities are similar. The TSA will consult with the proposed recipient charity, and will take advice from the Charity Commission as necessary, before making a decision on similarity of objects.

- 7 The TSA considers that the legal processes for dissolution and for winding up will ensure that all assets and liabilities of a provider are properly identified such that the TSA will not need to undertake a separate process to satisfy itself in that regard.
- 8 The Act also gives the TSA the power to discharge liabilities of a provider in order to avoid the sale of the provider's land and instead secure a transfer of that land. The TSA does not envisage using this power as to do so would mean public funds taking the place of existing creditors. There may be exceptional circumstances, for example if tenants are in danger of losing their homes, where the TSA would consider a case for providing financial assistance. The TSA would only consider such a case where all other possible avenues for meeting the liabilities had been exhausted.

Directing a transfer of surplus property

- 9 Where the TSA holds surplus property transferred to it under section 167 (and under previous legislation) the TSA will transfer such property to other non-profit registered providers in accordance with criteria determined by the board of the TSA and made available from time to time. In general, surplus property will be used to facilitate strategies for the resolution of serious problem cases, and in some cases may take the form of direct financial assistance.

Consultation

- 10 The Act does not require the TSA to consult relevant persons in exercising its power under section 167. As the provider which owned the property will be dissolved or wound up there are unlikely to be any significant legitimate interests remaining. The TSA is committed to as full consultation as is possible with any relevant stakeholders.

Guidance note 8

Guidance on sections 199 to 200: survey

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power to carry out a survey. This is a regulatory power and is set out in chapter 6 sections 199 to 200 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to all registered providers. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to all providers, including a non-profit private registered provider, a for-profit private registered provider and a local authority provider.
- 3 The term "premises" is not defined in the Act, but the TSA will only exercise the power to carry out a survey in relation to social housing, that is to homes or dwellings. The term "dwelling" is defined in section 275 of the Act as "a house or flat or other building occupied or intended to be occupied as a separate dwelling", and "includes any garden, yard, outhouse or other appurtenance". The TSA considers that common parts will fall within this definition.

Background and context to the use of the power

- 4 A provider is responsible for ensuring that it achieves the standards set by the TSA. A provider has primary responsibility for ensuring that its tenants live in good quality accommodation which is repaired and maintained to the highest standards. The TSA expects providers to have good quality information on the condition of its social housing stock. It may be necessary for the TSA to step in and exercise this power when it suspects that a provider is failing to maintain its premises in accordance with the standards under section 193 of the Act.

Potential triggers to the exercise of the power

- 5 Sections 199 and 200 of the Act set out the circumstances in which the TSA may exercise the power to carry out a survey. The TSA may arrange for a survey of the condition of identified homes by an authorised person.
- 6 Indicators of a potential breach of the standards could include:
 - a potential generic problem in design, construction or condition which may impact across the provider's social housing stock or across the wider social housing domain
 - a failure by the provider to honour a relevant voluntary undertaking to the satisfaction of the TSA

- a failure by the provider to deal with previous relevant regulatory interventions to the satisfaction of the TSA
- a survey is necessary as part of the exercise of the TSA's wider regulatory or investigatory powers such as an inspection or an inquiry
- a high level of relevant complaints from the provider's tenants
- concern about the extent of the provider's compliance with the Decent Homes Standard

Process

Who can carry out a survey?

- 7 A survey can be carried out by anyone who is authorised by the TSA. An "authorised person" may be a member of the TSA's staff, or any other person who has been authorised in writing by the TSA for the purposes of carrying out a survey under this power. The TSA will ensure that the authorised person is qualified for the intended purpose of the survey.

Authority to carry out the survey

- 8 The TSA will give the authorised person written authority to carry out the survey. The TSA will send a copy of this authority to the provider. When carrying out the survey, or seeking to enter premises in order to carry out the survey, the surveyor must produce a copy of the authorisation if requested to do so by the occupier of the premises. The surveyor may enter the premises at any reasonable time to carry out the survey.

Notice

- 9 The Act places obligations on both the TSA and the provider in relation to giving notice of the survey:
- the authorised person must give the provider at least twenty-eight days notice
 - the provider must give each occupier of the premises at least seven days notice

Report

- 10 After carrying out a survey, the surveyor must produce a written report for the TSA. The TSA will send a copy of the report to the provider.

Costs

- 11 The Act makes provision for the TSA to require the provider to pay some or all of the costs of the survey and report. This is discretionary, but the TSA will usually seek to recover the full cost of the survey and report from the provider, having taken into account the outcome of the report and the circumstances of the provider.

Sanctions

- 12 The Act makes provision for the TSA or the Director of Public Prosecutions to bring proceedings in circumstances where:

- a provider fails without reasonable excuse to comply with the requirement to give each occupier of the premises at least seven days notice of a survey
- a provider, or an officer of a provider, obstructs an authorised person in exercising the power to carry out a survey

Guidance note 9

Guidance on sections 201 to 203: inspection

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise its power on inspection. This is a regulatory power and is set out in chapter 6 and sections 201 to 203 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to all registered providers. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Background and context to the use of the power

- 2 The TSA will use the inspection process to assess performance against national standards and to inform key parts of our regulatory assessment. A provider is responsible for ensuring that the organisation achieves the standards. In circumstances where there may have been a failure against a standard, where the affairs of a provider may have been mismanaged, or to verify performance against any of the standards, the TSA may exercise the power to inspect. The TSA will commission and decide the scope of the inspection.

Potential triggers to the exercise of the power

- 3 Section 201 of the Act specifies that the TSA may arrange for a person to inspect:
 - a provider's performance of its functions in relation to the provision of social housing
 - the financial or other affairs of a provider
- 4 The TSA is likely to exercise the power predominantly in circumstances where it has reason to believe that a provider is failing to meet one or more of the standards, and it is necessary to establish whether or not this is the case before assessing if further action is necessary. Examples of such circumstance might include:
 - evidence on performance against national standards from a provider's self-assessment or other indicators of performance
 - evidence from a provider's annual reports to tenants on performance against standards
 - regulatory concerns arising from complaints about service delivery or a reference from the ombudsman
 - where we have grounds to suspect that improvement by the provider has not resulted in compliance with the standards or is not doing so in a timely way
 - indicators of financial problems or poor financial management from a provider's financial returns to the TSA
 - evidence of impropriety (including fraud)

- whistle blowing involving allegations of a serious nature
- performance issues arising from Comprehensive Area Assessment that relate to providers

Scope

- 5 The main purpose of an inspection is to assess a provider's performance in relation to standards set under sections 193 and 194 of the Act. The power may be exercised in relation to all providers including a non-profit registered provider, a for-profit registered provider and a local authority provider. An inspection of the social housing activities of a local authority provider will include liaison with managing agents where management services are provided by an arm's length management organisation (ALMO), a tenant management organisation (TMO), or other manager under contract.

The power

Who can conduct an inspection?

- 6 If the main purpose of an inspection is to assess a provider's performance in relation to standards set under section 193 of the Act, the TSA is required to first invite the Audit Commission to carry it out. Should the Audit Commission decline to do so the TSA may arrange for another person, an appropriate professional expert, to carry out the inspection. The TSA can appoint any appropriate person to conduct an inspection with the exception of a member of its own staff.

Inspections by the Audit Commission

- 7 It is for the TSA to decide whether an inspection is needed and its scope, taking into account the particular circumstances of the provider. Where the inspection is to be carried out by the Audit Commission, the TSA will identify the provider, the services for inspection and the main focus of the inspection. The TSA expects that the Audit Commission will usually obtain all the supporting information it requires for the inspection from the provider in accordance with its own procedures, and using the powers to obtain specified information and documents in the Act only if it is necessary to do so. The TSA will provide any relevant supporting information it holds to the Audit Commission. The Audit Commission will ensure that inspections are delivered in a timely, efficient and cost-effective way. In practice, particularly in circumstances where the TSA believes that there may have been a failure against a standard, it will ensure that the inspection is focussed on the potential failure. This is likely to be through a short-notice inspection. The TSA and the Audit Commission will work together to deliver inspections within the terms of any memorandum of understanding agreed between the two organisations from time to time.

The local performance framework for local authorities

- 8 In the local performance framework all inspection activity is subject to a "gate-

keeping” function. This is designed to ensure that inspection activity across inspectorates is managed effectively. The Audit Commission is responsible for gate-keeping all inspections of local authorities following consultation with other inspectorates who work within the local performance framework. In practice this means the Audit Commission would inform the TSA if it intends to decline any request for an inspection or delay its implementation, and the reasons for that decision.

Inspections by an appropriate professional expert

- 9 Again it is for the TSA to decide whether an inspection is needed and its scope, taking into account the particular circumstances of the provider. Where the inspection is to be carried out by bodies or individuals other than the Audit Commission the TSA will ensure that the inspector is qualified for the intended purpose of the inspection. The inspection will be focussed on any potential failure against a standard. The TSA will set the brief and the terms of reference for the inspection, including the main focus and any specific matters to be inspected. These will include the timetable for completion of the inspection and the reporting arrangements. The TSA will agree the inspector’s remuneration. The TSA expects the provider to give all the background information required for the inspection to the inspector on a timely basis. The TSA will give support to the inspector in circumstances where it is necessary to use the powers to obtain specified information and

documents in the Act. The TSA will provide any supporting information it holds to the inspector. The inspector will ensure that the inspection is delivered in a timely, efficient and cost-effective way, and the TSA will monitor the inspector’s progress in order to achieve these outcomes.

Notification and initial contact with the provider

- 10 The TSA will notify the provider about an inspection. It will also agree the arrangements for the inspection with the inspector and the provider based on the particular circumstances of the case. The TSA will expect the inspector to then make contact with the provider in order to agree the detailed practical arrangements associated with the inspection.

An inspector’s powers

- 11 Section 203 of the Act sets out an inspector’s powers. In summary these are:
 - to require a person to provide specified documents or information. The TSA would expect a provider, or its agents, to produce information and documents when requested to do so by the inspector as listed in section 107(1) (see the guidance note on section 107). Where the provider does not do so, the inspector may by notice require the information and documents to be produced
 - to enter premises occupied by the provider at any reasonable time
 - to inspect copy or take away documents found

on the premises. This includes all relevant documents held by the provider, including documents stored on computers

- to inspect any computer on which documents have been created or stored
- to require any person, including any person having charge of a computer, to provide such facilities or assistance as the inspector reasonably requests

Where the Audit Commission carries out the inspection, the inspector will be authorised in writing by the Audit Commission to exercise the powers set out in section 203 of the Act. Where an appropriate professional expert carries out the inspection, the inspector will be authorised in writing by the TSA to exercise the powers set out in section 203 of the Act.

Giving draft reports to the provider

- 12 The Audit Commission has its own procedures for sharing its inspection reports with a provider in draft form, and for considering and responding to challenge to its findings by a provider. In those cases where the Audit Commission carried out the inspection the TSA would expect the Audit Commission to follow its own procedures. In those cases where an appropriate professional expert carried out the inspection, the TSA will require the inspector to give the provider an opportunity to comment on the draft report.

The inspection report

- 13 The Act requires that the appointed inspector produce a written report. The TSA will ensure that a copy of the report is given to the provider together with its own assessment of the outcome. The Act makes provision for both the TSA and the inspector to have discretion to publish the report, and the TSA will take into account all relevant factors in coming to a decision on publication, including all legal requirements and commercial confidentiality. In those cases where an appropriate professional expert carried out the inspection, the TSA will consider whether to publish the report, and where it decides that it would be appropriate to do so, it will determine the basis on which the report is published having taken account of the views of the inspector and the provider.

- 14 The Audit Commission has its own procedures for publishing inspection reports and in those cases where the Audit Commission carried out the inspection the TSA would require the Audit Commission to publish the report in line with those procedures and as reflected by the MoU between the commission and TSA.

- 15 In all cases the TSA will expect the inspection to be concluded as quickly as possible in order that any remedial action that is necessary can be taken swiftly.

Follow-up action

16 The TSA will consider whether it is necessary to follow up an inspection report with the provider. Where the inspector's report makes recommendations we would expect the provider to make proposals for how it will achieve them. The TSA will consider the proposals and monitor the provider's progress towards achieving them. Where an inspection demonstrates a failure against a standard or mismanagement in the affairs of a provider, the TSA may consider further action against the provider, including the possible exercise of one or more of its enforcement powers. Where an inspection has been undertaken by the Audit Commission, the TSA may commission it to carry out follow up work as part of its assessment of the effectiveness of any remedial work that the TSA required as a result of that inspection. The TSA will ensure that inspection findings are reflected in any published regulatory judgement where they are material and its overall assessment of the provider is changed as a result of them.

17 In considering the outcome of the inspection, the TSA will assess any wider implications for the management and governance of the provider.

The costs of an inspection

18 The Act makes provision for the TSA to reimburse the costs incurred by the Audit Commission in carrying out an inspection and for payment to an appropriate professional expert. It

also makes provision for the Secretary of State by order to authorise the TSA to charge fees for inspections. The Secretary of State has not made such an order, so the TSA will not charge fees for inspections carried out during 2010-11. The CLG and TSA will consult about charging fees at a future date.

Sanctions for failing to co-operate with an inspector

19 The Act makes provision for the TSA or the Director of Public Prosecutions (or someone else with their consent) to bring proceedings in circumstances where a person without reasonable excuse obstructs an inspector exercising the powers set out in section 203 (4-8) of the Act.

What the TSA expects from the provider

20 The TSA expects a provider that is subject to inspection to:

- co-operate fully with the TSA and the inspector
- give access to premises, staff and tenants where required to the inspector
- provide information and documents to the inspector on a timely basis
- provide facilities and assistance to the inspector when requested
- not to publicly comment on the findings of an inspection until the report is in the public domain

Guidance note 10

Guidance on sections 206 to 209: inquiry

Guidance on section 210: extraordinary audit

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the powers on inquiry and extraordinary audit. These are regulatory powers and are set out in chapter 6 and sections 206 to 209 and section 210 of the Housing and Regeneration Act 2008 (the Act). They may be exercised in relation to all registered providers, subject to the exceptions applying to local authorities and for-profit providers that are set out in the section headed “scope” below. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA’s approach.

