



# Community Land Trusts

## **A consultation**





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# Section 1

## Introduction

The Government believes that everyone should have the opportunity to a decent home at a price they can afford; in a place where they want to live and work, and within a sustainable community. But it is not just about housing for individual families. Good housing can improve our social, environmental and economic well-being. It helps create better communities that can attract investment and skilled workers, and getting the design right can also improve the environment and reduce our carbon footprint. However, high demand for housing, lack of supply and consequent problems of affordability have become issues for many parts of the country. The Government aims to tackle this by achieving a better balance between housing supply and demand through an increase in the supply of housing, both at open market prices and where necessary at “affordable” (ie subsidised) prices.

The Government wants to help more people to own their own home where this is financially sustainable. It believes that this not only enables them to achieve their aspirations but also helps to meet additional objectives such as improving public services. We therefore offer a range of shared equity products, as well as discounted property schemes (such as the right to buy and the right to acquire), to help first time buyers (including social tenants and key workers) who may not be able to afford, without assistance, to buy a home of their own.

The Government also recognises the need to provide those who are unable to afford market rents or buy a home of their own, with affordable social rented housing that provides security of tenure. For example families on low incomes, people with severe disabilities, some older people and others for whom home ownership is unlikely to be the right option.

The Government has therefore set a target to provide 240,000 more homes a year in England by 2016, investing £8.4bn over the next three years in a major programme to offer a wide choice of housing to meet the needs of the whole community in terms of tenures and price ranges, ranging from housing at open market prices to social rented housing. This is where we believe Community Land Trusts (CLTs) alongside housing associations, local authorities, Local Housing Companies and housing co-operatives<sup>1</sup>, may have a part to play in helping deliver the Government’s target. However, it is for local communities and local decision makers to decide on what will work in different towns, villages and communities.

<sup>1</sup> A housing co-operative is a housing organisation where members (tenants) democratically control and manage their homes. Many Housing Co-ops also own their properties, but some manage properties for other landlords (ie a council or a housing association). Most Housing Co-ops are registered as Industrial & Provident Societies, which gives the co-op a legal structure, allowing it to operate as a co-operative.

This consultation document, which only covers England, sets out Government policy on the regulation of, financial support for and access to social rented and affordable housing provided with public subsidy. It seeks views on how these policies relate to the concept of CLTs and the development of a viable, well managed and robust CLT sector.

# Section 2

## Recognition for Community Land Trusts

A Community Land Trust (CLT) is a local community-controlled organisation set up to own and manage land and other assets in perpetuity for the benefit of the community. The assets other than land may be, for example, affordable housing, workspaces, agricultural facilities, commercial outlets, or community facilities.

The Government is committed to helping the development of a well managed and financially robust CLT sector. CLTs were suggested as a possible model for delivering affordable housing in the Government's *Housing Green Paper, Homes for the Future: more affordable, more sustainable* (July 2007) alongside other new forms of delivery vehicles such as Local Housing Companies and Arms Length Management Organisations (ALMOs)<sup>2</sup> (in addition to traditional providers such as local authorities and housing associations). The potential benefits of CLTs, as a useful part of a 'mixed economy' of different affordable housing providers and models was also acknowledged by the Government in the report of the Shared Equity Task Force<sup>3</sup>.

### A Brief History

The CLT mechanism was first developed in Britain and Ireland out of experiments in practical land reform by the co-operative movement and the Chartists in the nineteenth century. It was subsequently revived in India and in America. CLTs are also used by crofters in Scotland to buy land from absentee landlords<sup>4</sup>.

There are already a few successful rural CLTs in existence or under development in England, mostly providing properties for purchase on a shared ownership basis, though in some cases with some properties also available for rent. Examples of CLTs serving rural communities include Holsworthy in Devon, St Minver in Cornwall, Holy Island in Northumberland and Chipping in Lancashire<sup>5</sup>.

<sup>2</sup> An Arms Length Management Organisation is a company set up by a local authority to manage and improve all or part of its housing stock.

<sup>3</sup> Report of the Shared Equity Task Force December 2006.

<sup>4</sup> Summarised from *'History of CLTs, Scottish experience, CLTs in the USA by Pat Conaty'*

<sup>5</sup> Further information on these schemes can be found in *'Then we will do it ourselves: A report on the rural community land trusts'* (2008) Community Finance Solutions & Wessex Reinvestment Trust,

### **HOLSWORTHY COMMUNITY PROPERTY TRUST (CPT)**

Holsworthy CPT was formed in 2005, as a company limited by guarantee and registered charity, by local people. The aim of the Trust is to provide affordable housing for local people who are unable to purchase a home on the open market.

In 2007, the Trust acquired five flats above a former supermarket in the centre of town which the developer had been required to provide as affordable homes as part of a larger development. The flats have been renamed Whitlock Court and have been sold as part equity purchases to local people unable to purchase on the open market.

The Trust is looking to increase the number of homes it can offer on a part-equity basis and also plans to offer homes to rent in the future.

The concept of CLTs therefore is not new but the recent interest in developing this further has shown that there are legal, technical and practical difficulties that may need to be overcome to make CLTs more effective, particularly where planning gain<sup>6</sup> or public funding, in the form of grant, is involved.

## Legal Models

CLTs can adopt a number of different legal forms. Those available include:

- A **Charity**: an organisation whose purposes are exclusively charitable (a charity cannot have some purposes which are charitable and others which are not) The Charities Act 2006 states that a charitable purpose is one that falls within the list of thirteen descriptions<sup>7</sup> of purposes contained in the Charities Act and is for the public benefit.
- An **Industrial and Provident Society**: an organisation conducting an industry, business or trade, either as a co-operative (for the benefit of its members) or for the benefit of the community. Co-operative societies are run for the mutual benefit of their members, with any surplus usually being ploughed back into the organisation to provide better services and facilities. Societies run for the benefit of the community provide services for people other than their members.
- A **Company Limited by Guarantee**: a private limited company where the liability of the members is limited. Such a company does not have a share capital, but has members who are guarantors instead of shareholders. Limitation of liability means that the members can only be required to pay the nominal sum each guarantees (eg £1) in the event of the company being wound up while they are a member (or within one year of their ceasing to be a member). This type of company does not issue shares and profits are not distributed to the members. A company limited by guarantee may qualify as a registered charity if it meets the necessary criteria.

