

# The regulatory framework for social housing in England from April 2010



**TSA**

**TENANT  
SERVICES  
AUTHORITY**



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The annexes to this document are available in our publication *The Regulatory Framework for Social Housing in England from April 2010 – Annexes to the TSA's Regulatory Framework Document*.

# Foreword

We are the regulator for social housing in England. Our new powers come into effect for all social housing providers from 1 April 2010. From that date, for the first time, every social housing tenant in England will benefit from a common set of standards that will apply to all providers whether they are a local authority, a housing association, or other form of provider.

We have shaped a regulatory framework in collaboration with tenants, local authorities, housing associations and our many other partners. The framework establishes a set of standards to help improve the services provided for some eight million people who live in social rented and shared ownership homes in England.

Our standards and approach to regulation are fundamental to us in:

- **ensuring a fair deal for tenants** – who cannot in most cases simply vote with their feet and move to another provider if services are poor
- **protecting taxpayers and other funders of social housing** – by continuing our work on sector governance and financial viability to safeguard and maximise the value from public investment and promote private investment in new and existing homes
- **being a modern and effective regulator** – a consumer-focused regulator that is efficient, accountable, proportionate and transparent in its approach

We have made it clear that our regulation can best support lasting service delivery improvement if both providers and tenants have a sense of ownership in the regulatory framework. We have based our framework on creating a new expectation that providers will involve their tenants and hold themselves open to scrutiny by them. We set out how we expect, at the local level, providers to develop their service offer in response to local priorities and to work with other partners in their neighbourhood to improve the quality of life for all residents.

Hand in hand with these new expectations we are also taking this opportunity to free providers to innovate in the best interests of their tenants through a significant reduction in red tape. For housing associations, we will withdraw 54 Circulars previously issued by the Housing Corporation that set out guidance on many issues – guidance that too many providers previously read as the regulatory rulebook. From 1 April 2010, when councils owning social homes will be subject to regulation by us, we will regulate in a way that supports the principles of the local performance framework. With greater freedom for providers comes greater responsibility to deliver a better deal for their tenants and be held accountable for achieving this by their own governing bodies and their tenants. Only when this fails to deliver a fair deal for tenants will we, as the regulator, step in.

The feedback we received to our six draft standards that we proposed in November 2009 has been supportive. We have listened to detailed feedback on a number of standards and considered the different views that have been expressed by a range of respondents. We have had to balance these conflicting views in coming to final decisions on the standards and in doing so we have made some adjustments.

The six standards describe the outcomes we want to see achieved and some specific expectations we expect all providers to comply with. Our final decision on the requirements, and language, in relation to local standards, which we now refer to as 'local offers', reflects feedback we received about how providers and their tenants might innovate in practice. We have consciously given providers and their tenants the freedom to define what 'local' means to them. However, we have responded to feedback and set out more clearly the areas we expect providers to tailor their service offer and how we require providers to set out clearly to their tenants how they will meet all of the TSA standards, whether they are locally tailored or not. Most importantly, we expect providers to involve their tenants in the design of their services and to deliver on their promises.

We know that where performance is poor or involvement is weak, this can have a significant negative effect on tenants' lives. Where this is the case, we will expect speedy self-improvement and, where this is insufficient, we have a new graduated range of enforcement powers to ensure that tenants get a fair deal.

A handwritten signature in black ink, appearing to read 'Peter Marsh', with a long horizontal flourish extending to the right.

**Peter Marsh**  
Chief Executive

# Decision statement

**This section sets out key information about the decisions we have taken, what effects we think these decisions could have and who we have involved in reaching these decisions.**

The decisions outlined in this document will be formally made only once the statutory instrument putting in place the relevant powers has been made and the Government has made the Direction that it intends to give us in relation to local authority landlords. In light of the fact that these standards will take effect from 1 April 2010, we wish to publish the form of the decisions before they are formally made. The decisions are therefore subject to the completion of the Parliamentary process and the Secretary of State formally making the Direction relating to local authorities that the Government has published.

## Contact us

If you have any queries about this document, please contact:

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## The main decisions of the TSA recorded in this document

Under the Housing and Regeneration Act 2008, the TSA has decided to:

- set standards for social housing providers in England and describes how it will go about regulating against these standards
- established guidance for how it will use its powers
- established criteria for providers seeking to register and deregister
- issued certain Directions in relation to the accounts of registered providers and the Disposal Proceeds Fund

A separate decision document published alongside this document establishes the TSA's general consent for the disposal of social housing dwellings, The TSA's Consent to Disposals (March 2010).

## What it means for you

This document sets out the policies that will comprise the new regulatory framework from 1 April 2010.

Although continuing our important focus on governance and financial viability of housing associations, it introduces new standards that providers will be required to meet in relation to several aspects of service delivery and tenant involvement. It also introduces a new graduated suite of intervention and enforcement powers.

Significantly, Parliament has decided that councils owning social rented homes should be on the TSA's register and hence subject to the same regulation as all other social landlords (except for some adjustments to reflect their unique democratic and financial structures). The register is also open to a wider range of providers than before, including providers trading for profit or where social housing is not the main purpose of their business.

## Context for this decision document

The Housing and Regeneration Act 2008 followed the 2007 Cave Review of social housing. The Cave Review made a clear case for reform, to introduce greater protection, choice and involvement for tenants of social housing in England. This document sets out the policies that implement the 2008 Act.

The Government has issued two documents that are relevant to the decisions contained within this decision document. The first contained its Directions to us on three particular standards (Directions to the TSA, November 2009, CLG). These relate to rents, quality of accommodation and tenant involvement. Our standards must comply with these Directions. The second contained the Government's statement of policy intent in terms of our powers in relation to local authorities (The Housing and Regeneration Act [Registration of Local Authorities] Order 2009 Consultation, November 2009, CLG). Parliamentary

process to approve this order<sup>1</sup> began in January 2010. We will put an update on our website when the approval is formally confirmed.

## Our consultation process

The decisions in this document and the general consent have been developed following three stages of consultation. These were supplemented with many bilateral meetings and specific stakeholder events. To support our engagement, we established a sounding board of stakeholders and three advisory panels representing providers, tenants and advisors. Membership of these panels was set out in previous consultation documents.

The first stage of engagement was our National Conversation, from January to May 2009. Aimed at understanding the views and priorities of tenants across the country, it included national and local events and detailed research and surveys. This was arguably the largest ever discussion with tenants in England, introducing 'local conversations' to support innovative ways for tenants to get together and contribute their views on our proposals. As a result, we received 27,000 responses to our questionnaire. We published the main conclusions from the National Conversation in June 2009.

This informed a second stage, with the publication of a discussion document in June 2009. This described ideas and some proposals for the new

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<sup>1</sup> Laid as Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010.



regulatory framework. We received 325 written responses to this document and 399 responses from local conversations. A summary of responses to this document was published in October 2009. All non-confidential responses are available from our website.

The final stage was the publication in November 2009 of our statutory consultation document. This set out our formal proposals on the new framework. It was supported by the publication of two supplementary consultation documents on our use of powers and consents for disposals. We received 491 written responses to these consultation documents. A summary of responses is published alongside this document in *The Regulatory Framework for Social Housing in England from April 2010: Analysis of Respondents' Views*, March 2010. The responses on consents are summarised within its separate decision document.

Non-confidential responses are available from our website.

The 2008 Act requires the TSA to consult a number of stakeholders or types of stakeholders before reaching decisions. The publications and events above comprise a significant consultation with everyone who has an interest in the future of social housing. The TSA is satisfied that its consultation processes have fulfilled our obligations.

## **Other versions of this document**

We can provide this document in large print, Braille and audio versions on request. Other language versions may also be available. These are available from our customer service team on 0845 230 7000.

# Summary of key terms

This section provides a summary of the main terms used in this document.

**The 2008 Act** – the Housing and Regeneration Act 2008. This Act established a regulator of social housing, described in section 81 as the Office for Tenants and Social Landlords. We call ourselves the Tenant Services Authority. The Act also established the Homes and Communities Agency (HCA), which is responsible for public investment in housing and regeneration.

**TSA** – the Tenant Services Authority, the new regulator for social housing in England. Regulation was previously undertaken by the Housing Corporation in relation to housing associations. The TSA has been given new powers, duties, and objectives under the 2008 Act.

**Social housing** – this includes low-cost rented housing, low-cost home ownership and most other housing owned by existing registered social landlords (social housing is defined in sections 68 to 77 of the 2008 Act)<sup>2</sup>.

**Tenant** – a resident in social housing, whose provider could be a local authority, housing

association or any other registered provider. In this document, this term does not include leaseholders<sup>3</sup>.

**Provider** – this means a registered provider within the definition in the 2008 Act. All providers registered with the TSA as of 31 March 2010 are automatically registered as providers on 1 April 2010. As a result of Parliamentary approval in March 2010, all local authority providers are automatically registered too (whether the local authority manages its homes directly or where these services are provided by an Arm's-Length Management Organisation or Tenant Management Organisation). New applicants to be a registered provider after 1 April 2010 must meet the eligibility in the 2008 Act and registration criteria set by the TSA, except local authorities who provide or intend to provide social housing and who are subject to compulsory registration.

**ALMO** – an Arm's-Length Management Organisation, established by local authorities as management agents of their stock. ALMOs that do not own stock will not be registered under the 2008 Act and hence will not be the legal entity responsible for meeting the standards (it will apply to the sponsoring local authority). The same principle applies to Tenant Management Organisations (TMOs).

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<sup>2</sup> Section 68 of the 2008 Act results in some leasehold properties being included within the legal definition of 'social housing'. These are mainly shared ownership properties. It also includes (1) those RSL properties where grant (including as defined in section 77(3) of the Act) has been paid and where the leaseholder owns 100% of the equity in their dwelling or (2) it is owned under equity percentage arrangements. None of our standards under section 193 apply to these two groups. We call these "100% ownership leaseholders" for the purpose of this document.

<sup>3</sup> Relevant powers in the act focus on the tenants of low-cost rented accommodation and low-cost home ownership, not 100% ownership leaseholders. This reflected the government's view that these leaseholders had a degree of choice to move out of their homes, unlike most tenants in the sector, and are protected by contract and other legislation. We recognise that many areas of social housing have a mixture of tenures and our regulation, designed to improve outcomes for tenants, may well have positive effects for leaseholders.

# 1 The TSA's approach to regulation from April 2010

1.1 This section sets out the ten principles that will underpin our approach to regulation from April 2010.

**I. 'Co-regulation' is the TSA's approach – we expect robust self-regulation by the boards and councillors who govern the delivery of housing services, incorporating effective tenant involvement, subject to a 'backbone' of regulation by the TSA.**

1.2 Tenants and providers can expect the following from our approach to co-regulation.

- Providers will need to ensure for their tenants that they are meeting the obligations contained within the TSA's six standards. These have been influenced by our National Conversation that helped us establish tenants' priorities. They are also designed to help us further our ten fundamental objectives in the 2008 Act<sup>4</sup>
- The TSA standards place a strong emphasis on providers involving their tenants to shape local delivery to local priorities and scrutinise performance. The primary focus for discussions on service delivery and improvement should be between providers and their tenants rather than between the regulator and the provider
- Responsibility for meeting these standards lies with the boards and councillors that govern providers' service delivery. Essential elements of co-regulation must include honest and robust self-assessment that is evidence based. Providers should use external validation, independent audit and peer review where appropriate. Providers will report performance against all the standards annually to their tenants to strengthen their accountability. Tenants will be involved in the development and scrutiny of this report
- Tenants should have the ability to monitor and scrutinise their provider's performance against all the standards. Providers will also provide support tenants to build their capacity to make co-regulation effective
- Tenants who are not happy with their provider's service or approach to co-regulation can make a complaint to the provider. Our standards require providers to have a clear and accessible complaints policy so tenants know how they can raise concerns and have them dealt with fairly and promptly. If a tenant remains unsatisfied after complaining to their provider, they have the right to raise their concern with the relevant housing ombudsmen
- Although the TSA does not deal with complaints related to service failure (as this is the role of the provider and relevant ombudsman), where tenants or the ombudsmen have evidence or grounds to suspect that a provider has systemic compliance issues with one or more of our regulatory standards, and/or other issues of regulatory concern, they can raise these with the TSA for us to consider whether to pursue this with the provider

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<sup>4</sup> Section 86

- Where problems are identified with a provider's performance (from whatever source), they will as far as possible be given the opportunity to correct issues speedily themselves and take responsibility for their self-improvement, with the prospect of intervention or enforcement from TSA only where they fail to do so. Our regular dialogue with providers should mean that in most cases performance is discussed with the provider before we make a decision on whether to commission an inspection
- targeting inspection on those providers where we have reason or grounds to suspect that they may not be meeting our standards, rather than inspecting as a routine activity
- moving to using general consents for some of our work on providers' disposals of their stock rather than, as now, relying on individual consents. For example, greater use of the general consent will remove the obligation on providers to seek from the TSA a minimum of 1,000 individual consents annually

1.3 This new co-regulatory framework includes a clear focus on deregulation and reducing burdens<sup>5</sup>. For example, we are:

- basing our new standards on outcomes and seeking to avoid prescriptive process requirements
- not issuing any TSA codes of practice that relate to our new standards
- removing the requirements from previous guidance and Circulars issued by the TSA's predecessor body, the Housing Corporation. This amounts to the Regulatory Code and guidance; 54 Circulars from a total of 58<sup>6</sup> are withdrawn from April 2010 (a full list is provided at Annex 2), along with all previous Good Practice Notes<sup>7</sup>

1.4 The principles of better regulation, such as transparency, proportionality and accountability, are embedded within the regulatory framework and the way the TSA regulates in practice.

