Chartered Institute of Housing’s response to the Department for Communities and Local Government consultation: Local decisions - a fairer future for social housing

This consultation response is one of a series published by CIH. Further consultation responses to key housing developments can be downloaded from: http://www.cih.org/policy/papers.htm

‘Shaping Housing and Community Agendas’
Introduction

The Chartered Institute of Housing (CIH) is the professional body for people involved in housing and communities. We are a registered charity and not-for-profit organisation. We have a diverse and growing membership of over 23,000 people – both in the public and private sectors – living and working in over 20 countries on five continents across the world. We exist to maximise the contribution that housing professionals make to the wellbeing of communities. Our vision is to be the first point of contact for – and the credible voice of – anyone involved or interested in housing.

The Chartered Institute of Housing (CIH) welcomes the opportunity to respond to the Department for Communities and Local Government (DCLG) consultation document: Local decisions: a fairer future for social housing. Social rented housing is an asset of great significance to the country, to local communities, to families and to individual people. It can help to create prosperous, healthy local communities, as part of a balanced housing market; and alongside being a tenure of choice for some it is also an essential safety net that supports many of the most vulnerable in our society.

CIH supports the broad aims of the consultation proposals contained in Local decisions: a fairer future for social housing. Specifically these include:

- Making the social housing system fairer, striking a proper balance between the needs of new and existing tenants.
- Giving local authorities and housing associations new powers so that they can make best use of their housing, in a way which best meets the needs of individual households and their local area.
- The emphasis on localism, transparency and flexibility.

In our 2008 report Rethinking Housing\(^1\) CIH argued that a fresh and more flexible approach to social housing could help the system to work better and allow wider groups of people to access the sector. For some time we have argued that the role and purpose of social housing need to be clearer, taking into account but thinking beyond existing statutory duties. We have also called for a robust discussion about who is allocated social housing, how lettings are prioritised; and how the overall system interfaces with support and housing options. Local decisions has brought us to a point where those discussions and related reforms could take place. However, these are huge issues which need detailed consideration before policy can be developed and implemented.

CIH's response to Local decisions: a fairer future for social housing builds upon extensive research and consultation with housing professionals and others with a keen interest in the housing sector since John Hills' review of social housing in 2007. In adopting new approaches, social housing reform should protect and enhance current approaches which demonstrably work best for individuals and communities: protecting the vulnerable, providing a

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\(^1\) CIH (2008) Rethinking housing, Coventry, CIH
safe, secure and affordable base to pursue individual aspiration; and maintaining and developing stable, engaged and sustainable communities.

CIH member consultation

This consultation response represents the views of CIH as a professional body and it incorporates feedback from individual members drawn from different parts of the housing profession located all over England. In preparing its response to Local decisions: a fairer future for social housing CIH engaged extensively with its members, who have a wealth of experience and a commitment to excellent housing services. Our specific engagement to inform this response included:

- Eight regional social housing reform consultation events in the East Midlands, West Midlands, London, the South East, Yorkshire and Humberside and the North West. Over 300 members working at different levels in the profession actively participated in these discussions.
- An online survey which generated 295 responses from CIH members (a summary of findings is available at http://www.cih.org/socialhousingreform/).
- An online open-access discussion forum, and receipt of individual written submissions from members.

Our members have expressed great disappointment with the limited timeframe for consultation on these proposals. CIH echoes that disappointment: the impending changes to the housing system will affect millions of households for many years to come, and so the short timeframe to consider the impact and suggest refinements to policy is totally inappropriate.

The Local decisions consultation is taking place alongside other significant changes which affect housing such as regulatory reform, the launch of affordable rent, planning reform, and benefit reform. The impact of the proposals in Local decisions is not isolated from other changes in government policy, and the likely impacts and interrelationships of these policies need thorough consideration. The short time offered for consultation is very problematic because it hinders ability to think through the complexities of the changes, and as such adds an unnecessary level of risk to national and organisational decision making. By limiting consultation time, government has limited its ability to benefit from the collected wealth of experience that people with a stake in the sector could, and would, offer to help refine policy approaches.

Summary of our main points

CIH is positive about creating a modern and flexible approach to social housing which offers safe, secure, decent and affordable housing to people with a range of different housing needs, and simultaneously facilitates greater
mobility and supports aspiration. Government’s stated ambitions for *Local decisions* seem to echo this.

However, CIH has concerns about specific proposals contained in *Local decisions: a fairer future for social housing*. There is a risk that some aspects of the proposals could:

- Reduce individual aspiration, weaken communities and further residualise the social rented sector.
- Potentially and perversely increase costs both to individual social housing providers (administration and housing management) and to the public purse (housing benefit and local housing allowance) at a time of financial constraint.
- Run counter to wider government aims to reinvigorate local communities and civic activism through the Big Society, by creating transient and insecure communities.
- Diminish the overall supply and range of new affordable housing.

We make the following key points on major aspects of the proposals:

**Flexible Tenure**

- CIH calls for a more flexible approach to tenure which places choice and stability for customers at the heart of a more modern approach to social housing allocations.
- CIH supports in principle a flexible approach to tenure which includes fixed-terms (where these are of an appropriate length) and tenancy reviews; however, the emphasis must be on offering tenants positive and supported choices to improve their housing options and to support the development of sustainable communities, rather than on enforcing particular behaviour or eligibility. As such, we have concerns about the current proposals for tenure reform.
- Social housing should not be exclusively used as part of the welfare system, and moves to further residualise it or to require housing managers to police eligibility will be strongly resisted by the profession.
- We are concerned that the impact of the flexible tenure proposals as currently described will lead to social housing becoming more residualised, and further stigmatise those living in the sector. There needs to be greater flexibility in the way in which local authorities work with their housing association partners to facilitate access for customers with a broader range of income and housing needs.
- Two years is too short as a minimum term for a general needs social tenancy because this will create instability in households and communities with additional negative social effects, and lead to additional and burdensome administration and housing management costs which may have no clear benefit for the customer. Five years may be a more appropriate minimum term.
Proposals to introduce flexible tenancies do not address the underlying structural problem of the need to address the shortage of housing options offered at a price which households can afford.

CIH proposes an approach to flexible tenure for future tenants in which the terms of a tenancy could be altered to recognise changes in an individual’s circumstances: this would not impact negatively on individual security or affect stable communities. We would like amendments to the Localism Bill to enable this.

CIH would like to see an approach to housing management where security of tenure is be preserved for all tenants but where there would be an end to the guarantee of a permanent sub-market rent for tenants whose financial or other circumstances improve, linked to active support to assist tenants access other housing options if they want to as their circumstances and aspirations change.

We are very resistant to any proposals which could see tenancies ended on the basis of an income-based means test.

We see the benefit of landlords being able to move tenants to make better use of stock, but we are sceptical about whether fixed term tenancies can really improve availability of social housing overall.

The new fixed term tenancies should contain a probationary period, as these have been used to good effect in recent years.

CIH agrees that older people and those with long term illness or disability should continue to have a guarantee of a secure tenancy. We suggest that some exception to the right to occupy the same home could be provided for all tenants whose household composition changes significantly, regardless of age or disability, where this does not put the individual tenant at risk.

Where fixed term tenancies are used, it is appropriate for general needs social tenancies to be of different lengths depending on different circumstances. There is no need to prescribe lengths for different circumstances – good practice will develop and become owned by the sector.

Landlords should generally offer existing secure and assured tenants who move to another social rented property a ‘lifetime’ tenancy in their new home.

Clarity and consistency around decisions to end fixed term tenancies will be essential.

CIH is keen to see a greater role for social landlords to provide advice and assistance to tenants in relation to their housing options and for this to be sufficiently resourced.

Landlords should definitely provide advice and assistance when a fixed term tenancy is not being renewed. It may be that independent organisations are best placed to offer advice in these circumstances.

We are also keen to see development of an ‘active housing-options approach’ where reviews are regularly offered to all tenants to help them plan for the future and identify support needs.

As the professional body for the housing sector, we see a clear role for CIH in working with the sector to help it walk the line between providing
settled homes, dealing with unmet need, and managing assets for best local and financial effect.

Tenure strategies and tenancy policies

- CIH feels positive about the proposed local strategic policy on tenancies and the benefits they could deliver.
- We support the requirement to have a tenure policy but want the requirement to be framed in a way that allows the policy to be integrated into other strategy documents where appropriate.
- Some difficulties will arise from the strategies which will need to be addressed at local level.
- It is not currently desirable for government to prescribe the content of landlords’ tenancy policies – housing professionals and communities need flexibility to work through what they need and want from the policies.
- Landlord policies should give clarity to tenants, ensure consistency of approach, and protect housing providers from legal breach or challenge. It would be reasonable to require, probably through regulation, that landlord policies address these aims.