<sup>6</sup> "Planning gain" in this context refers to a process by which a condition for giving planning permission for a development is that the developer includes community benefits or safeguards – often in the form of a proportion of affordable housing on the site.

<sup>7</sup> A list of the thirteen descriptions is available at <http://www.charitycommission.gov.uk>

- A **Company Limited by Shares**: the most commonly used business form. In this type of company limitation of liability means that if the company fails there is no claim on the assets of the shareholders beyond their investment. Shares are issued and directors are appointed by the shareholders. The purpose of this type of company is to trade and make profits. These profits can be retained in the business to fund future growth or distributed to shareholders as dividends. A company limited by shares cannot be registered as a registered charity.
- A **Community Interest Company (CIC)**: a new structure created by the Companies (Audit, Investigations and Community Enterprise) Act 2004 designed specifically for those interested in establishing social enterprises. A CIC can have the structure of a company limited either by shares or guarantee. A CIC cannot be a charity and will not have the benefits of charitable status, such as tax concessions. CICs are subject to regulation, by a system established under the same Act.
- A **Limited Liability Partnership (LLP)**: a legal entity that has a legal personality separate from that of its members. Like a limited company, an LLP can do all the things an individual or company can do. It can make contracts, sue or be sued, hold property or become insolvent. Unlike other forms of partnership, the liability of its members, however, is limited. LLPs cannot register as charities.

The majority of CLTs, to date, have been constituted either as Industrial & Provident Societies for the benefit of their communities, or as Companies Limited by Guarantee, some with charitable status. The general view of CLT practitioners is that the other legal forms, whilst theoretically available, do not in practice fully meet the objectives of a CLT.

## Legal Definition

The Government has defined CLTs in section 79 of the Housing and Regeneration Act 2008 (the 2008 Act) to ensure they will be eligible for registration by the social housing regulator, the Tenant Services Authority (TSA).

### **STATUTORY DEFINITION OF COMMUNITY LAND TRUSTS**

A Community Land Trust which qualifies as an English body is defined in the 2008 Act as a corporate body which satisfies the conditions below (in those conditions “local community” means the individuals who live or work, or want to live or work, in a specified area):

**Condition 1** is that the body is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order:

- to provide a benefit to the local community and
- to ensure that the assets are not sold or developed except in a manner which the trust’s members think benefits the local community.

**Condition 2** is that the body is established under arrangements which are expressly designed to ensure that:

- any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members)
- individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members) and
- the members of the trust control it.

An English body which provides social housing in England (and fulfils various other criteria specified in the 2008 Act) is eligible for registration by the social housing regulator, the TSA. A definition of a CLT specifying its key characteristics is included in the definition of English bodies. The definition does not of itself bring access to funding or support, nor set in stone Government policy about how the CLT sector can best develop. Nor is it all-embracing, since there can be CLTs which do not satisfy the definition. Since registered charities, industrial and provident societies, and registered companies also fall within the definition of an English body, a CLT that does not satisfy the definition but which is one of these types of organisation would also be an English body. However, the legal definition, in addition to its immediate statutory application, may also serve as a guide for stakeholders and partners as to the nature of the CLT sector.

**Question 1: Do you agree that the CLT model has a role to play in a ‘mixed economy’ of different social and affordable housing providers?**

**Question 2: What role can CLTs play in both a rural and urban context?**

## Pilot Study

The Housing Corporation<sup>8</sup> has supported Community Finance Solutions (CFS) of the University of Salford in a pilot study of fourteen CLTs across the country – seven in urban areas and seven in rural areas. The aim of the study was to explore what role CLTs have to play in delivering affordable housing and to identify models that are scaleable (ie can be used regardless of the size of CLT), deliverable and can be replicated. Currently CLTs are eligible to apply, with a Registered Social Landlord (RSL)<sup>9</sup> partner, for Housing Corporation funding, through the National Affordable Housing Programme 2008-11,<sup>10</sup> to deliver social rented and affordable homes. CFS recently published a report<sup>11</sup> on the experiences of the seven rural pilots, and a toolkit<sup>12</sup> providing helpful pointers for communities wishing to explore the potential of CLTs in urban areas.

The Government now wants to move the CLT debate forward and to consider some important questions – for instance, what the criteria for financial support might be, and how to maximise the chances of a viable and well managed sector being developed. The Government also wishes to consider the role that CLTs might play in both the urban and rural context and how perpetuity of community benefit should and may be ensured.

<sup>8</sup> The Housing Corporation is the government agency which at present funds new affordable homes and regulates housing associations in England.

<sup>9</sup> This is the technical name for social landlords that are registered with the Housing Corporation to provide social housing (most are housing associations, but industrial & provident societies and registered companies are also eligible to register).

<sup>10</sup> A programme managed by the Housing Corporation for the renovation and building of affordable and supported social housing.

<sup>11</sup> Community Finance Solutions & Wessex Reinvestment Trust, *'Then we will do it ourselves: A report on the rural community land trusts'* (2008)

<sup>12</sup> *'Placeshaping: A toolkit for Urban Community Land Trusts'* April 2008 both are available at [www.communitylandtrust.org.uk](http://www.communitylandtrust.org.uk)

# Section 3

## Regulation

Existing CLTs are at present not registered with and therefore not regulated by the Housing Corporation. CLTs could however register with the Corporation if their objectives, constitution, etc. satisfy the Corporation's registration criteria. In addition, it is possible for CLTs, who are not investment partners, to bid in conjunction with an RSL for social housing grant from the Corporation to provide social rented and shared ownership properties. The management of any resultant housing by the CLT would be subject to the Corporation's grant funding conditions.