1.5 Our approach to co-regulation extends to the development and review of regulatory policy and how we regulate in practice. The degree of consensus we have been able to achieve in the new framework has only been possible because of the close engagement we have had with our key stakeholders.

1.6 The regulatory standards framework should be reviewed after three years. As we develop our co-regulatory process, some changes may be

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<sup>5</sup> Annex 3 contains our regulatory impact assessment for our decisions on the new framework.

<sup>6</sup> Four Circulars are retained in reference to the definition, in the Government's Direction to the TSA on rents, of rent policy and its operation.

<sup>7</sup> Except in relation to Circulars issued by the Housing Corporation that set out regulatory requirements for the small number of co-ownership societies it funded in the 1970s and 1980s. These societies were not regulated under the Housing Corporation's Regulatory Code but were required to meet the requirements in the appropriate Circulars. Property held by co-ownership societies of the current form falls outside the remit of the 2008 Act and so we will not exercise any of our regulatory and enforcement powers in relation to these societies and our standards will not therefore apply but we intend to maintain the integrity and continuity of the Housing Corporation's previous approach.

required within a shorter period, eg in respect of requirements for rents following any future Direction from the Secretary of State. If we consider changes might be needed, we will consult on these.

**II. Providers must meet our six standards. We are primarily concerned about outcomes for tenants, not detailed processes.**

1.7 Figure 1 sets out the six TSA standards that providers are expected to meet. Each standard is

defined in terms of required outcomes and some specific expectations. Providers must involve their tenants in determining how to meet the outcomes in each of the standards. The specific expectations are not intended to describe entirely how to meet or comply with the outcomes. Our six standards have regard to the desirability of providers being free to choose how they conduct business and deliver services. There may be some standards where it is possible to meet the required outcomes without necessarily meeting the specific expectations. In

Figure 1 The TSA's standards<sup>8</sup>

Standard	Containing requirements relating to the following areas
1. Tenant involvement and empowerment	<ul style="list-style-type: none"> <li>▪ Customer service, choice and complaints</li> <li>▪ Involvement and empowerment</li> <li>▪ Understanding and responding to diverse needs of tenants</li> </ul>
2. Home	<ul style="list-style-type: none"> <li>▪ Quality of accommodation</li> <li>▪ Repairs and maintenance</li> </ul>
3. Tenancy	<ul style="list-style-type: none"> <li>▪ Allocations</li> <li>▪ Rents*</li> <li>▪ Tenure</li> </ul>
4. Neighbourhood and community	<ul style="list-style-type: none"> <li>▪ Neighbourhood management</li> <li>▪ Local area co-operation</li> <li>▪ Anti-social behaviour</li> </ul>
5. Value for money	<ul style="list-style-type: none"> <li>▪ Value for money</li> </ul>
6. Governance and financial viability*	<ul style="list-style-type: none"> <li>▪ Governance</li> <li>▪ Financial viability</li> </ul>

\* This standard or part of standard does not apply to local authorities.

<sup>8</sup> Standards 1 to 5 are set using our powers under section 193 of the 2008 Act. Standard 6 is set under our powers under section 194 of the 2008 Act.

such circumstances, where tenants are satisfied and their needs are not put at risk, such innovation is to be welcomed. We would, however, expect providers in these circumstances to justify departures and demonstrate their effectiveness to tenants.

1.8 Three areas are subject to a Direction issued by the Government. These are quality of accommodation, rents and tenant involvement and empowerment. Security of tenure is a matter for the government and the drafting of the outcome in the Tenancy Standard is aimed at ensuring this is consistent with current Government policy and hence no changes are introduced as a result of the regulatory standard on this issue.

1.9 The Tenant Involvement and Empowerment Standard is a cross-cutting standard. It contains specific references to how, in meeting all the standards, providers must take into account tenants' diverse needs, including in respect of equalities and tenants with additional support needs. It also includes requirements in relation to local offers in a number of areas related to the other standards.

1.10 Our regulation is 'cross-domain'. The key aim of regulation is to operate in a way that as far as possible is 'provider neutral' so tenants receive similar outcomes regardless of who happens to be their provider. Our standards are designed to support the principles of the local performance

framework and the independent role of the Audit Commission in respect of local authorities' governance, financial management and approach to value for money. This means avoiding prescribed national metrics outside the national indicator set or prescribed local performance targets. In regulating against the standards we will work closely with the Audit Commission to avoid any overlap or duplication, for example in relation to its use of resources assessment and its role in Comprehensive Area Assessments (CAA). We will also help support the Audit Commission in its CAA role, for example by providing information we have on how providers generally in an area contribute to local outcomes.

### **III. We expect providers to engage meaningfully with tenants and offer them opportunities to agree how service delivery against the TSA standards can be tailored to reflect local priorities.**

1.11 There are many cases where a 'one size fits all' approach to service delivery will not meet the varying needs of tenants in social housing. We require providers to consult with tenants on local priorities under the following TSA standards: (i) the Tenant Involvement and Empowerment Standard, (ii) the Home Standard and (iii) the Neighbourhood and Community Standard<sup>9</sup>. This does not prevent

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<sup>9</sup> This is the same as our November proposals, except the Value for Money Standard is now no longer subject to our local tailoring requirement.

providers and their tenants agreeing local offers on a range of other issues. However, these will not form part of the providers' regulatory obligations. We set out our approach to ensuring providers take account of local priorities for tenants, within our wider approach to our standards, in figure 2.

**IV. Every tenant matters. We expect providers to understand and respond to the particular needs of their tenants and to demonstrate how they have taken into account the needs of tenants across the seven<sup>10</sup> equality strands.**

1.12 The TSA is unequivocally and positively committed to diversity in all our work. Our regulatory philosophy is influenced by wider principles of public service, which focus on fairness, universality and accountability. In order to meet these values, the TSA is firmly committed to equality and diversity throughout our work and practice through our single equalities scheme. Communities are made up of people from different backgrounds and experiences. Many people have care or support needs. Ensuring that this diversity is reflected in our work and that of providers is central to our vision. We support effective and inclusive approaches to both equality and diversity, and tenants with care or support needs.

1.13 Understanding the needs of all tenants is essential for providers and forms a cross-cutting

requirement that applies to all our standards. This includes the needs of people drawn from the seven equality strands: race, disability, sexual orientation, age, gender, religion or belief and gender identity. The Tenant Involvement and Empowerment Standard makes it clear that in meeting all the standards, providers must take into account equality and diversity and tenants with care or support needs.

**V. Good governance is a universal principle and is essential to the quality of service delivery, financial robustness and value for money.**

1.14 The 2007 Cave Review and the 2008 Act recognise that the bedrock of excellent service delivery is good governance, financial strength and value for money. For the housing association sector, we will continue to have a strong focus on governance and viability matters.

1.15 Although we do not have specific powers to set standards for governance and viability for local authority providers, the principles of good governance and financial strength are universal. Given the strong link between service delivery and good governance, we will work closely with the Audit Commission in supporting their role overseeing local authorities' leadership and financial matters, with a shared aspiration of helping to ensure all tenants receive the quality of service

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<sup>10</sup> The current equality laws give public bodies responsibilities in relation to race, gender and disability in policy making, delivery of services and public sector employment. In the planned Equality Bill the three duties are due to be harmonised into one duty that will cover all seven equality strands.

they deserve. Where through our work we have reason to be concerned there may be an issue with governance and/or financial management for those providers where these standards do not apply, we will refer the matter to the Audit Commission.

**VI. Transparency, effective tenant scrutiny, and an element of independent validation are central to our new co-regulatory framework. This includes providers setting out their service offers and reporting performance to their tenants (and to local authorities in their strategic role).**

1.16 All standards (except for the Governance and Financial Viability Standard) have a requirement that providers must set out their service offer for their tenants and then meet these commitments.

1.17 All providers should by 1 October in each year publish a report for their tenants (and shared with the TSA) on how they are meeting the TSA standards, including their local offers. We do not want to be overly prescriptive as to the format of this report. As far as possible, we expect providers to use information that is already collected and is therefore 'used and useful'. This report must set out how the provider is currently meeting the TSA standards, including how they measure their compliance against the standards. It should note any gaps and associated improvement plans. It should also include the provider's offer to tenants against the standards over the next year, including local service offers. The reports must set out the way in which the provider has provided opportunities for tenants to scrutinise performance and how they

have made use of external validation, peer review and benchmarking. We will adopt a proportionate approach to reporting requirements for those providers owning fewer than 1,000 properties.

1.18 The report must say how tenants have been involved in producing and scrutinising the report. To support this, the TSA will work with stakeholder partners, tenants and landlords to develop approaches to annual reports that assist in their preparation in a co-regulatory manner.

**VII. We will encourage effective forms of independent validation, audit and benchmarking of performance to encourage providers to improve continually and free the best from unnecessary red tape.**

1.19 The TSA will work with tenants, providers and other stakeholders to promote effective forms of validation and peer review that best support the standards framework. The TSA will not support any one validation model. We will publish findings of current models and core features that landlords and tenants should consider in whether to use such approaches to support their co-regulatory approach.

1.20 The TSA will also promote continuous improvement for the quality of service all tenants receive. We recognise that there are many routes to improvement and it is important that providers are able to choose approaches that match their culture and values. The TSA will work with stakeholders to identify gaps in good practice and how best these can be filled. We will also share where we, and the Audit Commission, find helpful examples of activity.



Finally, we will promote the availability of good practice to tenants.

**VIII. For the service delivery standards, our focus and resources will be targeted in a risk-based way on those providers with the most challenging performance issues.**

1.21 Providers are expected to meet all the requirements of all the applicable TSA standards. All tenants deserve a good quality service and many already receive this from their provider. We wish to prioritise our focus on raising the standard of service for those tenants that are not currently getting a good deal from their provider. We know that performance can vary across the range of activities of a provider and from place to place. By concentrating on areas of poor performance we will be acting proportionately ensuring we focus our energies where they are most likely to promote better outcomes for tenants. Inspection will be targeted predominantly where we have grounds to suspect performance concerns with respect to the standards, rather than used in a routine way.

**IX. We support the principle of sector-led improvement.**

1.22 We want providers take ownership for the improvement of their services and performance against the standards. Where problems are identified by the TSA, the provider will be offered an opportunity for speedy self-improvement, working with relevant agencies as appropriate.

1.23 In considering any intervention or enforcement activity, we will act in a proportionate way. We may consider the use of our more formal regulatory and enforcement powers where there is reason to believe that self-improvement is not appropriate (for example, where it is necessary to protect tenants from immediate harm or to protect public funds), or where opportunities for self-improvement have not resulted in improved outcomes, or where the improvement plans of the provider are not credible.

**X. We intend to expand the range of providers that own and manage social housing.**

1.24 From 1 April 2010, a broader range of providers, such as profit-making organisations, will be able to register with the TSA. The entry of new forms of provider will create greater competition and encourage innovation and the delivery of greater value for money by existing providers. The discretionary registration criteria we have set are related to a provider's ability to meet our standards.

## Figure 2 The TSA's approach to ensuring service delivery against the standards reflects local priorities

### A - Providers set out their offer to their tenants and deliver it

There is a requirement in five TSA standards (those relating to service delivery) for each provider to set out in an annual report for their tenants how their service offer meets their obligations for each of the TSA's standards and any improvements planned for tenants over the next year. Providers are expected to deliver on these commitments<sup>11</sup> and be accountable for their compliance with all the standards in all areas where they operate.

### B - A clear timetable for making offers and reporting performance to tenants

An annual report for each year ending 31 March should be made available to tenants by no later than 1 October<sup>12</sup>. We have established high-level expectations for the contents of these reports<sup>13</sup>. For the first report in October 2010, we expect providers to set out their plans for developing local offers. We would be prepared to accept limited extensions to this date in the first year only, where the provider can demonstrate this is reasonable and has advised its tenants and us in advance<sup>14</sup>. Local offers for service delivery should be in place by 1 April 2011.

### C - Meaningful engagement with tenants

The Tenant Involvement and Empowerment Standard requires all providers to offer their tenants opportunities to agree how some services can be tailored to meet local priorities. Where tenants want local tailoring and choices to reflect their priorities, the provider should consult meaningfully with their tenants and act reasonably to develop a local offer in response. Our expectation is that in most cases providers will reach agreement with their tenants on these local offers. Providers should take into account, and discuss with their tenants, their obligations to the other standards, including value for money<sup>15</sup>. The TSA cannot compel 'agreement' of local offers because we cannot regulate for the degree of acceptance by tenants. Where agreement cannot be reached, we encourage the providers and their tenants to seek independent mediation. There is a requirement that tenants are involved in the preparation and scrutiny of their provider's annual report and that providers set out in their reports how this has been achieved.

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<sup>11</sup> This is a new requirement compared to our November proposals.

<sup>12</sup> Rather than July, as per our November proposals.

<sup>13</sup> See figure 3 in section 3.

<sup>14</sup> This gives providers more flexibility compared to the November proposals.

<sup>15</sup> This is the same as our November proposals with the exception of a new clause that the provider should act reasonably in making an offer for local tailoring, which is qualified by the expectation that they will take into account their other obligations including value for money.