Affordable rent

- CIH accepts that proposals to introduce affordable rents have potential to help finance new, much-needed homes; but we do not believe it is the right approach to funding new social homes.
- We would like to see funding for sub-market housing provided by capital subsidy rather than revenue subsidy, with use made of asset management flexibility to maximise non-public funding. This would be much more sustainable than the proposed approach going forward, as well as being fairer to consumers and enabling a better range of housing options to be offered.
- The term affordable rent presents difficulties because the definition does not correlate with people’s ability to pay.
- CIH wants government to publish rigorous financial modelling which assesses the impacts of affordable rent proposals in different parts of the country, and to confirm that the new investment system will support new development across the whole of England. As currently described, affordable rents would be most likely to benefit developing associations in high value areas such as London and the South East; and the benefits are not necessarily replicable in areas of less intense housing demand.
- CIH points out that across the country and within local authority areas, there are wide disparities in rental levels between the social rented sector and the private rented sector. In higher value areas, the proposed rent levels could be unaffordable for most social housing tenants; while in lower value areas where rent differentials between the social and private rented sector are not so marked, charging affordable
 rents at up to 80 per cent of market is unlikely to generate sufficient revenues to compensate for the significant reduction in capital funding and incentivise new social housing development.

- The recent CIH report *Appreciating assets* shows how additional flexibility around asset management could deliver social benefits as well as income for new investment. If social landlords had the flexibility to manage their assets in a way that catered for a wider range of needs, they could raise revenue in a fairer and more effective way than is currently offered by affordable rent.

- CIH notes that proposals to introduce affordable rent could be counterproductive in terms of overall public expenditure. As currently described, proposals to introduce affordable rents could lead to an overall increase in housing benefit expenditure. This makes provision of social housing very vulnerable to future efforts by government to reduce the benefit bill.

- Providers should have the ability to let affordable rent properties on assured, not fixed tenancies if they choose.
- Providers should have the ability to convert existing social rent to a tenure other than affordable rent to raise funds and meet the needs of an area.
- All providers should be allowed to take a flexible approach to managing their assets (i.e. converting vacant social rented homes to other tenures) and for funds not to be restricted to use on development. Safeguards could be provided to ensure extra funds were invested promptly for social benefit.
- Affordable rents should be set on the basis of affordability to the intended client group, rather than just on a percentage of market rents.
- Government should take action to promote affordability in the market, not just make changes to sub-market housing policy and provision.

**Allocating social housing**

- There are some positive elements in the broad proposals to introduce greater flexibility in terms of access to the housing register. For example, restricting access could lead to more realistic customer expectations and deliver a more accurate picture of need for sub-market housing at a local level. However, local authorities would need to work closely with housing association partners to determine appropriate access arrangements to support sustainable application of affordable rents at the household and community level.
- Limiting access to the housing register to the statutory groups will seriously hinder providers’ ability to target a range of affordable housing options at different groups in an area. This contradicts government’s stated aspiration to offer support to low income earning households.
- CIH challenges the suggestion that restricting access to housing registers will improve access to social housing or create more options for people to meet their housing needs.
There is no need for additional reasonable preference categories. However, there is an appetite for greater local discretion to add categories to suit the local context. It may also be useful to flex the CBL bandings and priority given to the reasonable preference categories.

CIH supports the aspiration to change allocations systems so they can better support existing tenants who wish to move, but does not feel that running dual waiting lists will achieve this aim – we would rather see reform of the existing framework to enable the aspirations of existing tenants to be addressed.

### Mobility

- CIH supports broader government objectives to improve tenants’ mobility, though feels strongly that restricted mobility is not just a feature of social housing and actually affects low income households in all tenures.
- The proposals do little to improve inter-tenure mobility, which will be needed to support the wider aspirations of this policy.
- We agree that all social landlords should be required to subscribe to a mutual exchange service.
- CIH notes that IT services are fundamental to helping tenants organise a mutual exchange: however, the needs of tenants who do not have access to IT (including a substantial number of older tenants, many of whom have larger properties which would be an attractive exchange) must be recognised if mutual exchange schemes are to be inclusive and comprehensive.
- CIH has identified a range of mechanisms which could facilitate greater mobility in the social rented sector including the provision of better housing aid and personal advisors, more effective cross-local authority working, more effective working with other providers including the private rented sector and voluntary partners; and incentivising moves within the social rented sector.

### Homelessness

- CIH broadly welcomes proposals on homelessness reform as an immediate solution to current problems in terms of use of temporary accommodation and an insufficient supply of social housing units to meet demand, but there are challenges around discharging the duty in this way which must be addressed.
- We have serious reservations about the availability, affordability and suitability of private sector housing in many areas to provide accommodation for people owed the main homelessness duty.
- Government reforms to homelessness duties must be accompanied by additional regulation of the private rented sector to improve its quality. More funding and power to regulate the PRS will be required, as well as to support provision of decent homes.
CIH points out that access to private rented sector housing could be significantly limited by new restrictions on local housing allowance payable, which could limit the workability of the proposed measure.

CIH notes that the private sector already plays a very significant role in meeting the temporary accommodation needs for authorities in connection with their homelessness duties, and that housing professionals are accustomed to working with private landlords.

Without some form of tenancy support in the private rented sector, there could be higher rates of tenancy failure amongst the formerly-homeless.

We would like to see further explanation and modelling in practice of what the proposal for duty to recur if a formerly-homeless person subsequently housed in the PRS became homeless again within a period of two years.

We would be comfortable to accept a requirement for 12 month PRS tenancies for people owed a homeless duty.

**Overcrowding**

We would not support a redefinition of overcrowding so that standards can be reduced; nor do we support the abolition or erosion of existing powers.

The most effective solutions to tackle overcrowding lie at regional or sub-regional level, so local authorities will need to coordinate their strategies if they are given more powers.

More flexible tenancy conditions will help to tackle overcrowding, by reducing under occupation. But this will take a long time to work because it will only apply to new tenancies.

Lessons from the overcrowding pathfinders should be captured and disseminated to help housing professionals learn from their work.

Government should reconsider existing policy measures that drive under-occupation (e.g. reform to non-dependent charges) and overcrowding (e.g. reducing housing benefit available for young people in PRS accommodation).

We are aware that many of the government’s proposals, as well as a number of our own suggestions, would increase resource requirements for housing providers and local authorities at a time when budgets are under immense pressure. In some cases it will be possible to change practice and priorities to free up resources. However for many issues and in many areas, the potential to deliver reform of social housing effectively will be seriously hindered by the cuts to funding and welfare benefits announced in recent months.
Responses to the specific consultation questions

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Tenure

In its 2008 report *Rethinking Housing*, CIH called for a more flexible approach to tenure which places choice and security at the heart of a more modern approach to social housing allocations. CIH supports in principle a flexible approach to tenure which could include fixed-terms (of an appropriate length) and tenancy reviews; however, the emphasis must be on offering tenants positive and supported choices to improve their housing options. We are clear that social rented housing should remain a positive tenure of choice, and do not want it to become (intentionally or by accident) solely a backstop for people who have no other housing options.

CIH has long pointed out that social housing is allocated (often securely) on the basis of a particular moment in an individual’s life: a time of ‘housing need’ which may be temporary or transitional. Currently, the allocations system does not reflect this and it does not provide an offer that can easily change with an individual’s needs or aspirations. CIH has proposed a new approach to tenure which will enable social housing to meet people’s housing aspirations and respond to changing personal circumstances.

Within the proposed new framework, the introduction of tenancy reviews could deliver a greater sense of fairness and could help people to access additional housing and support services; relocate; or plan for and move into ownership, intermediate rent or private renting. The way tenancy reviews are framed will shape their effectiveness, however. We are loathe to see social housing becoming exclusively welfare provision, with eligibility policed and managed by housing staff. Tenancy reviews which determine whether someone keeps their home will be confrontational and not conducive to a positive landlord-tenant relationship. On the other hand, building an ‘active housing-options

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3 Housing professionals do not want the process of tenancy reviews to be mechanistic. A housing-options review approach (like Notting Hill Housing Association currently does with existing tenants) is viewed as much more positive than a housing entitlement review.
5 DCLG (2010) *Local decisions: a fairer future for social housing* (1.9), London, DCLG
6 CIH op.cit.
CIH also points out that introductory tenancies are now widely used: they apply to three-quarters of new LA lettings. This reform has already brought a degree of flexibility into the lettings process.

Many housing professionals are uncomfortable with the idea of asking someone to leave their home following a positive change in their circumstances, especially increased household income. It is destabilising to households and, in many areas, has a detrimental effect on the local economy. CIH proposes that, rather than ending occupation at the end of a fixed term when a tenant can no longer demonstrate a clear need for social housing, a housing provider may alter the terms of a tenancy to recognise changes in the individual’s circumstances. If a tenant’s income increases significantly, additional rent could be charged, or help could be provided to prepare for intermediate or outright ownership. Tenancy reviews could deliver a greater sense of fairness around access to social housing and could help people to access additional housing and support services; and be more proactive about planning for future housing choices.

CIH has strong reservations about the workability and possible adverse effects of DCLG proposals to introduce flexible tenancies as currently outlined. The proposals require further development and the potential impacts assessed. Current proposals could lead to social housing becoming more residualised and those in living in it stigmatised. These concerns are backed up by extensive research. The current model of social housing of necessity prioritises allocations to those in greatest need. The social housing sector 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. In addition a quarter of all black and minority ethnic householders are social tenants.