The Housing and Regeneration Act 2008 will in future determine the regulation of providers of publicly assisted low cost rental or low cost home ownership property, which may in the future include CLTs. The Act makes provision for the dissolution of the Housing Corporation, which currently has responsibility for the regulation of social housing provided by registered social landlords, and paves the way for the creation of the TSA as a stand alone social housing regulator. The Act creates a new regulatory regime, covering both profit making and not for profit registered providers, to succeed the existing registered social landlord system. Grant funding under the Act will be provided by the HCA.

The Act requires that if the HCA proposes to provide financial assistance for low cost rental accommodation, it must ensure that the landlord is a provider registered with the TSA. Low cost rental accommodation is defined<sup>13</sup> as:

- made available to rent
- the rent is below the market rate
- the accommodation is made available in accordance with rules designed to ensure that it is made to people whose needs are not adequately served by the commercial housing market

Therefore CLTs wishing to provide low cost rental accommodation, with financial assistance from the HCA, would need to be registered with the TSA and be subject to the regulation regime. The TSA, once established, will set the criteria for registration as a provider of social housing and the standards that providers of social housing must deliver. A CLT would need to meet those registration criteria in order to be registered.

<sup>13</sup> For a complete definition of low cost rental housing and low cost home ownership accommodation see Part 2 of the Housing and Regeneration Act 2008. The Act can be read at <http://www.opsi.gov.uk>.

Under the 2008 Act, there is no equivalent requirement on the HCA to ensure registration where it provides financial assistance for low cost home ownership accommodation (defined in the Act as shared ownership and equity mortgage arrangements designed for people whose needs are not served by the commercial market). However, the HCA must consult the TSA regarding any proposals to fund low cost home ownership accommodation.

## Governance

The 2008 Act sets out key requirements for constitution and purposes which enable a CLT to be defined as an English body. Within these broad limits, individual CLTs may adopt specific arrangements to be responsive to the needs of particular areas so long as they still comply with the definition. The Government, however, expects all CLTs, which own and manage land and other assets for the benefit of the community, to have in place robust governance arrangements that allow for scrutiny and accountability. We would also expect constitutional arrangements to safeguard, protect and make the most effective use of the CLT's assets and any public subsidy for the benefit of the community.

In addition, since all existing CLTs, so far as the government is aware, use one or another of the organisational forms set out above (mainly at present industrial and provident societies) they will also need to comply with any statutory requirements for such bodies, which are likely to include requirements relating to constitution and governance. Where CLTs register with the TSA, the standards set by the Regulator will also apply.

# Section 4

## Access policies

This section sets out the Government's policy in regard to access for rented and shared ownership housing provided by CLTs in receipt of public funds.

The aim of putting public resources into housing is to meet the needs of those, including the most vulnerable in society, who cannot afford to buy or rent in the private sector. The Government therefore believes that, where a CLT, in receipt of public subsidy, provides housing it should be made available in line with the priorities set out in the relevant national access policies (eg in the case of shared ownership), or regional, sub-regional and/or local housing strategies and allocation schemes. Regional and sub-regional housing strategies may be particularly relevant in the case of larger CLTs which are county-wide or which straddle local authority boundaries. Lettings and access policies must also adhere to existing equality and diversity legislation, be fair and transparent, and not unfairly discriminate directly or indirectly.

## Social Rent

As previously stated, the 2008 Act requires that if the HCA proposes to provide financial assistance for low cost rental accommodation<sup>14</sup>, it must ensure that the landlord is a provider registered with the TSA. Once established, the TSA will set the standards for the provision of low cost rental accommodation by registered providers including criteria for allocating accommodation. In setting standards, however, the regulator will have regard to the desirability of registered providers being free to choose how to provide services and conduct business.

Until the standards are set by the Regulator, we would expect all CLTs, in receipt of public subsidy, to consult with the local authority when setting their access policies. In framing their access and allocations policies, CLTs should, wherever possible, take into account the priorities set out in the relevant local authority's allocations scheme (or the relevant local authorities' allocation schemes, in the case of CLTs which straddle a number of local authority districts) while recognising that the CLT may have other policy objectives which they will wish to take into account, such as local need.

<sup>14</sup> Low cost rental accommodation is defined as made available to rent; the rent is below the market rate; and the accommodation is made available in accordance with rules designed to ensure that it is made to people whose needs are not adequately served by the commercial housing market.

## Shared Ownership

Under shared ownership agreements purchasers buy a share in a property and are granted a long lease by the landlord. Both landlord and leaseholder are entitled to a percentage of the full market value (known as an equitable interest). Usually leaseholders pay rent on the landlord's "share", and have an option under the lease to make further payments which will increase their share, up to 100 per cent ownership.

All first time buyers with a household income below £60,000, who cannot afford to purchase a home unassisted on the open market, are eligible to apply for shared ownership properties to which government funding has contributed. Some schemes can only be accessed by existing social tenants, whereas first time buyers and key workers generally have priority access to other Government funded schemes. CLTs seeking public funding will need to take account of the Government's eligibility criteria and its priority groups for assistance when setting out their access policies for any publicly funded properties they provide on shared equity terms.

For shared ownership homes, the total costs for the leaseholder (eg insurance, repairs etc) will need to be clear and understandable, as well as being affordable. A shared ownership leaseholder will often pay 100 per cent of such costs, despite owning only a percentage of the value of the property. At present, applicants for shared ownership properties provided by housing associations or developers must undergo a HomeBuy Agent (HBA) affordability check to ensure they can sustain the costs of home ownership.