Scope

- 2 These powers may be exercised in relation to all providers including a non-profit private registered provider, a for-profit private registered provider (in relation to its social housing) and a local authority provider (in relation to its social housing).
- 3 An extraordinary audit of the accounts and balance sheet of a local authority provider may only cover the extent to which they relate to the provision of social housing.
- 4 These powers may be exercised in relation to a registered charity only if the charity has received public assistance. The term “public assistance” is defined in section 274 of the Act, but in summary, it means that the registered charity

must have received certain specified loans or grants from public sources or had property transferred to it by a local authority. An inquiry into a registered charity may only relate to its social housing activities. An extraordinary audit of the revenue accounts of a registered charity may only cover the extent to which they relate to its social housing activities. If an inquiry is held into a registered charity, the TSA will notify the Charity Commission in accordance with section 209 of the Act.

- 5 During the course of an inquiry, the inquirer may consider the affairs of a body which at the relevant time was a subsidiary or associate of a registered provider. The terms “subsidiary” and “associate” are defined in section 271 of the Act, but in summary, they include any organisation falling within the meaning of “subsidiary” in either the Companies Act 2006 or the Friendly and Industrial and Provident Societies Act 1968; any organisation where the provider has the power to appoint or remove all or a majority of the board of directors; or any organisation where the provider holds more than half in nominal value of the company’s equity share capital.

Background and context to the use of the powers

- 6 The provider is responsible for ensuring that the organisation is properly governed, is viable, and achieves the standards set by the TSA. In circumstances where the affairs of a provider may have been mismanaged, it may be necessary for the TSA to step in and use the power to hold an inquiry. An extraordinary

audit may be required as part of an inquiry. The TSA will appoint one or more inquirers and will commission the inquiry. Although the TSA must appoint one or more persons who are independent of the TSA to conduct an inquiry, it is conducted on behalf of the TSA, with the inquirer(s) presenting findings on matters specified by the TSA, which may include making recommendations. The report of a statutory inquiry will be considered by the board of the TSA, which will decide on any action that may need to be taken on it, including the use of any of the TSA's powers.

Potential triggers to the exercise of the power

7 Sections 206 to 209 of the Act specifies that the TSA may hold an inquiry if it suspects that the affairs of a provider may have been mismanaged. The term “mismanaged” in relation to the affairs of a provider is defined in section 275 of the Act as:

- managed in contravention of a provision of part 2 of the Act or of anything done under part 2 of the Act
- otherwise conducted improperly or inappropriately

8 The TSA is most likely to exercise the power to hold an inquiry in circumstances where it suspects mismanagement, for example:

- there may have been a failure against the governance and financial viability standard for a private registered provider

- there may have been a failure against a social housing standard leading to a persistent under-performance in the delivery of services to tenants
- the provider may have failed to honour its commitments as set out in a voluntary undertaking
- the provider may have failed to comply with an order or Direction made by the TSA or to resolve problems that led to previous regulatory interventions
- the provider may have been involved in activities that might endanger the security or interests of tenants or put the social housing funds or assets of the provider at risk
- the provider may have been involved in the misuse or misapplication of public, charitable or other assets or funds
- there may have been a failure to operate within the provider's constitution, governing instrument or standing orders, which has been detrimental to the provider, its tenants or its operations
- the provider may have knowingly given false information to the TSA or to other organisations
- the provider may have been involved in persistent unlawful discrimination or other breaches of legislation
- the provider may have been involved in unlawful or unacceptable conflicts of interest, including breaches of charity law
- the shareholding membership of a non-profit private provider may have failed to act in the best interests of the provider or of its tenants

This is not an exhaustive list and the TSA may conclude that it is necessary to exercise the power in other circumstances to those set out above.

- 9 The TSA is most likely to exercise the power to hold an extraordinary audit in circumstances where it considers that:
- there may have been a material mis-statement in the accounts
 - the accounts have been qualified
 - a private registered provider's solvency is in doubt
 - there may have been a fraud
 - auditors have raised matters of serious concern, for example in their management letter

The powers

Who can conduct an inquiry?

- 10 As mentioned above, an inquirer must be independent of the TSA. An inquirer is deemed to be independent in circumstances where they and the members of their family:
- are not members, employees or consultants of the TSA
 - have not been members or employees of the TSA within the previous five years
- 11 The term “consultant” is defined in section 206 of the Act as an individual providing services to the TSA otherwise than by virtue of employment with the TSA or an appointment as an inquirer. For the avoidance of doubt, the TSA takes this

to mean that an individual consultant who is providing services to the TSA when the TSA decides to hold an inquiry cannot be appointed as an inquirer, but an individual consultant who has provided services to the TSA previously and who has completed the work associated with that commission may be appointed as an inquirer.

- 12 The TSA will appoint an inquirer on the basis of the skills and experience required in the circumstances of each individual case.

Process

- 13 The process for an inquiry is set out in detail below.

Costs

- 14 The TSA will meet the cost of the inquiry on terms to be agreed with the inquirer. Section 207 of the Act specifies that a local authority may contribute to the cost of any inquiry should it wish to do so.

Extraordinary audit

- 15 Section 210 of the Act specifies that where an inquiry is being held, or has been held, the TSA may require the provider to allow its accounts and balance sheet to be audited by a qualified auditor appointed by the TSA.

Who can conduct an extraordinary audit?

- 16 The Act defines the term “qualified auditor” as a person eligible for appointment as auditor of the provider’s ordinary accounts. The TSA will ensure that the auditor is qualified for the intended purpose of the extraordinary audit.

Process

- 17 The auditor will be appointed and briefed by the TSA, except in the case of a local authority provider where the appointment will be made by the Audit Commission. The provider subject to the inquiry, and others, will be notified in the same way as for an inquiry. See those sections of this guidance headed appointing an inquirer, briefing an inquirer and notification of an inquiry. The TSA will determine the matters to be audited during the extraordinary audit and the form of the report. The TSA will agree a work plan, timetable and costs of the extraordinary audit with the auditor. On completion of the extraordinary audit, the auditor will report to the TSA on such matters and in such form as determined by the TSA.

Costs

- 18 The Act specifies that the provider subject to the inquiry must pay the costs of the extraordinary audit including the auditor’s remuneration (section 210 (5)).

Appointing an inquirer

- 19 Before appointing an inquirer, the TSA will seek proposals from the prospective inquirer in relation to the possible methodology, likely time input and fees, overall timetable as well as estimated cost. The prospective inquirer will be asked to identify any additional support that is needed to facilitate the inquiry including professional services. The TSA will consider the prospective inquirer’s proposals and will direct the parameters for the inquiry, including the proposed methodology; the likely time input by the inquirer; the likely time input by other professional services; spending limits for specific items; overall timetable; overall budget; format, content and frequency of reports
- 20 The TSA will appoint one or more individuals as inquirers, and they will conduct the inquiry. The TSA will ensure that the inquiry has access to all the skills necessary to meet the inquiry brief, including, where appropriate, specialists such as lawyers or forensic auditors. The TSA and the inquirer will consider the most appropriate method of procuring the services of such individuals: they may be appointed as an additional inquirer; alternatively the inquiry may choose to buy in their services. Where the inquiry buys in services, the persons providing the service will not be an inquirer, but will undertake work for and on behalf of the inquiry under the direction of the inquirer. In all such cases, the TSA will approve the terms under which such individuals are appointed, including fee levels and the budget for the work to be undertaken. The

TSA will ensure that the inquirer, and persons or organisations providing services to the inquiry do not have any actual or potential conflicts of interest which might be prejudicial to their involvement. The TSA may appoint an additional inquirer during the course of an inquiry if it becomes necessary to extend the scope of the inquiry.

- 21 The TSA will nominate a named member of staff to commission the inquiry on its behalf and to fulfil the client role to the inquiry. The TSA will also nominate a named member or members of staff as the main point or points of contact between the TSA and the inquirers, and, where necessary, between the TSA and the provider during the course of the inquiry. The TSA may also provide administrative support or other facilities to the inquiry. Where such support is in place, the member of staff providing it will not be the same person as one of the nominated points of contact.

The inquiry

- 22 As mentioned above, an inquirer is independent of the TSA, but conducts the inquiry on behalf of the TSA. The inquirer:

- shall determine the procedure for an inquiry
- may make interim reports
- shall make a final report on matters specified by the TSA

- 23 Section 208 of the Act sets out the powers of an inquirer in relation to evidence. In summary these are:

- to require a person to provide specified documents or information. The TSA would expect a provider, or its agents, to produce information and documents when requested to do so by the inquirer. The inquirer may by notice require the information and documents to be produced. The notice will specify the document or information required, the form and manner in which the document is to be provided and when and where the document or information is to be provided. This power applies to the documents and information set out under sections 107 and 108 of the Act, and a failure to comply with such a requirement is subject to the same sanctions that are available under those sections. See the separate guidance note on this power
- such a notice might require evidence to be given on oath and the inquirer may administer oaths for that purpose
- to take evidence on oath
- serve a notice on an appropriate person directing him or her to attend [the inquiry] at a specified time and place in order to give evidence or produce specified documents in their control or custody that are relevant to the inquiry

The inquiry brief

- 24 The TSA will draft the brief for the inquiry. The contents will vary depending on the circumstances of the case. This is not an exhaustive list, but the brief will include:

- the TSA's powers
- The inquirer's powers, responsibilities and duties
- the general approach to the conduct of the inquiry

- information about the provider and its operations
- background to the TSA's concerns
- the TSA's principal concerns
- the parameters of the inquiry including the specific matters and time period that is to be investigated
- the timetable for the inquiry
- financial considerations
- the arrangements for reporting to the TSA, including any requirement by the TSA to provide interim reports
- the TSA's expectations of the inquirer
- how success against the brief will be monitored and measured
- any other matters that the TSA may consider to be relevant to a particular inquiry

25 The TSA will keep the brief under very close review during the course of the inquiry. If it becomes necessary to amend or extend the brief or allow additional time for the inquiry, the TSA will agree a revised brief to the inquirers and provide a copy to the provider.

Briefing the inquirer

26 The TSA will provide both written and oral briefings to the inquirer covering both the inquiry process and key background on the provider. The inquirer will be given all relevant information and documents about the provider's affairs and the specific areas for investigation that it is aware of or has in its possession. Since the circumstances of and the reasons for an inquiry will vary from case to case, it is not possible to provide an exhaustive list of documents, the following

material is likely to be made available to the inquirer, depending on the nature of the provider:

- the provider's constitution
- the most recent audited accounts and auditor's management letter
- business plan
- financial returns provided to the TSA
- performance information and compliance statement provided to the TSA
- any relevant voluntary undertaking given to the TSA
- the most recent TSA regulatory judgement
- the most recent TSA annual viability review
- key correspondence between the TSA and the provider
- any documents directly relevant to the matters to be investigated
- the latest Comprehensive Area Assessment for a local authority
- any other relevant background material

Notification of an inquiry

27 Depending on the nature of the issues that are subject to an inquiry, it may not be possible to give a provider advanced notice of the decision to undertake an inquiry. However, the TSA will notify the provider in writing and will normally arrange to meet the governing body to explain the reasons for the inquiry, the process that will be followed and the anticipated timetable. The notification will usually include:

- a copy of the order appointing the inquirer
- the brief for the inquiry

- the powers of the inquirer
- a copy of these guidance notes
- the terms of any public statement that the TSA requires the provider to make
- a draft news release to announce the inquiry
- the proposed lines of communication between the TSA and the provider

28 The provider will be asked to notify its key stakeholders. The TSA will notify other relevant organisations that it has decided to hold an inquiry. These may include:

- Communities and Local Government
- the Financial Services Authority or the Charity Commission as appropriate
- Homes and Communities Agency
- the Audit Commission
- a local authority in its capacity as the strategic housing authority for any area in which the provider operates where the inquiry is into the affairs of a private registered provider
- an appropriate body that represents the provider
- secured creditors

The TSA will keep relevant organisations informed of the progress of the inquiry as necessary. In doing so it will seek to balance the expectations of such organisations to be properly and fully informed against to the disclosure of qualified, sensitive or privileged material.

29 The TSA will issue a news release to announce the inquiry. The provider will usually be given an opportunity to comment on the factual accuracy of any such news release.

Conduct of an inquiry

30 It is for the inquirer working to the brief and within the parameters, timetable and budget set by the TSA to determine the procedure for the conduct of the inquiry. The inquirer is expected to establish matters of fact relating to the particular matters under investigation. If any matter of concern not within the brief comes to the inquirer's attention during the course of the inquiry, the inquirer should seek instructions from the TSA on whether or not the matter should be followed within the inquiry. If the TSA agrees it will issue a revised brief to the inquirer and to the provider.

31 The inquirers have wide-ranging powers to obtain information and documents from the provider, its subsidiaries, from associated organisations and from current and former officers, members, employees and agents including any professional advisers or persons acting for or on behalf of the provider. Any person failing to comply with such an order from the inquirers is liable to be prosecuted. The inquirers may take copies of any books, accounts or documents produced. Where an extraordinary audit is being carried out, inquirers may make an order for such information with a view to passing it on to the auditor.

32 The TSA will expect an inquiry to be conducted in accordance with the principles of natural justice. The inquirers may interview anyone who may have been involved in the matters under investigation. Any person interviewed

may, if he or she wishes, be accompanied by a representative, provided that that person is not also someone who has been or is to be interviewed by the inquirers. Where appropriate, those interviewed may be asked to give evidence under oath, to make a declaration of the truth or to agree and sign written statements. Neither the TSA, nor the inquiry, will pay for any person or their representative to attend the inquiry. No payment will normally be made for loss of earnings or professional fees or out of pocket expenses.