An allocations process based on ‘need’ has resulted in concentrations of the poorest and most disadvantaged people in society living in social housing. This process of residualisation is made worse by concentrations of disadvantage in particular areas; and the negative labelling of individuals and groups living in social housing. The 2009 report In the Mix stated: ‘The

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7 See DCLG live table 601, data for 2009/10.
8 CIH op.cit.
9 DCLG (2010) Local decisions: a fairer future for social housing (1.8), London, DCLG
10 CIH (2010) Allocating social housing: challenges and opportunities, Coventry, CIH: 68 per cent of households in the social housing sector have an income less than £15,000 per annum. 12 percent of households in the social housing sector have incomes between £20,000 and £30,000 per annum: the annual median wage for workers in the UK in 2009 was £25, 428. 34 per cent of households in the social
chronic under-supply of public housing coupled with a needs-based allocations system, means that public housing is now what might be called a ‘poverty-tenure’ because only the poorest people are filtered into it. It is felt that current proposals will further marginalise the sector and will not contribute to stable or sustainable communities.

In addition, CIH notes that proposals to introduce flexible / fixed term tenancies need to address the following points:

- **Homelessness:** Care needs to be taken so that shorter-term tenancies do not exacerbate the risk of homelessness by providing less secure housing options for vulnerable people – the reasons for ending a fixed term tenancy need to be clear, fair and transparent and not landlord led.

- **Human Rights:** There is currently some discussion in the sector about the legality of introducing flexible tenancies given that under current legislation, landlords are not permitted to end tenancies on the basis of time. In addition, concerns about the implications of Human Rights legislation on flexible tenancy proposals have also been raised. In the recent case of *Manchester City Council v Pinnock [2010]* the Supreme Court held that courts must consider proportionality when hearing possession cases. The justices unanimously held that where a person’s home is at stake, that person should be able to have the proportionality as well as the reasonableness of that action decided by a court, under Article 8 of the European Convention on Human Rights. It is not clear that ending a flexible tenancy would necessarily comply with this requirement.

As the professional body for the housing sector we see a clear role for ourselves in working with the sector to help walk the difficult line between providing settled homes, dealing with currently unmet need, and managing assets for best social and financial effect.

**Question 1:** As a landlord, do you anticipate making changes in light of the new tenancy flexibilities being proposed? If so, how would you expect to use these flexibilities? What sort of outcomes would you hope to achieve?

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12 The tenant, Mr. Pinnock, had his secure tenancy with Manchester City Council demoted. This was because of the anti-social behaviour of his adult children who did not live with him. Before his tenancy was due to revert to a secure tenancy, he was served with an eviction order. He challenged the decision. Mr Pinnock appealed on the basis that he had not been allowed by domestic law to raise the issue of the proportionality of his eviction for reasons related to the behaviour of his adult children rather than his own behaviour. Mr. Pinnock had been a tenant for more than 30 years, and no allegations had ever been made against him as an individual. However, Article 8 European Convention on Human Rights and the case law of the European Court required him to be able to raise this as an issue. The effect is that judges and lawyers now need to discern between reasonableness and proportionality when seeking eviction.
It is likely that enthusiasm for flexible tenure would largely depend on local politics: particularly the view of the social landlord on whether security of tenure is a fundamental housing right or whether social housing should be primarily a transferrable welfare asset.

Organisations may decide not to make use of fixed term tenancies for the following reasons:

- Concerns about reviewing flexible tenancies in terms of making judgements about people’s housing need and discerning continuing need at the end of a fixed tenancy period.
- Concerns about potential legal challenges and reputational damage due to disputed decisions to end tenancies.
- Objection to flexible tenancies on a point of principle.
- Inability to identify tangible benefits with the proposals.
- Local housing markets are not conducive to support flexible tenancies e.g. PRS and owner-occupation in the locality are out of reach of most households.
- Increased administration costs.
- If their IT/housing management systems do not have the facility to trigger tenancy reviews (most can support 12 month introductory tenancies alongside secure/assured tenancies but some will not support varied tenancy lengths).

It will be essential to provide clear information about the different tenancies (to potential tenants and to people who provide advice, whether informally or formally) and to ensure potential tenants do understand what they are committing to when they apply for a property. This would reduce the risk that the use of different tenancy types by different landlords in an area could make it difficult for a potential tenant to make informed choices about where to live.

Organisations may choose to use fixed term tenancies in order to:

- Tackle under-occupation.
- Make it easier to end tenancies for people in arrears or with poor behaviour.
- Change tenancy conditions to reflect increases in a tenant’s income.
- Move tenants onto other housing options if their financial circumstances improve (though there is great resistance to this in the sector).

Most organisations we have spoken to are currently evaluating the merits of using fixed term tenancies and have not yet made firm decisions. It is likely that a number of organisations will wait to see what others in the sector decide to do and learn from them. Many see the appeal of using fixed tenancies to enable them to ask under-occupying households to move to smaller property, but beyond this it seems likely that customer-focused
tenancy reviews and amendments to occupancy terms could be done without recourse to fixed tenancies.

We would like to see the Localism Bill amended to enable social landlords to change a household’s occupancy conditions/terms following a tenancy review. We explore and qualify this in our response to Q10 below.

Question 2: When, as a landlord, might you begin to introduce changes?

Organisations need to give thorough consideration to the potential positive and negative impacts of fixed term tenancies, the resource implications, the local authority’s strategic view, and the views of current and future tenants. It is likely of course that the powers will not exist for 12 months, which does give time for organisations to plan and consider their approaches. Therefore, some organisations may make use of the powers as soon as they are enacted. Many will wait to learn from the experiences of other organisations before introducing changes, however.

Question 3: As a local authority, how would you expect to develop and publish a local strategic policy on tenancies? What costs would you expect to incur?

CIH feels positive about the proposed local strategic policy on tenancies. The strategy could aid a more positive and transparent relationship between providers; be an opportunity to reset relationships between councils and housing providers; and establish principles for meeting needs, making use of the new flexibilities, dealing with affordable rent (supply, plus conditions for reviewing fixed term tenancy and for ending tenancies) etc. Whilst we support the requirement to have a strategic policy on tenancies, we want the requirement to be framed in a way that allows the policy to be a part of other documents where that is appropriate for a local area.

The strategic tenancy policy should be part of a wider housing strategy for the area which includes:

- *A local lettings plan:* This should comprise estimates of the supply and demand for different types of accommodation and an analysis of how the demand can be met, including general priorities, and of local factors to be taken into account under current legislation and guidance.

- *Arrangements with other housing providers:* Formal and informal arrangements with other registered providers and organisations in the voluntary and private sectors.

- *Advisory services:* Information and advice to prevent homelessness and on housing options for applicants on the housing register.

- *Joint working arrangements:* including common housing registers or common approaches to choice-based lettings by all social landlords in a given geographical area; multi-borough choice-based lettings schemes such as Home Connections; common exclusion policies
We have identified some difficulties which could arise out of the development of local authority tenure strategies which will need to be addressed, probably at local level:

- Local authority tenure strategies could potentially make sub-regional letting schemes difficult.
- While local authorities will develop tenure strategies which focus on local housing market conditions, national registered providers might struggle to fit these with their own national or regional tenure policies. This could present difficulties with joint-working arrangements including choice-based lettings and nomination agreements.
- Local authorities may state a preference for particular tenancy types which are difficult or undesirable for registered providers to deliver. Similarly, national policy may pull registered providers in directions which are not compatible with local aspirations.
- Because they will be required by law, they may be added on top of existing housing strategies rather than integrating with, and complementing them.
- The requirement to comply with wider strategies e.g. the London Housing Strategy might lead to conflicts with the tenure strategy. Alignment of the various strategies will be difficult and local authorities will need to be mindful about balancing various policies and managing conflicting areas.

Local authority tenure strategies will need to be developed in consultation with local residents and organisations (going beyond tenants and providers of social housing). They will need to be based on a good understanding of the local housing market and interactions and accessibility of different tenures. Consequently they will need to be refreshed regularly.

There is an appetite to ensure that landlords procedures around fixed term tenancies in an area are consistent, to ensure transparency and fairness, so it may be that guidelines or even an area policy feature in the local tenure strategy.

**Question 4:** Which other persons or bodies should local authorities consult in drawing up their strategic tenancy policy?

Local tenure strategies must reflect the housing needs and aspirations of local communities, and so consultation with all registered providers in the area, advice agencies, tenants and applicants will be essential.

Authorities will need to take care to take soundings from a range of local people, not just the most vocal or active. They will also need to understand the aspirations of businesses and how economic development might rely on particular approaches to tenure.
CIH believes that the Tenancy Standard developed by the regulator should:

- Provide a clear explanation of tenancy options and fully meet all relevant statutory, legal and regulatory requirements pertaining to the use of tenancy agreements.
- Be clear and accessible: written in plain language and disseminated via a range of media.
- Establish a fit-for-purpose appeals process using external moderators to adjudicate where tenancy decisions are contested.
- Be flexible enough to enable landlords to relate the Tenancy Standard to the housing and wider social and economic needs of local communities.
- Ensure that the equality and diversity impacts of tenancy policies are thoroughly monitored and transparently reported. This will apply to existing diverse groups within the community and new arrivals, e.g. migrants. Social housing providers play a key role in promoting diversity: many social landlords 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 institutions to act fairly. Tenancy policies should address the needs of diverse tenants rather than serve the needs of bureaucratic rationing systems.