HBAs are a network of 23 RSLs who are contracted by the Housing Corporation to provide a one-stop shop for all grant funded Low Cost Home Ownership (LCHO) products. HBAs assess eligibility, ensuring that applicants for assistance can afford home ownership in the longer term<sup>15</sup> and provide information on all the housing options available in their given area of operation. We would expect all applicants for shared ownership properties with public funding provided by CLTs to go through a HBA eligibility and affordability check.

<sup>15</sup> The network of HomeBuy Agents carry out a headline check of applicant's capacity to afford and sustain a mortgage and the costs associated with home ownership longer term. Many of these achieve this by assessing applicants using the Housing Corporations 'Affordability Toolkit' which is available on the Corporation's website at [www.housingcorp.gsx.gov.uk](http://www.housingcorp.gsx.gov.uk)

# Section 5

## Finance

This section sets out the issues surrounding finance for CLTs and seeks views on how CLTs may be able to secure funding for their projects. Principally there are three stages in the life cycle of a CLT – set up or pre-development, development, and post development. The funding required in each stage will differ in nature – for example public or private grants or loans.

### Pre-Development

The experiences of the pilot projects supported by the Housing Corporation and the University of Salford have highlighted the need for a source of revenue<sup>16</sup> funding in the early stages of a CLT's development, before income is generated either through rent or sales receipts from shared ownership properties. This initial funding is required for setting up the CLT including legal advice on the best constitutional model for the circumstances; finding and checking the land; early checks with the local authority over items such as planning permissions; consulting, informing and communicating with the community generally; initial design of the scheme; and drawing up the business plan to ensure that the scheme will be viable.

An option proposed by the team at CFS has been the establishment of a Facilitation Fund. This fund was launched at the end of September 2008 as the Community Land Trust Fund to:

- provide a source of funding for the initial set up costs of a CLT
- offer pre-development finance to fund the detailed design and technical aspects
- and provide some of the development period loan funding for other costs

The Fund has been set up with a £2m investment by charities. CFS are looking to secure further funding from other charities and possibly the National Lottery. The Fund will give grants and make loans. Interest on such loans will be charged at a rate that will cover administrative costs, plus an element of profit to enable the fund to increase.<sup>17</sup>

<sup>16</sup> Revenue expenditure is the cost incurred in the day to day running of the business. Capital expenditure is the cost associated with the acquisition or development of an asset. Therefore some costs incurred by the CLT in the development or acquisition of assets could be capitalised (and repaid for recycling to other groups in the form of a loan) if the scheme proceeds.

<sup>17</sup> More details on the proposals for a facilitation fund can be found in the document 'Then we will do it ourselves' available on the website [www.communitylandtrust.org.uk](http://www.communitylandtrust.org.uk)

The Government is also establishing a Communitybuilders scheme to provide support to community led organisations, which could include some CLTs, in tackling and solving local issues. The scheme can provide support from the initial feasibility stage of a project through to delivery.

## Development Stage

In order to provide homes for the community, a CLT will initially have to find (and potentially buy) land and fund the cost of development, or purchase existing properties. CLTs will therefore need medium term finance to fund the purchase and/or development of properties.

CLTs in partnership with a registered provider may currently apply for funding for the purchase and development of affordable homes through the Housing Corporation's National Affordable Housing Programme 2008-11<sup>18</sup>. All bids for funding through the programme need to meet the Corporation's criteria of efficiency, deliverability, compliance with the Corporation's design and quality standards, and strategic fit with national and regional housing plans and spatial strategies. In addition all rents must conform to the Housing Corporation's target rent regimes<sup>19</sup>.

At present community led CLT schemes generally prove to be more expensive, using existing assessment criteria, when compared to affordable housing schemes being delivered by larger RSLs, both at the level of grant per home and the grant per person housed. CLTs, however, aim to provide affordable housing in perpetuity and to achieve other benefits for the area, such as building the capabilities of local people and strengthening the sense of ownership and bonds within the community. These additional benefits and the costs associated with providing them are not usually taken into account when CLT schemes are being assessed for the value for money that is gained for public investment.

The Government therefore proposes to commission a study that will examine the issues associated with the way value for money is considered, to see if CLTs could compete for grant without being disadvantaged when compared to larger, more efficient providers that have more forms of resources they can draw on. The aim is to develop a framework and set of criteria for assessing grant funding of CLT schemes. While the project will be centred on CLTs, it will also have implications in many other circumstances including for instance in proposed Local Housing Companies, and in non-housing asset transfers to communities.

<sup>18</sup> Further information on funding criteria is available in the *'National Affordable Housing Programme 2008-11 Prospectus'* and the Housing Corporation's *'Capital Funding Guide'*.

<sup>19</sup> As set out in the Corporation's document, *Rent Influencing Regime: Implementing the Rent Restructuring Framework*.

The study will:

- use the emerging models of CLTs in different circumstances to examine the issues and possible solutions
- put the approaches to value for money within the present and forthcoming changes in law, policy and delivery mechanisms, with any assumptions within them set out
- highlight the options and changes needed from the current value for money approaches
- identify the positive and negative aspects of any new possible approaches
- cover the financial, economic, social and community, environmental and other costs and benefits
- discuss issues associated with the valuation of public sector land
- examine which benefits can be quantified in money terms, which can be quantified in non-money terms and which cannot be quantified at all for both the housing and the wider community
- examine the issues associated with the achievement of affordability in perpetuity
- discuss any particular issues in relation to other present and potential future delivery vehicles such as Local Housing Companies.

We recognise that these value for money issues already arise in relation to the use of S106 agreements<sup>20</sup>, and in future to the Community Infrastructure Levies<sup>21</sup> proposed in the Planning Bill, but the same issues also arise in other schemes.

**Question 3: Do you think the scope of the value for money study is right? If not what else should be considered?**

Some CLTs may simply want development period loans only. The Housing and Regeneration Act 2008 grants the HCA the power to “*give financial assistance to any person*” in any form with the consent of the Secretary of State. As the priorities and approaches of the HCA evolve, its criteria with regard to the roles CLTs can play in different circumstances, and the finance needed to enable them to perform these roles, will be established. It will however remain a condition of public finance, particularly grant that any receipts must be recycled into more affordable housing, and cannot be used for any other purpose.