#### **D - Providers and tenants discuss appropriate arrangements, within a broad framework set by the TSA**

The content of local offers is a matter for providers to agree in consultation with their tenants. We expect discussions to cover a number of areas related to the TSA standards: specifically those related to the Tenant Involvement and Empowerment, Home and Neighbourhood and Community Standards. There is a requirement in the Tenant Involvement and Empowerment Standard for providers, in offering opportunities for their tenants to agree local offers, to take into account: (i) standards of performance offered to tenants, (ii) how performance will be monitored, reported to and scrutinised by tenants, (iii) what happens if local offers, having been agreed with tenants, are not met, which may include redress for tenants, and (iv) the arrangements for reviewing local offers on a periodic basis<sup>16</sup>. There is also a requirement within the Tenant Involvement and Empowerment Standard for providers to say how they will provide support to build tenants' capacity so they are effectively engaged and involved<sup>17</sup>.

#### **E - The definition of what is 'local' is for providers and their tenants**

It is not for the TSA to define this, but we expect providers to consider their obligations under the Neighbourhood and Community Standard in relation to local area co-operation, which requires meaningful co-operation with Local Strategic Partnerships and the strategic housing function of local authorities. Providers should therefore consider whether services to the tenants could be improved by participating in an area-based offer. In these cases it may be reasonable for a provider to define 'local' as the local authority area or a subset of it, such as a neighbourhood or estate. Providers are not under a regulatory obligation to agree local offers with local authorities. We recognise that some providers may want to tailor their services by factors other than geography such as in relation to demographics (eg older tenants). Some providers may also, having properly involved and consulted their tenants, decide not to have a local offer where tenants expressly do not want one.

#### **F - What happens if there is a failure to deliver on commitments made in an agreed local offer?**

We want co-regulation between providers and tenants to work to resolve the issue. In doing so, we expect the provider to comply with its own scrutiny and redress provisions that it has agreed with its tenants. We also expect providers to take ownership for their self-improvement in such circumstances. Only in exceptional cases (such as when the provider is not delivering services in line with the outcomes set out in the TSA standards and has failed to address this), and where it is reasonable and proportionate will the TSA consider more formal intervention.

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<sup>16</sup> This is the same as the November proposals with the exception that we are requiring review on a periodic basis that can be agreed between providers and their tenants, but this does not have to be on an annual basis.

<sup>17</sup> This is the same as the November proposals.

### **G - Local delivery will help inform our view of a provider's compliance with the TSA's standards**

Although we will not regulate the delivery of individual local offers we expect to take into account a provider's performance as context for our overall assessment of its performance with regard to the TSA standards<sup>18</sup>.

### **H - Tenants of smaller providers deserve the same outcomes**

Every tenant matters, so our expectations for local offers will apply to those owning fewer than 1,000 properties. They will, however, be subject to proportionate reporting requirements. The very smallest providers, those owning fewer than 25 properties, do not need to produce an annual report to their tenants.

### **I - TSA will promote good practice to help inform local offers**

As part of our commitment to co-regulation, the TSA will work with the sector to promote information about local offers. This will include communicating the results of our 'local standards' pilots set up through Tenant Excellence funding. The results will be published in May 2010 along with a toolkit and a programme of dissemination events.

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<sup>18</sup> This is the same as we intended in our November proposals (though we accept the feedback from some respondents that the articulation was not as clear as it could have been).

## Further development of the regulatory framework in 2010-11

1.25 We will continue to develop some elements of the new regulatory framework in 2010-11. This includes:

- our equalities impact assessment, which will set out in spring 2010 how the new regulatory framework and how we put it into practice will take into account our objectives of promoting equalities and diversities. A progress report is set out in Annex 4
- supporting providers to develop good practice approaches to their annual report to tenants
- our joint review of inspection methodology with the Audit Commission. This is aimed at ensuring that the methods used for inspection are consistent with the outcome-focused nature of the new regulatory standards. A consultation paper will be published in May 2010
- our methodology for identifying those providers with the greatest risk of failing our standards will be published by 30 June 2010. This will be used to allocate our resources in a proportionate way to areas where they will have most impact
- a statement by 30 June 2010 on how registered providers can appeal in a more proportionate manner against regulatory judgements and decisions before the statutory routes of redress in the 2008 Act are triggered
- working with the respective ombudsmen, National Tenant Voice (NTV), Tenant Participation and Advisory Service (TPAS), Tenants and Residents of England (TAROE), Chartered Institute of Housing (CIH) and others to support the best signposting of tenants to the most appropriate way to resolve their complaints
- our approach to ring-fencing arrangements for certain providers who are part of corporate structures that are not regulated by the TSA
- our approach to how we grade our assessments of providers' performance against the Governance and Financial Viability Standard (not applicable to local authorities), linking also to our financial regulation information strategy which we will publish for discussion by 30 June 2010
- exploratory background to a potential future fee charging regime
- developing a strategic approach to information and data
- work with the Charity Commission and stakeholders to gain a clear understanding of the opportunity presented by the Charities Act 2006 for the TSA to become the principal regulator of charitable industrial and provident societies which are also registered social housing providers ('exempt charities')

1.26 Our three-year corporate plan sets out our wider work programme in more detail.

## 2 Standards for registered providers

2.1 This section sets out the standards<sup>19</sup> that will apply from 1 April 2010 to registered providers. It also sets out the products on which standards apply.

### Tenant involvement and empowerment standard

#### Required outcomes

##### 1 Customer service, choice and complaints

Registered providers shall:

- provide choices, information and communication that is appropriate to the diverse needs of their tenants in the delivery of all standards
- have an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly

##### 2 Involvement and empowerment

Registered providers shall support co-regulation with their tenants by:

- offering all tenants a wide range of opportunities to be involved in the management of their housing, including the ability to influence strategic priorities, the formulation of housing-related policies and the delivery of housing-related services
- consulting with their tenants and acting reasonably in providing them with opportunities to agree local offers for service delivery
- providing tenants with a range of opportunities to influence how providers meet all the TSA's standards and to scrutinise performance against all standards and in the development of the annual report
- providing support to tenants to build their capacity to be more effectively involved

##### 3 Understanding and responding to the diverse needs of tenants

Registered providers shall:

- treat all tenants with fairness and respect
- demonstrate that they understand the different needs of their tenants, including in relation to the seven equality strands and tenants with additional support needs

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<sup>19</sup> Sections 193 and 194 of the Housing and Regeneration Act 2008.

Registered providers shall set out in an annual report for tenants how they are meeting these obligations and how they intend to meet them in the future. The provider shall then meet the commitments it has made to its tenants. Registered providers shall take the obligations of the Tenant Involvement and Empowerment Standard into account in setting out how they are meeting and intend to meet all the other TSA standards.

## Specific expectations

### 1 Customer service, choice and complaints

1.1 Registered providers shall provide tenants with accessible, relevant and timely information about:

- how tenants can access services
- the standards of housing services their tenants can expect
- how they are performing against those standards
- the service choices available to tenants, including any additional costs that are relevant to specific choices
- progress of any repairs work
- how tenants can communicate with them and provide feedback
- the responsibilities of the tenant and provider
- arrangements for tenant involvement and scrutiny

1.2 Providers shall offer a range of ways for tenants to express a complaint and set out clear service standards for responding to complaints, including complaints about performance against the standards, and details of what to do if they are unhappy with the outcome of a complaint. Providers shall inform tenants how they use complaints to improve their services. Registered providers shall publish information about complaints each year, including their number and nature, and the outcome of the complaints. Providers shall accept complaints made by advocates authorised to act on a tenant's/tenants' behalf.

## **2 Involvement and empowerment**

2.1 Registered providers shall consult with tenants on the desirability and scope of local offers in relation to services to meet the following TSA standards: Tenant Involvement and Empowerment, Home and Neighbourhood and Community. In providing opportunities for tenants to agree local offers by no later than 1 April 2011 they shall offer commitments on:

- local standards for performance
- how performance will be monitored, reported to and scrutinised by tenants
- what happens if local offers are not met (including procedures of redress)
- arrangements for reviewing the local offers on a periodic basis

2.2 Registered providers shall enable tenants' opportunities to scrutinise the effectiveness of their policies in relation to tenant involvement.

2.3 Registered providers shall inform tenants about the results of their consultations on issues related to the standards.

2.4 Registered providers shall consult with their tenants, setting out clearly the costs and benefits of relevant options, if they are proposing to change their landlord or when proposing a significant change in their management arrangements.

2.5 Registered providers shall consult tenants at least once every three years on the best way of involving tenants in the governance and scrutiny of the organisation's housing management service. They shall ensure that any changes to tenant involvement in governance and scrutiny leads to an enhancement of the overall effectiveness of their approach.

## **3 Understanding and responding to diverse needs**

3.1 Registered providers shall demonstrate how they respond to tenants' needs in the way they provide services and communicate with tenants.



## Home standard

### Required outcomes

#### 1 Quality of accommodation

Registered providers shall:

- ensure that tenants' homes meet the standard set out in section 5 of the Government's Decent Homes Guidance<sup>20</sup> by 31 December 2010 and continue to maintain their homes to at least this standard after this date
- meet the standards of design and quality that applied when the home was built, and were required as a condition of publicly funded financial assistance<sup>21</sup>, if these standards are higher than the Decent Homes Standard
- in agreeing a local offer, ensure that it is set at a level not less than these standards and have regard to section 6 of the Government's Decent Homes Guidance

#### 2 Repairs and maintenance

Registered providers shall:

- provide a cost-effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choices to, tenants and has the objective of completing repairs and improvements 'right first time'
- meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes

Registered providers shall set out in an annual report for tenants how they are meeting these obligations and how they intend to meet them in the future. The provider shall then meet the commitments it has made to its tenants.

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<sup>20</sup> Decent Homes Guidance means A Decent Home: Definition and Guidance for Implementation, published by the Department for Communities and Local Government in June 2006, and any guidance issued by the department or its successors, in relation to that document.

<sup>21</sup> Financial assistance is defined in section 19(3) of the Housing and Regeneration Act, 2008. For the purpose of this standard it means financial assistance provided by the Homes and Communities Agency and its predecessor bodies.

## Specific expectations

### **1 Quality of accommodation**

1.1 The TSA may agree with a registered provider an extension to the 31 December 2010 date where this is reasonable. Providers shall ensure their tenants are aware of the reasons for any extension given.

### **2 Repairs and maintenance**

2.1 Registered providers shall ensure a prudent, planned approach to repairs and maintenance of homes and communal areas. This should demonstrate an appropriate balance of planned and responsive repairs, and value for money. The approach should include: responsive and cyclical repairs, planned and capital work, work on empty properties, and adaptations.

2.2 Registered providers shall co-operate with relevant organisations to provide an adaptations service that meets tenants' needs.

## Tenancy standard

### Required outcomes

#### 1 Allocations

Registered providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how they:

- make the best use of available housing
- are compatible with the purpose of the housing
- contribute to local authorities' strategic housing function and sustainable communities

There should be clear application, decision-making and appeals processes.

#### 2 Rents

Registered providers shall charge rents in accordance with the objectives and framework set out in the Government's Direction to the TSA of November 2009.

#### 3 Tenure

Registered providers shall offer and issue the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community. They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements<sup>22</sup>.

Registered providers shall set out in an annual report for tenants how they are meeting these obligations and how they intend to meet them in the future. The provider shall then meet the commitments it has made to its tenants.

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<sup>22</sup> Security of tenure is a matter for the Government and the drafting of this outcome in the Tenancy Standard is aimed at ensuring this is consistent with current Government policy and hence no changes are introduced as a result of the regulatory standard on this issue.

## Specific expectations

### 1 Allocations

1.1 Registered providers shall co-operate with local authorities' strategic housing function, and their duties to meet identified local housing needs. This includes assistance with local authorities' homelessness duties, and through meeting obligations in nominations agreements. Where, in exceptional circumstances, registered providers choose not to participate in choice-based lettings schemes in areas where they own homes, they shall publish their reasons for doing so.

1.2 Registered providers shall develop and deliver services to address under occupation and overcrowding in their homes, within the resources available to them. These services should meet the needs of their tenants, and will offer choices to them.

1.3 Registered providers shall provide tenants wishing to move with access to clear and relevant advice about their housing options. They shall participate in mobility schemes and mutual exchange schemes where these are available.

1.4 Registered providers' published policies shall include how they have made use of common housing registers, common allocations policies and local letting policies. Registered providers shall clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for allocations, mobility or mutual exchange schemes.

1.5 Registered providers shall develop and deliver allocations processes in a way which supports their effective use by the full range of actual and potential tenants, including those with support needs, those who do not speak English as a first language and others who have difficulties with written English.

1.6 Registered providers shall minimise the time that properties are empty between each letting. When doing this, they shall take into account the circumstances of the tenants who have been offered the properties.

1.7 Registered providers shall record all lettings and sales in the Continuous Recording of Lettings system.

## 2 Rents

2.1 Registered providers shall ensure they meet the following requirements, which derive from the Government's Direction to the TSA of November 2009 and published within Directions to the TSA – Summary of Responses and Government Response, November 2009, CLG.

2.2 Subject to paragraph 2.3, registered providers shall set rents with a view to achieving the following as far as possible:

2.2.1 Rents conform with the pattern produced by the rent formula set out in rent influencing regime guidance<sup>23</sup> ('target rents') with a five per cent tolerance in individual rents (ten per cent for supported and sheltered housing) ('rent flexibility level') but subject to the maximum rent levels specified in that guidance ('rent caps').

2.2.2 Weekly rent for accommodation increases each year by an amount which is no more than  $RPI^{24} + 0.5\% + \pounds 2$  until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower.

2.2.3 Weekly rent for accommodation that has reached or is above the upper limit of the rent flexibility increases each year by an amount that is no more than the increase to the target rents.