There is a definite concern within the housing profession that, despite being described as flexibilities, the proposed approaches will eventually become required practice. As long as housing providers are transparent, work in partnership with strategic housing authorities, and can justify their actions, we would like to see national-level acceptance of the way they choose to operate.

Landlord policies on tenancies should give clarity to tenants, ensure consistency of approach, and protect housing providers from legal breach or challenge. It would be reasonable to require, possibly through regulation rather than legislation, that landlord policies addressed these aims.
CIH believes that landlords should include in their policies on tenancies: information on different tenure options, eligibility criteria, eligible groups, rent levels, the processes involved including application, review at the end of a fixed-term or affordable rent tenancy; and information on rights of appeal and other housing options.

In addition, the following additional items of information would need to be included:

- Clear information on the expiry date of fixed-term tenancies.
- Fixed review dates for the tenancy established before the tenancy sign-up.
- Clear points in the tenancy agreement established for rent reviews.
- Requirements that the identity of the prospective tenant is checked before sign-up.
- Clearly established criteria used to decide the length of the tenancy, and how it can be extended.
- A requirement to determine the income (and savings) of prospective tenants.

It may not currently be desirable for government to prescribe content, as housing and legal professionals, local authorities and tenant groups work through what they need and want from these policies. For example, some landlords may wish to harmonise policies for a local area, others may wish to stand alone, and government should not restrict this at this stage.

Question 8: What opportunities as a tenant would you expect to have to influence the landlord’s policy?

The existing regulatory framework is already explicit in its expectations on social housing providers around tenant engagement. Social tenants often have very constrained choice about their housing and so they do need a voice, especially in relation to proposals which could impact on them significantly.

CIH believes that tenants have a key role to play in influencing their landlord’s approach to tenure policy. It will also be important to hear from potential future tenants, who may have quite different views about a tenancy policy. The ability to do this at a local level will be an element of the government’s commitment to localism and increased local accountability. Individual and community empowerment can foster a more genuine sense of ‘community’, social cohesion and collective responsibility. For landlords, it can lead to better knowledge and awareness of the needs of local communities and the impact of current service provision. It can also lead to the development of more informed and responsive services for the future.13 For tenants and communities to be able to participate in local approaches to tenure, they need

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a certain level of capacity and social capital. This capacity is known to be lacking in many areas. In addition, there is variability of leadership, capacity and skills at local authority level, and the need for cultural change in some places to embrace the role of tenants in influencing decisions on tenure and other aspects of policy.

**Question 9:** Is two years an appropriate minimum fixed-term for a general needs social tenancy, or should the minimum fixed-term be longer? If so, how long should it be? What is the basis for proposing a minimum fixed-term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be? Should the minimum fixed-term include any probationary period?

Two years is too short as a minimum term for a general needs social tenancy. Five years may be a more appropriate minimum term. We understand that many fixed terms will be renewed and that many providers would choose to use much longer fixed terms than the statutory minimum for all tenancies, but we believe the minimum needs to be of an acceptable length to protect tenants and communities.

From a management perspective, using a two year fixed-term general needs social tenancy would lead to increased housing management and IT costs without necessarily delivering improved outcomes for tenants. It is therefore unlikely that such short terms would be offered in practice.

Nevertheless, from a tenant and community perspective, CIH has a number of concerns about use of a two year minimum fixed term general needs social tenancy:

- **Perverse incentive:** A two year period could act as a major disincentive for tenants to change their circumstances. Assuming that access to the housing register is restricted to people in the most need (statutory preference groups), people gaining social tenancies will be leaving difficult circumstances which they may have endured for some time. If tenants fear that changing their circumstances might jeopardise their home, there is a psychological incentive to suppress aspiration and not to move forward in their lives.

- **Unsustainable communities:** A two year fixed-term general needs social tenancy would not support sustainable communities. There is no incentive for tenants to invest in their homes and communities if their tenancy is only guaranteed to have two years duration. Widely used shorter tenancies would break up neighbourhoods and communities; and where properties within existing communities were converted to fixed-term tenancies this could provoke tensions between tenants with different tenancies. Many local authorities point to problems with former right to buy properties that are now in the private rented sector and where there is rapid turnover, affecting the stability of communities.
• **Community engagement:** Shorter tenancy terms could result in less willingness on the part of tenants to engage positively with their landlords and the community which runs counter to broader government aims to reinvigorate community activism. Effective individual and community empowerment provides opportunities for people to influence and shape decision making processes which in turn can foster a more genuine sense of ‘community’, social cohesion and collective responsibility. For service providers, it can lead to better knowledge and awareness of the needs of local communities and the impact of current service provision. It can also lead to the development of more informed and responsive services for the future. Where tenants experience instability in their housing, these objectives are compromised.

• **Negative effects on children:** Additional negative social effects could result including unstable housing for children and the possibility that they might have to change their schools more often, damaging their educational opportunities.

Probationary tenancies have become quite an accepted part of housing management, and they are used quite effectively to ensure new tenants can meet the basic responsibilities required of them. Therefore the new fixed term tenancies should also contain a probationary period. There will be lessons from the introduction and management of probationary tenancies which can inform good practice in the use of fixed term tenancies.

**Question 10:** Should we require a longer minimum fixed term for some groups? If so, who should those groups be and what minimum fixed terms would be appropriate? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be?

**Question 11:** Do you think that older people and those with a long term illness or disability should continue to be provided with a guarantee of a social home for life through the Tenancy Standard?

Social housing plays a key role in housing and supporting vulnerable groups and older people. Any new approach to flexible tenure should fully take into account individual circumstances. Where, for example, vulnerability is permanent or acute, there should be sufficient flexibility to not require housing reviews on the same terms suggested for other tenants. CIH agrees that that older people and those with a long term illness or disability should continue to be provided with a guarantee of a secure tenancy through the Tenancy Standard. This does not mean these people should not be offered a tenancy

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14 Key to the government’s agenda are its visions for Localism and strengthened participative democracy and the Big Society where individuals in communities take action over what matters to them
16 Thornhill J and Kent Smith J (2009) Housing, schools and communities, Coventry, CIH: Poverty, instability, deprivation and neighbourhood decline has a detrimental effect on educational outcomes and achievement. Housing providers already work with tenants and school to tackle these factors.
review – as it can help to identify needs and aspirations which the landlord may be able to help address. Despite our commitment to a regulatory requirement for security for specific groups, we recognise the growing need to ask people to move elsewhere if they are occupying a home much larger than they need, and so suggest that some exception to the right to occupy the same home could be provided for all tenants whose household composition changes significantly, regardless of age or disability. These cases would need to be assessed individually so the tenant is not put at risk (e.g. to health) by moving.

If fixed term tenancies are used, it is appropriate for general needs social tenancies to be of different lengths depending on different circumstances. There is no need to prescribe this in the tenancy standard; good practice will develop and become owned by the sector. Landlords should have flexibility to decide tenancy lengths at a local level (with local defined loosely), although there is a risk that this could create patches of high demand as potential tenants seek the most attractive offer. If flexibility to set different terms was offered, it is likely that many landlords would offer secure or very long fixed term tenancies to the following groups, for example:

- Older people (secure).
- Adults with disabilities or long term illnesses (secure).
- Families with children under 16 (longer fixed-term tenancies).

Question 12: Are there other types of household where we should always require landlords to guarantee a social home for life?

We have no suggestions to add here.

Landlords who make use of fixed term tenancies may find they can use secure tenancies to support local lettings plans e.g. to attract particular types of people to a low demand or difficult to manage area in order to develop stability in the area.

Question 13: Do you agree that we should require landlords to offer existing secure and assured tenants who move to another social rent property a lifetime tenancy in their new home?

Question 14: Do you agree that landlords should have the freedom to decide whether new secure and assured tenants should continue to receive a lifetime tenancy when they move?

CIH points out that the term ‘lifetime tenancy’ employed in the DCLG consultation document is misleading and does not reflect the current statutory framework for the allocation of tenancies in the social housing sector. Local authorities and housing associations can offer secure or assured tenancies, but these can be terminated within the life-time of a tenant where tenancy conditions have not been met and only with a court order. Also, as noted
above, the vast majority of new tenancies now start off being non-secure, and 
only become secure at the end of the introductory period.

Landlords should generally offer existing secure and assured tenants who 
move to another social rented property a so-called ‘lifetime’ tenancy in their 
new home. Whilst more flexible tenure options can have a part to play in new 
lettings to existing tenants (especially in terms of improving ability to reduce 
under occupation), there is a risk that mobility will be restricted if tenants risk 
losing something they value by moving. The Local decisions document says 
that affordable rent is required to be a fixed term tenancy, although the 
Housing Minister has since said that it is not. This requires clarification. 
Affordable rent must also be lettable on an assured tenancy because we do 
not want to see a system where existing tenants cannot move to brand new 
homes without their landlord breaking legal requirements around continuity of 
tenure, or where new older/disabled tenants can never move to a home built 
after 2011 because the tenancy the required to have cannot be given.

If new tenants are given a secure/assured tenancy on the basis of an 
assessment that they will always need one, the idea of removing this tenancy 
type when they move is contradictory. It would lead to uncertainty for tenants 
and inconsistency of practice for landlords.

Question 15: Do you agree that we should require social landlords to provide 
advice and assistance to tenants prior to the expiry of the fixed term of the 
tenancy?

