



Directions to the Tenant Services Authority

Consultation paper



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Foreword

The Government is committed to building more homes people can afford to rent or buy. In *Building Britain's Future* (June 2009), the Prime Minister set out ambitious plans to invest a further £1.5bn in building thousands of new affordable homes over the next two years. Together with our existing commitments, this means that we have committed more than £7.5bn to affordable housing over the next two years.

More homes are a high priority. But it is also vital to ensure that those living in affordable housing receive a high quality service from their landlord. This is one of the central aims of this consultation, which sets out the directions that the Government proposes to issue to the Tenant Services Authority (TSA).

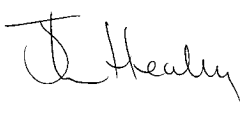
This consultation is the latest step on a journey that began with Professor Martin Cave's review of social housing regulation (*Every Tenant Matters*), published in 2007. Professor Cave recommended that there should be a new independent social housing regulator with a remit covering all social housing landlords, as well as a new system that put tenants at the heart of regulation while eliminating unnecessary burdens on landlords.

The TSA was launched on 1 December 2008 and is already regulating registered social landlords (RSLs). Since December, both the TSA and the Department have taken important steps towards the establishment of the new regulatory system in April 2010. The TSA has launched a national conversation with tenants and landlords to inform the development of its new regulatory standards. I will consult stakeholders shortly on draft legislation that is designed to implement 'cross-domain' regulation, so that the TSA can also act as regulator in the interests of council tenants.

This consultation relates to the regulatory standards that the TSA will operate in the new system. It proposes that ministers should direct the TSA to set standards on rents, quality of accommodation and tenant involvement. We have prepared draft directions that confirm the Government's commitment to complete the Decent Homes programme, the involvement of tenants in the management of their homes, and to affordable rents.

The draft directions also take account of the possibility that RPI inflation may be negative later this year. This is a difficult issue, requiring a balance between the current and the longer term interests of both tenants and taxpayers. I am proposing a 'floor' of minus 2 per cent in 2010-11, meaning that housing associations would not be obliged to reduce their rents by more than 2 per cent next year. In parallel to this consultation, I am also announcing that – in view of the current financial pressures on RSLs as a result of the economic downturn – fees will not be levied on any social landlords to cover the costs of regulation until April 2011 at the earliest, and once the TSA's regulatory operations are established after April 2010 we will consult further on the principle and practice of TSA fees.

These proposals for directions will support the TSA in improving the standard of accommodation and services available to the tenants of today, and help in securing new affordable housing for the tenants of tomorrow. I would welcome your views.



Rt. Hon. John Healey MP, Minister for Housing and Planning

Scope of the consultation

<p>Topic of this consultation:</p>	<p>Section 197 of the Housing and Regeneration Act 2008 (“the 2008 Act”) allows the Secretary of State for Communities and Local Government to direct the social housing regulator (the Tenant Services Authority, or TSA) on the content of the standards it sets on social housing landlords, or on objectives TSA must have regard to when setting standards.</p> <p>Once formally issued, the directions will be binding on TSA when it consults on and sets standards. TSA will set standards in the context of these directions that will be binding on landlords. This is the first time the power has been used.</p>
<p>Scope of this consultation:</p>	<p>Section 197 of the 2008 Act requires the Secretary of State to consult on draft directions. This consultation paper makes proposals for three directions: on the content of TSA standards on rent levels, quality of accommodation, and tenant involvement.</p> <p>The Government is not seeking to change the current policy on these issues (although one change is proposed to take account of the possibility of negative RPI inflation in September 2009 and the impact this could have on rental income). However given that the system of directions and standards is new, the Government is seeking views on whether the proposed directions will achieve the desired policy goal, and whether the balance is correct in terms of the extent to which Government sets boundaries for TSA’s standards.</p> <p>This is not a consultation on the wider issues of regulation reform and TSA, or on TSA standards. This consultation is limited to the use Government should make of direction powers at this point in time.</p>
<p>Geographical scope:</p>	<p>This power affects the whole of England.</p>
<p>Impact assessment:</p>	<p>Impact assessments are needed where proposals impact upon business or the third sector, or have significant costs (above £5m p.a.) for the public sector. An impact assessment accompanies this consultation.</p>

Basic Information

To:	<p>Social housing stakeholders, including:</p> <ul style="list-style-type: none"> • relevant non-departmental public bodies (Tenant Services Authority, Homes and Communities Agency, Audit Commission) • bodies representing the interests of tenants of social housing • bodies representing the interests of housing associations or other private providers of social housing • bodies representing the interests of local housing authorities • the Charity Commission • representative bodies of providers of private finance
Body/bodies responsible for the consultation:	The Affordable Housing Division in the Department for Communities and Local Government is responsible for this consultation.
Duration:	The consultation starts on 17 July 2009 and finishes on 9 October 2009.
Enquiries:	For further information on this consultation document please email tsasponsorteam@communities.gsi.gov.uk or telephone 020 7944 3553.
How to respond:	<p>Consultation responses should be submitted by email to: tsasponsorteam@communities.gsi.gov.uk</p> <p>Or by post to:</p> <p>Social Housing Directions Consultation Department for Communities and Local Government Zone 1/G10 Eland House Bressenden Place London SW1E 5DU</p>
Additional ways to become involved:	Following the directions consultation, TSA will hold a consultation on the contents of its standards in autumn 2009. Bodies with an interest in those standards are advised to participate.
After the consultation:	The Government will publish all responses to the consultation and the final direction to TSA on the Communities and Local Government website. This is expected in October 2009.
Compliance with the code of practice on consultation:	This consultation document and consultation process have been planned to adhere to the Government code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria. The period of consultation will be 12 weeks.

The consultation criteria

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. formal consultation should take place at a stage when there is scope to influence the policy outcome
2. consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
3. consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
4. consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
5. keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
6. consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
7. officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

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or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

Background

<p>Getting to this stage:</p>	<p><i>Every Tenant Matters: A Review of Social Housing Regulation</i>, a report by the independent Cave Review, was launched on 19 June 2007 and made recommendations about the future regulation of social housing in both the housing association and local authority sectors. The main recommendation was for a new regulator which would put tenants at the heart of regulation. The Government consulted on proposals to meet the Cave Review's recommendations.</p> <p>The Government legislated for regulation reform and set up of TSA through the 2008 Act. The Act includes the standards and directions powers. TSA became the regulator of registered social landlords in December 2008.</p>
<p>Previous engagement:</p>	<p>Since Royal Assent to the 2008 Act, the Government has commenced a number of sections. This is the first statutory consultation since Royal Assent on an aspect of the new regulatory system.</p>

1. This is a consultation on the draft directions proposed to be given by the Secretary of State for Communities and Local Government to the social housing regulator (known as the TSA) under section 197 of the Housing and Regeneration Act 2008 (“the 2008 Act”). The Government intends to publish the final directions in October 2009 following this consultation.
2. Once formally given, the directions will be binding on TSA when it consults on and sets standards for landlords of social housing. TSA will set standards within the context of these directions. The text in this consultation paper, and in the accompanying impact assessment, is not binding. The information in the ‘context’ section is intended to enable a better informed consultation by explaining recent developments in social housing regulation, the legal context, and the Government’s intentions. The ‘draft direction’ section explains the wording of the directions and **seeks your views on the questions listed by 9 October.**