- 33 The inquirer will be asked to provide regular reports on the progress of the inquiry to the TSA, including in particular progress in terms of timetable and budget. If the inquirer anticipates that the previously agreed timetable or budget is likely to be exceeded, the inquirer should inform the TSA and seek guidance about whether the TSA is minded to grant an extension and/or is prepared to authorise additional expenditure. If the TSA agrees it will issue a revised brief to the inquirer and to the provider.

An interim report

- 34 The inquirer may make one or more interim reports to the TSA, or as required by the TSA. If as a result of an inquirer's interim report, the TSA is satisfied that the affairs of the provider have been mismanaged, the TSA may exercise a number of its enforcement powers. See separate guidance notes.

The final report

- 35 Section 207 of the Act makes provision for the inquirer to make a final report on matters specified by the TSA.
- 36 The TSA will expect the inquirer to send the final report, or relevant extracts, in draft form to any individual who is likely to be criticised in the final report in order to give them the opportunity to respond to those criticisms. A copy of the final report will also be sent to the governing body of the provider. The inquirer should give the relevant parties a reasonable amount of time to respond. The TSA will expect the inquirer to demonstrate that the views of those individuals responding have been taken into account in making the final report. Where responses are received after the deadline set by the inquirer, it will be a matter for the discretion of the inquirer whether or not they will be taken into account.
- 37 While the form and content of the final report will vary from case to case, in compiling the final report, the TSA will expect the inquirer to record:
- findings about the matters for investigation set out in the inquiry brief
 - the facts of the case
 - the conclusions the inquirer has drawn from those facts, including specific conclusions as to whether or not there has been mismanagement, and, if there has, who was responsible for it
 - any facts about which there was dispute
 - any material conflicts of evidence
 - how the inquirer has taken account of any

responses to the draft final report from relevant parties in making the final report

- 38 Where the inquirer wishes to make suggestions for improving the performance of the provider in particular, or that of providers generally, or wish to comment on matters outside their brief these should be discussed first with the TSA and, if agreed, recorded in a separate letter to the TSA.

Consideration of the final report and representations

- 39 The TSA's board will consider the facts of the case as set out by the inquirer in the final report. It may not agree with some or all of the inquirer's conclusions or may form different conclusions from the evidence. The board may refer the report back to the inquirer at any point in order to seek clarification on, or a supplementary report about, some specific part or parts or the whole of the report. Where this reveals that the report contains an error of fact, the board will consider whether the error was sufficiently material to change the findings detailed in the report.
- 40 The board will seek to finalise its consideration of the report as soon as it is reasonably practicable to do so, but the process may require more than one meeting. The TSA will notify the provider of the provisional timetable in which the board is expected to consider the report. This will include the date of any relevant board meeting, or meetings and the anticipated deadline for the receipt of any written representations

- 41 The purpose of the TSA board meeting, or meetings, is to consider all the relevant material and to decide:

- whether the board is satisfied, as the result of an inquiry, that the affairs of the provider have been mismanaged
- if they have been mismanaged, whether any person or group of persons contributed to the mismanagement
- if they have been mismanaged, whether the board is minded to exercise any of the TSA's enforcement powers in the Act
- whether the board requires the provider to take any remedial action in relation to issues raised in the report

- 42 If the board concludes that the affairs of the provider have not been mismanaged, or if the board is satisfied that only minor remedial action is required, the inquiry will usually be concluded.

- 43 Once the board has made its findings, the provider will be informed as soon as possible in writing, setting out the reasons for the board's decisions. If the board concludes that there has been mismanagement, the TSA will inform the provider and any individuals who appear to have contributed to it. They will also be advised of any enforcement action that the board is minded to take. Copies of the final report, or relevant extracts, will be sent to the provider or to individuals or to third parties (referred to subsequently in this guidance as "relevant persons") and they will be invited to make representations to the TSA's board. Any such

invitation is entirely at the discretion of the TSA, and will only be extended to an individual or an organisation that appears to the TSA to have a direct and relevant interest in the governance, management and operations of the provider.

44 The TSA would usually expect the relevant persons to make written representations. In addition, the TSA may be prepared to consider oral representations made in person. The purpose of the representations is to offer the relevant persons an opportunity to correct matters of fact or to refute the contents of the final report.

45 Where the relevant persons wish to make written representations they will be asked to submit them by a specified deadline. It is in the best interests of the relevant persons to provide material by the deadline since this will give board members sufficient time to give it careful consideration. Where representations are received after the deadline, the TSA will use its best endeavours to circulate the material to board members before the meeting, but it cannot guarantee to do so. The TSA will not usually grant requests for additional time to submit written representations, although it may be prepared to do so if exceptional circumstances can be demonstrated.

46 Where the TSA is prepared to consider oral representations, the relevant persons will be invited to do so at a meeting of the board. The TSA will not usually grant requests to postpone such a meeting, although it may be prepared to

do so in exceptional circumstances. The TSA may set a time limit for the provider, the individual or the third party to make their representations.

47 Anyone making oral representations may be accompanied by a legal adviser or other representative if they so wish, provided that the person has not previously been interviewed by the inquirers, and the TSA has been notified in advance that they will be attending. The TSA will not pay for any person or their representative to attend the meeting with the board. No payment will be made for loss of earnings, or professional fees or out of pocket expenses, other than if exceptional circumstances can be demonstrated.

48 The board will determine how a meeting at which oral representations are to be made is to be conducted. The TSA may arrange for a verbatim transcript of the representations to be made. If it does so a copy will be sent to those making the representations or their representatives. When the board is satisfied that the relevant persons have had a reasonable opportunity to state their case, it will conclude its consideration of the report in private session. The TSA will notify the relevant persons of the outcome of the board meeting, including the reasons for its decision, as soon as it is practicable to do so.

49 At the conclusion of the inquiry, the provider, and all the organisations notified of the start of the inquiry will be notified of the conclusions reached and any action taken by the TSA.

Publication of an inquiry report

50 Section 207 of the Act sets out the TSA's power to publish all or part of an interim or final report. While the TSA is, in principle, committed to publishing all inquiry reports in full, it recognises that some reports may contain some material where publication might not be in the public interest or might compromise the safety of individuals or might deter others from coming forward with information. The TSA will always consider whether publication is in the public interest. If it is, the TSA will consider the most appropriate form for publication which could be:

- the full report
- a summary of the report
- any representations made by the provider or by any individual

52 Where the TSA does intend to publish material it will notify the provider and any relevant individuals of its intention to do so. The TSA will issue a news release to announce the publication of the report.

Expectations

What an inquirer can expect from the TSA

53 The TSA will:

- brief the inquirer and agree appropriate contractual arrangements, including as to costs, for the inquiry
- agree appropriate liaison and reporting

arrangements with the inquirer

- consider reports on the progress of the inquiry and respond in a timely manner to any requests for amendments to the inquiry brief
- the reasonable consideration of any requests made by the inquirer
- in holding the inquiry to pay due regard to the standards in public life and the TSA's fundamental objectives as set out in the Act. Specifically, objective 8, to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds, and objective 9, to guard against the misuse of public funds

What the TSA expects from an inquirer

54 During the course of the inquiry, the TSA expects the inquirer to:

- carry out the inquiry in accordance with the brief and this guidance
- strive to ensure that the inquiry is completed within the timetable and costs agreed with the TSA
- ensure that parties are given a fair opportunity to correct or contradict any relevant statement prejudicial to their interests
- conduct the inquiry fairly, expeditiously and proportionately in accordance with the rules of natural justice and without incurring unreasonable expenditure
- agree the nature and cost of the involvement of any support staff and other professional staff with the TSA at the outset, and in advance of any such expenditure being incurred

- to provide value for money and “best value” in conducting the inquiry
- at all times to be mindful of the fact that the TSA is a public body, and the TSA's fundamental objectives as set out in the Act. Specifically, objective 8, to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds, and objective 9, to guard against the misuse of public funds

What the TSA expects from the provider

55 During the course of the inquiry, the TSA expects officers, members, staff and agents of the provider to:

- co-operate fully with the inquiry
- respond positively and in a timely manner to all reasonable requests from the inquirers
- comply with any timetable set by the inquirer
- co-ordinate its communications strategy on all matters relating to the inquiry with the TSA, and to give the TSA the opportunity to comment on the content and timing of any news releases or other public statements
- at all times to be mindful of the fact that they along with the TSA provide public functions and therefore should observe the standards in public life and the TSA's fundamental objectives as set out in the Act. Specifically, objective 8, to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds, and objective 9, to guard against the misuse of public funds

Direction to the Homes and Communities Agency

56 Under section 106 of the Act, in circumstances where the TSA has decided to hold an inquiry, it may give a Direction to the Homes and Communities Agency (the HCA) which prohibits the HCA from giving financial assistance to the provider. In circumstances where it has decided to hold an inquiry, the TSA will also consider whether to issue such a Direction to the HCA. The TSA will review its approach on a regular basis until the inquiry is concluded. All communication between the TSA and the HCA will be in accordance with the terms of the memorandum of understanding between the two organisations. Further advice and guidance about the TSA's approach to the exercise of the power to direct the HCA is set out in the relevant guidance note.

Powers exercisable during or following an inquiry

57 The Act gives the TSA a range of powers which can only be exercised during or following an inquiry. The powers are to:

- direct a transfer of management (sections 249 and 250A)
- direct a transfer of land (sections 253 and 254)
- make and execute an instrument of amalgamation for an Industrial and Provident Society (section 255)
- direct restrictions on dealings, including the powers to suspend or remove an officer,

employee or agent of a provider, to direct a bank not to part with money or security and to restrict payments and transactions (sections 256 to 265)

- to censure a local authority employee or agent (order and sections 269A and 269B)

Further advice and guidance about the TSA's approach to the exercise of these powers is set out in the relevant guidance notes.

58 The TSA may decide to exercise any of its enforcement or general powers during or following an inquiry. Further advice and guidance about the TSA's approach to the exercise of these powers is set out in the relevant guidance notes.

Guidance note 11

Guidance on sections 219 to 225: enforcement notices

Purpose

- 1 This document gives general advice and guidance on how the TSA proposes to exercise the power on enforcement notices. This is an enforcement power and is set out in chapter 7 sections 219 to 225 of the Housing and Regeneration Act 2008 (the Act). This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to all providers including a non-profit registered provider, a for-profit registered provider and a local authority provider.

Background and context to the use of the power

- 3 A provider is responsible for ensuring that it manages itself effectively, achieves the standards set by the TSA, and engages positively with the TSA's regulatory framework. Where a failure against a standard or other problem has been identified, the TSA expects providers to respond in a prompt and effective manner. It may be necessary for the TSA to step in and exercise this power when a provider fails to do so.

Potential triggers to the exercise of the power

- 4 Section 220 of the Act includes ten specific circumstances in which the TSA may exercise the power of enforcement notices. They are:
 1. Where the registered provider has failed to meet a standard under sections 193 or 194 of the Act.
 2. Where the affairs of the registered provider have been mismanaged.
 3. Where the registered provider has failed to comply with an earlier enforcement notice.
 4. Where the registered provider has failed to publish information in accordance with a requirement under section 228(3) or 240(3) of the Act.
 5. Where the interests of tenants of the registered provider require protection.
 6. Where the assets of the registered provider require protection.
 7. Where the registered provider has given an undertaking under section 125 of the Act and failed to comply with it.
 8. Where the registered provider has failed to pay an annual fee under section 117(2) of the Act.
 9. Where an offence under part 2 of the Act has been committed by a registered provider.
 10. Where the registered provider has failed to comply with an order made by an ombudsman appointed by virtue of section 124 of the Act.

- 5 Except in cases where urgent action is required, the TSA will attempt to secure the voluntary agreement of the provider to take the necessary action before issuing an enforcement notice. In reaching a decision to issue a notice, the TSA will have regard to the willingness, capacity and resources available to the provider to undertake the necessary action.

Process

- 6 When a problem is identified, the TSA will bring it to the notice of the provider and seek information on the provider's intended response. The TSA will take account of this intended response in considering whether an enforcement notice is needed. If the TSA considers that an enforcement notice is required it will be issued in writing to the provider.
- 7 When issuing an enforcement notice the TSA will:
- specify the grounds on which an enforcement notice is given
 - specify the action the TSA requires the registered provider to take
 - specify when the action is to be taken
 - specify what information the registered provider must provide to the TSA to demonstrate that the required action has been completed
 - explain that a registered provider who is given an enforcement notice may appeal to the High Court
 - explain that the TSA may withdraw the enforcement notice by giving notice to the

registered provider

- explain that if a registered provider does not comply with the enforcement notice the TSA will consider exercising other regulatory or enforcement powers

- 8 The TSA expects the provider to:

- take prompt and effective action in accordance with the Direction in the enforcement notice
- provide evidence to demonstrate its achievement of the actions specified in the notice
- co-operate fully with the TSA
- co-ordinate its communications strategy on all matters relating to enforcement with the TSA, and to give the TSA the opportunity to comment on the content and timing of any news releases or other public statements

Notification to the Homes and Communities Agency

- 9 When the TSA issues an enforcement notice it will send a copy of it to the HCA.

Guidance note 12

Guidance on sections 226 to 235: penalties

Purpose

- 1 This document gives general advice and guidance on how the Tenant Services Authority (the TSA) may exercise the power on penalties. This is an enforcement power and is set out in chapter 7 and sections 226 to 235 of the Housing and Regeneration Act 2008 (the Act). This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out proposals for the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to a non-profit registered provider, or a for-profit registered provider. It may not be exercised in relation to a local authority.

Background and context to the use of the power

- 3 This power allows the TSA to penalise failure on the part of registered providers by the imposition of fines.