2.2.4 Rent caps increase annually by  $RPI + \text{one per cent}$ .

2.2.5 Target rents increase annually by  $RPI + 0.5\%$ .

2.3 Where the application of the Rents Standard would cause registered providers to be unable to meet other standards, particularly in respect of financial viability including the risk that a reduction in overall rental income causes them to risk failing to meet existing commitments such as banking or other lending covenants, the TSA may allow extensions to the period over which the requirements of the Rents Standard are met.

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<sup>23</sup> 'Rent influencing regime guidance' means the Rent Influencing Regime Guidance published by the Housing Corporation in October 2001, and any guidance issued by the Housing Corporation or TSA, or its successors, in relation to that document.

<sup>24</sup> 'RPI' means the general index of retail prices (for all items) published by the Office of National Statistics or, if that index is not published for any month, any substituted index or index figures published by that office.

2.4 Registered providers shall provide clear information to tenants that explains how their rent and any service charge is set, and how it is changed, including reference to the RPI benchmark to which annual changes to rents should be linked (except where rents are controlled under different legislation).

### **3 Tenure**

3.1 Registered providers shall publish clear and accessible policies which outline their approach to tenancy management. They shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions. The approach should set out how registered providers will make sure that the home continues to be occupied by the tenant they let the home to.

## Neighbourhood and community standard

### Required outcomes

#### **1 Neighbourhood management**

Registered providers shall keep the neighbourhood and communal areas associated with the homes that they own clean and safe. They shall work in partnership with their tenants and other providers and public bodies where it is effective to do so.

#### **2 Local area co-operation**

Registered providers shall co-operate with relevant partners to help promote social, environmental and economic well being in the areas where they own properties.

#### **3 Anti-social behaviour**

Registered providers shall work in partnership with other public agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

Registered providers shall set out in an annual report for tenants how they are meeting these obligations and how they intend to meet them in the future. The provider shall then meet the commitments it has made to its tenants.

## Specific expectations

### 1 Neighbourhood management

1.1 Registered providers shall consult with tenants in developing a published policy for maintaining and improving the neighbourhoods associated with their homes. This applies where the registered provider has a responsibility (either exclusively or in part) for the condition of that neighbourhood. The policy shall include any communal areas associated with the registered provider's homes.

### 2 Local area co-operation

2.1 Registered providers, having taken account of their presence and impact within the areas where they own properties, shall:

- identify and publish the roles they are able to play within the areas where they have properties
- co-operate with Local Strategic Partnerships and strategic housing functions of local authorities where they are able to assist them in achieving their objectives

### 3 Anti-social behaviour

3.1 Registered providers shall publish a policy on how they work with relevant partners to prevent and tackle anti-social behaviour (ASB) in areas where they own properties.

3.2 In their work to prevent and address ASB, registered providers shall demonstrate:

- that tenants are made aware of their responsibilities and rights in relation to ASB
- strong leadership, commitment and accountability on preventing and tackling ASB that reflects a shared understanding of responsibilities with other local agencies
- a strong focus exists on preventative measures tailored towards the needs of tenants and their families
- prompt, appropriate and decisive action is taken to deal with ASB before it escalates, which focuses on resolving the problem having regard to the full range of tools and legal powers available
- all tenants and residents can easily report ASB, are kept informed about the status of their case where responsibility rests with the organisation and are appropriately signposted where it does not
- provision of support to victims and witnesses



## Value for money standard

### Required outcome

#### 1 Value for money

In meeting all TSA standards, including their local offers, registered providers shall have a comprehensive approach to managing their resources to provide cost-effective, efficient, quality services and homes to meet tenants' and potential tenants' needs.

Registered providers shall set out in an annual report for tenants how they are meeting these obligations and how they intend to meet them in the future. The provider shall then meet the commitments it has made to its tenants.

### Specific expectations

#### 1 Value for money

1.1 Registered providers shall demonstrate to their tenants:

- how expenditure has been prioritised in relation to each of the standards and in the delivery of local offers, and in meeting other needs such as investment in new social housing provision
- how they have ensured value for money has been secured and tested
- plans and priorities for delivery of further value for money improvements

1.2 Registered providers shall have arrangements for tenants to influence the services delivered and the cost of those services that result in service charges to tenants.

## Governance and financial viability standard

### Required outcomes

#### 1 Governance

Registered providers shall ensure effective governance arrangements that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. Governance arrangements shall ensure they:

- adhere to all relevant legislation
- comply with their governing documents and all regulatory requirements
- are accountable to tenants, the TSA and relevant stakeholders
- safeguard taxpayers' interests and the reputation of the sector
- have an effective risk management framework

#### 2 Financial viability

Registered providers shall manage their resources effectively to ensure their viability is maintained.

### Specific expectations

#### 1 Governance

1.1 Registered providers shall adopt and comply with an appropriate code of governance. They shall give the reasons for their choice and explain areas of non-compliance with their chosen code.

1.2 Registered providers shall establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive and produce an annual assessment of the effectiveness of their arrangements.

1.3 Registered providers shall submit an annual return, on an accurate and timely basis in a form determined by the TSA. This is currently the Regulatory and Statistical Return (and its successor, the National Register of Social Housing).

1.4 Where there is a non-regulated element<sup>25</sup>, the registered provider shall demonstrate to the TSA that it has in place effective mechanisms (such as commitments, undertakings or other assurances between itself and the non-regulated element) which ensure that:

1.4.1 it is and will be able to comply with the TSA's standards and other regulatory requirements.

1.4.2 its ability to meet the TSA's standards and other regulatory requirements is not and cannot be prejudiced by the activities or influence of the non-regulated element.

1.4.3 in the event that the registered provider does not or may not be able to comply with the TSA's standards or other regulatory requirements:

a. the non-regulated element will give any necessary support or assistance to enable compliance.

b. the registered provider has the ability to require the support or assistance of the non-regulated element to enable compliance.

In some situations it may be appropriate for the TSA to be a party to such arrangements.

## **2 Financial viability**

2.1 Registered providers shall ensure that:

- effective controls and procedures are in place to ensure security of assets and the proper use of public funds
- effective systems are in place to monitor and accurately report delivery of their plans
- the risks to delivery of financial plans are identified and effectively managed

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<sup>25</sup> A "non-regulated element" refers to the activities, organisations or parts of organisations carrying out non-social housing activity within an organisation:

(1) which is a registered provider and which also carries out activities which are not regulated by the TSA;

(2) which is not a registered provider but which has as part of its organisation, corporate structure or group of organisations, a registered provider; or

(3) which is a registered provider and is controlled or substantially influenced by another organisation which is not a registered provider.

2.2 Registered providers shall ensure that they have a robust and prudent business planning and control framework. Through this framework they will ensure:

- there is access to sufficient liquidity at all times
- financial forecasts are based on appropriate and reasonable assumptions
- planning sufficiently considers the financial implications of risks to the delivery of plans
- they monitor, report on and comply with their funders' financial covenants

2.3 Registered providers shall provide to the TSA accurate and timely statutory and regulatory financial returns and an annual report on any losses from fraudulent activity.

## Summary of how the standards apply to different types of provider and products

2.2 This section sets out the way in which the standards apply in respect of different types of provider or different types of social housing<sup>26</sup>.

**Table 1 Application of standards to different types of provider and social housing**

Standard	Does the standard have cross-cutting elements across all standards?	Apply to local authorities?	Apply to non-profit registered providers (RPs)?	Apply to for-profit RPs?	Apply to low-cost rental?	Apply to low-cost home ownership or intermediate rent <sup>27</sup> ?
Involvement and empowerment	Yes	Yes	Yes	Yes	Yes	Yes
Home	No	Yes	Yes	Yes	Yes	Yes
Tenancy <sup>28</sup>	No	Yes (apart from rents)	Yes	Yes	Yes	No
Neighbourhood and community	No	Yes	Yes	Yes	Yes	Yes
Value for money	Yes	Yes	Yes	Yes	Yes	Yes
Governance and financial viability	Yes	No	Yes	Yes	Yes	Yes

<sup>26</sup> This is the same as our November 2009 proposals.

<sup>27</sup> See footnote 1 in the summary of key terms for scope of application of standards.

<sup>28</sup> The basis on which we consulted specifically noted that we did not propose to apply the Tenancy Standard to low-cost home ownership and intermediate rent products. We confirm that the Tenancy Standard will not apply to these products. We will work with the HCA to consider the best approach to setting out requirements that will be proportionate and effective.

## 3 Supporting improvement and monitoring performance against the standards

3.1 In this section we set out how we will support providers' self-improvement. We also outline the principles by which the TSA will seek to assess compliance against the standards. We will provide further details about our risk methodology for monitoring compliance and prioritising the use of our resources in summer 2010.

### Promoting sector-led improvement and good practice

3.2 It is providers' responsibility to determine how they develop a systematic approach to self-improvement and learning from each other through peer review and benchmarking. They must have effective tenant and other scrutiny mechanisms, including, for example, self-assessment, board or councillor scrutiny, tenant scrutiny of performance and have considered the use of external validation and accreditation services. It is also providers' responsibility to set out how they will improve their services and develop their accountability for this to their tenants, particularly through their approach to establishing local offers.

3.3 Local authorities have access to well-structured support for the improvement agenda from a number of agencies, such as the Improvement and Development Agency (IDeA) and Regional Improvement and Efficiency Partnerships (RIEPs). Providers should make best use of these existing initiatives and determine how these approaches and resources can be used to improve performance, working in partnership with each other and with their representative organisations.

3.4 The TSA's 'excellence' work will develop a source of information on current good practice. We will support sector-wide improvement and our Tenant Excellence Fund will be targeted at those areas where we identify a need to fill a gap to support landlords and tenants to meet the needs of the regulatory framework. The Tenant Empowerment Programme will help to support tenants and tenants' groups to build capacity and develop tenant scrutiny. We will promote others' work in developing excellence across the standards framework and help communicate this to providers and tenants. We will work closely with the Audit Commission and signpost providers and tenants where we have identified useful examples of good practice. We do not intend or pretend to be the sole source of good practice in the sector and we will support the work of others such as the CIH, TPAS, the National Housing Federation (NHF) and Local Government Association (LGA) in promoting excellence for all.

3.5 Our approach to continuous improvement includes:

- the publication of annual reports of performance against each TSA standard by providers to improve the transparency of performance measurement and allow boards and councillors to develop service improvement plans based on a clearer understanding of what other providers are able to achieve
- using our Tenant Excellence Fund to identify, recognise and share good practice in the sector
- through the Tenant Involvement and Empowerment Standard, tenants will be

supported to work with boards and councillors to assess their performance and develop standards that lead to improvements in service delivery

- by freeing providers from red tape and process prescription providers will be better able to develop new and innovative approaches to service delivery which may lead to better outcomes than would otherwise be the case in the previous regulation and inspection regimes
- developing our web portal to offer more valuable information on performance of providers at the local level
- reviewing the frequency and relevance of tenant satisfaction data
- working with others to assess the scope for external and robust accreditation
- considering with others where there are incentives that can be focused on excellent performance

## The TSA's general approach to assessing compliance

3.6 We will base our approach on the following information:

- **Annual reports.** We will place reliance on providers' annual report to their tenants that contains their self-assessment of their performance against the standards. The level

of assurance that we gain from this self-assessment will be influenced by the degree to which providers are transparent, involve their tenants in scrutinising performance and adopt external validation such as benchmarking, peer review and third party accreditation. The 2008 Act<sup>29</sup> gives us the power to require providers to prepare an annual report assessing their performance against the standards. We can also specify matters covered in this report and the period within which the report should be submitted to the TSA. Our guidance<sup>30</sup> for how we will use this power is set out in figure 3

- **Performance outcomes promised to tenants.**

The service delivery standards require providers to use their annual report to set out for tenants how their service offer meets their obligations for these standards, and deliver these commitments. In assessing compliance with the standards, we will take into account providers' response to this requirement and the outcomes they deliver. As in all our regulatory judgements, we will take a risk-based and proportionate approach in considering any further regulatory intervention in respect of providers' performance on their commitments. We want an approach that encourages providers to aspire to better service outcomes and avoids perverse incentives from regulation

- **Existing information sources.** For at least 2010-11 we will rely on data requirements and returns as currently specified for providers. Some

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<sup>29</sup> Section 204.

<sup>30</sup> Section 215(b).

of this information for housing associations is collected through our Regulatory and Statistical Return and the financial information returns. Some of the information related to local authorities is collected through their HSSA and BPSA<sup>31</sup> returns. The TSA and the Government use this information for statistical purposes. This role will continue after 1 April 2010. However, this data is also used to provide contextual information to inform regulation. For example, information could be assessed to see whether there are any indications of compliance to support landlords' self-assessment of performance

- **Analysis of complaints.** We will conduct analysis of complaints information at a sector and provider level and this will be one of the factors to inform our risk-based approach to regulation. This information will include complaints received by the TSA (including where they are signposted to the provider with no further action from the TSA), complaints received by the relevant ombudsman (shared in accordance with our memorandum of understanding), and complaints received by providers (published in accordance with the complaints requirements of the Tenant Involvement and Empowerment Standard). For further information on our approach to dealing with complaints made to us, see section 5
- **External validation.** The TSA will take into account information from providers that is based on independent or external validation,

benchmarking, peer review etc. This includes assessments of their involvement policies, including, for example, any impact assessments, amongst other things

- **Negative assurance.** We will place reliance in some areas on the absence of indications of non-compliance, rather than explicitly collecting and assessing information
- **Inspection.** Information from inspection is important to help us investigate where we have reason to think there may be risks to compliance. Our approach to inspection is set out in section 4
- **Requests for further information.** We will reserve the right to ask for further information if there are indications of concern from direct or indirect sources

3.7 We must also take into account the context of existing information in making any assessments of whether further regulatory scrutiny or information is required. The data may not be precisely comparable across all providers as it may be collected on different bases across different providers. Some data sets also suffer time lags (eg satisfaction surveys for some providers are currently undertaken once every three years). Some indicators are insufficient on their own to make a judgement of compliance against particular standards. Nevertheless, used intelligently and combined with other information, rather than a deterministic tool, such intelligence can help support the co-regulatory engagement between providers and tenants that is central to our regulatory approach.