Context

Policy background

3. The Government is committed to ensuring that tenants of social housing receive a high quality service from their landlords which responds to their needs and provides them with an appropriate level of choice. The Government's commitment to good quality housing and to increasing the power of citizens to shape the services they receive was recently confirmed in 'Building Britain's Future' (June 2009). The Tenant Services Authority was established to put tenants at the heart of regulation. In the thirty years since the current regulatory system for housing associations was introduced, the landscape of social housing has changed and people have rightly come to expect greater influence over the service they receive. In the twenty-first century, we need a regulatory system which enables landlords to respond more effectively to people's changing needs.
4. In December 2006, the Government asked Professor Martin Cave to carry out an independent review of regulation of the social housing sector, which was published in June 2007 as *Every Tenant Matters: A review of social housing regulation* (the Cave Review). The Cave Review recommended the creation of a stand-alone, independent regulator with clear statutory objectives to put tenants at the heart of regulation, ensuring that social landlords involve their tenants more in the management of homes. The new regulator should have wider powers to set and enforce clear standards for landlords. The Cave Review also recommended that a similar approach to regulation of social housing be taken across the domain, i.e. to both housing associations and local authorities.
5. The Government consulted on these recommendations, and legislated in the 2008 Act to create a new regulator, known as the Tenant Services Authority (TSA). TSA took over regulation of Registered Social Landlords (RSLs) from the Housing Corporation on 1 December 2008, and the Housing Corporation's existing regulatory powers were transferred to TSA. The 2008 Act granted TSA a wider range of regulatory powers than the Housing Corporation and the ability to set binding standards. However it also required that TSA must consult bodies representing tenants and landlords, as well as certain other stakeholders, on the content of its standards and how it uses its powers. The Government does not intend to commence these parts of the 2008 Act until after TSA has completed this consultation.

Legal structure

6. Standards are at the heart of TSA's new regulatory regime. They will outline the service tenants can expect from their landlords, and they are enforceable. The 2008 Act (section 193) permits TSA to set standards for 'registered providers' (see paragraph 12) as to the nature, extent and quality of accommodation, facilities or services provided in connection with social housing. It may in particular require registered providers to comply with specified rules on a range of issues, including levels of rent, maintenance and methods for consulting and informing tenants. TSA may also (section 194) set standards for registered providers relating to the management of their financial and other affairs. When setting standards, TSA must have regard to the desirability of registered providers being free to choose how to provide services and conduct their business.

7. TSA is an independent regulator, which will determine what standards to set to enable it to best meet its statutory objectives, following consultation with tenants, landlords and other stakeholders. TSA's objectives in the 2008 Act (section 86) are to:
 - encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands
 - ensure that actual or potential tenants of social housing have an appropriate degree of (a) choice, and (b) protection
 - ensure that tenants of social housing have the opportunity to be involved in its management
 - ensure that registered providers of social housing perform their functions efficiently, effectively and economically
 - ensure that registered providers of social housing are financially viable and properly managed
 - encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated
 - encourage investment in social housing (including by promoting the availability of financial services to registered providers)
 - avoid the imposition of an unreasonable burden (directly or indirectly) on public funds
 - guard against the misuse of public funds
 - regulate in a manner which (a) minimises interference, and (b) is proportionate, consistent, transparent and accountable

8. Although it is primarily TSA's responsibility to set standards, the Secretary of State also has a power in the 2008 Act (section 197) to direct TSA in relation to its standards. The purpose of this power is to ensure TSA has regard to the Government's legitimate interest in the regulatory standards it sets, and in particular those standards which might directly affect central budgets or key policy issues. It is not possible for the Secretary of State to direct TSA on issues which are not connected to management of social housing or the financial and other affairs of registered providers.
9. There are two distinct levels of direction power:
 - on three key policy issues the Secretary of State may direct TSA to set a standard, or on the content of its standards; these are rent policy, quality of accommodation and tenant involvement
 - on any other issues connected to management of social housing or the financial and other affairs of registered providers, the Secretary of State is limited to directing TSA to have regard to specified objectives

Coverage of the directions

10. The TSA is directly affected by these directions. The directions set parameters within which it can set standards on specified issues: rents, quality of accommodation and tenant involvement.
11. Other groups will also be affected: social housing landlords and social housing tenants. This is because TSA standards (which are affected by directions) govern the service which social housing landlords are expected to provide to their tenants. Landlords and tenants of all social housing will be affected, including both local authority landlords and housing associations. At present, there are about two million homes and five million tenants in each sector, the regulation systems for the housing association and local authority sectors are currently different in most respects, and the Tenant Services Authority only regulates housing associations. The Government's intention is that all social tenants, regardless of who their landlord is, should receive similar levels of service.
12. Housing association landlords will be regulated by TSA under the 2008 Act which includes them under the new term 'registered provider'. This term refers to bodies registered with the TSA as owners of social housing, and replaces the term 'registered social landlord' (RSL) in previous legislation such as the Housing Act 1996. Most housing associations are RSLs, and all current RSLs will automatically become registered providers. The main difference between the terms 'registered provider' and RSL is that the former can also include bodies other than housing associations, including commercial bodies which can distribute profits (RSLs may not distribute profits); in future, these bodies will be permitted to register, and any social housing owned by them will be regulated by TSA. Housing associations which were never registered with the Housing Corporation or were de-registered are not subject to regulation.

13. The Government intends that local authorities which retain ownership of their social housing stock will also be regulated by TSA. This will mean that all local authorities who perform functions as a social landlord will be registered with the TSA. Regulating local authority landlords requires further secondary legislation under section 114 of the 2008 Act. The Government will consult shortly on a draft section 114 Order on regulation of social housing owned by local authorities. The draft directions are intended to apply in an indicative way only to standards as they affect local authorities, and it assumes that the finalised Order will permit TSA to set standards for local authority social housing, and the Secretary of State to set directions. The Government considered issuing directions in respect of registered providers now and local authorities at a later stage once the section 114 Order was in place. It was decided to consult on directions for both sectors, as Parliament intended that Government and TSA should where possible consult on standards for both sectors together, ensure standards are common (where appropriate), and involve tenants and landlords in both sectors from the start – this was at the heart of the goal of consistent regulation across both sectors.
14. This consultation only affects homes which both meet the definition of ‘social housing’ in the 2008 Act (sections 69-77) and are owned by bodies registered with TSA. TSA may not set standards for homes which do not meet this definition. The 2008 Act ensures that all homes owned by RSLs will be classified as ‘social housing’, with specified exceptions such as homes offered at market rent; similar provision should be made for homes owned by local authorities. The 2008 Act also ensures that new homes will be classified as ‘social housing’ if they meet the definition of ‘low cost rental’ accommodation (also called ‘social rent’ or ‘council’ housing) or ‘low cost home ownership’. New homes are ‘social housing’ if they are offered at sub-market rents and are subject to rules designed to ensure they are made available to those whose needs are not served by the commercial housing market. ‘Social housing’ does not include property offered on the open market (including the private rented sector), or where leaseholders own 100 per cent of the interest in their homes; the directions therefore do not apply to these categories of home.
15. The proposed directions have no pre-determined end date. They will continue until replaced by the Secretary of State, which will require a consultation.