Potential triggers to the exercise of the power

- 4 Section 227 of the Act includes six specific circumstances in which the TSA may exercise the power on imposing penalties. They are:

1. Where the registered provider has failed to meet a standard under sections 193 or 194 of the Act.
2. Where the affairs of the registered provider have been mismanaged.
3. Where the registered provider has failed to comply with an enforcement notice.
4. Where the registered provider has given an undertaking under section 125 of the Act and failed to comply with it.
5. Where the registered provider has failed to pay an annual fee under section 117(2) of the Act.
6. Where an offence under part 2 of the Act has been committed by a registered provider.

- 5 In considering whether to penalise a provider, the TSA will take into account all relevant circumstances of the case, including the provider's financial position and any potential detrimental imposition on its tenants. It will also consider whether a penalty is the most appropriate response in each case, or if it should use one or more of its other powers.

Process

Warning

- 6 Before a penalty notice is issued, the TSA will give the provider a 'pre-penalty warning'. This will warn the provider that the TSA is considering imposing a penalty and will set out the grounds on which the TSA believes the penalty can be imposed.

- 7 The pre-penalty warning will include any details the TSA is able to give concerning the likely amount of the penalty. It will provide details of how the provider can make representations to the TSA. It will indicate whether or to what extent the TSA would accept a voluntary undertaking instead of, or in mitigation of, a penalty. The warning will also include details of the enforcement of the proposed penalty (see below).
- 8 The pre-penalty warning will be copied to the HCA and any other persons the TSA thinks appropriate, in particular any person who provided information as a result of which the pre-penalty warning is being issued.

Representations

- 9 The TSA will specify a period in the pre-penalty notice during which the provider may make representations to the TSA concerning the imposition of the proposed penalty or its amount. This period will be of at least 28 days and will begin on the date the pre-penalty notice is received by the provider. We will normally send such notices by recorded delivery and we will work on the basis that the provider receives the documents the day after they are sent. At the end of the period the TSA will consider any representations and decide whether to impose the penalty.

Imposition

- 10 A penalty is imposed by the TSA giving a penalty notice to the provider. The notice will set out the grounds on which the penalty is imposed, the amount, payment method, payment period, the interest to be charged on any late payment and the means of appeal. The notice may require the provider to publish information about the penalty and may set out the manner of that publication.

Notifying the Homes and Communities Agency

- 11 When a penalty is imposed the TSA will send a copy of the penalty notice to the HCA.

Amount

- 12 Penalties for an offence under part 2 of the Act may not exceed the maximum amount of fine that a magistrates' court could impose for the relevant offence, and the notice will confirm that the penalty falls within the current limit. For all other instances the penalty imposed may not exceed £5,000 or other maximum amount as ordered by the Secretary of State.

Destination

- 13 Money received by way of a penalty will be paid to the HCA, to be used at its discretion for investment in social housing. Before making such payment, the TSA may deduct a sum representing its direct and indirect costs and

expenditure in administering the penalty. The TSA will establish and publish a methodology for calculating these deductions.

Enforcement

- 14 The penalty will be treated as a debt owed to the TSA. If payment is not made by the date specified in the notice the TSA may charge interest on the debt from that date and may impose one or more additional penalties in accordance with any regulations that may be made by the Treasury.
- 15 The TSA may include a provision in the penalty notice allowing a discount if the penalty is paid on or before the specified date. The TSA will establish and publish a methodology for calculating any discounts.

Appeal

- 16 A provider who is given a penalty notice may appeal to the High Court against the imposition of the penalty, its amount, or both.

Guidance note 13

Guidance on sections 236 to 245: compensation

Purpose

- 1 This document gives general advice and guidance on how the TSA exercise the power on the award of compensation. This is an enforcement power and is set out in chapter 7 and sections 236 to 245 of the Housing and Regeneration Act 2008 (the Act). This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Background and context to the use of the power

- 2 This power allows the TSA to award compensation to a victim of a failure on the part of a registered provider.

Potential triggers to the exercise of the power

- 3 Section 237 of the Act includes two specific circumstances in which the TSA may exercise the power on awarding compensation. They are:
 1. Where the registered provider has failed to meet a standards under sections 193 or 194 of the Act.
 2. Where the registered provider has given an undertaking under section 125 of the Act and failed to comply with it.

- 4 The TSA is most likely to find it appropriate to exercise the power in circumstances where a breach of the standards has resulted in a tenant, or tenants, not receiving the quality of service required by the standard, or if the provider has failed to pay compensation that has been awarded by an ombudsman.

Scope

- 5 The power may be exercised in relation to a non-profit registered provider or a for-profit registered provider. It cannot be applied to a local authority.
- 6 Awards of compensation may be made to persons who have suffered as a result of the failure provided that they are tenants of the provider.
- 7 If the housing ombudsman has already awarded compensation to a particular person on a particular matter the TSA may not award compensation to that person on that matter unless the provider has not made the payment directed by the ombudsman.

Process

Warning

- 8 Before a compensation notice is issued, the TSA will give the provider a 'pre-compensation warning'. This will warn the provider that the TSA is considering awarding compensation and will set out the grounds on which the TSA believes the compensation can be awarded.

- 9 The pre-compensation warning will include any details the TSA is able to give concerning the likely amount of the award. It will provide details of how the provider can make representations to the TSA. It will indicate whether or to what extent the TSA would accept a voluntary undertaking instead of, or in mitigation of, an award. The warning will also include details of the enforcement of the proposed award (see below). Before issuing a pre-compensation warning, the TSA will consult with the relevant ombudsman.
- 10 The pre-compensation warning will be copied to the HCA and any other persons the TSA thinks appropriate, in particular any person who provided information as a result of which the pre-penalty warning is being issued.

Representations

- 11 The TSA will specify a period in the pre-compensation notice during which the provider may make representations to the TSA concerning the proposed award of compensation or its amount. This period will be of at least 28 days and will begin on the date the pre-compensation notice is received by the provider. At the end of the period the TSA will consider any representations and decide whether to impose the penalty.

Award of compensation

- 12 Compensation is awarded by the TSA giving a compensation notice to the provider and the person(s) to be compensated. The TSA will establish and publish a methodology for determining when an award of compensation would be appropriate and for setting the level of compensation to be awarded.
- 13 The notice will set out the grounds on which the award is made, the amount, to whom it must be paid, the payment period, the interest to be charged on any late payment and the means of appeal. The notice may require the provider to publish information about the award and may set out the manner of that publication.

Impact

- 14 When considering whether to award compensation or the amount of compensation to be awarded, the TSA will take account of information it has on the financial situation of the provider and the likely impact of the award on the provider's ability to provide services.
- 15 The TSA will aim to avoid jeopardising the financial viability of the provider, preventing the provider from honouring financial commitments or preventing the provider from taking action to remedy the matters on the grounds of which the compensation might be awarded.

Enforcement

- 16 The award will be treated as a debt owed to the person to whom it is awarded. If payment is not made by the date specified in the notice the TSA may charge interest on the debt from that date and may impose additional compensation.

Appeal

- 17 A provider who is given a compensation notice may appeal to the High Court against the award of compensation, its amount, or both.

Guidance note 14

Guidance on sections 251 to 252: appointment of manager

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power of appointment of a manager. This is an enforcement power and is set out in chapter 7 and sections 251 to 252 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to non-profit private registered providers and for-profit private registered providers. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to non-profit registered providers and for-profit registered providers. It may not be exercised in relation to a local authority provider.

Background and context to the use of the power

- 3 A provider is responsible for ensuring that it manages itself effectively, achieves the standards set by the TSA, and engages positively with the TSA's regulatory framework. In some circumstances, where a failure against a standard or other problem has been identified, it may be necessary for the provider to change, replace or reinforce its management to achieve the necessary improvements.

Potential triggers to the exercise of the power

- 4 The Act sets out the specific circumstances in which the TSA may exercise this power. These are:
 1. Where the registered provider has failed to meet a standard under sections 193 or 194 of the Act.
 2. Where the affairs of the registered provider have been mismanaged in relation to social housing.
- 5 The TSA is most likely to exercise the power in circumstances where it considers that the provider:
 - is facing critical financial viability problems that require urgent action to remedy
 - is failing to address serious deficiencies in the delivery of services to its tenants
 - requires additional leadership and/or staffing resources to deliver essential organisational change
- 6 Key factors in a decision to appoint a manager will include our assessment of the seriousness of the problem, the need for additional professional support, and the provider's willingness and ability to take effective action without the need for the TSA to use this power.

Appointment process

- 7 Before making an appointment the TSA will give the provider a warning notice. This notice will explain that the TSA is considering exercising this power, set out the grounds on which that action is proposed and explain its effects. The warning notice will specify a period during which the provider may make representations to the TSA. That period will commence on the date the registered provider receives the notice and will be for no less than 28 days. We will normally send such notices by recorded delivery and we will work on the basis that the documents are received by the provider the day after they are sent.
- 8 The warning notice will indicate whether or to what extent the TSA would accept a voluntary undertaking instead of, or in mitigation of, the appointment of a manager.
- 9 The TSA will send a copy of the warning notice to the HCA.
- 10 professional experience. The appointment may relate to the provider's affairs generally in regard to social housing or in relation to a specific aspect of social housing.
- 12 The manager's terms and conditions (including remuneration, which will be paid by the provider) will be specified by the TSA and included in the notice of appointment. In setting the remuneration level, the TSA will have regard to market rates for the specified work and the financial circumstances of the provider.
- 13 The manager will have any power specified in the notice of appointment and any other additional power he or she requires to achieve the purposes of the appointment. Where the manager considers that additional powers are required he or she will discuss and agree these with the TSA.
- 14 The TSA may require the manager to report to it on the affairs specified in the appointment notice.

Terms of appointment

- 10 The TSA will normally require the registered provider to appoint the manager. In exceptional cases, for example where it has serious concerns about the performance of the governing body, the TSA may appoint the manager itself.
- 11 Managers will be individuals, rather than corporate bodies, although the individual may work for a corporate body. The individual will be selected by the TSA on the basis of relevant

Notification to the Homes and Communities Agency

- 15 When a manager is appointed the TSA will notify the HCA.

Appeal

- 16 A provider may appeal to the High Court against the appointment of a manager or a requirement to appoint.

Guidance note 15

Guidance on sections 253 and 254: transfer of land

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power relating to the transfer of the land of a registered provider. This is an enforcement power and is set out in chapter 7 sections 253 and 254 of the Housing and Regeneration Act 2008 (the Act). It may be exercised in relation to registered providers with some exceptions, which are set out in the section below on scope. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised in relation to a non-profit registered provider which is a registered company or an Industrial and Provident Society. It cannot be applied to a local authority provider or to a registered charity. It can be applied to a for-profit provider only in relation to its social housing and associated land.

Background and context to the use of the power

- 3 Where the TSA suspects that the affairs of a registered provider may have been mismanaged, the TSA may hold an inquiry in accordance with section 206 of the Act. As part of an inquiry the TSA may require the provider's accounts and balance sheet to be audited by a qualified auditor appointed by the TSA (section 210). If,

as a result of such an inquiry or audit, the TSA is satisfied that the affairs of the provider have been mismanaged in relation to social housing or is satisfied that a transfer of the provider's land would be likely to improve the management of the land, the TSA may require the provider to transfer specified land to the TSA or to another registered provider. Further advice about the TSA's approach to the exercise of the power to hold an inquiry is set out in the guidance note on section 206.

The power

The circumstances in which the power can be exercised

- 4 The power can only be exercised as a result of the TSA's conclusions following an inquiry under section 206. The conclusions will be those of the board of the TSA following completion of the inquiry process. Under section 254 the TSA can only require a provider to transfer land having first obtained the consent of the Secretary of State to both the transfer of that land and to the terms of the transfer. Any requirement to transfer land under section 253 will be authorised by the board of the TSA.

The transfer

- 5 A transfer of land may be to the TSA or to another specified registered provider. The purpose of a transfer is to ensure that the land will be properly managed. Therefore, a transfer of land is likely to be to another registered provider which has the capability and the capacity to

ensure proper management in the future. As a general rule the TSA will not require transfers of land to be made to the TSA itself. In the unlikely situation that a transfer to the TSA became necessary, the TSA would treat this as a temporary measure pending onward transfer to a registered provider. The TSA can only dispose of land transferred to it under section 253 to a registered provider and, if the original transfer was from a non-profit provider, a disposal must be to another non-profit provider.

transfer its land to another charity that has similar objects to those of the transferring charity. The Act gives the TSA the power to decide whether the objects of the two charities are similar. The TSA will consult with the two charities, and will take advice from the Charity Commission as necessary, before making a decision on similarity of objects. This provision does not apply to registered charities.

The terms of transfer

- 6 The TSA will select a suitable recipient registered provider for a transfer of land. In making its selection the TSA will have regard to the quality and management of services to residents provided by the potential recipient, the quality of its governance systems, its financial viability, general regulatory compliance and management and financial capacity.
- 7 A for-profit provider can only be required to transfer its social housing and associated land. Social housing has the meaning given to it by section 68 of the Act. The Act gives the TSA the power to decide what land belonging to a for-profit provider is associated with social housing. The TSA would expect social housing and associated land to be readily identifiable within the assets of a for-profit provider, and would expect to agree these with the provider at an early stage in any transfer process.
- 8 A non-profit provider can only be required to transfer its land to another non-profit provider. An unregistered charity can only be required to
- 9 Section 254 makes provision for determining the price of a transfer of land and the terms on which the transfer takes place. The price at which a transfer will take place will not be less than the amount certified by the District Valuer (which has the meaning in the General Consents to Disposals 2010) to be the amount the land would fetch if sold by a willing seller to another registered provider. The onus is therefore on the District Valuer to prepare a valuation of the land to be transferred and to decide on the appropriate valuation methodology to be applied to reach that valuation. The TSA will commission, and pay for, valuations on transfers of land under section 253. At an early stage in the commission the TSA will meet with the Valuer and agree the Valuer's information and other requirements for the work necessary to prepare a Valuation. The TSA will expect the registered provider to co-operate with the Valuer in supplying relevant information and facilitating access to manual and computerised records, as well as physical assets, in accordance with the Valuer's requirements.