<sup>20</sup> Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation, with a land developer over a related issue. For example providing a proportion of affordable homes on a housing scheme. The obligation is sometimes termed as a ‘Section 106 agreement’.

<sup>21</sup> The Community Infrastructure Levy (CIL), the provisions for which are currently going through Parliament, will be a new charge which local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.

## Long Term Funding

CLTs will also need to raise private finance from banks and building societies for the long term funding of schemes, for example to finance the proportion of equity not sold to shared owners or to buy back property that might otherwise be lost to the open market. In developing their business model, CLTs will need to ensure that revenue and cashflow is sufficient to give lenders the confidence to advance funds.

Where shared ownership homes are being provided, prospective purchasers will also, generally, have to obtain mortgages for their equity share. In the short term before there is a significant track record of CLTs or similar schemes, there could be issues for prospective purchasers, in terms of securing mortgages, as finance providers may not be fully comfortable with or understand the different CLT models. Lenders are also unlikely to provide mortgages on properties where the covenants on resale are restrictive. Early discussions with lenders and providers may help to minimise difficulties.

## Mortgagees' powers on default and Mortgagee Protection Clause

CLTs aim to keep the homes they provide as affordable in perpetuity, often by preventing sale by the leaseholder on the open market (either by buying back the property or nominating a purchaser). Private lenders, on the other hand, usually require the ability to take possession of a property to recover their finance in the event of default.

This could create a conflict in circumstances where a mortgagor defaults and the private lender is forced to repossess the property. If the CLT is unable to secure funding to repurchase the property or to nominate a purchaser within a given timeframe, the lender will want to be able to sell the property on the open market.

In accordance with a tri-partite agreement between the Council of Mortgage Lenders, the Housing Corporation and the National Housing Federation, the Housing Corporation's model shared ownership lease for properties in receipt of grant funding includes a mortgagee protection clause (MPC). It is a condition of Housing Corporation grant funding that such a clause must be included.

**MORTGAGEE PROTECTION CLAUSE (MPC):**

The MPC is designed to cover part of a lender's loss should the lender have to take possession of the property on default. MPC protection works by deducting the outstanding amounts owed by the mortgagor from the amount the mortgagee must pay the landlord for the remaining tranche of the equitable interest, and only operates where the sale proceeds are insufficient to cover:

- (a) the principal amount due under the mortgage;
- (b) the reasonable cost of recovering or trying to recover any money due under the mortgage, and acquiring and selling the freehold (including a reasonable allowance for legal, valuation and estate agency work undertaken by the lender's employees);
- (c) any mortgagee protection or endowment policy premiums payable by or recoverable from the leaseholder and secured by the mortgage; and
- (d) not more than 12 months' unpaid interest due under the mortgage.

**Question 4: How can we best ensure that the aims of the CLT continue to be met while ensuring that lenders have appropriate security and therefore make mortgage funding available?**

# Section 6

## Affordable in perpetuity

Homes are the building blocks of communities and have an impact on health, wealth, and chances of success in life. That is why the Government wants to extend the opportunity for sustainable home ownership to as many people as possible. The Government has therefore designed low cost home ownership schemes to help both social tenants and other first time buyers get a foot on the property ladder through outright or partial home ownership. However, the Government also recognises that in some areas, for example, rural areas, housing which is lost to the affordable housing sector can be impossible to replace and opportunities therefore have to be restricted in some cases.

### Existing outright ownership schemes

#### **Right to Buy (RTB) and Preserved Right to Buy (PRTB)**

The RTB was introduced in October 1980 and encouraged more equal access to housing wealth, by providing low income households in social rented accommodation with the opportunity to buy the property they live in at a discount, thus giving them financial assistance to gain a foothold in the housing market. The RTB scheme requires purchasers to repay some or all of the discount if they move within a specified time after the purchase (currently five years in most cases), but after that purchasers are free to move on within the housing market when their circumstances allow.

Former local authority tenants whose homes are transferred to a housing association as part of a stock transfer will become assured tenants and will have the right to acquire (RTA – see below) but will also retain a preserved RTB which in most respects is the same as RTB.

The RTB rather than the RTA would also apply in the case of an RSL tenant with a secure tenancy from a non-charitable housing association. Housing associations granted secure tenancies before the Housing Act 1988 came into force, and therefore there are still some secure tenants of RSLs.

#### **Right to Acquire (RTA)**

The RTA was introduced in the Housing Act 1996. It gives some RSL tenants (and since 2005 some tenants of non-RSLs) the right to purchase their home at a discount. Eligibility must be satisfied in relation to both the tenant and the property. For the tenant, RTB eligibility relates mainly to length of time as a tenant of a public landlord. With regard to

the property, it must be provided with public money (eg social housing grant<sup>22</sup>) and must not fall within one of the RTA exemptions (for example housing provided particularly for occupation by people with certain needs).

RSLs should offer their tenants the most secure form of tenancy appropriate for the circumstances. Usually this means a full assured periodic tenancy, but in some circumstances assured shortholds are accepted as appropriate by the Housing Corporation. An assured shorthold tenancy is an assured tenancy which can be ended simply by notice, without the landlord having to give a reason, after a minimum of six months (in addition to the landlord being able to seek possession on reasoned grounds).

A tenant who has either an assured shorthold tenancy (which includes a demoted tenancy, where a demotion order has been made due to anti-social behaviour), or a long tenancy, is not eligible for the RTA.

### **Existing Low Cost Home Ownership Schemes**

In addition, building on previous shared equity/ownership schemes, in 2006 the Government introduced its low cost home ownership scheme – HomeBuy, based on equity sharing – to help social tenants, key workers and first time buyers on to the property ladder. The Government has helped 110,000 households to buy a home through shared ownership and shared equity schemes since 1997.