As stated earlier, we would want to see fixed term tenancies being used as 
part of a positive, customer focused approach rather than as management of 
welfare provision. If tenants are asked to leave, a socially-focused 
organisation should definitely make sure they are supported and able to move 
on in a positive way.

We would stress that we also want regular provision of advice and assistance 
around housing options to become common practice for people who have 
long or ‘lifetime’ tenancies.

CIH has long called for an augmented role for social landlords to provide 
advice and assistance to tenants in relation to housing more generally. In its 
2007 publication Modernising Housing Advice\(^{18}\), CIH pointed out that many 
housing advice services are still focused on crisis management. Whilst this 
may help to prevent homelessness a more sophisticated approach which 
helps more people to plan ahead to meet their aspirations would be beneficial 
to both service providers and service users. This could include signposting 
individuals to independent financial advice and lenders, information about 
good quality local private landlords, links to lettings and estate agents, local 
private sector lettings schemes, etc. In addition to these core one-stop 
housing services, the service should also look at how it can provide a

\(^{18}\) CIH (2007) Modernising housing advice, Coventry, CIH
signposting or integrated service around preventing problems and providing support, linked to advice about employment, skills, childcare, etc.

It may be that independent organisations are better placed to offer support and advice to tenants reaching the end of a fixed tenancy, especially if housing providers fear being accused of putting business interests before the tenant. We would also stress that safeguards will be needed, such as ensuring a tenant has actually been able to secure good quality alternative accommodation before they are required to leave their home.

**Question 16:** As a landlord, what are the factors you would take into account in deciding whether to reissue a tenancy at the end of the fixed term? How often would you expect a tenancy to be reissued?

Issues which landlords might choose to take into account in deciding whether to reissue a tenancy at the end of a fixed term are:

- Whether the home let continues to be a suitable size for the household.
- Whether tenants have complied with the tenancy conditions.
- Whether the tenant is still in a priority need group.
- The availability of suitable alternative accommodation.

We are very resistant to any proposals which could see tenancies ended on the basis of an income-based means test. We would like landlords to have the power to vary the terms of a tenancy based on income however e.g. by increasing the rent or converting the home to shared ownership. Increased rent may not raise much extra income for the landlord but would demonstrate fairness to people who are uncomfortable with tenants paying a below-market rent when they could afford to pay more. There are of course concerns that increasing rent would be a disincentive to increase income, and so we would like to explore what income thresholds might be appropriate and maintain affordability before this idea was pursued further.

Clarity and consistency around decisions to end fixed term tenancies will be essential. The housing sector will need to quickly develop good practice which enables housing organisations to behave transparently and to make consistent, fair decisions for people with similar circumstances. The risk of challenge – through complaints policies and legal means – is high; and housing providers are keen to avoid this.

We see the benefit of enabling tenants to move to make better use of the housing stock, but beyond this there is scepticism about whether fixed term tenancies as a tool can really improve availability of social housing by moving people on as their circumstances change. In high value areas, and areas where there is a high income-cost ratio, alternative accommodation outside of social housing will seldom be available so it will not be possible to ask people to move on to private renting or owner occupation. We have been extremely concerned by the assumption that it is acceptable for PRS tenants who
cannot meet rent through Local Housing Allowance to move to cheaper areas – possibly many miles away from their settled home. Therefore we would be similarly concerned if social tenants were asked to leave their home at the end of a fixed tenancy on the grounds that they could secure PRS accommodation away from their existing location.

**Affordable rent**

CIH accepts that proposals to introduce affordable rents have potential to help finance new, much-needed homes; but we do not believe it is the right approach to funding new social homes. We do want to see reform of investment models for affordable housing and agree that flexibility across the affordable housing portfolio is desirable – for area management as much as for possible financial benefits. We explore these issues in our 2011 report *Appreciating assets*, which will be of use to anyone with an interest in the development of affordable rent. Despite our desire for flexibility, we have concerns about the current proposals and suggestions for an improved approach.

We know that policy is being developed as this consultation takes place and that officials are aware of many of the concerns which follow. CIH identifies the following principal concerns about the affordable rent proposals:

- **Lack of detail**: The announcement of a very sketchily formed investment policy, followed by a series of inconsistent statements on the nature of its operation, has made it very difficult for housing professionals to plan for or evaluate the idea of affordable rent. It is notable, for example, that the proposed tenure types to be used for affordable rent in this consultation and in the ministerial statement of 9 December are significantly different. This wastes time and effort, and causes great uncertainty.

- **Is affordable rent ‘affordable’?** The term *affordable rent* is misleading because the rent charged is to be determined by a relationship to local market rents not to local or individual incomes. The level of affordable rent (up to 80 per cent of market rents) will vary depending on property size and local housing markets, but there seems to be no consideration of local incomes in its definition. Government has stated that affordable rent should be for the same client group as social housing, so it is important to remember that:
  - 68 per cent of households in the social housing sector have an income less than £15,000 per annum
  - Only 12 percent of households in the social housing sector have incomes between £20,000 and £30,000 per annum: the annual median wage for workers in the UK in 2009 was £25,428
  - 34 per cent of households in the social housing sector are in work
62 per cent of households in the social housing sector are in receipt of housing benefit

31 per cent of households in the social housing sector are of retirement age (and thus on fixed incomes).  

Clearly up to 80 per cent of market rent is not affordable to many households in many areas.

Area definitions: The effectiveness of the affordable rent model proposed depends on the definition of an area from which the average market rent will inform affordable rents. If a market rent area were to be defined as a local authority area this could disguise significant differences in market rent levels between neighbourhoods. Unless care is taken, area-based rent setting could lead to great differentials in what rents are charged, leading to potential inequalities. Further consideration of the skills and information available to inform rent setting will be needed before implementation.

Wide rental differentials: In many areas of the country there is a significant gap between social and private rents. Whilst increasing social rents to 80 per cent of market rents would raise money in these areas, it would not necessarily cater for local need, potentially making affordable rents ‘unaffordable’ for most social housing tenants.

Narrow rental differentials: In many other areas of the country social rents are quite close to private rents, so increasing social rents does not significantly increase income for the provider. It will be essential that the new grant allocation system takes account of this, and ensures that development can continue in these areas. Without some flexibility in the HCA’s grant system, it is clear that the affordable rent model would best benefit those organisations in London and the South East where there are higher market rents.

Housing benefit: If housing benefit will cover the increase in social housing rents to affordable rent levels, then this will obviously increase the overall cost of housing benefit, which runs contrary to government proposals in the 2010 Budget and the CSR 2011-2014 to reduce this element of public expenditure. Funding sub-market housing via revenue subsidy also brings a level of uncertainty about the future to both households and providers which is not experienced when capital subsidy is used, and which is not desirable. The housing sector has an excellent track record of helping tenants to overcome barriers to work and promoting financial inclusion, and so there is no desire in the sector to trap low income people in property they cannot afford or which prevents them from entering the employment market. These beliefs, coupled with assumptions that government will institute further reforms to housing benefit once the scale of impact on the benefit bill is seen means that there is significant support in the sector for offering affordable rented property only to tenants who can pay the rent without housing benefit.

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• **Is it fair?** Affordable rent will essentially be a social housing product offered to the social housing client group at a higher price than usual social housing. This creates a two tier system and uses the scarce resources of the worst off in society to fund development of sub-market housing.

• **Bridging the capital grant funding gap:** In areas where market rents are closer to social housing rents, or areas where it is not possible to set affordable rents at 80 per cent of the market level (because they would not be affordable), is unlikely to generate sufficient revenues for housing associations to make up for the loss of capital grant funding announced in the CSR.

• **Negative impact on development in some areas:** The affordable rent model could actually result in reduced development if funders were sceptical about the ability of providers to collect higher rents at a time where housing benefit may be capped for people who are not working, or for larger households. In addition, in some areas there are still issues of low demand in some estates and properties that are difficult to let: increasing the rent charged could exacerbate this problem.

• **Perverse incentives:** There is a risk that the new affordable rents (up to 80 per cent of market rents) could actually serve as a disincentive for people to move to new properties given that there are still quite large differentials between social and market rents between different localities and regions.

• **Insufficient flexibility:** CIH notes that current proposals to convert existing social rented homes to affordable rent to support development do not enable providers to cater for a wider range of needs by offering a wider range of tenure types through asset management flexibilities (see Appreciating assets).

• **Political difficulties:** If housing associations raise rents in one area to fund development in another, it is likely that local authorities will be uncomfortable. This approach makes business sense but will need careful management to maintain good relationships between local authorities and housing associations.

• **Managing homes and assets together:** To make this approach work well, our modelling shows that housing associations will need control over vacancy rates/patterns as well as flexibility around how they use ‘natural’ voids. Fixed term tenancies enable this but there is a tension between the social aspiration to provide permanent homes and the business need to be financially efficient. The sector will need to develop good practice that makes such a system work as well as possible for tenants and is also fair and transparent. For example, if a housing association wants to end a tenancy for asset management reasons they will need to be open about this and not argue that the decision is anything to do with the occupant or their circumstances.