10 The terms of a transfer of land under section 253 will be specified by the TSA in the requirement to make the transfer. Those terms must include provision for the payment of any debts or liabilities in respect of the land, whether or not those are secured on the land. The details of the terms will depend on the circumstances of the case, and, in particular, the amount of land to be transferred. Where a transfer of all of a provider's land takes place, the terms of the transfer will make provision for all assets and liabilities of the provider to be passed to the recipient provider. The terms will ensure that the transfer is as close as possible to a complete transfer of engagements, leaving the transferor behind as a shell organisation only. The TSA will make provision for the solvent winding-up of the transferor to be undertaken as soon as is practicable after the transfer has been completed. Section 166 of the Act gives the TSA the power to petition the court for the provider to be wound up under the Insolvency Act 1986 where a transfer of the provider's land has taken place under section 253.

11 Where a partial transfer of land takes place, the terms of the transfer will make provision for payment of any debts or liabilities associated with the land being transferred. The TSA expects the provider to co-operate fully in enabling the TSA to identify those debts and liabilities and, where relevant, to agree to also transfer cash or other assets, or an appropriate portion thereof, held by the provider in respect of the land. The TSA will seek to reach an equitable solution in the allocation or apportionment of assets and

liabilities and, in particular, will seek to avoid giving preferential treatment to any creditor who is not lawfully entitled to such treatment. The TSA reserves the right to use its power under section 201 to inspect the provider's financial or other affairs to inform the TSA's task of setting the terms of the transfer.

12 The TSA recognises the rights of secured creditors in respect of any security held over land that the TSA proposes to transfer from one registered provider to another, and that the secured creditors will need to give their consent to a transfer. The TSA will take appropriate steps with the provider to identify all relevant secured creditors, and will consult with the secured creditors about the proposed transfer and the terms of the transfer.

The consent of the Secretary of State

13 The TSA can only require a provider to transfer its land if the Secretary of State (SoS) has first given consent to the transfer and to the terms of the transfer. The TSA recognises that the decision for the SoS is not the same one as the decision for the TSA and therefore the SoS will need to be fully informed about the details of the case as well as the process followed by the TSA in undertaking its responsibilities. The TSA will agree working arrangements in advance with the Department of Communities and local government for the handling of any future applications for SoS consent.

Consultation

14 The Act does not require the TSA to consult relevant persons in exercising its power under section 253. However, the TSA recognises that it would be appropriate to have regard to a wide range of legitimate interests and is, therefore, committed to as full consultation as is possible with a number of different stakeholders. Those stakeholders will include:

- tenants - the TSA recognises that any situation where land is transferred could cause anxiety for tenants and leaseholders, although their legal rights would not be affected. The TSA will take all steps it can to mitigate that anxiety. The TSA will ensure that tenants are consulted and informed, as far as is reasonably practicable, prior to a final decision on a transfer of land that affects them. The nature of consultation will depend on the circumstances of the case and the timescales involved. It will not be practicable in some situations to make direct contact with each individual tenant. The TSA will use various techniques to consult and inform tenants including where appropriate, liaison with recognised tenant representative groups, appointment of a tenant adviser, telephone help-lines, advertisements in local newspapers and tenant meetings
- secured creditors - the TSA will work closely with the secured creditors throughout the exercise of the power to require a transfer of land (see also paragraph 12)
- Homes and Communities Agency – the TSA will consult and work with HCA to ensure that the

objective of protecting invested public funds is secured as far as possible

- the registered provider - the TSA will ensure that the provider (including its officers and its directors, committee members or trustees) and its senior staff are consulted and informed as appropriate throughout. The TSA expects the provider to co-operate in achieving an effective and timely outcome in the interests of all of its stakeholders
- the proposed recipient registered provider - the TSA will work closely with the proposed recipient provider throughout the exercise of the power
- other regulators - the TSA will consult and inform the Financial Services Authority, the Charity Commission and the Registrar of Companies as appropriate
- local authorities - the TSA recognises that local authorities in whose areas a registered provider operates may have various levels of interest in the provider's affairs. Where a local authority holds security over land to be transferred its position is the same as other secured creditors as outlined. In some cases a local authority may need to provide consent to a transfer of contracts or undertakings. The TSA will consult with and keep local authorities informed as appropriate to the particular circumstances of each case
- central government - the TSA will keep relevant persons at the department of communities and local government informed at all stages in the exercise of these powers

Guidance note 16

Guidance on section 255: amalgamation of an Industrial and Provident Society

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power on the amalgamation of an Industrial and Provident Society. This is an enforcement power and is set out in chapter 7 and section 255 of the Housing and Regeneration Act 2008 (the Act).
- 2 This power is separate from, and will be used in different circumstances to, the TSA's power to consent to a (voluntary) amalgamation proposed by two or more providers as set out in various parts of sections 160 to 169 of the Act.
- 3 This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out proposals for the objectives and principles that underpin the TSA's approach.
- 4 This power can only be used after an inquiry and/or extraordinary audit and this document should be read in conjunction with the guidance on those powers.

Scope

- 5 The power may be exercised only in relation to a non-profit registered provider which is an industrial and provident society. It may not be exercised in relation to a for-profit provider, a local authority provider or a non-profit registered provider which is not an industrial and provident society.

Background and context to the use of the power

- 6 Where the TSA suspects that the affairs of a registered provider may have been mismanaged, the TSA may hold an inquiry in accordance with section 206 of the Act. As part of an inquiry the TSA may require the provider's accounts and balance sheet to be audited by a qualified auditor appointed by the TSA (section 210).

Potential triggers to the exercise of the power

- 7 Section 255 of the Act includes two specific circumstances in which the TSA may exercise the power on amalgamation. They are where, as a result of an inquiry under section 206 or an audit under section 210, the TSA is satisfied that:
 1. The affairs of a non-profit registered provider which is an Industrial and Provident Society have been mismanaged in relation to social housing, or
 2. The management of social housing owned by a non-profit registered provider which is an Industrial and Provident Society would be improved if the provider were amalgamated with another Industrial and Provident Society.
- 8 The power can only be exercised as a result of the TSA's conclusions in these two areas following an inquiry under section 206 or an

audit under section 210. The conclusions will be those of the board of the TSA following completion of the inquiry or audit process.

- 9 If, as a result of an inquiry or audit, the TSA is satisfied that the affairs of the provider have been mismanaged in relation to social housing or is satisfied that an amalgamation of the provider with another Industrial and Provident Society would be likely to improve the management of social housing, the TSA may make and execute an instrument on behalf of the provider which provides for its amalgamation with another Industrial and Provident Society.
- 10 Under section 255 the TSA can only make and execute an instrument amalgamating the two Industrial and Provident Societies having first obtained the consent of the Secretary of State. Any making and executing of an amalgamation instrument under section 255 will be authorised by the board of the TSA.

Process

- 11 In considering its findings following a statutory inquiry or extraordinary audit, the board of the TSA will decide whether to exercise the power to amalgamate an Industrial and Provident Society.
- 12 If the board so decides, the TSA will seek the consent of the Secretary of State to the proposed amalgamation. Following receipt of the consent of the Secretary of State to the amalgamation, the TSA will follow the outline

process below in executing the board's decision.

- 13 For ease of reference, in the remainder of this document the provider subject to the statutory inquiry or extraordinary audit will be referred to as RP1, the provider with which RP1 will be amalgamated will be referred to as RP2 and the resultant organisation referred to as RP3.
- 14 In general, the TSA will expect RP2 to take the lead on business and operational planning for RP3. The TSA expects RP1 to work positively with the TSA and RP2 in taking the amalgamation forward.
- 15 RP3 must be an Industrial and Provident Society, registered by the TSA and designated as a non-profit registered provider. Pending registration by the TSA, RP3 shall be treated as registered and designated as a non-profit provider.

Selection of RP2

- 16 The TSA will select organisation RP2. In identifying a suitable, willing organisation and making its selection the TSA will have regard to the quality and management of services to residents provided by potential RP2 organisations, the quality of their governance systems, their financial viability, general regulatory compliance and management and financial capacity.

Due diligence and business planning

- 17 RP2 will be expected to conduct due diligence as it sees fit on RP1.
- 18 RP2 will be expected to prepare a business plan for RP3 and to submit that for consideration by the TSA.
- 19 RP2 will be expected to develop a plan to establish RP3 and to submit that for consideration by the TSA.

Consultation

- 20 The TSA expects RP1 and RP2 to conduct appropriate consultation regarding the amalgamation with their residents, lenders and local authorities in which they work
- 21 Where necessary RP1 and RP2 will need to obtain the formal consent of their lenders to the propose amalgamation
- 22 The TSA will agree with RP2 and RP1 which organisation will undertake which aspects of consultation.

Governing instrument (rules)

- 23 The TSA will invite RP2 to draft a set of rules for RP3. These will be expected to be based on the most up to date version of model rules for Industrial and Provident Societies and will need to be approved by both RP1 and RP2.

The TSA will provide comments and in principle agreement to the new rules before they are considered by the board of the TSA.

Agreement to the amalgamation by the board of the TSA

- 24 The board of the TSA will receive a report setting out the detail of the proposed amalgamation and covering the outcome of consultation and due diligence, business and operational planning for RP3, views of lenders and local authorities and the new rules for RP3. If the board of the TSA agrees to the detail of the proposed amalgamation it will seek the consent of the Secretary of State to that proposal.

Registration of the amalgamation

- 25 Following receipt of the Secretary of State's consent to the proposal, the TSA will prepare an instrument of amalgamation and send a copy of it to the Financial Services Authority (FSA). The copy will be sent for registration within fourteen days of the date of execution. A copy registered after that fourteen day period is valid. The FSA will register the instrument (the amalgamation does not take effect until it is registered by the FSA). The TSA will advise RP3 of the FSA's registration of the instrument of amalgamation.

Guidance note 17

Guidance on sections 256 to 265: powers available during or following an inquiry

Purpose

- 1 This document gives general advice and guidance on the powers that the TSA may exercise during or following an inquiry. These are enforcement powers and are set out in chapter 7 and sections 256 to 265 of the Housing and Regeneration Act 2008 (the Act). These powers do not apply to local authorities.
- 2 This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.
- 3 These powers can only be used after an inquiry and/or extraordinary audit and this document should be read in conjunction with the guidance on those powers.

Scope

- 4 The powers in sections 256 to 261 may be exercised only in relation to non-profit registered providers. They do not apply to for-profit registered providers or a local authority provider.
- 5 The powers in sections 262 to 265 apply to all registered providers except local authorities.

Background and context to the use of the power

- 6 Where the TSA suspects that the affairs of a registered provider may have been mismanaged, the TSA may hold an inquiry in accordance with section 206 of the Act. As part of an inquiry the TSA may require the provider's accounts and balance sheet to be audited by a qualified auditor appointed by the TSA (section 210).

Potential triggers to the exercise of the power

- 7 The Act sets out the circumstances in which the TSA may exercise this power and they are set out below.
- 8 Following receipt of an interim or final inquiry report the board of the TSA may conclude that it is necessary to use one or more of the powers available.
- 9 In particular, the board may conclude that it is necessary to suspend or remove officers, employees or agents of the registered provider in order to ensure the proper conduct of the inquiry and/or the proper management of the provider's functions, including the delivery of services to its tenants. It may also conclude that it is necessary to restrict the dealings of the registered provider in order to protect its assets and the public investment.

10 Where a person is removed from their position following a statutory inquiry or extraordinary audit the TSA may conclude that it would not be appropriate for that person to serve as an officer of another provider and so the TSA may disqualify that person.

The power

Restrictions on dealings during an inquiry

11 Section 256 of the Act includes two specific circumstances in which the TSA may exercise the power on restrictions on dealings during an inquiry under section 206 of the Act into a non-profit registered provider. They are:

1. Where the regulator has reasonable grounds for believing that the affairs of the non-profit registered provider have been mismanaged and that its assets or the interests of its tenants require protection.
2. Where the regulator is satisfied that, as a result of an inquirer's interim report under section 207 of the Act, the affairs of the non-profit registered provider have been mismanaged.

Restrictions on dealings following an inquiry

12 Section 257 of the Act includes two specific circumstances in which the TSA may exercise the power on restrictions on dealings following an inquiry under section 206 of the Act into a non-profit registered provider. They are:

1. Where the regulator is satisfied that, as a result of an inquiry under section 206 of the Act, the affairs of the non-profit registered provider have been mismanaged.
2. Where the regulator is satisfied that, as a result of an audit under section 210 of the Act, the affairs of the non-profit registered provider have been mismanaged.

Suspension of officers, employees or agents during an inquiry

13 Section 259 of the Act includes two specific circumstances in which the TSA may exercise the power on suspension during an inquiry under section 206 of the Act into a non-profit registered provider. They are:

1. Where the regulator has reasonable grounds for believing that the affairs of the non-profit registered provider have been mismanaged and that its assets or the interests of its tenants require protection.
2. Where the regulator is satisfied that, as a result of an inquirer's interim report under section 207 of the Act, the affairs of the non-profit registered provider have been mismanaged.

Removal or suspension of officers, employees or agents following an inquiry

- 14 Section 260 of the Act includes two specific circumstances in which the TSA may exercise the power on removal or suspension following an inquiry under section 206 of the Act into a non-profit registered provider. They are:
1. Where the regulator is satisfied that, as a result of an inquiry under section 206 of the Act, the affairs of the non-profit registered provider have been mismanaged.
 2. Where the regulator is satisfied that, as a result of an audit under section 210 of the Act, the affairs of the non-profit registered provider have been mismanaged.

Disqualification of a removed person

- 15 Section 262 of the Act includes two specific circumstances in which the TSA may exercise the power on disqualification of a removed person. They are:
1. Where a person has been removed under section 260 of the Act.
 2. Where a person has been removed under paragraph 24(2)(a) of schedule 1 of the Housing Act 1996, section 30(1)(a) of the Housing Associations Act 1985 or section 20(1)(a) of the Housing Act 1974 (other similar provisions).