Timetable

16. The Government intends to consult on the draft directions for a period of 12 weeks, starting on 17 July and ending on 9 October. The Government then intends to publish all responses to the consultation and the final directions on the Communities and Local Government public website in October 2009.
17. This consultation is part of an overall timetable for the set-up of TSA as a cross-domain regulator with its new 2008 Act powers. We expect that:
 - CLG will consult on the section 114 Order in summer 2009
 - TSA will consult on standards and guidance on how it will use its powers in autumn 2009
 - TSA's new regulatory regime will commence in April 2010

The proposed directions

General principles

18. The proposed directions are given below. The direction for registered providers covers three issues: rent policy, quality of accommodation, and tenant involvement. The direction for local authorities covers two issues: quality of accommodation and tenant involvement. The proposed direction as it relates to those two issues is identically worded for registered providers and local authorities. In formulating these draft Directions, the Government has had regard to the TSA's fundamental objectives.
19. It is important to be clear that these draft directions represent no change in the Government's policy on social housing (except for one issue, the proposed 'floor' on RSL rents, for which see below). The Government has powers to direct TSA to make policy changes on certain issues (rents, quality of accommodation and tenant involvement), and encourage TSA to make changes on a wider range of issues by directing it to have regard to specified objectives. However, apart from the proposed rents floor, the Government does not currently wish to make policy changes by issuing directions. The draft directions seek to reflect current policy and impose no new burdens. If Government policy changes in future, this may need to be reflected through a new direction.
20. However, the legal basis of regulating social housing has changed as a result of the new legal powers in the 2008 Act outlined in paragraphs 6 – 9 above. TSA will need to achieve its goals using a new set of powers. The primary aim of this consultation is therefore not whether and how social housing policy should change, but whether the Government's proposed directions are technically workable and would assist in achieving current social housing policy goals.
21. The main technical issue considered by the Government was what issues should be subject to direction. It considered the following options:
 - option 1: issue no direction to TSA
 - option 2: issue a direction only where the Secretary of State may direct on the content of standards (on rent policy, quality of accommodation, and tenant involvement)
 - option 3: issue a much wider direction on the three issues in option 2 and up to ten issues of general social housing policy

22. The Government does not consider option 1 to be appropriate. During passage of the 2008 Act, ministers confirmed an intention to direct on the policy for the level of rents in the RSL sector. The Government has a key direct interest in rent levels because policy on rent has a major impact on the public finances as most social rents are paid through Housing Benefit and because of Government's previous investment in social housing. Rent levels also have a major impact on tenants. For this reason, central Government currently sets a social rent policy which it expects all social landlords to follow. At minimum the Government believes that there must be a direction on rent policy to set boundaries and guidelines for a standard to be set by TSA.
23. The Government believes that the question of whether to adopt option 2 or option 3 depends on the degree to which it is necessary or desirable to set further parameters on the standards which TSA can set. TSA is already required by the 2008 Act to set the standards which it believes will best meet its statutory objectives (listed in paragraph 7) and there are other limits in the 2008 Act; for example, TSA must have regard to the desirability of landlords being free to choose how to manage their own business. The Government stated in response to the Cave Review and in Parliament that TSA should be an independent regulator, not subject to extensive policy or technical oversight from central government. So in general, it is for TSA to decide, with involvement from other stakeholders (including the Government), what standards are suitable. This indicates that, as a general principle, the Secretary of State's direction power should be used only where it is necessary to do so.
24. The Government's present view is that use of the direction power should be limited to where TSA standards could have a major impact on public finances, or where there are compelling policy reasons to direct. The Government believes this test is only met by the draft directions below on rent levels, quality of accommodation and tenant involvement. Specific rationales for these directions are given below, but in general, rent levels and decent homes are the only social housing management issues which have major financial implications. These are the only three issues where the Secretary of State was given a power to direct on the content of standards (as opposed to directing on objectives).
25. The Government's view was that no other issues met the test above. TSA objectives already cover issues such as the good management of homes, or landlord contribution to local well-being. It is committed to consulting widely on those standards. Additional objectives imposed through a direction were not considered necessary.
26. The Government also believes that draft directions should contain the minimum amount of detail needed to achieve the desired goal, and where possible should be set at a very high level (while setting clear boundaries where necessary). This is a principle of good regulation, but there are also particular reasons why it is appropriate in social housing regulation:

- TSA is an independent body, and while Government may sometimes need to direct on policy, it should leave the detail to TSA
- excessively detailed directions will require TSA to set very detailed standards; and very detailed standards are unlikely to suit specific local needs and be compatible with the diversity of landlords and tenants
- the Government and TSA are committed to not setting additional performance indicators for local authorities

27. The draft directions on all three issues are intended to apply only to low cost rental accommodation which is subject to rent restructuring rules, that is, the homes generally considered to be social rented or council housing. It is not intended to apply to low cost home ownership accommodation. It is not intended to apply to intermediate rented housing (a recent model of social housing covering much less than 1 per cent of overall stock which will technically class as 'low cost rental accommodation' but which has a different rent formula). Government does not feel the case has been made to set any directions which cover low cost home owners and intermediate renters, as these groups will generally have more choice over the service received. It is for TSA to decide what standards are appropriate for these groups.

Question 1: Do you support the Government's preferred option (to direct on rents, quality of accommodation and tenant involvement only)?

Direction on rent levels

28. The Secretary of State is proposing to direct TSA on the content of the standard it should set on rents. The draft direction is enclosed. This decision was taken for two reasons:
- the impact of social rent levels on the public finances (particularly its implications for housing benefit and public investment in new homes)
 - to reflect policy since 2001 on rent restructuring and convergence between RSLs and local authority rents
29. **The direction will apply to registered providers (housing associations and any other private bodies which register in future) only.** It is the Government's intention to direct TSA on local authority rents at a later time.
30. The direction will not apply to low cost home ownership or intermediate rent properties. We have also considered whether it should make specific reference to properties where conditions have been set in regard to rent levels which may conflict with the other requirements in the direction; for example, covenants or agreements relating to large scale voluntary transfer, or housing PFI contracts. It would be very

difficult to make explicit provision for all these cases in the direction. The Government believes that the direction would technically take precedence over the private agreement, but TSA is required to have regard to the desirability of landlords being free to choose how to run their own businesses. TSA is likely to explain how it will treat such cases when consulting on its standards and how it will use its powers.

31. The draft direction for registered providers aims to achieve the rent policy for RSLs agreed since 2000 and outlined in detail in Housing Corporation guidance issued in October 2001. This is current rent policy for all homes subject to rent restructuring policy in the RSL sector. The principle of that policy is to gradually achieve convergence between average rents on RSL and local authority social housing in the same area and of similar quality, while ensuring that rent rises meet the needs of tenants and landlords. The draft direction makes specific reference to the existing guidance noted here, and on which the draft direction is based.
32. Annual rent rises usually take effect from April each year, and are based on the following calculation:
 - the basic rent rise is calculated as the RPI (inflation) level in the previous September, plus 0.5 per cent
 - actual rent may exceed target rent by a flexibility of 5 per cent (10 per cent in sheltered or supported housing), subject to a maximum rent level (rent cap) specified in the guidance
 - the landlord may choose to apply an additional payment of up to £2 per week to standard annual increases until actual rent reaches the lower of the flexibility above target rent level or rent cap
33. This rent direction would be the basis of TSA standards on rents for the year 2010-11 and the direction would stand for all subsequent years until it was replaced (following a consultation). Registered providers will be responsible for meeting all standards, and are expected to plan their activities to demonstrate that they have taken all reasonable measures to do so.
34. Most commentators expect the level of inflation (RPI) for September 2009 to be negative, and as a result rent rises in 2010-11 based on that figure are likely to be much lower than in 2009-10. This creates potential problems for landlords. RSL business models and financial arrangements are not the same as those of local authorities, although both types of body are not for profit organisations. RSLs depend on rental income to provide funding for management services, carry out promised improvement programmes and raise private finance to build new social homes. If the formula were applied in the usual way where inflation was strongly negative, there would be a sharp drop in rental income for a significant number of RSLs, with implications for services to tenants and the new development of social housing.