#### **HOME BUY: EXPANDING THE OPPORTUNITY OF HOME OWNERSHIP**

The HomeBuy scheme enables social tenants, key workers and other first time buyers who cannot afford to purchase without assistance, to buy a share of a home and get a first step on the housing ladder.

There are three HomeBuy products based on equity sharing to offer people a choice in the type of home they can buy:

- **New Build HomeBuy** enables people to buy a minimum 25 per cent share of a newly built property, paying a rent on the remainder.
- **Open Market HomeBuy** enables people to buy a property on the open market with the help of an equity loan of up to 50 per cent.
- **Social HomeBuy** enables tenants of participating local authorities and RSLs to buy a minimum 25 per cent share in their current home at a discount and pay rent on the remainder.

All first time buyers with a household income of £60,000 a year or less, who are unable to buy a home on the open market, are eligible to apply for assistance.

<sup>22</sup> Social Housing Grant is a capital grant made available by the Housing Corporation to Registered Social Landlords (the majority of which are housing associations) to provide new affordable housing for rent or low cost home ownership.

In addition to outright ownership schemes, the government promotes a variety of shared ownership schemes. The common feature of all such schemes is that, regardless of formal legal ownership, the “equitable interest” – ie the financial stake in the property – is shared, typically between the purchasing tenant and selling landlord (and in some cases involving the lender as well).

Shared ownership schemes, allow purchasers, who cannot afford to buy in the market, access to home ownership through the purchase of a share (minimum 25 per cent) in a property. Purchasers of property provided on a shared ownership model, including Government funded schemes, are generally allowed to “staircase” – ie increase their equitable interest – up to 100 per cent ownership when they can afford to do so. Although once a purchaser staircases to full ownership the property is lost to the affordable housing sector, the sales of further shares release value for reinvestment by RSLs to help other households.

## Retaining stock under existing outright ownership schemes

There are a number of measures in existence to help retain former social rented accommodation. Local authority and housing association tenants who have purchased their home under the Right to Buy or Right to Acquire scheme on or after 18 January 2005 and who wish to resell their home within ten years of the purchase are required to offer it back to their former landlord at full market value. A similar right of first refusal is applied to outright voluntary sales under the Social HomeBuy<sup>23</sup> scheme (which can include outright sales) offered by participating local authorities and housing associations.

The receipts from RTA sales are required to be reinvested in new social rented accommodation. However in some areas provision of replacement housing may be difficult; this is particularly the case in small rural communities. There are therefore exemptions from the RTA scheme in designated rural areas<sup>24</sup> (generally settlements of 3,000 inhabitants or less) where social rented housing, if lost to the market, would be difficult to replace. Social HomeBuy receipts for both local authorities and RSLs are required to be reinvested in affordable housing and new social rented provision. Properties in rural areas exempt from the Right to Acquire may not be sold under Social HomeBuy. As Social HomeBuy is voluntary participating landlords may also exclude other properties which they wish to retain.

<sup>23</sup> Social HomeBuy provides opportunities for tenants who do not have the Right to Buy or Right to Acquire, and those who do, but cannot afford outright purchase under the statutory schemes, to buy a share (minimum 25 per cent) in their rented home, at a discount.

<sup>24</sup> Rural areas exempt from the RTA were designated in Statutory Instruments SI1997 No 620-625 and SI 1999 No 1307.

## Retaining stock under existing shared ownership schemes

Generally the Government wants households who buy a share in a property to increase their equity stake when they can afford to do so and move to full ownership<sup>25</sup>. However, the Government also recognises that in some areas, for example, rural areas, housing which is lost to the affordable housing sector can be impossible to replace and opportunities therefore have to be restricted. When shared owners wish to move and sell their share, the housing association will generally nominate a household from their waiting list. Alternatively a shared owner may increase their equity share to 100 per cent and sell their leasehold interest at full market value on the open market. However, in many circumstances, landlords have a right of first refusal to buy back properties when owners who have purchased 100 per cent equitable interest wish to sell. Leases offered by local authorities and newer shared ownership leases offered by housing associations may include a pre-emption clause that provides for the right of the landlord to re-purchase within a stated period.

One way of retaining shared ownership properties for future purchasers is to restrict the equity share which shared owners may acquire to less than 100 per cent. However, prior to the introduction of the Housing and Regeneration Act 2008 (see below), restricting staircasing carried the risk of “early” enfranchisement ie that the shared owner of a house could purchase the freehold under rights in the Leasehold Reform Act 1967 before they owned 100 per cent of their home. This is because, under that legislation, housing associations were only protected from the risk of early enfranchisement if their shared ownership leases allowed purchasers eventually to staircase to 100 per cent. If staircasing was restricted, social landlords would not be protected and would be at risk of early enfranchisement. There was previously no protection from early enfranchisement for non-housing association providers. The risk relates to shared ownership houses only, not flats, since under leasehold legislation, the tenant’s share of a shared ownership lease of a flat must be 100 per cent before the lease is regarded as a long lease for the purposes of deciding whether or not the tenant has the right to join together with other tenants to buy the freehold or the property containing their flats (collective enfranchisement).

## New measures to ensure that housing remains affordable

Provisions in the Housing and Regeneration Act 2008 enable the Secretary of State in England to designate “protected” areas if it considers it appropriate to do so to support the provision and retention in the area of shared ownership housing. The Government would want to designate an area as a protected area if it is one where shared ownership houses would be hard to replace and should be retained for future purchasers. One mechanism for retaining properties in protected areas is to permit providers to restrict the equity share

<sup>25</sup> Purchasers buy an initial minimum 25 per cent share in a property and are able to buy further shares in their homes in minimum tranches, if they can afford to do so. Minimum tranches vary, and will be specified in the lease, but will always be a figure between 10% and 25%.

which purchasers can buy. Alternatively, providers could allow purchasers to increase their stake to 100 per cent ownership and buy back the properties when the purchaser wishes to sell for onward sale on a shared ownership basis. The Government is publishing the criteria to be taken into account when deciding whether to designate an area as a protected area and consulting on the areas to be designated in parallel with this consultation – *Shared Ownership and Leasehold Enfranchisement and Protected Areas*. The Government envisages, subject to consultation, that as a starting point protected areas will be small rural settlements, currently exempt from the Right to Acquire scheme.