• **Neglecting the ‘inbetweens’:** Government housing policy is still failing to address wider issues of affordability and access to suitable housing options for people who are not in ‘priority’ housing need, but whose income does not allow them to access homeownership or even...
comfortably to access private renting. The term ‘in-betweens’ refers a range of people, from those at the margins of home ownership to those who have no independent living options accessible to them. A particular concern is with those within this group who cannot afford to pay market rents for accommodation that is of an appropriate size to meet their needs. These households may be living in private rented accommodation that is unsuitable, or these may be concealed households, that is, adults in permanent relationships staying on in the family home, with relatives or friends. The recent DCLG report on Estimating Housing Need showed that, of the nearly 2m households currently in need, the majority were so because of overcrowding, sharing or being in ‘concealed’ households.

As our 2011 report *Appreciating assets* shows, management skills and business processes within housing associations will need to change and improve to enable effective use of the new model. The report also shows that care needs to be taken with the assumptions made about the amount of money which could be raised – changing the rent and rent setting methodology will impact on other variables such as lending rates and loan to value ratios.

We would like to see funding for sub-market housing provided by capital subsidy rather than revenue subsidy, with use made of asset management flexibility to maximise non-public funding. This would be much more sustainable than the proposed approach going forward, as well as being fairer to consumers and enabling a better range of housing options to be offered.

However, recognising that affordable rent is government’s chosen investment model, we would like to see:

- Ability to let affordable rent properties on assured, not fixed tenancies if providers choose.
- Ability to convert existing social rent to a tenure other than affordable rent to raise funds and meet the needs of an area (see *Appreciating assets*).
- Ability for all providers to take a flexible approach to managing their assets (i.e. converting vacant social rented homes to other tenures) and for funds not to be restricted to use on development. CIH could work with the sector to establish good practice to reassure government that funds raised would be put to visible social use.
- Investment policy that supports development in all market areas in England.
- Rents set on the basis of affordability to the intended client group, rather than just a percentage of market rents.

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20 For further discussion see Davies A and Lupton M (2010) *Future directions in intermediate renting: a discussion paper* (CIH and L&Q), Coventry, CIH.
21 For further discussion see Davies A and Lupton M (2010) *Future directions in intermediate renting: a discussion paper* (CIH and L&Q), Coventry, CIH.
• Action to promote affordability in the market, not just making changes to sub-market housing policy and provision.
• A name for the new product which accurately describes what it is, in terms of affordability and accessibility. If affordable rent is for the same client group as social rent, then it does not need a new name.

Allocating social housing

Question 17: As a local authority, how would you expect to use the new flexibilities to decide who should qualify to go on the waiting list? What sort of outcomes would you hope to achieve?

Question 18: In making use of the new waiting list flexibilities, what savings or other benefits would you expect to achieve?

CIH has called for a review of the way in which waiting lists operate in order to generate a more realistic picture of housing need locally and across the country and to better manage customer expectations. There are now over 1.8 million households on social housing registers. Many of those on social housing registers have no realistic chance of getting a home. In addition, these statistics are not representative of overall housing need. There is widespread misunderstanding about the allocation of social housing and perceptions of unfairness which can be a source of tension in communities.

There are a number of potential advantages to proposals to introduce new flexibilities around the use of waiting lists. These include:

• Applicants for social housing would be more realistic about their housing options.
• More realistic waiting lists would lead to a more accurate picture of need for sub-market rented housing locally.

But there are also potential disadvantages to the current proposals:

• Turning social housing into welfare housing – so it is only accessible by people in acute need.
• Increased pressure to help applicants access accommodation in the private rented sector.

22 Thornhill J (2010) Allocating social housing: challenges and opportunities, Coventry, CIH: Since 2003 local authorities have maintained open housing registers so anyone can apply to go on the housing register. There are some people on local authority housing registers who have found alternative accommodation or place their name on the list in anticipation that they might want a social tenancy at some point in the future. Housing register statistics are also affected by choice based lettings schemes which can increase demand for social housing through advertising and bidding systems.

23 Thornhill J (2010) Allocating social housing: challenges and opportunities, Coventry, CIH: A recent poll by Ipsos MORI for DCLG found many people perceived the way social housing is allocated to be unfair.

24 DCLG (2010) Local decisions: a fairer future for social housing (1.4), London, DCLG
An increase in the risk of homelessness if and where tenancies fail in the private rented sector.

We are sceptical that closing housing registers will do anything more than reducing the number of people on them – it will not improve access to social housing or create more housing options for people struggling to meet their needs.

Question 19: What opportunities as a tenant or resident would you expect to have to influence the local authority’s qualification criteria?

CIH notes that government is committed to providing public services which are more transparent, more effective, and cheaper; simultaneously enhancing local accountability to local people for services delivered at a local level.\(^ {25}\) This should include the opportunity locally for tenants and residents to influence the local authority’s qualification criteria for the housing register. However, for tenants and residents to be able to participate meaningfully in influencing the decision making of local authorities, they will need a certain level of capacity and social capital. The local authority will also need the right skills to facilitate meaningful and inclusive community involvement in decision making. This capacity is known to be lacking in many areas, meaning that some communities could be excluded from this ‘Big Society’ approach. Local authorities will need to recognise that existing and potential tenants may have quite different views about qualification criteria, and they will need a way to manage this.

Tenants and residents will already have been involved in devising allocation policies in some areas, and good practice can be identified from these experiences. In addition, local lettings plans are commonly used by social landlords, and so there will be good practice around tenant and resident involvement/consultation which can be drawn from their development. Our Practice Brief, *Allocations and local flexibility*, contains useful guidance and examples in this regard.

Question 20: Do you agree that current statutory reasonable preference categories should remain unchanged? Or do you consider that there is scope to clarify the current categories?

Question 21: Do you think that the existing reasonable preference categories should be expanded to include other categories of people in housing need? If so, what additional categories would you include and what is the rationale for doing so?

There is no need to change the existing reasonable preference categories.

Question 22: As a landlord, how would you expect to use the new flexibility created by taking social tenants seeking a transfer who are not in housing

\(^ {25}\) LGA (2010) Place Based Budgeting, London, LGA
need out of the allocation framework? What sort of outcomes would you hope to achieve?

CIH would like to see social landlords enabled to address the transfer aspirations of existing tenants – as in any service it can be frustrating to cater for new customers to the detriment or exclusion of existing ones. The idea of taking existing tenants outside of the allocation framework is unclear, and as described so far sounds as though two systems will be required to run in parallel, which will be cumbersome and lack transparency.

There are potential problems if separate systems are required:

- It could potentially generate higher levels of demand for internal moves which could be difficult for landlords to manage, particularly in areas of high demand.
- It could perversely create less transparency about who is moved.
- It could generate additional staffing, administration and management costs.
- It could create tensions with local authority partners.
- It could create ‘springboard tenancies’ – where tenants get a home through the housing register and then instantly request a transfer on the existing tenants register to see if they can get a ‘better’ property.

We accept that there is a range of advantages to proposals to enable landlords to use the new flexibility created by taking social tenants seeking a transfer who are not in housing need out of the allocation framework. These include:

- Increasing mobility in and through the social rented sector.
- Generating shorter waiting times for internal movers.
- Enabling social landlords to take action to deal with under-occupation and thus make more efficient use of the housing stock.
- Enable providers to exercise greater flexibility in their allocation decisions.
- Make it easier for social landlords to create chain lettings.
- Provide greater customer choice and enhance the way existing customers are treated by their landlords.
- Accelerating the transfer process.

Our preference, to gain these benefits and avoid the problems listed above, would be to see the allocation framework amended so the aspirations of existing customers could be included without requiring a demonstration of ‘need’ – for example by building on the good practice around chain lettings and management moves.
**Mobility**

CIH notes that levels of mobility within the social housing sector are relatively low. Research by the Centre for Housing and Planning Research (CCHPR)\(^{26}\) has shown that around half of the 400,000 social housing tenancies terminate each year are due to tenants moving within the sector. As a proportion of all social housing tenancies in England, this equates to around 5 per cent. Activity levels of both mutual transfers and exchanges have seen significant falls from the mid-1990s onwards.\(^{27}\)

The link between greater physical and economic mobility has informed debates on social housing since the Hills review of social housing (2007)\(^ {28}\) explicitly linked low housing mobility for social housing tenants with restricted employment prospects. In juxtaposition, the 2009 report *Mobility Matters*\(^ {29}\) identified a level of demand for mobility in social housing that the authors claim is currently not being met. 37 per cent of residents surveyed out of 1,280 said that they wanted to move.

Mobility within social housing is restricted because of lack of vacancies and new supply, low priority given to existing over new tenants within allocations systems, low priority given to people wanting to move into an area, lack of suitable alternatives (especially for downsizing), and difficulties for housing managers to create ‘chains’ of moves. A recent study, based on in-depth interviews with residents of a large former council estate in Sheffield suggests that people are unwilling to cut family ties and close social networks and hence move for what are most likely low-paid and insecure jobs. Elsewhere, it has been shown that relocating can make it difficult to replace existing social networks and ties of those living in ‘deprived’ communities.\(^ {30}\) In turn this had in some instances detrimental effects on the mental well-being of those affected. This might explain why the majority of moves (90 per cent) within the social sector are within a 10 miles radius.\(^ {31}\)

In addition, respondents identified the lack of parity in terms of security of tenure between the private and social rented sectors as a major disincentive in terms of achieving greater inter-tenure mobility. Most private sector tenancies are offered initially on the basis of a six month assured shorthold tenancy. Reference was made to the fact that in the Republic of Ireland more effective use has been made of the private rented sector to deliver social outcomes. Through the Residential Accommodation Service, local authorities

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\(^{26}\) CIH and HC (2008) *Mobility and Social Housing*, Coventry, CIH

\(^{27}\) ibid.