35. For this reason, the Secretary of State has decided to consult on a change to the formula to permit a floor of minus 2 per cent on increases to rent levels in 2010-11. This means that where the application of the RPI + 0.5 per cent formula would normally lead to a fall in rent levels of more than 2 per cent, registered providers would not be obliged to reduce the rent by more than 2 per cent.
36. The rationale for the proposed floor of minus 2 per cent is to protect registered providers from a particularly sharp drop in rental income, and also to give them certainty about the minimum amount of rental income they can expect next year.
37. We recognise that some housing associations are concerned about the prospect of any nominal-terms reduction in rental income next year. Indeed, we considered the case for a floor of 0 per cent that would have allowed registered providers to freeze their rents in the event of deflation in September 2009. However, we had to balance these concerns with the interests of rent payers and the potential impact on the public finances of higher rent increases than would have arisen from the application of the normal formula. We also had to take account of the fact that housing associations were able to set relatively high rent increases for 2009-10 due to the level of RPI inflation in September 2008.
38. Alongside the proposed rent floor, TSA will continue to work with any individual registered providers who are in financial difficulty. Where the application of the rents standard would cause a provider to be unable to meet other standards, particularly in relation to financial viability, TSA can – where necessary – give the provider an extension to the period over which the requirements of the standard need to be met.
39. We have considered the likely costs of the proposed minus 2 per cent rent floor, compared to a scenario in which there was no floor. It is important to note that the floor would have no effect if RPI inflation in September 2009 was minus 2.5 per cent or higher. For example, if RPI inflation in September was minus 2 per cent, the floor would not have any effect. However if, as was forecast in Budget 2009, RPI inflation was minus 3 per cent, the floor would come into effect. In that scenario, we estimate that the cost to those paying rents would be around £391m more over ten years (NPV) than if there was no rent floor. Approximately two thirds of this total would be met by housing benefit.
40. The proposed direction imposes a rent floor for one year only, but the Government does not rule out proposing a floor for future years should it be necessary – this would be achieved through another direction.

Question 2: Do you agree with the principle and detail of our proposed direction on rent policy?

Question 3: Is the draft rent direction technically correct as a means of achieving current policy, and if not, what are the implications?

Question 4: Do you agree that the direction should allow a floor (of minus 2 per cent) on rent rises, so that landlords are not obliged to reduce their rents by more than 2 per cent?

Direction on quality of accommodation

41. The Secretary of State is proposing to direct TSA on the content of the standard it should set on quality of accommodation, with reference to continuation of the Decent Homes programme. The draft direction is enclosed, and it applies to both registered providers and local authorities.
42. The decision to direct was taken because of the considerable financial implications of decent homes for landlords and for Government through the housing revenue account subsidy system. It is of major significance to tenants. Policy on decent homes is led by central Government rather than TSA, and funding is co-ordinated by the Homes and Communities Agency. There is also an implication in the 2008 Act that the Secretary of State is likely to direct on the content of standards on this issue.
43. In 1997 the Government committed to tackling the £19bn backlog in disrepair, and in the 2000 green paper it set out a target to make all social housing 'decent' by 2010. The decent homes standard was set to cover the basic components of a home that made it warm, wind and weather-tight and having reasonably modern facilities. It was set as a threshold so that any home below the standard would be improved. By 2010, work will have been completed to 3.6 million homes, and our target is that around 95 per cent of the total of housing association and local authority low cost rental homes will be decent. In terms of delivery by individual landlords, the Government expects that all landlords should make their homes decent by the end of 2010 unless they have agreed an extension for some of their stock. All landlords should complete all the work scheduled within their current decent homes programmes by 2014-15.
44. The quality of accommodation direction would affect TSA's standards on decent homes, which may begin to operate from April 2010. The direction would stand until it was superseded following a consultation.
45. The proposed direction aims to ensure progress in reaching the decent homes standard. It therefore maintains the current policy on decent homes, and will not impose any additional burdens on landlords; the only change is that policy goals will be achieved in part through TSA standards. In practice, meeting and maintaining the

standard depends on funding availability from Government or other sources (e.g. rental income or private finance). The direction cannot make provision for funding, and the capital programme to fund decent homes is not in any case within TSA's remit. Therefore, the Government is proposing a direction allowing TSA the flexibility to work with landlords in developing a strategy to meet the standard after 2010 where there is good reason for doing so.

Question 6: Do you agree with the principle and detail of our proposed direction on quality of accommodation (decent homes)?

Direction on tenant involvement

46. The Secretary of State has decided to direct TSA on the content of the standard it should set on tenant involvement, with particular reference to the need for landlords to build the capacity of tenants to allow them to be involved. The draft direction is enclosed, and applies to both registered providers and local authorities.
47. The decision to direct on this issue was taken because tenant involvement in the management of their homes is a policy priority. Although unlike rents and decent homes there are no major financial implications, it is a key issue for tenants and a key recommendation of the Cave Review. The Government takes the view that the specific power to direct TSA on the content of standards which relate to the *“involvement by tenants in the management by registered providers of accommodation”* was included with the expectation that it would be used. In addition, although TSA has statutory objectives to ensure that tenants are given choice by landlords, and the opportunity to be involved in the management of their homes, TSA does not have a specific objective on empowerment and capacity building. This is vital in delivering the goal of wider tenant involvement in regulation recommended by the Cave Review.
48. The Government's overall empowerment aim is to shift power, influence and responsibility away from power centres into the hands of communities and individual citizens. In social housing, effective engagement of tenants in the management of their homes is a key ingredient of good housing management. Government's ambition, which it aims to achieve by a range of programmes and policies, is:
- to ensure all social housing tenants have the confidence, skills and power to engage on housing and housing-related neighbourhood issues in ways that are right for them; and
 - for all social landlords to understand the needs of their tenants and the neighbourhoods in which they live, and offer tenants support and a full range of opportunities to influence service delivery and policies

49. The aim behind this direction is to get all social landlords to not only offer the full range of opportunities but to equip tenants with the skills that would enable them to make use of them. This would encourage TSA to work to strengthen what is already in place and significantly improve landlords' performance in this area.
50. The draft direction does not itself change policy. For housing associations, it does not require TSA to change the current guidance issued on tenant involvement (by the Housing Corporation). For local authorities that own stock, it does not require TSA to set standards that exceed existing requirements set out in the national framework for tenant participation compacts (which Government intends to review shortly).
51. As a result, this draft direction does not add burdens. TSA may however choose to meet the direction by setting standards (following consultation later this year) which go further than the direction; such standards could represent an additional cost or burden. The Government believes TSA may set such standards, because TSA was set up with clear objectives to deliver more choice and empowerment for tenants. The Government fully supports TSA in delivering on its objectives. However, TSA will also have regard to minimising additional burdens whilst meeting these objectives.

Question 7: Do you agree with the principle and detail of our proposed direction on tenant involvement?

The Directions on Regulatory Standards

(Local Housing Authorities)

The Secretary of State, in exercise of the powers conferred by section 197 of the Housing and Regeneration Act 2008 (“the 2008 Act”) makes the following Directions:

Citation, application and interpretation

1.—(1) These Directions shall be cited as the Directions on Regulatory Standards and shall apply to local housing authorities from 1 April 2010.

