Giving tenants control – Right to Transfer and Right to Manage
DCLG May 2012

Response from the Chartered Institute of Housing

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Introduction
CIH has long supported measures aimed at extending the level of influence tenants can exercise to shape the services that they receive and where possible manage local housing services. Tenant Management Organisations have shown that resident run services can provide good quality and value for money services.

Ipsos MORI research for the Tenant Services Authority in 2009 revealed that tenants are interested in exercising greater influence over the management of housing services and saw greater involvement as a mechanism to drive up the quality of service provision.

However, many questioned the degree to which they could exercise effective influence over service improvement leading to ambivalence about certain involvement opportunities. In addition, research undertaken into satisfaction outcomes achieved through the resident controlled housing association Walberton and Elgin Community Homes (WECH) revealed that “empowering communities to take ownership of council estates is a highly effective means for delivering transformative improvements to the wellbeing of individuals in poor and disadvantaged neighbourhoods” (Rosenberg J 2011)

CIH broadly supports the principles underpinning DCLG’s consultation Giving Tenants Control: Right to Transfer and Right to Manage which proposes to make it easier for tenants to exercise their Right to Manage and includes new Right to Transfer regulations for England.

CIH and tenant empowerment
In recent years, CIH has worked with partners to develop the Community Gateway Model: an approach originally developed to enshrine tenant empowerment within the transfer process but subsequently expanded to cover ALMOs and the wider option appraisal process. The Community Gateway process has involved:
• developing a community empowerment strategy that identifies how tenants can increase their involvement in decision-making and management
• agreeing local community areas that will be the focus for community activities and decision making
• giving every local community a wide range of options for involvement, from consultative approaches through to management and ownership options.

Community Gateway Organisations, including Preston, Greenfields Community Housing in Essex, Phoenix Community Housing in the London Borough of Lewisham and Watford have included the following features:
• tenant majority membership, that gives a sense of ownership and community guardianship of the organisation’s values and directions
• a membership which can participate in shaping the organisation’s strategies and policies
• tenant board members elected in some way by the membership
• defined Local Community Areas reflecting community perceptions
• a range of housing options available to local communities, from informal engagement to tenant management and community ownership
• partnership working to provide options wider than housing to local communities (CIH/HCAS/Chapman Hendy (2003).
In addition, CIH has supported the Commission for Co-operative and Mutual Housing (CCMH) which has been set up to explore how community membership housing organisations can contribute to the UK’s housing solutions.

**Specific consultation responses**

**Question 1: Do the Regulations (together with the guidance) meet the objective of being robust, but workable?**

**Question 1:** response: CIH agrees with the principles underpinning the proposed Regulations to make it easier for tenants to exercise their Right to Manage and request a Right to Transfer. These measures clearly reflect the principles of localism and they represent an attempt to extend the statutory right for local authority tenants to change their landlord introduced in the Housing and Regeneration Act 2008 amending Section 34A of the Housing Act 1985.

However, CIH would question whether the measures proposed in *Giving Tenants Control: Right to Transfer and Right to Manage* will be sufficient to address the concerns addressed in paragraph 27: in particular a slowing down in the creation of new TMOs, a lengthy time frame and high set-up costs. CLG consultation recognises that the creation of new Tenant Management Organisations has slowed down in recent years: between 1991 and 1997 the formation rate of TMOs rose to an average of 14 TMOs per year, but the rate of formation has slowed since 1997 and averaged 4 per annum over the decade up to 1999 (Tunstall 2000). In addition, CLG notes the time taken by TMOs to exercise their Right to Manage has taken a lengthy 3 years; and the total cost of supporting a TMO through the process has been between £100,000 and £200,000. Although proposals contained in *Giving Tenants Control: Right to Transfer and Right to Manage* attempt to remove some of the bureaucratic elements of the process, will they be sufficient in themselves to reduce costs, stimulate appetite for greater tenant involvement and control and speed up the process?