The provisions will also protect non-housing association housing providers who offer shared ownership leases for houses on the same terms and conditions as housing associations (subject to any other conditions which may be prescribed by the Secretary of State) from early enfranchisement. The conditions which the Secretary of State proposes to apply to non-housing associations are also contained in the parallel consultation.

## CLTs and retention of housing stock

Community Land Trusts enable communities to acquire land and assets, and provide both social rented and low cost home ownership properties as affordable in perpetuity. Most CLT models do this by separating the ownership of the land and homes provided on the land, retaining the value of the land and assets in perpetuity, on behalf of the wider community. However, depending on the CLT model used it is not always possible, under current legislation or funding conditions, to prevent an owner/tenant in a CLT property from acquiring 100 per cent ownership of the property and selling onto the open market. For example if Government funding is provided to CLTs for the provision of social rented homes, tenants may have the statutory right to acquire their home at a discount and with homes offered on a shared ownership (part buy/part rent) basis, purchasers generally have the right to increase their equity share to 100 per cent.

There are, however, a number of approaches CLTs can use to retaining stock:

- Those offering social rented accommodation with grant funding in designated rural areas, or tenants of CLTs which are co-operative housing associations, would be exempt from the RTA.
- Some CLTs are charitable companies limited by guarantee, with charitable housing objectives and as such are covered by an existing exemption (Charitable Housing Trusts are exempt from leaseholder enfranchisement) where the housing is provided for charitable purposes.

- An option which may enable CLTs to keep properties offered on a part equity basis as affordable in perpetuity is a Declaration of Trust model. In this the trust deed is an agreement between joint owners that sets out the share of equity for each owner and the basis on which these shares can be sold. This type of joint ownership is normally used for situations in which each owner is entitled to live in the property, but the CLT movement envisages it being adapted for use in landlord/leaseholder situations.

Some situations in which CLTs wish to retain control of disposal and affordability of their properties may be governed by section 106 agreements<sup>26</sup>. These are obligations imposed as a condition of planning agreement which enable affordable housing contributions to be tailored to the circumstances of a particular area. In these cases, it will be necessary for the method used to fit with the section 106 requirements.

Although the approaches set out above may be suitable to enable CLTs to prevent the sale of their housing on the open market, it appears that CLTs would generally prefer to use the Housing Corporation's shared ownership model. One reason for this is that, because a variety of shared ownership products has been on the market for some time, it is felt this model is already understood and accepted by lenders.

The provisions in the Housing and Regeneration Act 2008 (see 'New measures to ensure housing remains affordable' on page 24), once implemented, will enable any CLT operating in a 'protected area' to retain any shared ownership homes as affordable for future purchasers, by restricting the equity share which the shared owner may acquire. Outside these protected areas, the retention of CLT homes which use the shared ownership model would under the current law require them to use one of the methods set out above. However in addition we are seeking views on how perpetuity of community benefit should and may be ensured in both a rural and urban context.

**Question 5: Are there other ways to ensure perpetuity of community benefit on homes provided by CLTs?**

<sup>26</sup> Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a land developer. For instance a condition for planning permission for building housing on a site might be that the developer also upgrades – or pays to upgrade – roads and local facilities; and/or that a proportion of the housing is affordable.

# Section 7

## Supporting the way forward

In addition to the policy and financial issues addressed in earlier parts of this document, the Government is seeking views on what more can be done to support communities in the development of a viable CLT sector that is well managed, financially robust and provides fair access to housing.

Community based organisations such as CLTs usually lack the expertise, capacity and capability to work through the legal and practical difficulties in turning community initiatives to successful projects. Community led organisations need a range of support and facilities to become effective and efficient in delivering their services, particularly in the early stages. This includes:

- **Technical Support:** CLTs need sources of advice on many matters including legal and constitutional arrangements, governance, finance, planning, architectural and many other issues.
- **Capacity Building:** CLTs need information and skills building to make effective decisions. This can be gained by shared learning from other CLTs, from RSLs and other housing bodies, community development organisations (such as Community Development Foundation), academics and consultancies.
- **Information:** Part of the training and learning will need to be re-enforced through updated information services and sharing of best practice which build on existing sources such as those available on the CLT website currently hosted by the University of Salford and the National CLT conferences.
- **Promotional:** To maintain the effective growth of a CLT sector, there will need to be mechanisms for engaging with stakeholders such as local authorities, planning departments, financial institutions etc to promote, educate and resolve issues.

The Government is currently commissioning a research project to review the availability of, and access to, technical expertise and development support for community organisations to enable them to successfully manage and own public assets. The aim of the project is to increase the capacity and capability of communities to own and manage public sector assets but will also cover capacity building provision which is relevant to the development and management of assets that have not been subject to transfer from the public sector.

In the summer we published *Communities in control: real power, real people* setting out a programme for increasing community empowerment, through increasing democratic and civic participation, improving the accountability of local leadership to the community and promoting community led enterprise. The Government wants to see an increase in the number of people helping to run or own local services and assets, and the transfer of more public assets into community ownership. To help achieve this, the Empowerment white paper *Communities in control: real power, real people*<sup>27</sup> commits the Government to establishing an Asset Transfer Unit, building on the work of the Advancing Assets for Communities programme that the Department for Communities and Local Government is funding to demonstrate how the recommendations in the 2007 Quirk Review<sup>28</sup> can be effectively implemented.