(2) The Regulatory Standards set by the Regulator of Social Housing (“TSA”) pursuant to these Directions shall apply to low cost rental accommodation of local housing authorities but shall not apply to accommodation not accounted for within a local housing authority’s Housing Revenue Account.

(3) In these Directions—

“category 1 hazard” has the meaning given by or under section 2 of the Housing Act 2004,

“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,

“Housing Revenue Account” means the account a local housing authority is required to keep by virtue of section 74 of the Local Government and Housing Act 1989,

“RPI” means the general index of retail prices (for all items) published by the Office for National Statistics or, if that index is not published for any month, any substituted index or index figures published by that Office, and

“set” in relation to a standard, includes revise, and cognate expressions shall be construed accordingly.

(4) Expressions which are used, but not defined, in these Directions shall have the same meaning as in the 2008 Act.

Quality of accommodation

2.—(1) The TSA shall set a standard relating to the quality of accommodation (“the Quality of Accommodation Standard”).

(2) In setting the Quality of Accommodation Standard, the TSA shall have regard to the Decent Homes Guidance.

- (3) The TSA shall set the Quality of Accommodation Standard with a view to achieving the following, so far as possible—
- (a) that, by the date referred to in paragraph (4), the accommodation—
 - (i) contains no category 1 hazard,
 - (ii) is in a reasonable state of repair,
 - (iii) has reasonably modern facilities and services, and
 - (iv) includes facilities or services for the provision of a reasonable level of thermal comfort,
 - (b) that, when the accommodation has reached the standard set out in the Decent Homes Guidance, the local housing authority maintains it at that standard.
- (4) The date mentioned in paragraph (3) is 31st December 2010 or, where it is reasonable for a local housing authority to have an extension to this date, such later date as the TSA may agree with the local housing authority.

Tenant Empowerment

- 3.**—(1) The TSA shall set a standard relating to the involvement by tenants in the management of accommodation (“the Tenant Empowerment Standard”).
- (2) The TSA shall set the Tenant Empowerment Standard with a view to achieving the following, so far as possible—
- (a) that tenants are given a wide range of opportunities to influence—
 - (i) the formulation of their housing related policies, and
 - (ii) the delivery of their housing related services, and
 - (b) that tenants are supported to develop and implement this empowerment.

[Name]

For and on behalf of the Secretary of State for Communities and Local Government

[date]

The Directions on Regulatory Standards

(Registered Providers)

The Secretary of State, in exercise of the powers conferred by section 197 of the Housing and Regeneration Act 2008 (“the 2008 Act”) makes the following Directions:

Citation, application and interpretation

1.—(1) These Directions shall be cited as the Directions on Regulatory Standards and shall apply to registered providers of social housing from 1 April 2010.

(2) The Regulatory Standards set by the Regulator of Social Housing (“TSA”) pursuant to these Directions shall apply to low cost rental accommodation of registered providers but shall not apply to—

(a) rental accommodation in relation to which grant has been given on the basis that the accommodation is intermediate rent, or

(b) accommodation specified as exempt from the rent influencing regime in Rent Influencing Regime Guidance.

(3) In these Directions—

“category 1 hazard” has the meaning given by or under section 2 of the Housing Act 2004,

“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,

“Rent Influencing Regime Guidance” means the Rent Influencing Regime Guidance published by the Housing Corporation in October 2001, and any guidance issued by the TSA, or its successors, in relation to that document,

“RPI” means the general index of retail prices (for all items) published by the Office for National Statistics or, if that index is not published for any month, any substituted index or index figures published by that Office,

“set” in relation to a standard, includes revise, and cognate expressions shall be construed accordingly, and

“Social Rent Guidance” means the Guide to Social Rent Reforms published by the Department of the Environment, Transport and the Regions in March 2001 and any guidance issued by the Department, or its successors, in relation to that document.

(4) Expressions which are used, but not defined, in these Directions shall have the same meaning as in the 2008 Act.

Quality of accommodation

2.—(1) The TSA shall set a standard relating to the quality of accommodation (“the Quality of Accommodation Standard”).

(2) In setting the Quality of Accommodation Standard, the TSA shall have regard to the Decent Homes Guidance.

(3) The TSA shall set the Quality of Accommodation Standard with a view to achieving the following, so far as possible—

- (a) that, by the date referred to in paragraph (4), the accommodation—
 - (i) contains no category 1 hazard,
 - (ii) is in a reasonable state of repair,
 - (iii) has reasonably modern facilities and services, and
 - (iv) includes facilities or services for the provision of a reasonable level of thermal comfort,
- (b) that, when the accommodation has reached the standard set out in the Decent Homes Guidance, the registered provider maintains it at that standard.

(4) The date mentioned in paragraph (3) is 31st December 2010 or, where it is reasonable for a registered provider to have an extension to this date, such later date as the TSA may agree with the provider.

Rent

3.—(1) The TSA shall set a standard relating to rent (“the Rent Standard”) and in setting the Rent Standard the TSA shall have regard to the Social Rent Guidance.

(2) The Rent Standard shall apply in relation to the setting of rents in the financial year beginning on 1 April 2010 and subsequent financial years.

(3) Subject to paragraph (4), the TSA shall set the Rent Standard with a view to achieving the following, so far as possible—

- (a) rents conform with the pattern produced by the rent formula set out in the Social Rent Guidance (“target rents”) with a 5% tolerance on individual rents (10% for supported housing and sheltered housing)(“rent flexibility level”) but subject to the maximum rent levels specified in that Guidance (“rent caps”),
- (b) weekly rent for accommodation increases each year by an amount which is no more than—

$$\text{RPI} + 0.5\% + \text{£}2$$

until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower, but, notwithstanding the formula above, if for the year beginning on 1 April 2010, RPI is -2.5% or less, registered providers shall not be required to reduce weekly rent by more than 2%,

- (c) weekly rent for accommodation which has reached or is above the upper limit of the rent flexibility level increases each year by an amount which is no more than the increase to the target rents,

- (d) rent caps increase annually by—

$$\text{RPI} + 1\%$$

but, notwithstanding the formula above, if for the year beginning on 1 April 2010, RPI is -2.5% or less, rent caps shall not be reduced by more than 1.5%, and

- (e) target rents increase annually by—

RPI + 0.5%

but, notwithstanding the formula above, if for the year beginning on 1 April 2010, RPI is -2.5% or less, target rents shall not be reduced by more than 2%.

(4) Where the application of the rents standard would cause 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, then the TSA may allow extensions to the period over which the requirements of the rent standard are met.

Tenant Empowerment

4.—(1) The TSA shall set a standard relating to the involvement by tenants in the management of accommodation (“the Tenant Empowerment Standard”).

(2) The TSA shall set the Tenant Empowerment Standard with a view to achieving the following, so far as possible—

- (a) that tenants are given a wide range of opportunities to influence—
 - (i) the formulation of their housing related policies, and
 - (ii) the delivery of their housing related services, and
- (b) that tenants are supported to develop and implement this empowerment.