CIH believes Government should continue to be vigilant about the effectiveness of these measures. Tenant’s Choice, which preceded Section 34A of the Housing Act 1985 only resulted in a small number of transfers before being repealed in 1996. The proof of these new Regulations will be in the degree to which they effect the underpinning principles, that ownership or management of local authority housing should be decided locally; and that tenants should be empowered to shape the services that they receive and where possible or required to take control of housing or explore transfer options and manage local housing services.

In addition, CIH would make the following specific points about some specific details contained in the Regulations and associated guidance which require further clarification:

- In paragraph 15 of the Regulations, it is not clear how the “new duty to co-operate” will work in practice where a local authority is not supportive of the Right to Transfer. What will be the stages involved in enforcing this duty to co-operate where a local authority is not supportive of the process without legitimate reason?
• In Annex A, Part 1 (para 2) the guidance indicates these measures apply to tenants who hold secure tenancies and live in a “house”. However, a large proportion of council tenants hold secure tenancies but live in flats. Are they excluded from this process?
• In Annex A, Part 1 (para 2) and Part 2 (para 10) the assessment of the competency of a tenant group must be undertaken by an “approved assessor” but there is no indication as to who this will be or how they will be approved. In addition, will their assessment of the competence of a tenant group simply apply to the Right to Manage or Right to Transfer process or will it apply to the wider and overall competency of the tenant group?
• In Annex A, Part 2 (para 13) the guidance states an authority may reject a proposal notice if at least half of the houses specified in the notice were the subject of a previous proposal notice served in the previous two years. Does this refer to the same named tenant group or to the constituency of the group albeit under a different name?

**Question 2: Do the Regulations (together with the guidance) meet the objective of ensuring that the local authority has a route to halt the process if it is has a detrimental impact?**

**Question 2: response:** Recent reforms to the Housing Revenue Account for local authorities in England will have substantial financial and business planning implications for local authorities in England. In addition, some local authorities have expressed concern over the financial implications of recently announced Right to Buy proposals on their asset portfolio and financial and business planning processes. Whilst CIH supports the rights for tenants to exercise greater influence and control over the management of housing services and their homes; there are concerns in the sector that transfers could present a financial risk for local authorities in this new funding regime.

CIH recognises that the Regulations (together with the guidance) make clear that a local authority has a route to halt the process if it has a detrimental impact. This could be important to ensure that the transfer of stock does not have a “disproportionately negative impact”, for example “seriously affect(ing) the authority’s ability to deliver housing services.” The draft Regulations, however, provide very little illustrative guidance as to what “detrimental impact” means. Does this just include financial measures or are there other factors included also? While the principles of efficiency and probity are clearly important; a local authority will need to make a clear and robust case why and under what circumstances they might seek a determination from the Secretary of State to halt the transfer process.

**Question 3: Do you agree that we should remove unnecessary requirements for local authorities to notify the Secretary of State of the results of the ballot and to send copies of Tenant Management Organisation agreements to the Secretary of State?**

**Question 3: response:** CIH agrees that “unnecessary requirements” which might obstruct the process of initiating Right to Manage should be removed; but we would argue that greater clarity is required as to why certain requirements are deemed “unnecessary.” Although the principles of Localism would deem that responsibility for transferring the management of local services is a matter for local decision and not one for government,
nevertheless, council housing and its use and management plays a vital role in ensuring the well-being of some of the most vulnerable people in society. In England, the social housing sector more broadly provides accommodation to some of the most vulnerable people in society: 70 per cent of social tenants have incomes within the poorest two fifths; social tenants have high rates of disability, are more likely to be lone parents, single people or aged over 60.

For this reason, there is a legitimate reason why local authorities should continue to notify the Secretary of State of the results of the ballot and to send copies of Tenant Management Organisation agreements to the Secretary of State. This emphasises the importance of the use and management of council housing as a matter of national importance.

In addition, while the removal of so called “unnecessary requirements” which might obstruct the process of initiating Right to Manage might remove perceived bureaucratic barriers; are these measures really substantial enough to address concerns identified in paragraph 27: namely a slowing down in the creation of new TMOs, a lengthy time frame and high set-up costs?