Process

Restrictions on dealings

- 16 The TSA may order a bank or other person holding money or securities on behalf of the non-profit registered provider not to part with them without the TSA's consent. Before issuing an order the TSA will take all reasonable steps to give notice to the non-profit registered provider and the person to whom the order is made.
- 17 The order may restrict:
- the transactions that may be entered into by the non-profit registered provider or
 - the nature and amounts of payments that may be made by the non-profit registered provider
- 18 The order may in particular stipulate that transactions or payments may not be entered into or made without the TSA's consent. The TSA may only make an order in respect of a registered provider that is a registered charity if that provider has received (financial) public assistance.
- 19 An order made following an inquiry has effect until revoked by the TSA. An order made during an inquiry has effect until the end of a period of six months beginning on the day the inquirer's final report is made. The TSA may revoke the order before that time or extend it for a further period of up to six months.

20 The bank or person to whom the order is made will be informed that if they contravene the order, they will commit an offence and may be prosecuted.

Suspensions and removals

21 During an inquiry, the TSA may, by order, suspend any officer, employee or agent of the non-profit registered provider who the TSA thinks has contributed to the failure or mismanagement.

22 Suspension ceases at the end of the period of six months beginning on the day the inquirer's final report is made. The TSA can revoke the order before the end of that period.

23 Following an inquiry, the TSA may, by order, remove any officer, employee or agent of the non-profit registered provider who the TSA thinks has contributed to the failure or mismanagement. Pending a decision whether to remove such a person the TSA may suspend them for a specified period of up to six months.

24 Before making an order to remove an officer, employee or agent of the non-profit registered provider the TSA will take all reasonable steps to give at least fourteen days notice to the person and the registered provider.

25 The TSA may only suspend or remove an officer, employee or agent of a registered charity if the charity has received public assistance. The TSA will notify the Charity Commission if it suspends

or removes an officer, employee or agent of a registered charity.

26 Where a person has been suspended or removed the TSA may give Directions to the non-profit registered provider about the performance of the suspended/removed person's functions or any other matter arising from the suspension/removal. The TSA may appoint a person to perform the suspended/removed person's functions.

Disqualification

27 If a person has been removed (not suspended) as an officer under section 260 they are disqualified from acting as an officer of any registered provider except local authorities (for the avoidance of doubt this covers non-profit registered providers and for-profit registered providers).

28 The TSA may waive disqualification either generally or in relation to a particular registered provider or class of registered providers. A waiver will only be granted following an application by the disqualified person. The TSA will notify the person if any aspect of their disqualification has been waived.

29 The TSA will maintain a register of disqualified persons that shows the details of any waivers and which is available for inspection by the public.

- 30 If a disqualified person acts as an officer for a registered provider, the person's acts are not invalid by reason of the disqualification only.
- 31 A person who acts as an officer while disqualified is committing an offence and may be prosecuted.
- 32 A person who acts as an officer while disqualified and who receives payment or other benefits from the registered provider may be required by the TSA to repay the sum or a specified amount representing the whole or part of the value of the benefit. If the person fails to comply with a requirement to repay, the non-profit registered provider may recover the sum or specified amount as a debt.

Guidance note 18

Guidance on sections 266 to 268: removal of officers

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power on the removal of an officer. This is an enforcement power and is set out in chapter 7 and sections 266 and 267 of the Housing and Regeneration Act 2008 (the Act). It may be exercised only in relation to a non-profit registered provider and excludes local authorities. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.
- 2 This document does not cover the power on the suspension or removal of an officer during or following an inquiry which is set out in sections 259 to 265 of the Act. There is separate advice and guidance on this power.

Scope

- 3 The power may be exercised only in relation to an officer of a non-profit registered provider. It cannot be applied to a local authority provider or to a for-profit registered provider.
- 4 The term "officer" is defined in section 270 of the Act.
- 5 This power may be exercised in relation to an officer of a registered charity only if the charity has received public assistance. The term "public assistance" is defined in section 274 of the Act,

but in summary, it means that the registered charity must have received certain specified loans or grants from public sources or had property transferred to it by a local authority.

Background and context to the use of the power

- 6 In general, the TSA expects a provider's constitution to make provision for removal where an officer fulfils one or more of the criteria specified in the Act, and for the provider to take action against an officer when it is appropriate to do so within the terms of its constitution.

Potential triggers to the exercise of the power

- 7 Section 266 of the Act includes seven specific circumstances, or cases, in which the TSA may exercise the power on the removal of an officer. The TSA may remove a person who:

1. Has been adjudged bankrupt.
2. Has made an arrangement with his or her creditors.
3. Is subject to a disqualification order or a disqualification undertaking under the Company Director's Disqualification Act 1986 or equivalent legislation in Northern Ireland.
4. Is subject to an order under section 429 (2) of the Insolvency Act 1986 relating to disabilities on revocation of a county court administration order.

5. Is disqualified under section 72 of the Charities Act 1993 from being a charity trustee.
 6. Is incapable of acting by reason of mental disorder.
 7. Is impeding the proper management of the provider by reason of absence or failure to act.
- 8 The TSA is most likely to step in and exercise this power when a person is impeding the proper management of the provider through absence or failure to act, particularly in circumstances where the TSA considers that:
- the absence of officers means that the governing body fails to hold quorate meetings
 - the failure to act puts at risk the financial viability of the provider or the services to tenants in accordance with the standards set by the TSA
- 9 The TSA may decide to step in where there is clear evidence one or more of the criteria specified in the Act applies, and where a provider has not taken action in a timely manner. It may be necessary for the TSA to step in and exercise this power against more than one officer of a provider.

Process

Notice

- 10 Before making an order under section 266, the Act requires the TSA to take all reasonable steps to give at least 14 days notice to both the officer and the provider.
- 11 While it is not required to do so by the Act, in circumstances when it gives notice of removal, the TSA will seek representations from both the officer and the provider and, if any are received, it will take account of them in making its decision.

Appeal

- 12 An officer removed under this section of the Act may appeal to the High Court.

The power to appoint a new officer

- 13 The TSA may exercise its power to appoint a new officer under section 269 to replace an officer removed under section 266.

Guidance note 19

Guidance on section 269: appointment of new officers

Purpose

- 1 This document gives general advice and guidance on how the TSA may exercise the power on the appointment of a new officer. This is an enforcement power and is set out in chapter 7 and section 269 of the Housing and Regeneration Act 2008 (the Act). It may be exercised only in relation to a non-profit registered provider and excludes local authorities. This document should be read in conjunction with The Regulatory Framework for Social Housing in England from April 2010, which sets out the objectives and principles that underpin the TSA's approach.

Scope

- 2 The power may be exercised only in relation to an officer of a non-profit registered provider. It cannot be applied to a local authority provider or to a for-profit registered provider.
- 3 The term "officer" is defined in section 270 of the Act.
- 4 This power may be exercised in relation to an officer of a registered charity only if the charity has received public assistance, as defined in section 274 of the Act. In summary, this means that the registered charity must have received certain specified loans or grants from public sources or had property transferred to it by a local authority. The power to appoint an officer to a registered charity may be exercised only if the TSA has consulted the Charity Commission.

Background and context to the use of the power

- 5 The provider is responsible for ensuring that the organisation is properly governed and viable and achieves the standards set by the TSA. In circumstances where there has been a failure against a standard or where a provider has been mismanaged, the TSA will assess the most appropriate course of action. We will consider the willingness of members of the provider's governing body to contribute positively to a timely resolution of the presenting problems and whether they have the capability, expertise and skills in sufficient depth to achieve a satisfactory outcome. If the TSA concludes that they do not, it may appoint officers to the governing body.

- 6 The appointment of officers is intended to give the provider a range of relevant additional skills and expertise to assist in addressing the TSA's concerns. It is a supportive action designed to act as the catalyst for the changes necessary to resolve the failure or mismanagement.

Potential triggers to the exercise of the power

- 7 Section 269 of the Act includes three specific circumstances in which the TSA may exercise the power on the appointment of new officers. They are:
 1. To replace an officer removed under section 266 of the Act, that is the removal of an officer without an inquiry.

2. Where there are no officers
 3. Where the TSA thinks an additional officer is necessary for the proper management of the provider's affairs
- 8 The TSA is most likely to appoint an additional officer because it is necessary to do so for the proper management of the provider's affairs, particularly where in the opinion of the TSA one or more of the following circumstances apply:
- The provider's affairs have been mismanaged
 - There has been a failure against the governance and financial viability standard
 - There has been a failure against a social housing standard and persistent under-performance in the delivery of services to tenants
 - The provider has failed to deal with previous regulatory interventions to the satisfaction of the TSA
 - The governing body lacks the skills and experience to run the business
 - There has been a lack of proper control by the governing body
 - There has been a failure to effectively challenge the executive team by the governing body, and that failure has been detrimental to the business
 - It is necessary to replace an officer suspended or removed during or following an inquiry
 - It is necessary to replace an officer removed in accordance with the provisions of section 266 of the Act, that is in certain specified circumstances such as bankruptcy
 - Where there are no officers
 - The case raises matters of wider significance or concern to the social housing sector

This is not an exhaustive list and the TSA may conclude that it is necessary to exercise the power in other circumstances to those set out above.

- 9 When the TSA exercises its power to remove an officer under section 266, it will always consider whether it is necessary to replace the officer who has been removed. It will make its decision in the light of the circumstances of the provider. In particular, it will assess the level of risk associated with the provider and whether the governing body has the capability, expertise and skills in sufficient depth to achieve the proper management of the provider's affairs in the light of that regulatory risk assessment.
- 10 It is most unusual for there to be no officers on the governing body of a provider, so the TSA expects to have to exercise its power to appoint a person as an officer in these circumstances on very rare occasions. The trigger for such action is clear.

The power

The restrictions on the number of appointed officers

- 11 The TSA may appoint more than one officer to the governing body of a provider. The Act specifies that in general the use of this power overrides any restriction on eligibility or numbers of officers imposed by the provider's constitution. However, this is balanced by a restriction that in most circumstances the number of appointed officers must be a minority of officers of the

provider. The TSA may appoint more than a minority of the officers of a provider only if:

- the provider has fewer officers than required by its constitution
- the provider's constitution does not specify a minimum number of officers

12 The TSA will decide how many appointments to make based on the circumstances of the case and the constitution of the provider. The TSA will review the number of appointed officers from time to time and may adjust the number where it concludes that the circumstances of the case make it necessary to do so.

The period and the terms of an appointment

13 The Act requires the order appointing an officer to specify the period for which, and the terms on which, office is to be held. The TSA will usually appoint officers for an initial period of six months. The TSA will review the need for the appointments and may extend the period of office or may withdraw the appointed officers at any time, depending on the circumstances of the case. An appointed officer can resign at any time within the rules of the provider. In these circumstances, the TSA will decide whether to replace an appointed officer who has resigned. The terms on which an appointed officer holds office will be set out in the order making the appointment.

The rights, powers and obligations of an appointed officer

14 The Act specifies that an appointed officer has the same rights, powers and obligations as any other officer of the provider's governing body.

Direction to the Homes and Communities Agency

15 Under section 106 of the Act, in circumstances where the TSA has appointed an officer to the governing body of a provider, it may give a Direction to the Homes and Communities Agency (the HCA) which prohibits the HCA from giving financial assistance to the provider. In circumstances where it has appointed an officer, the TSA will also consider whether to issue such a Direction to the HCA. The TSA will review its approach on a regular basis until the person appointed has vacated office, at which point the Direction to the HCA will be withdrawn. All communication between the TSA and the HCA will be in accordance with the terms of the memorandum of understanding between the two organisations. Further advice and guidance about the TSA's approach to the exercise of the power to direct the HCA is set out in the relevant guidance note.

Who can be an appointed officer?

- 16 The Act places no restrictions on who can be an appointed officer. They could be drawn from any source. The TSA will always try to match the best and most suitable people to the provider and to the particular circumstances of each case. The TSA will appoint people with relevant knowledge, skills and expertise. They should have the interpersonal and relationship management skills to operate effectively on the governing body and to represent the provider at the highest level in its dealings with other bodies.
- 17 An appointed officer could be a member of staff of the TSA, although the TSA is only likely to appoint its staff in exceptional circumstances such as where there are no officers.
- 18 The TSA has established an appointed officer panel, a pool of expert individuals who are available to act as appointed officers. In identifying individuals to act as an appointed officer to the governing body of a particular provider, the TSA will always consider whether any individuals on the panel would be suitable. However, the TSA accepts that restricting its options to individuals on the panel might not be appropriate in some circumstances. For example, this might be because the number of people on the panel with the required skills who are prepared to serve in the area in which the provider operates is limited. Consequently, the TSA may also consider appointing suitable

individuals who are not on the panel. Our overriding objective will be to identify the most appropriate people for the case.