The Asset Transfer Unit will promote and support an increase in asset transfer, through an information, advice and referral service, through growing the pool of expertise on asset transfer, through promotion, research, innovation and shared learning, through the development and dissemination of tools and good practice material, and through the promotion of public-private-third sector partnerships.

The white paper also announced plans for a consultation to consider non-regulatory ways of encouraging members of society to take on governance roles in independent and voluntary or community based organisations, such as CLTs.

**Question 6: What other potential support is required to develop a viable, well managed and robust CLT sector?**

**Question 7: How can/should a sustainable framework of support for CLTs be delivered?**

<sup>27</sup> *Communities in control: real power, real people* was launched on 9 July 2008. This White Paper is about passing power to communities and giving real control and influence to more people.

<sup>28</sup> *Making assets work: The Quirk Review of community management and ownership of public assets* (2007)

# Section 8

## Responding to this Consultation

The Government would be pleased to receive any comments on this document by 31 December 2008. Unfortunately we cannot extend this deadline. Comments should be sent to:

Iqram Patel  
Department for Communities & Local Government  
Zone 2/H10  
Eland House  
Bressenden Place  
London SW1E 5DU

Or by email to:  
communitylandtrusts@communities.gov.uk

If you are responding by email please insert **'Consultation – Community Land Trust'** in the subject line. It would also be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

This consultation document only covers **England**.

### Confidentiality and data protection

Any responses to this consultation may be made public by Communities and Local Government. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure 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 other 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. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Alternative Formats under Disability Discrimination Act

If you require this publication in an alternative format (eg Braille or audio) please email [alternativeformats@communities.gov.uk](mailto:alternativeformats@communities.gov.uk) quoting the title and product code together with your address or telephone number.

## 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 Enterprise and Regulatory Reform 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.

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:

Consultation Co-ordinator  
Department for Communities and Local Government  
Zone 6/H10  
Eland House  
London SW1E 5DU

or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

# Annex A

## List of Consultation Questions

### Recognition for Community Land Trusts

**Question 1: Do you agree that the CLT model has a role to play in a 'mixed economy' of different social and affordable housing providers?**

**Question 2: What role can CLTs play in both a rural and urban context?**

### Finance

**Question 3: Do you think the scope of the value for money study is right? If not what else should be considered?**

**Question 4: How can we best ensure that the aims of the CLT continue to be met while ensuring that lenders have appropriate security and therefore make mortgage funding available?**

### Affordable in perpetuity

**Question 5: Are there other ways to ensure perpetuity of community benefit on homes provided by CLTs?**

### Supporting the way forward

**Question 6: What other potential support is required to develop a viable, well managed and robust CLT sector?**

**Question 7: How can/should a sustainable framework of support for CLTs be delivered?**

# Annex B

## List of Consultees

The consultation paper has been sent to organisations and representatives of major interest groups known to us. These are listed below. Respondents are invited to inform us of any other organisation or person that should be made aware of this document.

Action with Communities in Rural England  
CDS Co-operatives  
Chartered Institute of Housing  
Commission for Architecture and the Built Environment  
Commission for Rural Communities  
Community Development Foundation  
Community Finance Solutions, University of Salford  
Community Land Trust Advisory Group  
Community Land Trusts  
Confederation of Co-operative Housing  
Council of Mortgage Lenders  
Department for Business, Enterprise and Regulatory Reform  
Department for Environment, Food and Rural Affairs  
Development Trust Association  
Her Majesty's Treasury  
Home Builders Federation  
Local Authorities  
Local Government Association  
Local Government Chronicle  
National Association of Local Councils  
National Federation of Tenant Management Organisations  
National Housing Federation  
Office of the Third Sector  
Regional Development Agencies  
Registered Social Landlords  
Royal Institute of Chartered Surveyors  
Royal Town and Planning Institute  
Sustainable Development Commission  
Town and Country Planning Association  
Tenants & Residents Organisations of England

# Annex C

## Impact Assessment

Impact assessments have been undertaken and are available for the following areas covered in this document:

- Legal definition of a CLT
- Regulation of low cost rental and ownership accommodation
- Shared Ownership and Leaseholder Enfranchisement
- National Affordable Housing Programme 2008-11
- Consultation on non-regulatory ways of encouraging the take up of governance roles

This consultation document seeks views on how a viable, financially robust and well managed sector can be developed and as such does not require any impact assessments.

# Annex D

## Further Reading

Homes for the Future: more affordable, more sustainable (2007) Communities and Local Government

Homes for the Future: more affordable, more sustainable: Summary of Responses to the Housing Green Paper (2007) Communities and Local Government

Communities in control: real power, real people (2008) Communities and Local Government

Planning Policy Statement 3: Housing (2006) Communities and Local Government

Housing & Regeneration Act 2008 (2008) The Stationary Office

Communities in control: Real people, real power – Standing for Office: Time-Off Entitlements – A consultation (2008) Communities and Local Government

Shared Ownership and Leaseholder Enfranchisement and Protected Areas: A consultation (2008) Communities and Local Government

Making assets work: The Quirk Review of community management and ownership of public assets (2007)

National Affordable Housing Programme 2008-11 pre-prospectus (2007) Housing Corporation

National Affordable Housing Programme 2008-11 Prospectus (2007) Housing Corporation

Capital Funding Guide 2008 (2008) Housing Corporation

Community Land Trusts: A Practitioner's Guide (2007) University of Salford

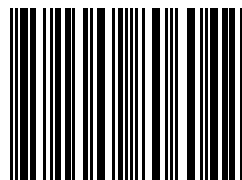
Then we will do it ourselves: A report on the rural Community Land Trusts part of the CLT National Demonstration Programme (2008) University of Salford

Placeshaping: A toolkit for Urban Community Land Trusts (2008) University of Salford

Guidance Note Legal structures for Community Land Trusts (2006) Wrigleys Solicitors

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