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<sup>31</sup> The Housing Strategy Statistical Appendix (HSSA) and Business Plan Statistical Annex (BPSA) are completed by local authorities for CLG. This arrangement will continue in 2010-11.



3.8 For the Governance and Financial Viability Standard (which does not apply to local authorities), providers with more than 1,000 properties will remain subject to a level of direct scrutiny of financial and governance performance to enable the TSA to maintain an independent review. We intend to continue publishing judgements for these providers, as this is supported and valued by lenders and providers themselves. The supply of financial information, both annual accounts and forecast information, will remain a key part of our regulation of all non-local authority landlords' governance and viability. From 1 April 2010 we will expect the same type of financial information as previously from these providers. We will, also as previously, keep the specification of these returns under review, working with providers and stakeholders to keep them fit for purpose, and ensure this information complies with the general principle of 'used and useful'. In spring 2010 we will publish our financial regulation information strategy for discussion, which will set out how we intend to develop our returns and how the data will be used.

## **Assessing compliance with the Decent Homes Standard**

3.9 The text of the 'quality of accommodation' elements of the Home Standard reflects the terms of the Direction issued to TSA by the Secretary of State and expresses, in the view of the Government,

what is necessary for a home to be decent. There is also direct cross reference to the Government's Decent Homes Guidance.

3.10 We accept it is the case that stock that meets the Decent Homes Standard will, without ongoing repairs and improvements, fall below the standard at some future point. The purpose of the terms in which the Direction and our standard are expressed is to ensure that there is an effective approach in place to identify investment requirements to keep stock at the level of the Decent Homes Standard. Whilst the standard cannot make provision for public funding, it is for the TSA to make a judgement about the extent to which availability of public funds, for council providers in particular, is the primary or exclusive grounds for the inability to comply with this standard.

3.11 In cases where there is insufficient funding in place to meet the standard, the question we will consider is not whether we will accept a local offer that is lower than the required standard, but whether we will agree an extension to the deadline for reaching the standard.

3.12 Unless there are specific reasons to do otherwise, extensions to the deadline already agreed by the Housing Corporation or the TSA for housing associations, or CLG for local authorities, will continue to be valid.

### Figure 3 Guidance on annual reports to tenants<sup>32</sup>

1 All standards (except for the Governance and Financial Viability Standard) have a requirement that providers shall set out their service offer for their tenants and then meet these commitments.

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2 All providers shall by 1 October in each year publish a report for their tenants (and shared with the TSA) on how they are meeting the TSA standards, including their local offers. We do not want to be overly prescriptive as to the format of this report. As far as possible we expect providers to use information that is already collected and is therefore 'used and useful'. This report should:

- assess how the provider is currently meeting the standards, including how they measure their compliance
  - note any gaps and associated improvement plans
  - include the provider's offer to tenants against the standards over the next year, including local service offers
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3 The reports must include reference to how the provider has gained assurance on the outcomes reported, including how tenants have been involved in scrutinising performance and, where appropriate, use of external validation, peer review and benchmarking.

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4 We will adopt a proportionate approach to reporting requirements for those providers owning fewer than 1,000 properties. Providers with fewer than 25 properties do not need to produce a separate annual report to their tenants<sup>33</sup>.

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5 The report shall detail how tenants have been involved in producing and scrutinising the report. To support this, the TSA will work with stakeholder partners, tenants and landlords to develop approaches to annual reports that assist in their preparation in a co-regulatory manner.

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6 Timetable - the annual report for each year ending 31 March shall be made available to tenants (and the TSA) by no later than 1 October<sup>34</sup>.

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7 For the first report in October 2010, we expect providers to set out their plans for developing locally tailored offers and, where this is not possible, to provide a progress update for their tenants. We would be prepared to accept limited extensions to this date in the first year only, where the provider can demonstrate this is reasonable and has advised its tenants and us in advance<sup>35</sup>.

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<sup>32</sup> Section 204, Housing and Regeneration Act 2008.

<sup>33</sup> This is a specific decision that follows from our November 2009 consultation document.

<sup>34</sup> Rather than July as per our November proposals.

<sup>35</sup> This gives providers more flexibility compared to the November proposals.

## The TSA's risk-based approach

3.13 Our risk framework will help us determine how we:

- deploy resources most effectively to ensure we focus on those organisations with the greatest performance challenges
- identify the key risks currently facing social housing, its providers and tenants (or risks that may arise in the future) using published thematic analyses, Tenant Excellence funding and other ways to encourage debate and share good practice

3.14 This risk-based approach will guide the TSA's engagement across all the standards, based on our analysis of performance information in conjunction with other sources of market intelligence, to enable the TSA to deliver regulation effectively and proportionately.

3.15 What this means in practice is:

- those organisations where we have no indications of risk of standards failure, and about whom there are no other contra-indications of compliance, can expect to be subject to only minimum levels of regulatory engagement although they will benefit from our wider role on promoting good practice and supporting delivery of the regulatory framework
- all our engagement with providers will be risk based and proportionate taking into account, for the Governance and Financial Viability Standard, recognition of their impact (by number

of homes) within the sector as a whole. We will engage with these providers to understand their business and future plans, whilst recognising their responsibility to manage and control their organisation

- those providers where there is information suggesting cause for concern, or where we have other evidence of poor performance, can expect to have an increased level of regulatory engagement, based on the general presumption that this will initially be a dialogue to support the providers' self-improvement approach, prior to any further regulatory intervention in order to investigate the issue

3.16 We will also develop our approach to risk scanning and analysis of emerging risks and from time to time we will make regular statements to the sector and its key stakeholders regarding the main issues facing the sector. In this way we hope to encourage debate of the issues and promote sector-led solutions.

3.17 For non-local authority providers, compliance with the financial obligations of the Governance and Financial Viability Standard is so fundamental to the delivery of other standards that the TSA will need to ensure we regularly review and understand the financial position of providers, which may lead to more routine engagement on governance and viability issues.

3.18 We will publish more detail on our risk methodology in summer 2010 and will be in discussions with stakeholders before then to help us shape it.

## **Publishing regulatory assessments**

3.19 The TSA is committed to being transparent in our approach to assessing regulatory performance by publishing our assessments of providers. We believe that this can help inform tenants about their provider's performance, drive up performance of individual providers and provide assurance to other stakeholders regarding the position of the sector.

3.20 For many of our standards, 2010-11 will be the first time we have assessed providers in these areas, so it would not be appropriate for us to publish assessments in the initial months of the new standards framework. We expect that better transparency and accountability should be derived through providers' engagement with their tenants for their first annual reports in which they will publish their own assessments as detailed in figure 3.

3.21 We will continue to publish graded assessments in relation to viability and governance (these are not applicable to councils) as these are key areas where lenders, boards and others value our assessments. We will also want to take into account other information providers have in relation to the other standards, as detailed in their annual report to tenants, in forming these assessments.

3.22 In order to maintain continuity and transparency for providers, tenants and their stakeholders, from 1 April 2010 the published

governance and viability assessments will continue to be based on the approach to those elements in the current TSA Regulatory Judgement product. However, over the course of 2010-11 we will work with stakeholders to develop both the format and grading of these judgements to maintain them as 'used and useful'.

3.23 We do not currently propose to publish graded assessments of performance against other standards and we will work with stakeholders in 2010-11 to assess whether, and if so, how best we can add to the information that will be made public from October 2010 on the performance of providers against each TSA standard.

## **Published performance information**

3.24 The 2008 Act requires the TSA to publish, at least annually, information about the performance of providers. This will support co-regulation and tenants' empowerment by providing a source of useful information across all providers. We intend the information collected to be 'used and useful', and in relation to local authorities, to support the principles of the local performance framework.

3.25 Our aim is to publish, at least once a year, information about the performance of providers and include information that is useful to tenants, potential tenants, providers and local authorities<sup>36</sup>. Our website now enables people to 'find and

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<sup>36</sup> Supporting our obligation under section 205.

compare your landlord' using performance indicator information based on data that is already collected. We aim to develop this facility over time, to enhance the range and comparability of information available from it.

## Developing a strategic approach to information and data

3.26 To develop our co-regulatory approach with providers and tenants, we want to develop a more sophisticated approach to using information to assess the market, inform wider policy and to inform us of any compliance issues. Our aspiration over time is to meet another of the 2007 Cave Review's objectives of 'less information, but of a higher value'. We will discuss how we might do this with stakeholders in 2010-11.

3.27 We will also take an active interest in the expected revision of the national indicator set for councils, with a view to improving the fit between prescribed national indicators and key elements of the TSA's standards framework.

## Assessing compliance where there are existing contractual arrangements

3.28 This is relevant where providers have:

- commissioned the provision of housing services in relation to the supply and management of

low-cost rented housing under private finance initiative arrangements

- entered into contracts with third party organisations such as NHS Trusts or higher education institutions to provide housing and housing services to, for example, their employees or students
- contracted out all or part of the provision of management and maintenance services

3.29 In these circumstances, it is our expectation that the provider will take the agreed contractual position as its starting point for the local offer for homes managed under those contracts. The commitments in those contracts should be the basis, in the first instance, for their annual report for tenants – subject to the terms of the contract, they may delegate this activity to their contractor.

3.30 If providers and their contractors, in consultation with their tenants, identify that these contracts do not meet TSA standards, either in terms of dealing with all the areas covered by the standards or do not specify a sufficient quality of housing service, we expect them to discuss this with us in the first instance, setting out the options for remedying the position.

3.31 The services specified in the contract and the performance in providing those services is a matter for the commissioner of that contract and not the TSA. However, where the primary relationship and payment mechanism is between the registered provider (as landlord) and individual tenants, the registered provider should operate on the basis that standards apply as indicated in table 1 (see section 2).

## How we will engage with providers

3.32 Our operational teams are structured so that we can engage with providers in a coherent and efficient way. We will continue to review the most effective use of our resources to ensure the new regulatory framework is a success and achieves value for money.

3.33 Where our proportionate, risk-based approach indicates direct engagement is required, whether regularly or as a reactive response to emerging concerns, providers will have a named individual who will act as a point of contact for dealing with queries and who involves, where necessary, other staff with specialist expertise in the service delivery standards and business or financial analysis.

3.34 Where our risk methodology indicates the need for direct engagement with a provider, we will at all times be clear why we consider that engagement is necessary. Specific engagement will be led by the appropriate staff with technical expertise, in conjunction with the designated relationship lead.

3.35 We will agree with providers for the forthcoming year what is expected from them and what they can expect from us. However, we will keep the plan under review and reserve the right, if any additional intelligence or information comes to our attention indicating it should influence our risk assessment, to consider direct or additional regulatory engagement.

3.36 As well as our regulatory engagement, we consider it is an important part of our work in 2010-11 to raise awareness of the new framework and actively support, for example, the expertise and learning derived from our pilots on local offers. We will contact providers, offering the opportunity to benefit from our technical expertise in the service delivery standards, and support discussions around these areas of the new framework. Again, we will set out clearly the purpose and remit of these discussions, which will not be deemed to have been triggered by our risk assessment.

## Requirements for smaller providers (that own and manage fewer than 1,000 homes)

3.37 All standards apply to small providers but we have modified our requirements for small providers in respect of providing an annual report.

- Smaller providers with fewer than 25 homes will not be required to produce a separate annual report but will be expected to ensure that they provide equivalent opportunities for their tenants or residents to discuss and agree how services will be delivered and how they will meet the TSA standards
- Providers with more than 500 homes in a single council area must provide an annual report to their tenants and make it available to TSA on the same basis as larger providers
- Providers with fewer than 1,000 homes but which are part of a group structure which has more than 1,000 homes must provide an annual

report to their tenants and make it available to the TSA on the same basis as larger providers

- Other providers with fewer than 1,000 (but more than 25) homes should provide an annual report to their tenants covering the same matters as for larger providers but will not be required to provide that report routinely to the TSA. Housing associations in this position will be required to make certifications on the Regulatory Statistical Return (RSR) short form broadly equivalent to that which is already required, and smaller council providers will continue their existing statistical returns to the CLG. The TSA may look at annual reports from this group of smaller providers on a sample basis

3.38 We have a single national team offering streamlined support arrangements for providers with fewer than 1,000 homes. This team is managed from our Manchester office. In general we would expect to have little regulatory engagement with smaller providers, only in response to specific problems. Ongoing development plans that would see providers owning more than 1,000 properties in the near future may mean that reporting requirements are increased.

3.39 We believe there may be additional measures that we should consider with stakeholders in 2010-11 that might allow us to reduce administrative burdens on smaller providers further whilst ensuring that we are able to regulate the sector effectively. These include:

- taking greater account of other systems, such as the Almshouse Association's Standards of Almshouse Management and the Abbeyfield Society's Abbeyfield Standard, as indicators of compliance with TSA standards, including the Tenant Involvement and Empowerment Standard (we already ask about this on the RSR short form)
- taking greater account of compliance with the quality assurance framework or Care Quality Commission requirements in certain cases where, for small specialist providers of housing with care and/or support services, these frameworks are a more relevant test of tailoring of services to the needs of the users of those services – we expect that this will be limited to the smallest organisations of this kind working with no more than one commissioning authority, and subject to a maximum size of separate funding contract for care or support services as a proportion of overall turnover
- as part of our wider work on improving and rationalising our approach to regulatory information, identifying and exploring the extent to which we can find better ways than the present short form RSR for collecting information from smaller private, not-for-profit providers

## 4 Inspection

4.1 The 2008 Act enables the TSA to arrange for an inspection of a provider in respect of its performance in relation to the provision of social housing or its financial or other affairs<sup>37</sup>. This section sets out our general approach to commissioning inspections of housing services. It should be read in conjunction with our detailed guidance note on use of our inspection power set out in Annex 1<sup>38</sup>.