[Name]

For and on behalf of the Secretary of State for Communities and Local Government

[date]

Summary: Intervention and options

Department /Agency: Communities and Local Government		Title: Impact assessment of Directions to the Social Housing Regulator (TSA) on content of standards	
Stage: Consultation	Version: 1.1	Date: 9 July 2009	
Related Publications:			

Available to view or download at:

<http://www.communities.gov.uk>

Contact for enquiries: Alec Taylor

Telephone: 020 7944 3533

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

The issue is how the Secretary of State will use his new powers to direct the Tenant Services Authority (TSA) on the content of its standards for social housing landlords and objectives to consider when setting standards. TSA is an independent regulator guided by statutory objectives. However, Government believes that intervention (by direction) is needed to set parameters on how TSA sets standards on key financial and policy priorities.

What are the policy objectives and the intended effects?

The Government is not seeking to change policy through a direction (except on the inclusion of a rents floor). However, existing policy must in future be implemented through a new legal and regulatory structure. This needs to work effectively, and must allow TSA flexibility to set standards while giving the Government certainty on key issues. The wider policy goal in setting up TSA is to ensure good social housing management, tenant involvement and choice, and better regulation.

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

Policy options are as follows:

- 1) not direct, allowing the TSA to set standards following its statutory objectives ('do nothing' option)
- 2) direct TSA only on the content of standards on rents (including a rent floor), decent homes and tenant empowerment. This is our preferred option, as it is our view that the use of the direction power should be limited to areas where TSA standards could have a major impact on public finances or where there are other compelling reasons to direct
- 3) direct TSA as at (2), and direct it to have regard to objectives on a wide range of policy issues

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The content of any directions is likely to be reviewed in 2-3 years time following policy changes.

Ministerial sign-off for consultation stage impact assessments:

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

Signed by the responsible minister:



.....Date: 13 July 2009

Summary: Analysis and evidence					
Policy Option: 2		Description: Direct TSA only on the content of standards on rents (including a rent floor), decent homes and tenant empowerment.			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The impact, if any, of the proposed minus 2% rent floor will depend on RPI inflation. If RPI in September 2009 was minus 3%, the proposed rent floor would cost those paying rents around £391m over 10 years (NPV) than if there was no rent floor. Around two-thirds of this total would be met by housing benefit.		
	One-off (Transition)	Yrs			
	£				
	Average Annual Cost (excluding one-off)				
£		Total Cost (PV)	£ 391m		
Other key non-monetised costs by 'main affected groups' A rent floor may lead to marginally higher rents faced by tenants. This may lead, at the margin, to a small impact on work incentives, as the housing benefit taper will last for slightly longer.					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Again assuming that RPI in September 2009 was minus 3% a rent floor of minus 2% would benefit housing association landlords by around £391m more over ten years (NPV) than if there was no rent floor. This could be used to service debt on new borrowing, which could fund the delivery of new affordable housing.		
	One-off	Yrs			
	£				
	Average Annual Benefit (excluding one-off)				
£		Total Benefit (PV)	£ 391m		
Other key non-monetised benefits by 'main affected groups' Option 2 (limited directions) will provide policy certainty and continuity in rents, decent homes and tenant empowerment. TSA will retain independence and flexibility to set 'co-regulatory' standards. A rent floor of minus 2% could reduce risks to viability and new development by housing associations.					
Key Assumptions/Sensitivities/Risks The directions are indicative as they affect standards for local authorities, as powers to apply them to this sector have not yet been taken. Costs and benefits of a rent floor depend on the actual level of inflation, and housing associations' decisions on levels of rent and development.					
Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0		
What is the geographic coverage of the policy/option?			England		
On what date will the policy be implemented?			April 2010		
Which organisation(s) will enforce the policy?			TSA		
What is the total annual cost of enforcement for these organisations?			£ 0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ 0		
What is the value of changes in greenhouse gas emissions?			£ 0		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)					
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

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

Summary: Analysis and evidence

Policy Option: 3	Description: Direct TSA on content as under Option 2, and direct it to have regard to objectives on a wide range of policy issues
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’ The impact, if any, of the proposed minus 2% rent floor will depend on RPI inflation. If RPI in September 2009 was minus 3%, the proposed rent floor would cost those paying rents around £391m over 10 years (NPV) than if there was no rent floor. Around two-thirds of this total would be met by housing benefit.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 391m
Other key non-monetised costs by ‘main affected groups’ As option 2, plus: Directions to have regard to policy objectives could indirectly lead to added costs to landlords. It could also reduce TSA's independence in setting standards for social housing management.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’ Again assuming that RPI in September 2009 was minus 3% a rent floor of minus 2% would benefit housing association landlords by around £391m more over ten years (NPV) than if there was no rent floor. This could be used to service debt on new borrowing, which could fund the delivery of new affordable housing.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£ 0		Total Benefit (PV) £ 391m
Other key non-monetised benefits by ‘main affected groups’ Option 3 (wide directions) allows certainty and continuity in rents, decent homes and tenant empowerment, and more certainty that TSA will follow Government priorities in standards on policy issues. A rent floor of minus 2% could reduce risks to viability and new development by housing associations.			

Key Assumptions/Sensitivities/Risks The directions are indicative as they affect standards for local authorities, as powers to apply them to this sector have not yet been taken.
 Costs and benefits of a rent floor depend on the actual level of inflation, and housing associations' decisions on levels of rent and development.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	April 2010
Which organisation(s) will enforce the policy?	TSA
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of	£ 0	Decrease of £ 0
		Net Impact £ 0

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

Evidence Base (for summary sheets)

Purpose and intended effect of measure

The proposed measure is the issue of directions on three issues by the Secretary of State to the new regulator of social housing, the Tenant Services Authority (TSA) in accordance with section 197 of the Housing and Regeneration Act 2008 ('the 2008 Act'). The Secretary of State will direct TSA on the content of the standards it intends to issue to social housing landlords on the management of social housing. Directions and standards are new regulatory powers included in the 2008 Act.

The intended effect of the directions is to set parameters on rents, decent homes and tenant empowerment policies, permitting TSA to set standards ensuring policy continuity on these key issues, but allowing flexibility and independence for TSA on most aspects of standard-setting.

The only policy change required by the directions is a proposed change to the formula for rent setting by housing association landlords to incorporate a minimum rent level ('rent floor') for one year from April 2010. The purpose is to eliminate the effect of any deflation over and above 2.5 per cent on landlords' rental income and reduce the chances of associations having to cut back on development and ongoing maintenance. This in turn would help to further the Government's objectives around housing supply, standards, and protecting jobs in the construction sector. The proposed direction imposes a rent floor for one year only, but the Government does not rule out proposing a floor for future years should it be necessary – this would be achieved through another direction.

Background

This consultation on directions is a small part of a wider development – the reform of social housing regulation through the creation of a new stand-alone social housing regulator with power to regulate all social landlords (housing associations and local authorities) and ensure tenants are at the heart of regulation and have more choice in the service they receive. This was initially recommended by *Every Tenant Matters: A Review of Social Housing Regulation*, an independent review by Professor Martin Cave launched June 2007. The Government consulted on its response to the Cave Review on the same day, and took forward its proposals in the 2008 Act.

More details of the general background are provided in the Housing and Regeneration Act impact assessment (11 December 2008), pp.108-139, which is available at:

<http://www.communities.gov.uk/documents/housing/pdf/housingregenactimpactassess>

Following Royal Assent to the 2008 Act, TSA was set up and granted interim regulatory powers over housing associations (registered social landlords (RSLs)) on 1 December 2008. These are the same regulatory powers previously available to the Housing Corporation under the Housing Act 1996 and other legislation. TSA is required to consult on any standards it seeks to set on how social housing is managed and the financial and other affairs of landlords, and on how it will use the additional powers in the 2008 Act. The Government will not commence TSA's new powers and remove its interim ones until TSA has completed its consultation.