**Question 4: Do you agree with our proposal to remove the requirement to prepare a feasibility study whilst retaining the “offer” upon which tenants will vote?**

**Question 4: response:** CIH agrees with the proposal to remove the requirement to prepare a separate feasibility study whilst retaining the “offer” upon which tenants will vote where this clearly duplicates information contained in the offer document which outlines to tenants and residents the benefits of tenant control.

**Question 5: Do you agree with plans to work with the sector to streamline the guidance to help tenants exercise their Right to Manage?**

**Question 5: response:** CIH supports the proposal to work with the sector to streamline the guidance to help tenants exercise their Right to Manage. However, more thorough evaluation should be given to establish and quantify the barriers which exist to the establishment of Tenant Management Organisations. The complexity and cost of the process can act as a disincentive.

CIH supports plans outlined in paragraph 42 to work with sector partners to develop streamlined guidance which would provide practical help for tenants exercising their Right to Manage. CIH would be keen to work with CLG, tenants and sector partners to develop this guidance.

CIH would also emphasise the importance of providing continued financial support and other resources for tenant groups to obtain training and development to support the Right to Manage process. Real tenant empowerment requires resources; and greater clarity is required about how this process will be resourced in the future.

**Question 6: Are there other ways in which Government could encourage voluntary or alternative routes to housing management?**
**Question 6: response:** While the principles that decisions regarding the ownership or management of local authority housing should be decided locally; and that tenants should be empowered to shape the services that they receive and where possible or required to take control of housing or explore transfer options and manage local housing services are important; it should be recognised that not all tenants will want to assume management of services or ownership of their homes.

Research shows that currently 75 per cent of existing Tenant Management Organisations (TMOs) have been formed in response to specific concerns about the historic service failure. Evidence shows the main reasons for setting up TMOs have been a wish for more say in service provision and delivery (76 per cent), dissatisfaction with the repairs and maintenance service (69 per cent), poor housing management (51 per cent) and the physical appearance of an estate (42 per cent). As a result, many TMOs are now responsible for managing day to day repairs, void management, tenancy management and cleaning communal areas. Additionally, validating research has shown TMOs provide a faster, better repairs service; lead to reductions in voids and relet times; and create a better environment through improvements in cleaning and grounds maintenance (DCLG 2002).

Given that concerns about service quality and a desire to influence service delivery more effectively have significantly influenced the decision to establish a TMO historically, it is important to ask whether there are other ways in which tenants can influence service delivery and quality without pursuing tenant management as the modus operandi for affecting service change? The following diagram illustrates different ways in which tenants can influence local service delivery.

<table>
<thead>
<tr>
<th>Level</th>
<th>Method of involvement and influence</th>
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<tbody>
<tr>
<td>1</td>
<td>• Service user satisfaction surveys</td>
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<td>• Publication of service information</td>
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<td>• Complaints and suggestions</td>
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<td>• Feedback from tenant groups, local elected representatives</td>
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<td>2</td>
<td>• Resident, estate or neighbourhood groups</td>
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<td></td>
<td>• Community partnerships</td>
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<td>• Cross service neighbourhood forums</td>
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<td></td>
<td>• Service level agreements</td>
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<td>• Service user groups, mystery shopping, tenant inspectors</td>
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<td>3</td>
<td>• Tenant and resident associations</td>
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<td></td>
<td>• Housing forums</td>
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<td>• Tenant scrutiny groups</td>
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<td>• Tenant board members</td>
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<td></td>
<td>• Management committees and local management agreements</td>
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<tr>
<td>4</td>
<td>• Management of community assets by community groups and partners</td>
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<tr>
<td>5</td>
<td>• Tenant management organisations (TMOs)</td>
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<tr>
<td></td>
<td>• Community associations</td>
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<td>• Co-operatives</td>
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CIH believes that the primary change required in relation to resident involvement is one of culture and attitude rather than one of structures. Ensuring that involvement is embedded and engrained within the work of all staff is an enormous challenge; but this is, of course, necessary if the proposed revisions within this paper are to work. Housing organisations should be encouraged to remove unnecessary barriers to effective involvement and to develop a “can do” attitude. Greater capacity and responsiveness in the housing sector to support a broader range of options for tenants to influence service delivery and quality could mean that tenant management may not always be a primary objective in all circumstances; particularly where tenants do not feel as though they want to assume additional responsibility for managing services.