### How we shall commission housing inspections from the Audit Commission

4.2 The TSA will use the inspection process to assess providers' performance against our 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.

4.3 Under the 2008 Act, we must first invite the Audit Commission to carry out inspections on our behalf in relation to all the standards (except for the Governance and Financial Viability Standard)<sup>39</sup>. This section describes how we shall do this.

4.4 The TSA expects to commission inspections from the Audit Commission predominantly where we believe that a provider may be 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.

4.5 In our approach to inspection policy we must be mindful that the inspection process is a proportionate response to helping us assess a provider's performance against the standards.

4.6 It is therefore important to see inspection in the broader context of how we shall assess performance and engage with providers. Our risk methodology should give us a good understanding of those providers with the greatest performance challenges against the standards, supported where appropriate by our direct regulatory engagement. Where we have grounds for concern we shall be in discussion with the provider to provide an opportunity to understand our reasons, and we shall want to understand whether it has a credible improvement plan in place. This engagement activity will therefore inform our decisions over which providers should be inspected. Equally, information derived from an inspection will also contribute to our assessment of a provider's performance. This means that providers, where we have performance concerns, will usually have the opportunity to

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<sup>37</sup> Sections 201 to 203.

<sup>38</sup> See The Regulatory Framework for Social Housing in England from April 2010 – Annexes to the TSA's Regulatory Framework Document.

<sup>39</sup> The 2008 Act does not require the TSA to invite the Audit Commission to undertake inspections in relation to the Governance and Financial Viability Standard.



discuss these with us in the normal course of our regulatory activity before we decide whether an inspection of a provider is necessary. There may be some circumstances where this is not possible or appropriate because we need to act speedily and decisively to protect the interests of tenants or the taxpayer.

4.7 Potential grounds for us considering commissioning an inspection of a provider's performance against a standard(s) could arise from a number of sources. Examples include:

- its self-assessments and annual report to tenants and other performance information
- Comprehensive Area Assessments (CAA)
- regulatory concerns arising from complaints or a reference from the ombudsmen
- 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

4.8 The TSA will identify the main focus for the inspection and the Audit Commission will, through an agreed methodology, undertake the inspection on our behalf.

4.9 We expect that most inspections we commission from the Audit Commission will be targeted inspections done at short notice rather than full inspections. We will, however, use the most appropriate inspection tool in the individual circumstances. We expect in the majority of circumstances to wish to inspect in relation to service performance concerns with one or more

standards. Where we have wider systemic concerns we may commission a wider inspection of services.

4.10 Once we have decided that an inspection of a provider should go ahead we shall explain to the provider the reasons for doing so.

4.11 Both the TSA and Audit Commission can publish the reports of inspection though we shall agree a protocol for this as part of our joint review of the inspection methodology (see below). The TSA is responsible for post inspection follow-up and overseeing the implementation of any agreed recommendations.

4.12 The Audit Commission has a 'gate keeping' role in relation to inspections of local authorities (ie it co-ordinates inspections of local authorities undertaken by a number of regulatory and inspection bodies). The TSA is subject to this in the same way as other inspectorates.

## **Review of the inspection approach and the Audit Commission's KLoE**

4.13 Both the TSA and Audit Commission recognise that under the new standards and a new regulatory approach, the methodology for inspection will need to be changed to reflect these changes. We have agreed to work together on a fundamental review of the inspection methodology following the same co-regulatory approach we have used to develop the TSA standards. We will publish a joint consultation document in spring 2010 and we

anticipate the new methodology will be in place for inspections taking place from October 2010.

4.14 For the interim period between April and October 2010, we have agreed with the Audit Commission to use only those aspects of its Key Lines of Enquiry (KLoE) framework that are directly relevant to the standards within the scope of the inspection that we have commissioned.

4.15 The TSA's judgement will be based solely on the new standards from 1 April 2010. In practice, this means any aspects of a landlord service KLoE that are not related directly to the standards upon which the inspection is focused will not be used or considered. There will be no new KLoE introduced in this period in relation to the TSA's standards.

## **ALMO inspections for 2010-11**

4.16 As an exception to the approach above, in 2010-11 CLG-commissioned ALMO inspections that are required for Decent Homes funding will continue under existing arrangements. We will work closely with CLG and the Audit Commission to limit the risk of 'double inspection' of ALMOs during this period.

## **How the TSA will support the Audit Commission's comprehensive area assessment**

4.17 The Audit Commission leads on Comprehensive Area Assessments (CAA) and

draws together information and judgements from five other inspectorates.

4.18 The TSA's regulation will support the Audit Commission in its role of undertaking CAA. The precise way in which this will work will be developed with the Audit Commission in 2010, but it is our expectation that area-based assessments of this type will take into account all types of social housing provider and the quality of services provided to tenants in that area.

4.19 Through the TSA standards, we will ensure that performance of providers across the full range of services is publicly reported and the TSA will feed any relevant information we have on providers within an area to the Audit Commission to take account of as part of its CAA. Regular liaison between our two organisations will ensure that the Audit Commission will be made aware of any concerns we have (and areas of excellent practice).

4.20 Where the TSA identifies intelligence that relates to concerns associated with a local authority's governance and/or finances, these will be shared with the Audit Commission, so that they can be taken into account as part of the organisational assessment within the CAA. Similarly, if the TSA has indications of strategic housing concerns these will also be shared with the Audit Commission who will consider and determine if and what further investigation is required.

## **How the Audit Commission will support the TSA's risk assessment of social providers**

4.21 The Audit Commission will share with the TSA information it has and collects on local authority housing management services. This information will contribute to the TSA's risk methodology and our approach to identifying those providers with the most significant performance challenges.

4.22 CAA may have highlighted a number of issues with a more strategic focus that also affects housing providers within the local area, such as the degree of local area co-operation, for example. These areas will also be highlighted to the TSA for further consideration and will form part of the regulatory intelligence linked to individual providers or sector risks/issues.

## **Memorandum of understanding with the Audit Commission**

4.23 The TSA and the Audit Commission have agreed and published a memorandum of understanding<sup>40</sup> describing our shared objectives and how we will work with each other. The TSA and the Audit Commission will work together not just on housing inspections but also on research studies to identify good practice and the sharing of intelligence to ensure collaborative regulation of the domain. Both organisations will share information on their respective regulatory and inspection activity. The purpose is to ensure efficient and effective regulation and to minimise regulatory burden and duplication on providers. Both organisations are committed to reviewing the memorandum following the review of the inspection methodology later in 2010.

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<sup>40</sup> Memorandum of Understanding between the TSA and the Audit Commission, July 2009, published on the TSA's website.

# 5 Complaints received by the TSA about providers

5.1 This section comprises our guidance on how we deal with complaints made to the TSA about the performance of registered providers<sup>41</sup>.

## Our approach to handling complaints

5.2 We will handle complaints in accordance with the policy outlined in figure 4.

Figure 4 The TSA's approach to complaints

### The primary role of providers and the ombudsmen

- I A tenant with a complaint against their provider should raise it with their provider.

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- II Providers have prime responsibility for dealing with, and being accountable for, complaints about their service. The TSA's Tenant Involvement and Empowerment Standard includes clear expectations on all providers about how they handle complaints. This includes reference to dealing with complaints about performance against the standards, which includes those related to their obligations under the Tenant Involvement and Empowerment Standard.

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- III A tenant not satisfied with the way their landlord has dealt with their complaint should raise it with the relevant ombudsman.

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- IV The ombudsman will have a final say on service-related complaints. The TSA does not take on these complaints once this process is concluded and is not an alternative route for complaints about a provider's service to tenants.

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- V The Housing Ombudsman, under our memorandum of understanding<sup>42</sup>, can refer to the TSA issues of regulatory concern about a provider<sup>43</sup>.

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- VI Where the TSA receives complaints directly we shall direct the tenant to the most effective route for resolution via the respective provider and ombudsmen processes.

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- VII The TSA does not deal with service-related complaints on behalf of tenants or groups of tenants – this is a role for the provider and relevant ombudsman.

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<sup>41</sup> As required by section 215(1)(a).

<sup>42</sup> Memorandum of Understanding between the TSA and Housing Ombudsman, published August 2009, available from our website. We are currently discussing a similar memorandum of understanding with the Local Government Ombudsman.

<sup>43</sup> Our memorandum of understanding enables data of all complaints submitted to and/or investigated by the ombudsman to be shared with the TSA on a quarterly basis and complaints which the ombudsman believes to be of a regulatory concern forwarded to us to consider<sup>43</sup>.

## Role of the TSA

- VIII We do not investigate service complaints but where a complaint received by the TSA raises, in our judgement, issues of **regulatory concern** about a provider we may pursue this directly with that provider.

## Criteria used by the TSA in deciding whether to investigate a complaint

- IX Issues of **regulatory concern** are related to:
- the degree to which the complaint provides evidence or grounds to suspect systemic failure against one or more of the TSA's standards by the provider. This includes the Tenant Involvement and Empowerment Standard
  - whether, in our judgement, it raises another serious regulatory concern such as:
    - an immediate or potential risk to a tenant's, or a number of tenants', health and safety
    - an allegation of mismanagement or fraud
    - a significant risk to the reputation of the sector

We expect to discuss these complaints with the provider in the first instance. Where appropriate we will share the outcome of the investigation with the complainant.

## Collective or group complaints

- X Collective complaints will not be treated differently by the TSA to individual complaints, although they may help highlight the scale of tenants' concerns.

## The procedure for contacting the TSA

5.3 Issues of potential regulatory concern can be raised with the TSA in a number of ways:

- Telephoning 0845 230 7000 and speaking to the TSA's customer service team between the hours of 8.30am to 5.00pm (Mon – Fri)

- Writing to: Customer Service Team, TSA, 1 Piccadilly Gardens, Manchester M1 1RG
- Emailing [enquiries@tsa.gsx.gov.uk](mailto:enquiries@tsa.gsx.gov.uk)
- Via our website [www.tenantservicesauthority.org](http://www.tenantservicesauthority.org)

5.4 Any person or organisation can bring an issue to the TSA's attention. This includes from elected local councillors and Members of Parliament as advocates on behalf of tenants within their wards/

constituencies. It also includes other bodies representing tenant(s).

## **Periods within which the TSA aims to respond to complainants on the issues they have raised**

5.5 Issues brought to the TSA's attention will be acknowledged as soon as possible and no later than five working days of receipt, with an indication of whether we will investigate it with the provider. Where this is not possible we will inform the complainant that we require further time within five days and provide a revised date.

5.6 We will inform the complainant of one of two options:

**Option 1** – The issue is not to be investigated with the provider but TSA will note it within our overall information about providers. The complainant will be directed to the most appropriate place to have their complaint considered (eg the provider or the relevant ombudsman service).

**Option 2** – The issue will be investigated with the provider, in which case we will set out how we plan to engage with the provider. Again, the complainant will be directed to the most appropriate place to have their complaint against the provider considered.

## **Allegations and whistle blowing**

5.7 Allegations tend to have an 'organisational' focus and may point to a problem at the organisation, which may include fraud or some other systemic failure. A 'whistleblower' tends to describe someone who works in or for an organisation who raises an allegation about his or her employer. These employees may have legal protection under the Public Interest Disclosures Act (PIDA). The TSA will respond to allegations about providers in accordance with its procedures for responding to allegations and whistle blowing<sup>44</sup>.

## **Complaints about the TSA**

5.8 Anyone can make a complaint about the TSA. Our approach to dealing with complaints about our service is set out on our website. Our approach will take into account any implications arising from our intended statement on how providers can appeal against regulatory decisions and judgements in a more proportionate way before the statutory routes of redress in the 2008 Act are triggered, when it is published by 30 June 2010.

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<sup>44</sup> This is under review and will be published on our website shortly.

# 6 Intervention and enforcement

6.1 We expect providers to take responsibility for their self-improvement and we expect this to be effective in most cases. However, in cases where this approach is either inappropriate or has proved unsuccessful, we may need to consider the use of our regulatory, enforcement and general powers. This section sets out our general approach.

## Guidance on the use of our statutory powers

6.2 This section presents the high level objectives and principles that underpin our approach to dealing with poor performance and using our regulatory and enforcement powers. Reference to 'powers' in this section relates to those powers listed in the sections below.

6.3 Having consulted, as required by the 2008 Act, on how we intend to use some of our formal powers, guidance notes for how we will use specific powers are published in the annexes to this document<sup>45</sup>. The guidance notes should be seen in the context of the approach set out in this section.

6.4 In broad terms, the TSA can exercise the powers described below where it suspects or has evidence of a failure against one or more standards

or where a provider has mismanaged its affairs or, in some cases, for other reasons that are specified in the 2008 Act<sup>46</sup>.

## Our new graduated range of powers

6.5 We have a number of regulatory powers under the 2008 Act to monitor providers' compliance with regulatory requirements or in the event that we suspect a provider is failing to meet a standard or is in breach of other regulatory requirements.