Notification and initial contact

- 19 The TSA will notify the provider about the appointments by a letter addressed to the chair or company secretary or other suitable person. The TSA will serve an order on the provider for each appointed officer and the orders will be copied to the appointed officers. The TSA will issue a news release to announce the appointed officers. The provider will usually be given an opportunity to comment on the factual accuracy of any such news release.
- 20 The TSA will hold a meeting with the appointed officers to brief them and to provide them with all the background material they will need to carry out their duties. As a minimum, such background material is likely to include:
- the provider's constitution
 - the most recent audited accounts and auditor's management letter
 - the most recent TSA regulatory judgement
 - the most recent TSA annual viability review
 - key correspondence about the provider's special measures status
 - the terms of any public statement that the TSA requires the provider to make
 - a draft news release to announce the appointed officers

21 The TSA will hold a meeting with the provider, usually with its governing body and senior staff, in order to:

- introduce the appointed officer(s)
- explain the role of the appointed officer(s), their relationship with the provider and with the TSA and the TSA's expectations of appointed officers
- explain the TSA's expectations of the provider
- explain the implications of the provider's regulatory status and the actions that the TSA expects the provider to take to overcome the failure or problem
- agree lines of communication between the TSA and the appointed officers and between the TSA and the provider

Expectations

What appointed officers can expect from the TSA

22 The TSA will:

- agree appropriate liaison and reporting arrangements with appointed officers at the outset, including nominating a member of TSA staff as the main point of contact for all aspects of the appointments
- provide support to appointed officers, and meet them from time to time in order to check progress and ensure that the underlying concerns are resolved to the satisfaction of the TSA
- provide an indemnity to appointed officers to the effect that any individual appointed officer who has acted honestly and in good faith will

not have to meet out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their appointed officer functions save where the person has acted recklessly

What the TSA expects from appointed officers

23 The TSA expects an appointed officer to:

- work in the best interests of the provider
- act in the knowledge that they have the same rights, powers and obligations as any other officer of the provider's governing body, and to exercise their judgement accordingly
- work within the constitution, code of conduct, standing orders, policies and procedures of the provider or, where these are not properly documented, to exercise their judgement to comply with generally accepted good practice
- take an objective approach to implementing any special measures strategy or action plan
- be circumspect about making any public comments about the provider or about their role as an appointed officer and to generally act within the provider's rules on confidentiality
- refer any news enquiries to the provider and to generally act within the provider's communications strategy
- maintain contact with the TSA, to keep it informed of key developments and to provide it with feedback on the progress of its regulatory strategy and action plan

What the TSA expects from the provider

24 The TSA expects the officers and staff of the provider to:

- co-operate fully with the TSA
- co-operate with an appointed officer
- facilitate the full involvement of an appointed officer in the affairs of the provider
- provide copies of all documents, codes of conduct, standing orders, policies and procedures relevant to their membership of the governing body to an appointed officer
- send copies of all notices, agendas and papers for meetings to an appointed officer
- consult an appointed officer about the dates and times of meetings that they will be required to attend
- inform any other relevant authority, for example Companies House in the case of a registered company, that an appointed officer has joined the governing body as it is required to do when any new member joins the governing body
- provide details of the liability insurance cover it provides for all members of its governing body to an appointed officer, and to inform the insurers that an appointed officer has joined the governing body if it is required to do so under the terms of the insurance
- admit the appointed officer to membership and issue a share certificate where the provider has a shareholding membership
- reimburse an appointed officer for all reasonable expenses they incur in accordance with the established policy and practice for all members of the governing body
- offer to pay appointed officers where the provider pays members of its governing body. It will be for each appointed officer to decide whether or not to accept the offer
- co-ordinate its communications strategy on all matters relating to an appointed officer or to special measures with the TSA, and to give an appointed officer and the TSA the opportunity to comment on the content and timing of any news releases or other public statements

Annex 2:

Housing Corporation Circulars withdrawn from 1 April 2010

The following schedule sets out the status of Circulars and good practice notes issued by the Housing Corporation following the introduction of the TSA's new regulatory framework on 1 April 2010.

Circulars that are **retained in standards** are specifically referenced in the rent element of the Tenancy Standard and are therefore part of that standard.

Circulars that are listed under **changing powers** are retained as part of our transitional arrangements only. We need to retain certain Circulars in relation to transactions or functions that take place before

the new regulatory framework has commenced and therefore need to be dealt with by us under our transitional powers. They do not have any effect in relation to transactions or functions that begin on or after 1 April 2010.

Circulars and good practice notes that are listed as **not current after 1 April 2010** do not form part of the TSA's new regulatory framework. We will make appropriate archiving provisions for these documents and they will continue to be available on request or through an online archive.

Retained in standards:		
Guidance document title Circulars	Publication date	Document type
Circular 05/03: Rent influencing regime - implementing the rent restructuring framework (temporary social housing and privately financed supported housing)	May-03	Circular
R2-02/02: Rent influencing regime - guidance on the valuation of supported housing	Jan-02	Circular
Circular 30/01: Rent influencing regime - supplemental guidance for implementing the rent restructuring framework	Dec-01	Circular
Circular 27/01: Rent influencing regime - implementing the rent restructuring framework	Oct-01	Circular

Changing powers

Guidance document title Circulars	Publication date	Document type
R4-28/94: Group structures	Aug-94	Circular
Circular 01/08: The general consent	Feb-08	Circular
Circular 06/07: Amendment to governing documents	Jun-07	Circular
Circular 08/03: Entry of restriction relating to section 9 consent on title of land at the Land Registry	Oct-03	Circular
R3 15/99: Co-ownership sales	1999	Circular

Note: we will reissue existing guidance notes for the co-ownership framework on 1 April 2010

Not current after 1 April 2010

Guidance document title Circulars	Publication date	Document type
Circular 08/07: Validation of performance reporting systems	Oct-07	Circular
Circular 05/07: Housing Corporation requirements in relation to resident involvement	May-07	Circular
Circular 02/03: Local authority nominations	Feb-03	Circular
Circular 03/02: Revisions to deregistration criteria for registered social landlords	Mar-02	Circular
R3-34/98: Constitutional and structural partnerships	Oct-98	Circular
R1-39/96: The principles governing the terms of a transfer of land following an inquiry into the affairs of a registered social landlord: general determination 1996	Oct-96	Circular
Circular 10/07: Housing association disability and gender action plans	Nov-07	Circular
Circular 07/07: Internal controls assurance	Jul-07	Circular
Circular 06/03: Registry information requirements	Jun-07	Circular
Circular 04/07: Requirement to submit external audit management letters and responses	May-07	Circular

Not current after 1 April 2010

Guidance document title Circulars	Publication date	Document type
Circular 02/07: Tenancy management: eligibility and evictions	May-07	Circular
Circular 01/07: Treasury management by housing associations	May-07	Circular
Circular 08/04: Statutory housing management guidance on anti-social behaviour policies and procedures	Aug-04	Circular
Circular 04/04: Regulating a diversified sector	May-04	Circular
F1-19/97: Housing Act 1996 - statutory determinations	May-97	Circular
33/94: Right to repair and right to compensation for improvements	Dec-94	Circular
Circular 04/08: Rents, rent differentials and service charges for housing associations	Oct-08	Circular
Circular 01/06: Accounting requirements for registered social landlords: general determination 2006	May-06	Circular
Circular 02/06: General consent 2006	Apr-06	Circular
Circular 07/05: Compliance with mortgage sales guidance	Dec-05	Circular
Circular 06/05: Leasehold schemes for the elderly - management charge limits 2006-2007	Dec-05	Circular
Circular 03/04: The Housing Corporation's definitions of Housing Association supported housing and housing for older people	Apr-04	Circular
Circular 05/02: Leasehold schemes for the elderly: management charge limits 2002-2003	Apr-02	Circular
F2 - 21/01: Title deeds charged to the Housing Corporation	Jul-01	Circular
F7-04/00: Housing Corporation lending rates	Mar-00	Circular
F7-02/00: Interest charging on late payment of invoices	Mar-00	Circular
Circular 02/08: The housing (service charge loans) regulations 1992	Mar-08	Circular

Not current after 1 April 2010

Guidance document title Circulars	Publication date	Document type
F2-03/92: Shared ownership in rural areas. Housing Association repurchase scheme and restricted stair casing	Jan-92	Circular
F2-68/89: Shared ownership leases	Oct-89	Circular
F2-28/99: Changes to the preserved Right to Buy cost floor rules	Dec-99	Circular
Circular 03/99: Right to Buy – changes to discount and cost floor	Feb-99	Circular
F2-40/90: Shared-ownership leases of houses (effect of amendments to Leasehold Reform Act 1967)	Oct-90	Circular
F2-34/90: Shared ownership in rural areas: Housing Association repurchase scheme	Sep-90	Circular
F2-05/90: Scheme accounting - debtor accounts	Jan-90	Circular
F1-63/89: Equity retention on non-grant aided shared ownership schemes.	Aug-89	Circular
F5-34/89: Right to Buy - Housing Acts 1985 and 1988	Apr-89	Circular
F5-41/87: Extension of the right to buy and miscellaneous Right to Buy issues	Dec-87	Circular
F5-03/81: The Right to Buy	Jan-81	Circular
Circular 03/08: Amendment of procedures for varying shared ownership leases	Oct-08	Circular
F7-30/99: Housing Corporation lending rates	Nov-99	Circular
F2-20/99: Housing Corporation panel of solicitors	Jul-99	Circular
R4-06/97: Group structures	Feb-97	Circular
F1-01/97: Data protection - Housing Corporation's fraud detection activities	Jan-97	Circular
F2-46/96: Housing Corporation loans	Dec-96	Circular

Not current after 1 April 2010

Guidance document title Circulars

Publication date

Document type

F1-34/96: Innovation and good practice grant general determination 1996

Oct-96

Circular

F2-11/96: Cessation of surety and related provisions by the Housing Corporation

Mar-96

Circular

R3-27/95: The Unfair Terms in Consumer Contracts Regulations 1994

Aug-95

Circular

R2-24/93: General consent 93.1 under section 25 of the Local Government Act 1988
(Disposal of Land to Registered Housing Associations)

Jun-93

Circular

R2-04/92: The general consent 1992 - mortgage rescue schemes

Feb-92

Circular

Good practice notes

GPN 16: Working with local authorities

Apr-08

GPN

GPN 15: Demonstrating internal controls assurance in housing associations

Jan-08

GPN

GPN 8: Equality and diversity

Nov-07

GPN

GPN 14: Tenure

Nov-07

GPN

GPN 5: Board member remuneration

Jun-07

GPN

GPN 3: Maintaining standards of probity

May-07

GPN

GPN 7: External audit of housing associations

May-07

GPN

GPN 13: Promoting respect: tackling anti-social behaviour through partnership working

Mar-07

GPN

GPN 11: Making groups work

Nov-06

GPN

GPN 12: Choice based lettings

Oct-05

GPN

GPN 10: Rewards and risks

Jun-04

GPN

GPN 9: Regulating a diversified sector

May-04

GPN

Annex 3:

Regulatory impact assessment

Benefits of regulation

1. The impact of our requirements on providers is informed by the demonstrable benefits which regulation delivers to tenants and social landlords. The assurance which regulation provides helps landlords gain access to considerable commercial funding to build new homes and improve existing accommodation, at lending rates that even in current markets are preferential. Our legal and operational links with the Homes and Communities Agency mean that government can invest confidently in the sector, knowing that taxpayers' money is protected. Our regulation supports efficiency and good governance and, in case of difficulties, ensures that any failure is quarantined and managed effectively.
2. Our regulation of rents provides protection and certainty for tenants and helps to ensure that revenue support through Housing Benefit is properly targeted and controlled. We are working to encourage new landlords to join the sector, to increase supply and boost choice for tenants. We have important legal duties that, by driving up value for money and focussing on good service, help to improve the lives of millions of households. Good housing is central to strong and sustainable communities and the benefits arising from properly-run, properly-managed housing providers are a solid basis to build social capacity and improve lives. These wider benefits form the context to the regulatory framework.

The compliance environment

3. The Regulatory Framework for Social Housing in England from April 2010 (TSA March 2010) draws on extensive engagement and consultation with tenants, landlords and other stakeholders. The document describes our co-regulatory approach and how we intend to deliver co-regulation in practice.
4. In setting out our new approach we acknowledge an issue raised by a number of stakeholders: the overall compliance environment in which social landlords operate. We understand that our requirements are only part of a larger picture. Landlords comply with legislation about how they allocate homes, manage neighbourhoods and estates, and their strategic relationship with local government. Landlords have duties in relation to health and safety, planning and consumer law, plus the compliance environment for organisations themselves: their governance, structure, finance and accountability.
5. For smaller providers and those who deliver very specialist accommodation and services, these duties in aggregate can be considerable. Our regulatory framework is established in knowledge of this; we are bound in law to minimise interference and not to duplicate the work of other agencies.
6. We are required by the Regulators' Compliance Code to make it easier for regulated bodies to understand and meet their obligations. Many providers are within the Government's

definition of small and medium enterprises. We will consider how best to reflect the particular situation of smaller landlords. Local authority landlords have a distinct governance and reporting environment. The Regulators' Compliance Code ensures that we should take account of this. We will continue to review what advice and support we can provide to landlords, as implementation of the new framework goes forward.

Proportionate regulation

7. This annex assesses the likely impacts of the new framework on providers. In making our assessment, we have drawn on the many comments received through the consultation process that referred to costs, burdens and the arrangement of resources to best meet the focus on outcomes and improvement which is at the heart of co-regulation.
8. In making this assessment, we are alert to the overarching duty to proportionate regulation placed on us in law and our obligation to consider the way that providers conduct their business. A clear message from the consultation is the different profiles of costs and burdens the sector anticipates might arise from our new approach, related to factors including the relative size of providers, the nature of their business, and their organisational form. The point was raised that in some other sectors the key regulatory interests are price to consumers and assurance of supply - questions about relative quality of services and customer involvement in

shaping those services do not always have the significance in these other regulated sectors that they have in ours.

9. The contrast is that the regulated environment of social housing is more complex and more sensitive to external constraints and the impact of regulatory requirements cannot always be expressed in formulaic ways. That essentially affects the impact of regulation on provider business. We understand that social housing is an atypical market; that is why the Cave Review recommended an independent, tenant-focused regulator. We remain alert to any differential impacts of our requirements within our duty to proportionate regulation.

Assessing impacts

10. Some respondents questioned whether our consultation could not usefully have included a detailed analysis of the resource impacts of the new framework on providers and greater demonstration of the degree to which burdens would be reduced. We think it is important to address this issue.
11. We said in Annex 5 to the statutory consultation document that our aspirations for co-regulation could not be realised straightaway and that time was needed to move to the mature form of co-regulation which is our longer-term goal. We also noted that the regulatory framework is not static and that as it evolves the profile of costs and burdens will change. The impact assessment prepared by CLG for implementation of the Cave

Review recommendations focused on the better value for money achievable through reform of regulation and the counterbalance of regulatory costs with beneficial impacts on costs for regulated bodies, such as those identified above. The social housing sector is very diverse and to attempt to estimate the likely effect of regulatory costs as balanced by beneficial impacts for all types of provider in all situations would not, we believe, have been helpful.