CIH notes that the Tenant Empowerment Programme has historically played a role in helping tenants explore how they can have a greater say in influencing service delivery and quality, providing resources to support tenants gain the skills and confidence required to set up tenant panels or to challenge their landlords to provide a better service; and providing opportunities for tenants to manage their own homes or seek the transfer of homes to a different landlord via statutory Right to Manage provisions. In principle, this should cover a broader range of options than just tenant management.

In addition, the new regulatory framework emphasises enhanced tenant scrutiny as a mechanism to give tenants more power in holding their landlords to account for service delivery, their decisions, performance and conduct. Changes to regulation in England introduced in 2012 will require landlords to be more proactive in self-regulation and in involving tenants in the scrutiny process. In addition, the localism agenda envisages a greater role for service users at a local level to influence and scrutinise service delivery.

Finally, research for Urban Forum (2011) has shown that some of the major barriers to effective tenant management are a poor relationship with a landlord; cuts in income and lack of supporting resources. Positive relationships with landlords have been cited in previous research as a key driver for the successful establishment of Tenant Management Organisations (Cairncross et al 2002) while inadequate levels of funding were identified as a potential barrier to effective empowerment. Ipsos MORI research for TSA found that may tenants felt they had little opportunity for involvement and were not well informed about opportunities for involvement that existed. Better communication and information provision with regards to involvement opportunities is vital across the board.

**Question 7: Could these Regulations lead to any unintended discriminatory impacts?**

CIH emphasises that robust equality analysis will need to underpin any interaction with these new Regulations. Housing authorities are subject to provisions in the Equality Act 2010 and under the public sector duty have a duty to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not and to foster good relations between persons who share a relevant protected characteristic and those who do not.
CIH would note that the draft Regulations contain very little practical detail on equalities issues. CIH notes that housing authorities have a key role to play in promoting diversity: many housing authorities actively promote understanding and good relations between people who have different backgrounds and experiences, and this enhances the quality of life in local areas. This develops capacity in communities, helps the democratic process through fostering trust between communities and civic partners; and enables citizens to trust local public authorities to act fairly. This is a significant point and is particularly important for groups which share a protected characteristic and may be under-represented in the community or may experience difficulties securing advocacy, capacity or wider support from decision makers, the wider tenant body and the broader community.

Local housing authorities and tenant groups will need to be particularly vigilant with regards to equalities and how this informs their approach to these new regulations. The draft Regulations should make explicit the need for local housing authorities to fully consider equality impacts and also require the active involvement of groups that might be affected by the draft Regulations, including groups that might be under-represented. CIH would finally comment that evidence submitted to the Public Administration Select Committee Inquiry into the Big Society has shown that there is widespread concern that policy emphasis on organising and delivering services through voluntary or community action could exacerbate inequality and further polarise marginalised communities.

CIH
The Chartered Institute of Housing (CIH) is the professional body for everyone involved in housing and communities. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. Our work is driven by a passionate belief that our contribution as housing professionals is vital to making communities great places to live and work – and that everyone is entitled to a decent, affordable home in a thriving, safe community.

CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We are a membership organisation with a diverse and growing membership of over 22,000 people who work in both the public and private sectors, in 20 countries on five continents across the world.
References

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Rosenberg J (2011) Social housing, community empowerment and well-being: part one - empowerment practice in social housing, Housing, Care and Support, Volume 14, No. 4 (2011)
TSA (2009) Understanding tenant involvement: final report for the Tenant Services Authority
Urban Forum (2011) lessons for Localism: tenant self management