6.6 Our regulation is cross domain and we are clear that in setting our policies, including the principles of how we use our powers, we aim to be 'provider neutral'. The Government has consulted on our powers in relation to councils throughout the course of 2009 and strongly supported the principle of cross-domain provisions as far as possible except where the legitimate democratic and financial differences of councils warrant a different approach.

## Monitoring and investigative powers for all providers

6.7 The following regulatory powers apply from 1 April 2010 to all existing RSLs, local authority

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<sup>45</sup> We have not at this stage consulted on guidance on the detail and use of all our powers. There are some powers that relate to local authorities (such as censure of an officer during or after an inquiry and appointment of an adviser) where we are working further with local authority stakeholders to understand better how these powers might be used. There are also some powers that are novel and complex and where more time is required for discussion with stakeholders before we can produce detailed guidance. These relate to powers to transfer and tender management. These powers will be subject to a further supplementary consultation on our use of powers in due course.

<sup>46</sup> The term 'mismanaged' in relation to the affairs of a provider is defined in section 275 of the 2008 Act as: managed in contravention of a provision of the 2008 Act or of anything done under the Act; or otherwise conducted improperly or inappropriately.

providers and any new not-for-profit and profit-making providers:

- arrange a survey (section 199)
- arrange an inspection (sections 201 to 203)
- direct an inquiry (sections 206 to 209)
- direct an extraordinary audit (section 210)

6.8 The following range of enforcement powers apply to all existing registered social landlords, local authority providers and any new not-for-profit and profit-making providers:

- enforcement notice (sections 219 to 225)
- direct a tender of management (sections 247 and 248)
- direct a transfer of management (sections 249 and 250)

6.9 The following general powers also apply to all existing registered social landlords, local authority providers and any new not-for-profit and profit-making providers:

- collect information and documents (sections 107 and 108)
- direct the Homes and Communities Agency not to invest (section 106)
- place restrictions on disposals or transfers of property (sections 170 to 176)

6.10 If a provider is a previous RSL (or is not a local authority and intends to become a registered provider), we have a range of enforcement powers which can require the provider to take specified action to resolve an identified failure or other

problem. The following enforcement powers (additional to those set out in 6.7) can be used for providers who are not local authorities:

- penalty fine (sections 226 to 235)
- award compensation (sections 236 to 245)
- appoint a manager (sections 251 and 252)
- direct a transfer of land (sections 253 and 254)
- make and execute an amalgamation of an industrial and provident society (section 255)
- direct restrictions during or following an inquiry (sections 256 to 265)
- remove an officer in circumstances such as bankruptcy (sections 266 to 268)
- appoint new officers (section 269)

6.11 The following additional relevant general powers will also apply to non-local authority providers:

- give financial assistance (section 95(3))
- direct how sums in a disposals proceeds fund are used, allocated or paid (section 178)
- settle the affairs of providers that become insolvent (sections 144 to 159)
- petition to wind up a provider (section 166)
- transfer property on dissolution (sections 167 and 168)

6.12 Some of these powers are similar (but not exactly the same) to those the TSA previously used to regulate housing associations and other registered social landlords under the Housing Corporation's 1996 Act powers. Those that are substantially similar include the powers to conduct an inquiry, arrange an extraordinary audit, approve



changes to non-profit providers' management and constitution, transfer of land, restriction of dealings during or following an inquiry and suspension, removal and appointment of an officer. Our new enforcement powers now include an enforcement notice, a penalty fine, award compensation, direct a tender of management, direct a transfer of management, appoint a manager and make and execute an amalgamation of an industrial and provident society.

## If a provider is a local authority

6.13 The following enforcement powers in addition to those set out in 6.7 have been confirmed by Parliament<sup>47</sup> in relation to local authorities:

- appoint advisors to a local authority (section 252A)
- censure a local authority officer or agent during or following an inquiry (sections 269A and B)

## How we will use our powers: general

6.14 Our approach to using our powers is underpinned by three key components: our fundamental objectives, our standards (and any associated codes of practice) and any specific requirements in the 2008 Act in relation to using our powers.

6.15 We may consider the use of our regulatory powers, including inspection, to investigate where we suspect that there may have been a failure to meet the standards or that the affairs of a provider have been mismanaged. The investigation may lead to no further action, an agreed self-improvement plan without recourse to our formal enforcement powers, or in some cases where it is warranted, more formal use of our enforcement powers.

6.16 We are not required to use our formal investigation powers (such as an inspection or inquiry) in advance of the use of our enforcement powers. For example, an enforcement notice could be issued if the TSA is satisfied that a provider has failed to meet a standard<sup>48</sup>. However, our general approach will be to apply the more proportionate power available to us taking into account the seriousness of the issue under consideration.

6.17 We will keep the use of our powers under regular review, and may decide to exercise any of the powers if improvement by the provider is not sustained or if the circumstances of the case make it necessary to do so. The TSA may use its powers either singly or in combination depending on the circumstances and issues of the case.

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<sup>47</sup> Laid as Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010.

<sup>48</sup> Section 220(2): this section also contains other examples.

## Principles underpinning our approach to using our powers: what providers can expect from us

6.18 We will adopt the following principles.

- We will generally take into account the role of self-improvement before using any of our enforcement powers. In cases where this approach is either not appropriate (for example, where it is necessary to protect tenants from immediate harm or to protect public funds) or has proved unsuccessful, we will need to consider how to address the issue using our more formal powers
- Where we do use our enforcement powers, we will usually adopt a graduated approach
- We will have regard to our fundamental objectives when considering any individual case and will seek to balance the interests of the provider, its tenants, its key stakeholders and the impact on public funds when responding to the circumstances of each individual case
- We will be proportionate in our approach, consistent in how we make judgements, accountable for our actions and transparent in our relationships with the provider, its tenants and other stakeholders. There may be occasions where the pursuit of our statutory objectives (eg financial viability) limits how transparent we can be with third parties whilst we are considering using our powers in relation to a provider
- We will always explain the grounds and give reasons for taking action. We will usually give notice of any action (in some cases we are

required to do so by the 2008 Act) unless to do so would undermine our ability to act or the interests of tenants means we cannot

- We will assess the most appropriate course of action taking account of the particular circumstances of the provider (including any structural differences arising from the type of provider or the financing arrangements that they must operate), the level of risk and the potential impact associated with the provider, tailor our regulatory engagement accordingly and always take action which is commensurate with the materiality of the breach or failure
- We will give careful consideration to any remedial strategies proposed by the provider, including any relevant voluntary undertakings, and will seek to agree the way forward with the provider when it is prepared to resolve the presenting issues and we conclude that it has all the resources necessary to do so
- We will take account of any significant changes in circumstances and adapt our approach accordingly

6.19 We may need to react and respond as a matter of urgency to unanticipated and exceptional events that happen from time to time. In circumstances where we consider it necessary and expedient to do so we may adjust the intensity of our engagement with a provider, or exercise one or more of our powers with little or no notice, particularly in circumstances where giving notice would defeat the purpose of taking the proposed action or where it is necessary to protect tenants from immediate harm or to protect public funds.

## How we will engage with providers

6.20 We want to be transparent in our relationship with a provider when we are considering the use of any of our enforcement powers. Our approach will need to have regard to the circumstances of the case, particularly where we think that urgent or immediate action is necessary and we have to apply the power with little or no notice. We will apply the following principles when we engage with a provider in circumstances where we are considering using our formal powers (whilst respecting the fact that the 2008 Act in some cases establishes a procedure to be followed and this is set out in the detailed guidance notes):

- we will have dialogue with the provider before, during and following this process in accordance with our usual approach to regulatory engagement with the provider to ensure we work together to protect tenants, social housing assets and public funding. This includes informing a provider when we are minded to use a power explaining the issues and concerns we have and giving the provider an opportunity to respond to this
- we will give notice to a provider when we propose to use a power. We will explain the power and the issues or concerns that have made us consider using it
- we will invite the provider to make representations in response to our notice and to give us any information or comments, including any relevant voluntary undertaking, it thinks

might help us make our decision about whether or not to use the power

- we will carefully consider any representations, information and comments, including any relevant voluntary undertakings received from the provider in coming to a decision about the action we intend to take
- we will notify the provider of our decision and give our reasons for making it. We will tell providers about any appeal or challenge procedures related to our decision and any related timescales

6.21 We will take into account any implications arising from the TSA's intended statement of appeals against our judgements and decisions once this is published.

## Factors that may lead to the use of our regulatory, enforcement and general powers

6.22 In broad terms, any decision will be based on:

- the seriousness of the failure or problem identified
- the urgency with which the problem or failure needs to be addressed
- the level of risk associated with the provider and the potential impact of its failure
- the degree of assurance given by the provider to the TSA in relation to action it is taking or will take to resolve the issue. We may take into account the provider's history in dealing with relevant issues

- the resources available to the provider to resolve the problems
- proportionate use of resources that need to be applied to our regulatory engagement with the provider

6.23 We will notify the provider when we are minded to use any of our regulatory, enforcement and general powers.

6.24 In order to bring about improvements, we may propose an action plan setting out the key corrective actions required and the milestones and timetable in which they should be achieved. We will usually work with the provider to agree how best to implement this plan. We will carefully consider any remedial plan submitted by a provider, including any voluntary undertaking it gives to the TSA.

6.25 We will notify the provider when it has completed the key corrective actions to our satisfaction. This will be confirmed following a comprehensive risk assessment of the provider.

6.26 Our aims will always be underpinned by our fundamental objectives and our standards. Our specific objectives may vary from case to case or change during the course of a case, but broadly speaking we would want to:

- address and resolve the presenting problems and any related or contributory problems

- protect the interests of tenants, including by improving standards of performance so that tenants receive a quality of service delivery required by our standards
- maintain the financial viability of the provider and require the provider to meet acceptable standards of organisational effectiveness and service delivery
- act as a catalyst for change within the provider and ensure that any improvements in performance are sustained in the long term
- protect public expenditure and guard against the misuse of public funds
- reassure lenders
- protect the reputation of providers of social housing as a whole
- address and seek to resolve any additional relevant and material matters that come to light while a provider is subject to our regulatory, enforcement or general powers
- where necessary, co-ordinate our approach with other regulatory bodies, such as the Audit Commission

## Checks and balances on the use of our powers

6.27 There are a number of checks and balances in the 2008 Act which must be applied to the TSA's use of its powers.

## Regulators' compliance code

6.28 The TSA must regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable. The 2008 Act requires the TSA to comply with the provisions of the Regulators' Compliance Code<sup>49</sup>. The code does not apply to the exercise by a regulator of any specific regulatory function in individual cases.

## Consideration before exercising an enforcement power

6.29 The 2008 Act states the TSA must consider four specific matters<sup>50</sup> before deciding whether to or how to exercise an enforcement power<sup>51</sup>. They are:

- the desirability of a provider being free to choose how to provide services and conduct business
- whether the failure or other problem is serious or trivial
- whether the failure or other problem is a recurrent or isolated incident
- the speed with which the failure or other problem needs to be addressed

## Voluntary undertakings

6.30 A provider can give the TSA a voluntary undertaking ('an undertaking') in respect of any matter concerning social housing<sup>52</sup>. The circumstances in which such an undertaking can be given are widely drawn. For example, a provider may offer such an undertaking whilst subject to regulatory, enforcement or general powers.

6.31 In exercising some of our powers we must have regard to any undertaking offered or given by a provider. We will consider any undertaking offered in such circumstances in accordance with published procedures.

6.32 We may take into account whether a sufficient undertaking has been offered and honoured. In considering an undertaking, the TSA will:

- assess whether or not we consider the terms of an undertaking are satisfactory, giving reasons for our decision
- monitor the provider's progress towards meeting its undertaking and assess whether the provider has honoured the undertaking, giving reasons for our decision

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<sup>49</sup> Issued under section 22 of the Legislative and Regulatory Reform Act 2006.

<sup>50</sup> Section 218 of the 2008 Act.

<sup>51</sup> Sections 219 to 225 of the 2008 Act.

<sup>52</sup> Section 125 of the 2008 Act.

6.33 Although an undertaking will always be a voluntary matter for the provider, we will respond in the event a provider asks whether an undertaking would address matters that have necessitated enhanced scrutiny by the TSA.

6.34 While we must have regard to any undertaking offered or given by a provider, there may be circumstances where the existence of a voluntary undertaking may not prevent further enforcement activity. This might include circumstances in which we consider that the undertaking is unsatisfactory or insufficient to resolve the problems or where urgent or immediate action is necessary.

6.35 We will usually make a public statement in circumstances where we accept an undertaking.

# 7 Registration and deregistration

7.1 This section outlines the new registration and deregistration arrangements that are in place from 1 April 2010.

## Existing RSLs and local authority providers

7.2 All providers on the TSA's existing register (known as RSLs) transfer automatically to the new register on 1 April 2010, and all applicable local authority providers are registered without the need to apply.

## The eligibility criteria and conditions for new entrants

7.3 New (non-local authority) entrants eligible for registration from 1 April 2010 will need to meet new registration conditions that reflect the changes in the 2008 Act. The TSA, consistent with its fundamental objectives, wants to encourage new entry to support the increased supply of social housing and to provide greater choice to tenants.

### Eligibility criteria

7.4 Applicants must:

- be English bodies
- be, or intend to be, providers of social housing in England
- satisfy the criteria established by the TSA

7.5 Applicants must be English bodies and be, or intend to become, providers of social housing in England. To be an English body, applicants do not have to be any particular type or status and could, for example, be a partnership. However, we require that an applicant has a legal presence in England. This will enable us to exercise any necessary statutory functions and will similarly provide tenants with the legal presence they will require. 'Social housing' means low-cost rental or low-cost home ownership as defined in sections 68 to 77 of the 2008 Act; the meaning of 'provider' is defined in section 80 of the Act.