\(^{29}\) Broomleigh Housing Association (2009) *Mobility matters: Exploring mobility aspirations and options for social housing residents*, London, Broomleigh


draw up contracts with private sector landlords to provide housing for people with a long-term housing need for an agreed term.\(^{32}\)

CIH supports broader government objectives to improve tenants’ mobility, including national coverage by home-swap systems. Greater geographical mobility could lead to greater economic independence and could therefore support local economies by improving tenants’ access to work. Improved mobility for existing tenants could help make better use of stock (e.g. reducing under-occupation), improve satisfaction and quality of life, and give existing tenants a greater sense of fairness.

CIH has illustrated good practice already in place in some housing organisations.\(^{33}\) For moves within a local area, the awarding of extra points through local allocations schemes could be awarded for people in employment or training, for example. The challenge for housing providers would be to balance between meeting the most acute need and using discretion to provide incentives to earn points to move up a waiting list.

**Question 23:** What are the reasons why a landlord may currently choose not to subscribe to a mutual exchange service?

The majority of housing organisations are already part of a mutual exchange service. Reasons for non-participation could include:

- Cost of fees payable to service providers.
- Judgement that such a service is not of value to tenants.
- Belief that there is little demand for such services.

CIH believes that social landlords should subscribe to a mutual exchange service so that all tenants have the chance to move in this way should they want to.

**Question 24:** As a tenant, this national scheme will increase the number of possible matches you might find through your web-based provider but what other services might you find helpful in arranging your mutual exchange as well as IT-based access?

IT services are crucial to helping tenants organise a mutual exchange. However, a personal advisor would also be advantageous. This would fit well with an in-tenancy housing options approach which we would like to see developed within the social housing sector.

CIH notes that whilst the internet offers an excellent means of arranging swaps for some tenants, not everyone will have internet or broadband access. Research by Ofcom has shown that that less than half of social tenants have

\(^{32}\) Thornhill J (2010) *Allocating social housing: challenges and opportunities*, Coventry, CIH

\(^{33}\) Sinn C (2010) *Practice brief: allocations and local flexibility*, Coventry, CIH
internet or broadband access at home (43 and 36 per cent respectively). A similar picture emerges when looking at home internet or broadband access by the 65-74 age group (41 and 33 per cent). And access for those 75 years of age or over decreases even further. Thus, the majority of older tenants do not have access to the internet and will therefore be excluded from schemes that are purely internet-based. Without the participation of older households however, there will continue to be a substantial imbalance between the size of properties households are looking for, and what they are currently occupying.35

CIH has identified a range of mechanisms which could facilitate greater mobility in the social rented sector. This could involve offering incentives for individual households to release under-occupied properties for letting to larger households. There is also scope for making better use of private rented accommodation in tackling under-occupation, particularly in areas where there is little social housing. ‘Incentives’ here can take the form of brokering ‘safe’ moves through matching tenants to landlords, assisting with paperwork, etc. The following approaches to mobility could be developed:

- **Better housing advice:** In its 2007 publication *Modernising Housing Advice* CIH emphasises the importance of setting the question of mobility within the social housing sector in a wider enhanced housing options approach. A key component in an enhanced housing options approach could be looking at opportunities for greater mobility for individual households. Within this, facilitating access and providing more effective advice and information about different cross-sector housing options is necessary including the private rented sector, co-operatives, Community Land Trusts and other third sector providers; also low cost home ownership, and mobility schemes which enable applicants to move homes and across districts.

- **Cross local authority working:** It has been recognised that making provisions in allocations schemes to support moves within the social housing sector can play an important role in promoting greater social and economic mobility. Sub-regional CBL schemes are an effective means of supporting this agenda. But even in the absence of such

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34 Ofcom (2009), *Access and Inclusion: Summary of Ofcom research on internet access, use and attitudes*, London, Ofcom
35 CIH and HC (2008) *Mobility and Social Housing*, Coventry, CIH
36 In its 2010 *Practice Brief*, CIH identifies under-occupation incentives including: assistance with, or payment of, removal costs; assistance with other costs such as redirection of mail and reconnection charges; providing for external storage space; cash payments; help with redecorating the property into which the tenant is moving or a decoration allowance. Stoke on Trent’s allocations scheme makes provision for all existing tenants who are willing to move to allow the local authority to take advantage of a particular type of property which is scarce and in high demand by awarding them priority within the banding scheme. A ‘Transfer Incentive Scheme’ is available to existing tenants in 4, 5, and 6 bedroomed properties who are under-occupying by at least 2 bedrooms. A tenant accepted onto this scheme is given enhanced priority under the allocation scheme and are given a financial incentive of £250 per bedroom released and a £300 disturbance payment.
39 Ibid.
schemes, cross local authority boundaries moves can be facilitated through local lettings policies, which for instance could allow for a certain number of properties to be allocated to key workers, others to fill a specific skills gap within an area and householders seeking a move.

- **Working with other providers:** Local authorities’ work with other providers including the private rented sector has historically been considered to be less important than services such as provision of social housing, tackling homelessness, or development control for new housing. However, more effective partnership working with the private rented sector and other third sector providers can play a significant role in meeting both short and longer term housing need, facilitating greater mobility within the sector and providing choices for a wide range of consumers. Social lettings agencies (SLA), which have emerged over recent years could support this aim. A SLA works in a similar way to a commercial lettings agency, with the exception that its customer base comprises tenants which are in receipt of local housing allowance (LHA) an that any ‘profits’ are re-invested into the organisation. A funding bid for setting up a regional SLA for the East Midlands region (DASH2Rent) is currently underway. The proposal has the backing from both the Government Office for the East Midlands and the East Midlands Regional Assembly. In addition to improving access to accommodation for vulnerable households and those in greatest housing need, such a model could also be utilised to facilitate mobility for existing social tenants.

**Homelessness**

CIH broadly welcome proposals on homelessness reform as an immediate solution to current problems in terms of use of temporary accommodation and an insufficient supply of social housing units to meet demand. CIH believes that it is not possible to look at social housing in isolation from the wider housing offer and the private rented sector should be a key component in a more joined up approach to meeting housing need in England. Proposals to make more effective use of the private rented sector could free up waiting lists and facilitate quicker transfers. However, there are key concerns around the quality and affordability of accommodation in the private rented sector, the quality of private sector housing management and access to the sector which must be addressed. We are therefore calling for more finance and power to regulate the PRS, to accompany the proposed changes in homelessness legislation.

Potential positive outcomes which could be seen in some areas are:

- More realistic expectations around tenancy options.

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40 [http://www.privilerentedsector.org.uk/social_lettings_schemes.aspx](http://www.privilerentedsector.org.uk/social_lettings_schemes.aspx)
Savings could be generated from ending the need to secure temporary accommodation.
Greater availability of social housing for non-homeless households.
Homeless people could be moved into a settled home more quickly.

CIH notes that the private sector already plays a key role in meeting the temporary accommodation needs for authorities in connection with their homelessness duties. The sector currently houses almost 57,000 households, over 70 per cent of the total temporary accommodation needs in England with private sector leasing (PSL) providing the bulk of this total. Some organisations have built up considerable experience of delivering cost effective PSL schemes for local authorities whilst ensuring that tenants benefit from high standards of management and maintenance.

**Question 25:** As a local authority, how would you expect to use the new flexibility provided by this change to the homelessness legislation?

We anticipate that most local authorities will make use of the power to discharge the homeless duty by housing people in the private rented sector. The scale of use is likely to vary by authority – depending on the price and availability of private rented accommodation in different market areas. It is likely that rural areas will find this power less useful than urban ones.

The lower end of the PRS can be quite poor quality in some areas and housing professionals will be loathe to house homeless households in accommodation they do not have confidence in themselves. There will therefore be a requirement for further funding to assist the private sector in providing decent homes and assisting in sustaining tenancies for vulnerable groups.

We hope local authorities would also assess the likelihood of a homeless household being able to sustain a private tenancy before discharging duty, and to have criteria for when a household would be more appropriately housed in social housing.

**Question 26:** As a local authority, do you think there will be private rented sector housing available in your area that could provide suitable and affordable accommodation for people owed the main homelessness duty?

Housing professionals have reservations about the availability, affordability and suitability of private sector housing in their areas to provide accommodation for people owed the main homelessness duty. Of course the private rented sector is growing and varied in terms of location, size, quality, cost and security: ranging from small scale buy-to-let landlords, to ‘accidental’ landlords who are only letting because they cannot sell on the open market and multiple landlords letting as a business. Different properties and landlords will be more or less suited to housing homeless people. Not all private landlords will be able to deal with vulnerable or challenging tenants.
Landlords currently have expertise with tenancy support and their interventions stop many tenancies failing. Without some form of tenancy support in the private rented sector there could be higher rates of tenancy failure, with people re-presenting themselves as homeless again and again. This in turn would be expensive for local authorities to manage and could lead to instability in communities.