The 2008 Act grants the Secretary of State a power to direct TSA on the content of standards (on a limited range of issues), and to direct TSA to have regard to specified objectives (on all issues connected to management of social housing or financial and other affairs of providers). The Government therefore intends to issue directions before TSA consults formally on standards.

Fuller background on the context, including the legal powers, is in the main consultation text.

Reasons for intervention

The reasons for the wider policy intervention, the reform of regulation and set up of TSA, are addressed in the Housing and Regeneration Act impact assessment, page 116. This impact assessment deals only with the reasons for issuing directions.

The Secretary of State has a legal power to direct but is not required to do so. Option 1 below envisages no use of the power to direct, Option 2 limited use and Option 3 extensive use. The choice of option depends on the extent to which it is necessary or desirable to set further parameters on the standards which TSA can set. TSA is required by the 2008 Act to set the standards which it believes will best meet its statutory objectives and must consult with stakeholders.

The Government stated in response to the Cave Review and in Parliament that TSA should be an independent regulator, not subject to extensive policy or technical oversight. In general, it is for TSA to decide, with involvement from other stakeholders (including the Government), what standards are suitable.

The reason for intervention on the rent floor is to eliminate the effect of any deflation over and above 2.5 per cent on landlords' rental income and reduce the chances of associations having to cut back on development and ongoing maintenance. This in turn would help to further the Government's objectives around housing supply, standards, and protecting jobs in the construction sector.

Policy objectives

The broader objectives of Government and TSA are set out in the Housing and Regeneration Act impact assessment. TSA has ten statutory objectives, which are listed at Annex A.

The main objective of the directions is to ensure that the TSA is able to work independently and flexibly to fulfil its duty to set standards to improve tenant services and give tenants a greater say in policy, while ensuring certainty for Government and stakeholders on key policy and financial issues.

There is no intention to change any element of policy through the direction (except the proposed rent floor). The goal is to continue the policy status quo, but it is necessary to do so through the new legal and technical framework in the 2008 Act. On the rent floor, the objective is to give RSL landlords more certainty about future income at a time of expected deflation, and to eliminate the effect of deflation over and above 2.5 per cent on their capacity to provide new social housing.

Links to other policy areas and programmes

This policy is a minor part of the wider policy of reforming regulation and setting up TSA. This wider policy is explained in detail in the Housing and Regeneration Act impact assessment.

The issue of directions plays an important role in the timetable for setting up TSA with its new powers in the 2008 Act. These new powers, which include standards and wider enforcement powers, are necessary to enable TSA to deliver the benefit of improved choice, protection and involvement of tenants. They are the first stage in a three part process:

- July to October 2009: consultation and issue of directions by Government
- autumn 2009: TSA will consult on standards and guidance on how it will use its powers
- April 2010: Start of new TSA regulatory regime

The Government will also consult shortly on an Order under the enabling power at section 114 of the Act which will outline how TSA will regulate local authority landlords.

The draft direction on which Government is consulting covers three policy areas: rents (housing associations only and any other private bodies which register in time), decent homes and tenant involvement.

Options

The main technical issue considered by the Government was what issues should be subject to direction. It considered the following options:

- option 1: issue no direction to TSA
- option 2: issue a direction only where the Secretary of State may direct on the content of standards (on rent policy, quality of accommodation, and tenant involvement)
- option 3: issue a much wider direction on the three issues in Option 2 and up to ten issues of general social housing policy

Option 1

Under this Option, the Government would not direct TSA in any respect. TSA would be free to set any standards it wished subject to the limits imposed by the 2008 Act, which are:

- TSA must follow its statutory objectives (section 86), including the need to minimise interference and regulate proportionately
- TSA must have regard to the desirability of providers being free to run their business
- standards must be on issues connected to social housing management (or the financial and other affairs of landlords)
- TSA must consult on standards
- TSA may only enforce breaches of standards subject to restrictions in section 218, e.g. consider whether breaches are serious or trivial.

The Government stated in response to the Cave Review and in Parliament that TSA should be an independent regulator, not subject to extensive policy or technical oversight from central government. In general, it is therefore for TSA to decide, in consultation with stakeholders (including the Government), what standards are suitable. This supports adoption of Option 1.

However, the Government has already stated that it does not consider Option 1 appropriate. During passage of the 2008 Act, ministers confirmed an intention to direct on the policy for the level of rents in the housing association sector. The Government has a direct interest in rent levels because policy on rent has a major impact on the public finances (most social rents are paid by housing benefit), as well as a major impact on tenants. At minimum the Government believes that there must be a direction on rent policy to set boundaries and guidelines for a standard to be set by TSA. If it did not, then TSA would have free rein to raise or lower rent levels.

Options 2 and 3

Options 2 and 3 both involve the Secretary of State directing TSA. However, under Option 2, the direction is restricted only to the three key policy issues where the Secretary of State has an enhanced power to direct ('direction on content'), and not on the remainder of social housing management issues where he has a more limited power to direct TSA to have regard to specified objectives ('direction on objectives'). Option 3 envisages directions on objectives on a wide range of social housing policy interests.

The Government believes that the question of whether to adopt Option 2 or Option 3 depends on the degree to which it is necessary or desirable to set further parameters on the standards which TSA can set. TSA is already required by the 2008 Act to set the standards which it believes will best meet its statutory objectives (listed in paragraph 7) and there are other limits

in the 2008 Act; for example, TSA must have regard to the desirability of landlords being free to choose how to manage their own business. The Government stated in response to the Cave Review and in Parliament that TSA should be an independent regulator, not subject to extensive policy or technical oversight from central government. So in general, it is for TSA to decide, with involvement from other stakeholders (including Government), what standards are suitable. This indicates that as a general principle the use of the Secretary of State's direction power should be used only where it is necessary to do so.

The Government's present view is that use of the direction power should be limited to where TSA standards could have a major impact on public finances, or where there are compelling policy reasons to direct. The Government believes this test is only met by the three issues in the draft direction below: rent levels, quality of accommodation and tenant involvement. The principal reason for this is that rent levels and decent homes are the only social housing management issues which have major financial implications. These are also the only three issues where the Secretary of State was given a power to direct on the content of standards (as opposed to directing on objectives).

The Government's view was that no other issues met the test above, and therefore that Option 2 should be adopted. TSA objectives already cover issues such as the good management of homes, or landlord contribution to local well-being. It is committed to consulting widely on those standards. Additional objectives imposed through a direction were not considered necessary.

The rent floor

A 'rent floor' is proposed as part of a direction to TSA under both Options 2 and 3. Under Option 1, there would be no directions, and it would be for TSA to determine whether it wished to impose a floor or not, and how that floor should work as part of its standards; this would therefore be subject to consultation later in 2009. The Government's view is that Option 1 would not provide certainty of rent levels to stakeholders within a reasonable timetable.

Costs and benefits

The draft directions proposed do not impose any additional costs on TSA or on social landlords (housing associations, local authorities and any other bodies which voluntarily become social landlords), other than the rent floor. The proposed draft directions aim to ensure the continuation of existing policy under a changing regulatory system on the three policy areas covered:

- on rents, the direction ensures certainty of rental income to housing associations, and limit the costs to tenants and government
- on decent homes, it ensures continuation of the current programme, while allowing flexibility to agree new strategies to meet the targets where necessary
- on tenant empowerment, it strengthens the requirement on TSA to ensure landlords offer a range of empowerment options and build capacity; this ensures TSA will at minimum continue existing policy (in RSL and local authority sectors)

The TSA may set standards which go further than the direction (e.g. on tenant empowerment), subject to statutory consultation with stakeholders. TSA standards therefore could impose additional costs or burden, but such costs cannot be covered in this impact assessment, which only covers directions. However, TSA must have regard to minimising additional burdens on landlords.