7.6 In considering an application from an intending provider, we will require a strongly evidenced business plan that clearly sets out the plan for market entry (including any organisational changes) and demonstrates how funding or land ownership will be secured to put the plan into action. Evidence either of existing homes or land, or of financial provision for buying or developing homes, will provide assurance of the intent to provide social housing. This is likely to be evidence of land ownership and planning permissions or loan or other financing arrangements. Once we are satisfied of the applicant's intent, the applicant will be assessed in accordance with the registration criteria established.

7.7 We will take a pragmatic approach to assessing the 'intention to provide', setting a timeframe to review the intending provider's position that will be based on the applicant's business plan. We would expect to discuss deregistration with a registered provider when the position was reviewed if there

appears to be no prospect of the business plan coming to fruition. This discussion will likely result in us either continuing to consider the registered provider as an intending provider or deciding that deregistration is appropriate as the registered provider is no longer eligible for registration.

7.8 The requirement in the 2008 Act for registered providers to be “landlords” means that applications after April 2010 could be received from subsidiary organisations of both non-profit and profit-making organisations where the parent is not technically eligible for registration. Given the approach to regulating group structures that the TSA (and the former Housing Corporation) has adopted – which effectively regulates at the group level – we want to ensure that any changes in this area are managed in a way that continues to provide effective regulatory assurance and commands the confidence of the sector and lenders. We need also to consider the practical effect of the requirement in section 194(2) of the 2008 Act that, in respect of profit-making providers, allows standards to be set under this section only so far as they relate to the provision of social housing.

7.9 Where a new applicant falling into either of these circumstances applies to be registered after April 2010, we will expect it to satisfy us that it can demonstrate its structure and governance arrangements afford us effective and enduring regulatory assurance. This may involve agreeing with us appropriate ring-fencing agreements,

which have been used in other sectors where the regulator regulates a subsidiary or part of an entity. We will not wish to register such an applicant unless we receive this assurance.

7.10 For all existing providers (RSLs) that automatically transfer to the new register on 1 April 2010, the Government and the TSA have agreed that these providers will continue to be registered and regulated as if they meet the requirements for registration in the 2008 Act, whether or not in practice this is the case (for example as with a non-stock-holding parent of a social provider subsidiary)<sup>53</sup>. The Government expects to revoke these transitional arrangements at a future date to ensure a level playing field between different types of provider. This is not expected to be within three years, during which period the TSA will work with existing providers to ensure that there is an orderly transition to new group structures that meets the requirements of the 2008 Act, gives regulatory assurance and maintains lender confidence. The TSA will set out its process for taking forward this issue following Parliamentary approval of the relevant secondary legislation.

7.11 Our requirements are set out in the Governance and Financial Viability Standard (1.4) and are not therefore duplicated in the registration criteria. This is a new area for the TSA and, as such, we plan to consult further with the sector to determine how these requirements can best be discharged.

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<sup>53</sup> Using the transitional arrangements in secondary legislation needed to support the introduction of the new Act in April 2010.



7.12 The legislation provides for the registration of landlords of social housing. An ALMO or TMO that was not a landlord but a property manager would not meet the eligibility conditions in the Act and so would not be capable of registration. However, ALMOs and TMOs that are landlords will be eligible for registration, although there is no requirement for them to register unless they wish to seek funding from HCA and remain as landlord of the property. Unlike for a local authority, if an ALMO or TMO were to be regulated they could be subject to the full range of TSA standards, including governance and financial viability. We will continue to work closely with stakeholders such as the Councils with ALMOs Group (CWAG) and the NFA about how this works effectively in practice.

### TSA criteria

7.13 Once the TSA is satisfied that an applicant is eligible for registration, the applicant will be assessed against any registration criteria set by the TSA. Any applicant that is eligible and meets our registration criteria **must** be registered.

7.14 The TSA's criteria are based on:

- an applicant's financial situation
- its constitution
- other arrangements for its management

7.15 Financial viability is an absolute requirement. We will expect all applicants to demonstrate that they meet this part of the standard at the point of registration and will continue to meet it over a

period of time. We will not expect to register an applicant that was unable to satisfy us of this.

7.16 We will also assess applicants against the governance requirements and those on tenant involvement and empowerment, but will not always expect compliance with these standards at the point of registration, accepting a reasonable path to compliance that will be subject to regular review.

7.17 We will also assess the management arrangements in place within an applicant's organisation to see whether these provide a reasonable path to achieving compliance with the service delivery standards. We will not directly assess compliance with the service delivery standards.

7.18 In judging what is a 'reasonable path', we will take a risk-based view on the level of compliance already achieved, the nature of the actions needed to achieve compliance and the proposed timescale for completing these actions. A registered provider not achieving compliance with the relevant standard within a reasonable timescale could expect us to consider whether enforcement action was appropriate.

7.19 Non-profit making organisations are required to have within their objects:

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

## Figure 5 The registration criteria

An applicant must meet the financial viability requirements within the Governance and Financial Viability Standard at the point of registration and demonstrate it can sustain this on an ongoing basis.

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An applicant must meet, or demonstrate a reasonable path to meeting, the governance requirements of the Governance and Financial Viability Standard.

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An applicant must meet, or demonstrate a reasonable path to meeting, requirements on tenant involvement and empowerment.

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An applicant must have in place management arrangements that enable it to meet, or demonstrate a reasonable path to meeting, the service delivery standards.

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A non-profit applicant must have within its objects the provision of social housing, not-for-profit status and non-distribution of assets to members.

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7.20 There are no requirements in the registration criteria about the objects of profit-making organisations as we have no subsequent oversight of changes to these objects.

7.21 Other than on an organisation's objects, the registration criteria are the same for both non-profit and profit-making applicants. This is because the standards are the same for all registered providers (except in relation to governance and viability for local authorities).

7.22 Figure 5 sets out a summary of the TSA registration criteria.

7.23 The registration criteria can be reviewed and, following consultation, adjusted at any time after 1 April 2010. We plan to do this periodically.

## Registration process

7.24 Our registration process will be influenced by a number of objectives including:

- a proportionate registration process, seen in the context of the size of the social housing portfolio and risk profile of the potential entrant. Size of portfolio could be in absolute terms and related to geographic concentration
- when handling applications from, for example, large organisations, such as an ALMO, that own only a limited number of social housing properties, our assessment against the criteria will reflect the risk profile of the applicant and its size in terms of the number of social housing properties it has or intends to have, but the assessments against the Governance and Financial Viability Standard will take account of the wider organisation within which these properties rest

- where an organisation seeking grant funding from the HCA indicates that it expects to retain ownership of the property when it is let, we will maintain close liaison with the HCA during the registration process
- in the event of the creation of a new organisation born out of an existing registered provider, perhaps as a result of a merger, the TSA will take a proportionate approach having regard to the knowledge we have of the relevant registered provider(s)
- where an applicant for registration has already been accredited by the TSA or its predecessor body, the Housing Corporation, under the Housing Management Accreditation Scheme, this accreditation will be taken into account during the registration process

## Deregistration criteria

7.25 There are a limited number of defined circumstances set out in the 2008 Act that would lead to the compulsory deregistration by the TSA of a registered provider (eg they have ceased to exist).

7.26 A registered provider can apply for voluntary deregistration on the grounds that it:

- no longer is or intends to be a provider of social housing in England
- is subject to regulation by another authority whose control is likely to be sufficient
- meets any relevant criteria for deregistration set by the TSA

7.27 In considering an application for voluntary deregistration, the TSA will consider the following relevant criteria:

- the arrangements to ensure the continued protection of tenants
- the arrangements to ensure there is no misuse of public funds

7.28 In looking at the continued protection of tenants, we will:

- expect the registered provider to demonstrate ongoing financial viability
- expect the registered provider to be achieving a satisfactory level of performance
- take into account any relevant regulatory or other controls that the registered provider would continue to be subject to after deregistration (including membership of the Housing Ombudsman scheme)
- take into account the views of the tenants and of any local authority in whose area the registered provider lets housing
- take into account the nature and scale of the social housing provision of a registered provider

7.29 In considering arrangements for guarding against the misuse of public funds, we will consider the amount of capital public funding outstanding and any current or planned development for which the registered provider had received or would receive public funding. Deregistered providers will still be subject to TSA consent rules for disposals unless we have already directed that any specified dwelling should cease to be social housing. We

would not expect the power to 'declassify' social housing to be widely used. Deregistered providers would also still be subject to any conditions attached to the public funding imposed by the HCA (or the predecessor body, the Housing Corporation).

7.30 Deregistered providers can apply again for registration at any time.

## The register

7.31 The TSA must maintain a register of providers of social housing, available for public inspection, that shows whether an organisation is profit-making or not. Some of our powers, for example consent on changes to objects, relate only to non-profit registered providers so this is an important distinction. Any registered and non-registrable charities will be designated as non-profit making. For other organisations registering after April 2010, the 2008 Act requires us to designate them as non-profit making if:

- the organisation does not trade for profit or is prohibited by its constitution from issuing capital with interest or dividend at a rate exceeding that prescribed under section 1(1)(b) of the Housing Associations Act 1985
- a purpose of the organisation is the provision or management of housing
- any other purposes are connected with, or incidental to, the provision of housing

7.32 If a new registered provider does not meet these requirements in the TSA's assessment then it will be designated profit making.

7.33 The Secretary of State can make regulations providing that a specified purpose is or is not incidental to the provision of housing, but has indicated that no such regulations will be issued in the medium term so we need to set out how we will decide what is "connected with or incidental to the provision of housing". Currently there are permissible purposes established under section 2(4) of the Housing Act 1996 and subsequent statutory instruments. We propose to have regard to the list of permissible purposes but will clarify over time the purposes we consider are connected with or incidental to the provision of housing.

## Fees

7.34 The 2008 Act makes provision for the TSA to charge fees to providers for initial registration and/or continued registration. In July 2009, the Government announced that, in view of the current financial pressure on housing associations as a result of the economic downturn, fees would not be levied on any providers to cover the costs of regulation until April 2011 at the earliest.

## **Accreditation of managers**

7.35 The 2008 Act includes a power for TSA to issue an accreditation scheme for managers of social housing. We have no plans at present to establish such a scheme. We will keep this position under review as we develop further strategies to open up the market in housing management provision.

7.36 Separately, under transitional arrangements, the Homes and Communities Agency will maintain the Housing Corporation's Housing Management Accreditation Scheme (HMAS) insofar as it continues to be required to enable grant recipients to fulfil the conditions attached to any financial assistance given under section 27A of the Housing Act 1996.

# 8 TSA Directions under the 2008 Act: accounts and Disposal Proceeds Fund

## Accounting direction

8.1 The 2008 Act<sup>54</sup> enables the TSA to give Directions to registered providers about the preparation of their accounts. A Direction may only be given to a profit-making registered provider in respect of social housing activities. It does not apply to local authorities. This Direction is given following consultation which we issued in November 2009.

8.2 Accounting requirements for registered providers were previously subject to general determinations issued by the Housing Corporation. The last accounting general determination was issued in 2006<sup>55</sup>. For now we will continue to use this<sup>56</sup>. This will only be required from private registered providers and, in the case of for-profit registered providers, only in respect of their social housing activities.

8.3 We will review the accounting requirements of registered providers and will consult on this in due course. We wish to ensure that social housing activities can be ring-fenced. We will take due regard of the needs and wishes of stakeholders in ensuring that financial information is transparent

and comparable whilst seeing where unnecessarily complex and detailed analysis may be reduced.

## Disposal Proceeds Fund

8.4 The 2008 Act<sup>57</sup> establishes that in various circumstances registered providers need to create a Disposal Proceeds Fund (DPF) and follow certain rules in regards to the use of that fund. A registered provider may only use the DPF in accordance with a Direction set by the TSA. To ensure continuity, the Secretary of State has approved secondary legislation to enable us to continue to use the existing DPF determination issued under the Housing Act 1996. This satisfies the requirement in the 2008 Act that a Direction set by TSA should be approved by the Secretary of State.

8.5 The TSA will continue the use of the DPF in accordance with the guidelines and determination published by the Housing Corporation, save that references need to be made to the TSA and the 2008 Housing and Regeneration Act where appropriate<sup>58</sup>. The TSA will review the DPF in due course and any future Direction will be subject to consultation and Secretary of State approval, as appropriate.

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<sup>54</sup> Section 127.

<sup>55</sup> This was issued subject to section 218 and paragraph 22 of schedule 11 to the Housing Act 2004 and section 7 and part III of schedule 1 to the Housing Act 1996. It is available from our website [www.tenantservicesauthority.org/server/show/nav.3545](http://www.tenantservicesauthority.org/server/show/nav.3545)

<sup>56</sup> Save that technical references need to be made to the TSA and the 2008 Housing and Regeneration Act where appropriate.

<sup>57</sup> Section 177.

<sup>58</sup> The DPF was previously subject to section 24 of the Housing Act 1996 and determinations issued by the Housing Corporation. The last DPF general determination was approved 17 November 2008.

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# Notes





# The regulatory framework for social housing in England from April 2010

This document sets out the new regulatory framework that social housing providers have to meet from April 2010. At its heart are six standards, and against each of these, we have described the outcomes landlords should meet and our specific expectations of them.

We have developed the regulatory framework in collaboration with tenants, local authorities, housing associations and our many other partners. Its aim is to help improve the services provided for the eight million people who live in social rented and shared ownership homes in England.



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