Although we support the change of powers, there are challenges around discharging the homelessness duty into the private rented sector which will need to be addressed:

- Private sector landlords not being prepared to supply housing to people deemed statutorily homeless or in receipt of welfare benefits.
- The creation of a revolving door of homelessness with tenants losing their homes after a fixed period of time.
- Local housing allowances payable to tenants in the private rented sector not keeping up with private sector rent levels resulting in tenants having to top-up their rent from their own income or other welfare benefits.
- Access to private rented sector housing being limited by new local housing allowance caps and the shared room rate.
- Increases to the overall housing benefit bill.
- The need to increase local authority resources to find suitable properties in the private rented sector and to support landlords letting to formerly homeless households.
- There is a risk that formerly homeless households will be concentrated in one area – where PRS rents are cheapest – if many duties are discharged into this sector, thus concentrating deprivation and creating problems for an area. Local lettings plans have been used to address this problem in social housing and may become needed in the PRS to maintain a balance between community sustainability and flexibility around discharge of homelessness duties.

We have some concerns that reductions in local authority funding may result in homelessness prevention services being cut which may unfortunately lead to homelessness increasing. As a consequence, there may be a higher demand for PRS accommodation for homeless households as more people being owed a duty by authorities. It is to be hoped that this can be avoided through strategic decision making around local budgets.

Some of these challenges will be addressed by local authorities, but they cannot do this within their existing means. Therefore CIH is also calling for national-level action in the form of greater regulation of the PRS in line with Rugg Review proposals. We also restate our opposition to the Housing Benefit reforms due to be implemented this year.
Question 27: Do you consider that 12 months is the right period to provide as a minimum fixed-term where the homelessness duty is ended with an offer of an assured shorthold tenancy? If you consider the period should be longer, do you consider that private landlords would be prepared to provide fixed-term assured shorthold tenancies for that longer period to new tenants?

CIH would be comfortable to accept a requirement for 12 month minimum PRS tenancies for people owed a homeless duty. Housing professionals with experience of working with private landlords to secure accommodation low (e.g. for homelessness prevention) have been able to get 12 month tenancies but longer is significantly harder. There are of course many landlords who would not be prepared to grant 12 month tenancies, limiting the pool of property available. There is already a wealth of good practice to draw on from England and also in Scotland where this policy is already in force. For example, the Homes4let social lettings agency in Dorset works in partnership with councils to administer 250 private lettings.

The rationale for the local authority duty recurring if a formerly homeless household loses their accommodation within two years is unclear, unless it means that people who would otherwise not be priority are in fact priority because of the way the duty to address their previous priority circumstances was discharged. We would like to see further explanation and modelling of what this expectation could mean in practice.

Overcrowding

Question 28: What powers do local authorities and landlords need to address overcrowding?

Powers which could help local authorities and their landlords to address overcrowding in social housing include:

- Central government resources to develop larger homes.
- The ability to require existing under-occupiers to move into accommodation which matches their actual housing needs in terms of size.
- The ability to require new tenants to downsize at a future point should their future housing needs no longer match their accommodation in terms of size.

We would not support a redefinition of overcrowding so that standards are more flexible.

CIH notes that overcrowding arises from a mismatch between supply, demand and actual use and is therefore indicative of dysfunctional housing markets. The most effective solutions to tackle overcrowding lie at the regional or sub-regional level at which housing demand operates. Increasing the powers of individual local housing authorities is unlikely to have any
lasting impact unless all authorities within a particular housing market act together to coordinate their strategies. One area in which local authorities could act together would be in the rationalisation of stock, see for example, *The Rationalisation of Housing Association Stock* (CIH, 2007), which includes recommendations for changes in the national policy framework. In the absence of any effective regional government structures there needs to be a better range of incentives for local authorities to coordinate their strategies.

Previous analysis by CLG found that at the national level the stock of 2, 3 and 4 bedroom council dwellings exceeds the numbers required to meet the bedroom standard, and there is only a ‘gross’ shortage of 1 bedroom dwellings and dwellings with 5 or more bedrooms. For 1 and 5 bedroom dwellings the demand outstripped the supply by more than 2:1. This shortage is largely the result of a mismatch of current needs. Around 60 per cent of households that would qualify for a single bedroom dwelling are housed in a dwelling larger than they currently need, whereas 96 per cent of single bedroom dwellings are occupied by a household of the right size.

CIH believes that more flexible tenancy conditions and all the reforms proposed in paragraph 7.5 of the consultation paper will help to address this problem. However, given that this will only apply to new lettings this will take a very long time to work through the system. In the short to medium term to address the problem of distribution existing tenants in larger properties need to be persuaded to move. Previous studies have shown that increasing rent differentials are unlikely to have much impact (tenants are not generally persuaded to move by lower rents). Therefore the most effective incentives will be to improve the quality of the smaller properties or supply of smaller properties in the more popular areas, coupled with practical help around the actual move. Some really good lessons and practice came from the overcrowding pathfinders, around working with tenants, working with existing stock and how to make it best fit for purpose. It is disappointing they will end, and it is to be hoped that learning from them will be captured and disseminated.

CIH recommends that government should reconsider existing policy measures that either encourage household formation or erode the stock of smaller properties available across all sectors. Counter indicative policy

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42 CLG (2003) *Overcrowding in England: the national and regional picture* – statistics, London, CLG: Overall the overcrowding problem in council housing could be seen as primarily a problem of distribution. There is a shortage of one bedroom accommodation but this does not cause overcrowding directly but contributes to the distributional problem for larger dwellings. There is a “gross” shortage of dwellings with 5 or more bedrooms, but the rate of overcrowding [for these properties] would be much lower were it not for the problem of distribution. Thus at the [national] level the rate of overcrowding of households needing 5 or more bedrooms would be 50 per cent, not 85 per cent, if all of the dwellings with this number of bedrooms were occupied by households that require 5 or more bedrooms. […] the situation is essentially the same as for [housing associations except that] the number of dwellings with 5 or more bedrooms exceeds the number required, except in London. Overall the rate of overcrowding is less than for council tenants. […] the rates for 3 bedroom dwellings [outside London…]. […] as for council housing, overcrowding can be seen to be primarily a problem of distribution.
initiatives have recently included:

- Increasing non-dependant charges in housing benefit.
- Reduced housing benefit levels for private sector accommodation, including the extension of the shared room rate. Under occupiers tenants are less to view the private sector as an attractive alternative whilst choice is restricted to shared accommodation and/or the bottom third of the market.
- Restrictions on the use of empty dwelling management orders.

**Question 29:** Is the framework set out in the 1985 Housing Act fit for purpose? Are any detailed changes needed to the enforcement provisions in the 1985 Act?

**Question 30:** Should the Housing Health and Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?

CIH believes that overall, the wider the range of powers that local authorities have to tackle the problem of overcrowding the more likely they will be able to develop appropriate local strategies. Whilst it maybe true that some of the powers in part XI of the Housing Act 1985 may not be used extensively used this will be partly due to the variation in local housing market conditions. It will also partly reflect the fact that authorities use these powers sparingly and responsibly. Whilst instances of actual use and enforcement may be rare this will often be because the threat of power will be enough to help the authority to reach a negotiated solution. Therefore, CIH does not support the abolition or erosion of existing powers – although there may be a case for some minor technical changes.43

Likewise although CIH accepts the overcrowding standard is out of date (having remained unchanged since 1935) we are concerned that this will be used as an excuse to erode it further. We would not support changes that would allow authorities to reduce the standard below the existing basic level. Whilst it has many faults the existing standard does at least provide local communities with a benchmark from which they can judge how their authority is performing.

CIH supports a general approach to tackling overcrowding based on risk assessment as being a perfectly sensible way to determine individual priorities for action. However, CIH does not accept the Housing Health and Safety Rating System (HHSRS) has made the overcrowding standard obsolete. The HHSRS is a tool for assessing the effect of physical property standards on the occupiers whereas the overcrowding standard reflects the allocation and distribution of existing stock.

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43 See the response by the LGA LG Regulation Group
Conclusion

The social rented sector provides a valuable role in improving housing conditions and life chances for many people. It provides safe and secure accommodation for many poorer and vulnerable households and the positive interventions of many social landlords contribute to better communities. CIH is positive about creating a modern and flexible approach to social housing which offers safe, secure, decent and affordable housing to people with a range of different housing.

CIH believes that any proposals to modernise an approach to social housing should:

- Facilitate greater mobility and support tenant choice and not diminish individual aspiration.
- Create sustainable and balanced communities and not further residualise the sector.
- Lead to greater efficiency and value for money and not increase costs to households, social landlords or the public purse.
- Revitalise local communities and not weaken opportunities or incentives for civic activism.
- Increase overall supply of new social housing and not introduce further barriers to development.

Some of the proposals in *Local decisions: a fairer future for social housing* can be put to good effect by housing professionals, but there are risks and concerns which need working through before implementation. Revisions and amendments are also needed to make this policy framework work well.

We stress again the high level of expertise and commitment within the housing profession, as well as the desire to constantly improve the country’s housing situation. We urge government to make better use of this when developing policy and, once the policy is in place, to trust decisions when they have been made and justified at local level.

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