12. The gradations of possible outcomes from implementation of the new framework present costs and benefits for which there is no appropriate market data and where an attempt to ascribe a monetised value in advance of implementation would be subjective and potentially misleading. In standard modelling, if valuation cannot be determined from market data then the next step is usually to apply a 'willingness to pay' test. This is often determined from inferring a price by observing consumer behaviour (for example for environmental or social impacts that may be important but have no readily-calculable market price). If that cannot be achieved, a further step is to look at stated preference - that is, how much stakeholders would be willing to pay for a particular benefit or how much compensation they would demand to accept a cost.
13. For reasons explored in the Cave Review, we question whether it would be plausible to apply these tests to the new regulatory framework at this time. Tenants' willingness to pay for social housing and associated services is not typically

driven by market preferences; and landlords' engagement with regulation and the benefits derived from regulation are not typically a matter of paying for access to a regulated market, as in the utilities for example.

14. Impact assessment is a process and transition to the new framework is not a single event. We have statutory duties to ensure that providers of social housing are efficient, effective and economical; to ensure financial viability and protect public funds. We intend to monitor the operation of the new regulatory framework and we will keep questions about relative costs and benefits under review. We have said that we will support good practice that allows providers and tenants to learn from best approaches to impact assessments and that includes assessing the effects of our regulation.

National standards

15. The new regulatory framework document provides our response to issues which stakeholders raised in relation to the national standards. We said in our earlier assessment that the variety of mechanisms used to meet the terms of the national standards mean that transitional costs may arise to providers. A number of stakeholders made comments relevant to this.
16. One theme which emerged is that in setting standards across a broad range of landlord services, regulatory burden might persist even where services improve because each step

in improvement becomes the new baseline (an effect sometimes described as 'regulatory creep' – that regulation expands to fill the space available, becoming the norm instead of the exception).

17. While we acknowledge that the regulatory framework will continue to evolve, it is not our intention that regulation should increase exponentially. We have said that in 2010-11 we will focus our resources on identifying and addressing the worst performing providers, to raise the standard of service for tenants who are getting an especially poor deal in comparison with others. Some respondents suggested this should be our approach going forward. Over time as co-regulation beds in and providers who need additional assistance explore peer support and improvement, our view is that in the main regulatory engagement will be focused on landlords who do not take the opportunities which the new framework provides.

18. An allied concern in relation to burdens is that the national standards might be used to passport-through Government policy without further assessment of the impact on landlords. We think it is important to balance necessary future development of the standards framework and securing good outcomes for tenants with the need to ensure that providers are not subject to fluctuating or unclear demands. We will review the impact of the standards framework in due course and work with colleagues in Government to maintain an overall awareness of the compliance environment of the sector.

19. Several providers working with tenants and service users who have more specific needs mentioned the particular capacity and resource requirements of proper engagement with those groups. The Tenant Involvement and Empowerment Standard is framed to reflect our objective that tenants have opportunities to be involved in the management of their homes. The right opportunities will vary according to the tenant group and an approach that supports capacity building should be part of this.

20. We regard involvement and empowerment as investment to secure lower burdens and greater compliance in future. Where dialogue is open between landlords and tenants and services address tenants' needs then it is easier for landlords to demonstrate that the national standards are being met. Landlords working with tenants who need additional assistance and support will already be engaged in much of this activity, often on a very intensive basis. We understand that full empowerment may be more challenging in some circumstances and that there are potentially costs to landlords and tenants. But where tenants are fully engaged, then costs can reduce over time.

21. Value for money is a key factor in the new framework and a technical, but important, point raised in consultation in relation to the value for money standard is that compliance should not entail the imposition of measurement methodologies that are in themselves burdensome. Providers should make clear how and on what basis they have prioritised

expenditure to meet their obligations, and what they have done to ensure value. While certain metrics may be needed to deliver these assessments, focus on tenants' experience of the service should help ensure that appropriate, accessible models are used that allow for meaningful comparisons of quality and value. We would certainly agree that the method should not overtake the message.

Local offers

22. This balance between costs in the short term against achievement of longer-run benefits should be even more apparent through landlords' approach to their local offers. Again, some specific issues were raised about the cost profile of what were referred to in the consultation document as 'local standards'. Where providers work across local authority boundaries, a view was expressed that a variety of local offers would arise: some district-wide, others covering a number of local authority districts, or possibly differing offers within a district to take account of very localised needs and priorities.
23. All of these situations are possible. We have deliberately not been prescriptive about defining 'local' to allow for a diversity of approaches. In saying this, we understand the concerns raised by providers with dispersed stock about the practicality of establishing and monitoring a suite of local agreements. But we suggest that where administrative costs arise as a consequence, these will be offset over time as improved and effective involvement activity across a range of

areas will support compliance and contribute to a reduction in the costs of regulatory engagement. Landlords with dispersed stock can also strengthen collaborative working with other landlords, for example through greater alignment of the terms of their local offers, where tenants are satisfied with that approach.

Local authority landlords

24. The CLG impact assessment for the inclusion of local authorities in our regulation suggested that over time efficiency savings should arise from cross-domain regulation, while noting transitional administrative costs to local authorities of moving to the new system. To ensure an effective transition and in regard to our duties under the Regulators' Compliance Code, we have undertaken to support the principles of the local performance framework (LPF) in respect of information burdens.
25. Concern was expressed through the consultation that, perhaps by default, we would not be able fully to adhere to this commitment because compliance reporting on standards might entail a focus on additional factors outside of the LPF. In context of queries about evolving burdens, future review of the LPF and addition of new indicators to the national indicator set was also raised. Again within this broad issue, respondents also asked about TSA's relationship to the Comprehensive Area Assessment (CAA) process, citing the potential for duplication of work with the Audit Commission.

26. We have given a clear commitment to government that we will work within the LPF and assess compliance of local authority landlords using any relevant available information. There are government-wide rules concerning changes to the national indicator set and although it may be open to us working constructively with local government to propose new housing indicators at some future review, it is not within our powers to impose such indicators unilaterally. Any changes are subject to discussion and consultation within government and more widely. Our memorandum of understanding with the Audit Commission sets out our role in relation to CAA and the commission's gate keeping function. We are bound in law not to duplicate the commission's work and do not foresee that our regulation of local authority landlords will lead to increased costs beyond those identified by CLG. We will continue to work closely with the commission to avoid overlap and duplication.

Performance information

27. In our earlier assessment we said that we would look to ask for no more information than a good landlord would need to demonstrate that it is delivering good services, and that we would minimise burdens by focusing on information that is used and useful. Stakeholders raised questions about burdens arising from reporting outcomes of their local offers, and about the uses and value of external validation of performance information.

28. An important component to the concept of local offers is the involvement of tenants in performance monitoring. This prompted an observation that the necessary information for the agreed scope and outcomes of a local offer might not be currently available, suggesting that a new burden could arise. In this context, questions were also raised about the timing of annual reports. These are addressed elsewhere in this document. We think that the way a provider's local offer is discussed and agreed with tenants should be viewed in context of the opportunities available for more effectively-managed services and the value for money benefits of aligning service delivery better with tenants' priorities. A useful example might be choice based lettings, now widely-used among social landlords. Moving to choice entailed new ways of monitoring and reporting lettings performance, and this shift has subsequently proved very valuable to landlords in demonstrating the transparency of decision-making. A similar benefit seems achievable from locally-focussed reporting on service delivery.

29. In response to our proposal that providers should use external validation, independent audit and peer review where appropriate, while this was generally welcomed the potential for new burdens was also perceived by some. It was noted that use of various kinds of external validation risked becoming a proxy form of regulation, with increased administrative workload and cost. We are alert to the issue that reducing regulatory burdens should not equate to burdens transferring elsewhere and we do

not think that this should be the case. Peer reviewing and benchmarking are already widely used and though no approach will be cost-free, organisational benefits accrue from a much sharper focus on comparative performance that allows for greater efficiency. We understand the point raised by some specialist providers about benchmarking like-with-like. Co-regulation aims to make smarter use of information and should not entail inappropriate comparisons where landlords are engaged in very specialist work.

30. An important point raised about used and useful information is that while data might appear to be of use to a number of agencies and regulators, differences in emphasis and requirements between regulatory bodies in effect creates duplication where the same information has to be reported in often subtly different ways. This was thought to be especially so with regard to support and social care. We understand the point to mean that while regulators may aspire to work together, the different focus of their frameworks means that despite their intentions the same outcomes end up being reported more than once. An important element of co-regulation has to be effective co-operation between regulators and inspectors, including taking proper account of other agencies' judgements. We will work with our partners in the regulatory community to try to ensure that similar requirements do not lead to duplication in reporting.

Reducing burdens

31. Co-regulation places the onus of compliance on providers and is intended to ensure that good-performing landlords have to spend less time and resources engaging with us. Our focus on clarity in our regulatory engagement is expressed through our proposal to remove the requirements of guidance and Circulars issued by our predecessor body. Some respondents questioned whether the link from less guidance to lower burdens was necessarily proven. The argument made is that flexibility can equate to uncertainty, which has a cost and where a document sets out a clear expectation or describes a required course of action, by means of that compliance is quicker, more assured and less burdensome.
32. We are aware that in particular smaller and more specialist providers can have a different view of prescription to larger landlords. That said, we have taken note of the point raised in responses that too great a focus on the regulator issuing advice and good practice can lead to regulatory creep and impairs the prospects for co-regulation. The Regulators' Compliance Code requires us to take account of the needs and circumstances of smaller regulated entities and others in need of help and support. We think that the best way to deliver proportionate regulation is to work with providers in ways that reflect their particular circumstances and business, rather than through the application of sector-wide guidance in every case. A key rationale for

reducing burdens is to promote provider capacity and enhance innovation. We appreciate that social landlords can be run by volunteers giving their own time and resources, which is why we aim to make regulation smarter, more accessible and more relevant to providers' needs.

a central aspect of co-regulation is shared understanding and that has to include around resource allocation and business planning. We are committed to consultation on any changes to the framework and welcome further engagement on this as the new framework develops.

33. Respondents also questioned whether our approach will enable innovation and encourage new vehicles for delivery of social housing services. For new applicants, registration is a choice. We want to help new landlords to register. Our view is that a proportionate framework, focused on improvement, where regulatory intervention is by exception provides the best balance of costs and benefits and is welcoming to new landlords.

Developing the framework

34. As noted previously, we see the regulatory framework as evolving over time and in this the pattern of costs and benefits may change. We do not accept that our role and the scale of our intervention will inevitably increase as a consequence of this, but we do understand providers' concerns that costs should be properly quantified and benefits analysed to ensure for example that a reduction in burden in one place does not result in increased burdens elsewhere.
35. We want to work with providers to gain a better understanding of the costs of the regulatory framework. While we have not thought it appropriate to make cost estimates at this stage, especially in light of transitional issues,

Annex 4:

Equalities impact assessment progress report

- 1 The TSA has specific duties under equalities legislation, one of which is to conduct effective Equality Impact Assessments (EIAs) to ensure that we are basing our policies on the right evidence.
- 2 Following the publication of our June discussion document, we engaged with a broad range of housing providers, external agencies including voluntary bodies, tenants from a wide variety of backgrounds and other organisations directly or indirectly providing affordable housing services to tenants from diverse backgrounds. We also worked closely with our Equality and Diversity Advisory Board.
- 3 We used the feedback from this process to further inform the development of our approach to equality and diversity as a cross-cutting theme through all standards.
- 4 The revised document formed the basis of the next stage of our consultation process which was the statutory consultation last November. In addition to consulting stakeholders, we also held or facilitated ten specific events for tenants along the equality strands namely age, disability, gender, religion, sexuality, race as well as events to capture the views of tenants with care and support needs. We recognise a need to develop our engagement with transgender tenant community.
- 5 All of the feedback from this process has helped to shape the final regulatory framework both in terms of how we cover equality and diversity, and tenants with care and support needs; and ensuring we gained the view of tenants in the equality strands.
- 6 Where feedback from the latest consultation process has enabled us to identify potential gaps or inconsistencies in the proposed framework, we have taken steps to address this aiming to reflect the feedback that we have received. In particular we worked through issues raised with members of the Advisory Board. As a result we made a number of changes to emphasise the importance of equality and diversity as a cross-cutting theme throughout all of the standards.
- 7 It is too early to be able to quantify the real impact that our proposed way of regulating will have on the affordable housing sector in particular on tenants in respect of equality and diversity issues but we are clear about the impact that we want to achieve. The impact that we want to have is an affordable housing sector where providers understand the needs of their tenants across all seven equality strands and including tenants with care and support needs and are able to demonstrate how they have used this understanding to improve services across all standards. It will be an environment where every tenant matters and tenants can expect services that take account of their background and needs.
- 8 We aim to publish a further EIA statement alongside our Single Equalities Scheme in May 2010, which will set out the intended impact our approach to equalities is designed to achieve, the consultation process we undertook, who we

consulted, what they told us and how we have used that feedback to develop our regulatory approach. We will also set out clearly gaps that we have identified such as transgender tenants, gypsies and travellers and tenants whose particular circumstances mean that they are especially vulnerable to or affected by socio-economic disadvantage.

- 9 We will also set out in the documents due to be published in May 2010, a timetable for reviewing the equality impact of our new regulatory framework over the next three years.

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The regulatory framework for social housing in England from April 2010

Annexes to the TSA's regulatory framework document

This document provides the annexes to the regulatory framework that will apply to all social housing providers from April 2010. It gives guidance on the use of our powers, lists the Housing Corporation Circulars that are withdrawn from 1 April 2010, sets out the regulatory impact assessment and provides a progress report on our equalities impact assessment.