The principal benefit of the proposed directions (other than the rent floor) is to ensure continuity of existing policy within a new legal regime, while permitting TSA flexibility to achieve its objectives.

In one respect the rent direction amends the existing rent formula, by adding a floor (minimum level) to the annual rent increase for tenants of housing associations in the year from April 2010

to March 2011 only. The rent formula was set by Government in 2001 as part of the rent restructuring policy. It is intended to be fairer by making rents for properties of a similar size in the same parts of the country more comparable, irrespective of who the landlord is. The formula is dependent on inflation (RPI) in the previous September; a target rent increase of R + 0.5 per cent is set for most housing associations. However, in September 2009, inflation is estimated at minus 3 per cent, which means that the formula would require most housing associations to implement a significant reduction in rent levels for 2010-11.

The effect of the 'rent floor' proposed in the direction would be that RSLs would not be obliged to reduce their rents by more than 2 per cent in cash-terms in 2010-11. On the assumption that RPI in September 2009 will be minus 3 per cent, most rent increases would therefore be minus 2 per cent. They would then rise according to the normal formula in subsequent years (i.e. rent increases would be the same from April 2011, but the base would be higher if there was a floor in 2010-11). Based on data provided by the Tenant Services Authority, the estimated cost to landlords of reduced rental income from not having a minus 2 per cent rent floor is estimated at £391m over 10 years (NPV). Considered differently, the cost to those paying rents to housing associations of having a minus 2 per cent floor – compared to the rent reduction they would receive if there was no floor – is £391m over 10 years, and the benefit to landlord will be the same amount. About 60 per cent of rents are paid by Government through housing benefit, a 40 per cent by tenants. However, it is important to note that a minus 2 per cent rent floor would have no effect (compared to the normal formula) if RPI in September 2009 was minus 2.5 per cent or greater. The table below illustrates that the costs and benefits would depend crucially on the level of RPI inflation in September 2009:

RPI inflation in September 2009	Cost / benefit (NPV over ten years)
Minus 2.5 per cent	£0
Minus 3 per cent	£391m
Minus 3.5 per cent	£782m

In the event that RPI in September 2009 is less than minus 2.5 per cent, having a minus 2 per cent rent floor would lead to additional benefits to society in the form of additional development of social homes, and mitigate the risk to the overall health of the housing association sector. Housing associations depend on rental income to raise the additional finance needed to build more social housing, and to provide management services to tenants. A minus 2 per cent floor would eliminate the effect of any deflation over and above 2.5 per cent on landlords' rental income, and therefore reduce the risk that they would have to cut back development and ongoing maintenance. This would help protect Government's objectives around housing supply standards, and protecting jobs in the construction sector. We anticipate that these benefits would exceed the costs of having a rent floor for one year.

Simplifications / administrative burdens

The direction does not add any administrative burdens to TSA or to landlords.

The Government has taken care to limit the direction to the minimum necessary detail to achieve their goal. The rationale for limiting the detail is as follows:

- TSA is an independent regulator and we do not wish to limit its ability to respond to tenants' concerns by setting a direction which is inappropriately detailed

Risks

There is a risk that the draft directions will not achieve the desired goals because of technical error or because the Government has not foreseen a particular policy need. In particular, that the rent direction might not be suitable in all circumstances given the current economic uncertainty. The Government seeks views on whether the directions are technically adequate.

There is a risk in consulting on a direction indirectly affecting local authority landlords before a section 114 Order (permitting the regulation of local authority landlords by TSA) is laid. However, we intend that the section 114 Order will be compatible with the draft directions.

As discussed above, the proposed rent floor would have no effect if RPI inflation in September 2009 was minus 2.5 per cent or greater. However, even if the proposed rent floor did come into effect, there is a risk that the specified benefits may not be fully delivered, because they depend substantially on landlord and lender behaviour. However, the Government believes that the risk of not having any rent floor next year to the development of new homes and possibly to the viability of some associations is much higher.

Consultation

On the wider issues of regulatory reform and set up of TSA, the Government consulted on its proposals in *Delivering Housing and Regeneration: Communities England and the future of social housing regulation* (19 June 2007). In addition, the independent Cave Review (2006-07) sought stakeholder views.

The 2008 Act was subject to extensive discussion in Parliament and with stakeholders. This included discussion of section 197, the direction power. Ministers stated in Parliament that they envisaged TSA as an independent body largely setting its own standards, but that Government needed a power to direct to ensure key Government policy objectives could be met. Ministers confirmed in Parliament that they intended to direct on rent policy.

Implementation and enforcement arrangements

On completion of this consultation, the Government will analyse responses and issue a direction. Under the 2008 Act, TSA must follow the direction when it consults on and issues performance standards to landlords. TSA has powers in the 2008 Act to enforce performance of its standards, and the Government intends to commence those powers once TSA has issued its standards.

Post-implementation review

The impact and costs of the wider policy of regulation reform and setting up TSA will be reviewed within three years of implementation of the new regulatory system, which we would anticipate to be in late 2012 to early 2013.

The Government will review any directions it issues at an appropriate point.

Statutory and specific impact tests

We have completed an initial screening process to assess whether a full equalities impact assessment is needed and have determined that it is not. We concluded that because these are statutory intervention measures we are introducing, they do not impact any specific persons or groups listed below.

Because these proposals do not involve a change in policy (other than the proposed rent floor), the Government does not consider that there are any impacts, costs or benefits on competition,

legal aid, sustainable development, carbon or other environment, health impact, race equality, disability equality, gender equality, human rights, or rural proofing.

Small firms impact test

Directions could indirectly affect small non-profit bodies (housing associations), and any small profit-making firms which voluntarily registered as social landlords. However, since no policy change or additional regulation is proposed (other than the proposed rent floor), the actual impact of these directions is likely to be nil. There may however be a benefit to small non-profit bodies in added certainty that the current rent formula will be maintained, together with a floor for 2010-11 that would absorb the impact of any deflation over and above 2.5 per cent on rental income.

Specific Impact Tests: Checklist

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

Annexes

ANNEX A: TSA STATUTORY OBJECTIVES

(These are taken from section 86 of the 2008 Act).

- (1) to encourage and support a supply of well-managed social housing, of appropriate quality sufficient to meet reasonable demands.
- (2) to ensure that actual or potential tenants of social housing have an appropriate degree of –
 - (a) choice, and
 - (b) protection.
- (3) to ensure that tenants of social housing have the opportunity to be involved in its management.
- (4) to ensure that registered providers of social housing perform their functions efficiently effectively and economically.
- (5) to ensure that registered providers of social housing are financially viable and properly managed.
- (6) to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated.
- (7) to encourage investment in social housing (including by promoting the availability of financial services to registered providers of social housing).
- (8) to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds.
- (9) to guard against the misuse of public funds.
- (10) to regulate in a manner which –
 - (a) minimises interference, and
 - (b) is proportionate, consistent, transparent and accountable.

It is up to the Regulator to interpret, implement and balance the objectives as it sees fit.

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