

DECLARATION OF INTEREST - CHECKLIST FOR ASSISTANCE OF MEMBERS – 2007 OVERVIEW AND SCRUTINY

Name: Councillor

Overview and Scrutiny Committee:

Date:

Item No: Item Title:

Nature of Interest:

A Member with a personal interest in any business of the Council must disclose the existence and nature of that interest at commencement or when interest apparent except:

- Where it relates to or is likely to affect a person described in 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose the existence and nature when you address the meeting on that business.
- Where it is a personal interest of the type mentioned in 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- Where sensitive information relating to it is not registered in the register, you must indicate that you have a personal interest, but need not disclose the sensitive information.

A Member with a prejudicial interest must withdraw, **either** immediately after making representations, answering questions or giving evidence where 4 or 6 below applies **or** when business is considered and must not exercise executive functions in relation to that business and must not seek to improperly influence a decision.

Please tick relevant boxes

Notes

	Overview and Scrutiny only		Notes
1.	I have a personal interest* but it is not prejudicial.	<input type="checkbox"/>	<i>You may speak and vote</i>
2.	I have a personal interest* but do not have a prejudicial interest in the business as it relates to the functions of my Council in respect of:		
(i)	Housing where I am a tenant of the Council, and those functions do not relate particularly to my tenancy or lease.	<input type="checkbox"/>	<i>You may speak and vote</i>
(ii)	school meals, or school transport and travelling expenses where I am a parent or guardian of a child in full time education, or are a parent governor of a school, and it does not relate particularly to the school which the child attends.	<input type="checkbox"/>	<i>You may speak and vote</i>
(iii)	Statutory sick pay where I am in receipt or entitled to receipt of such pay.	<input type="checkbox"/>	<i>You may speak and vote</i>
(iv)	An allowance, payment or indemnity given to Members	<input type="checkbox"/>	<i>You may speak and vote</i>
(v)	Any ceremonial honour given to Members	<input type="checkbox"/>	<i>You may speak and vote</i>
(vi)	Setting Council tax or a precept under the LGFA 1992	<input type="checkbox"/>	<i>You may speak and vote</i>
3.	I have a personal interest* and it is prejudicial because it affects my financial position or the financial position of a person or body described in 8 overleaf and the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest or it relates to the determining of any approval consent, licence, permission or registration in relation to me or any person or body described in 8 overleaf and the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest	<input type="checkbox"/>	<i>You cannot speak or vote and must withdraw unless you have also ticked 4 or 7 below</i>
4.	I have a personal and prejudicial interest in the business but I can attend to make representations, answer questions or give evidence as the public are also allowed to attend the meeting for the same purpose	<input type="checkbox"/>	<i>You may speak but must leave the room once you have finished and cannot vote</i>
5.	I must regard myself as having a personal and prejudicial interest in the business because it relates to a decision made (whether implemented or not) or action taken by the Cabinet or another of the Council's committees or sub-committees and, at the time the decision was made or action was taken, I was a member of the Cabinet, committee or sub-committee and I was present when that decision was made or action was taken	<input type="checkbox"/>	<i>You cannot speak or vote and must withdraw unless you are a Cabinet member attending under section 21(13) of the LGA 2000 when you may speak to answer questions</i>

6.	I must regard myself as having a personal and prejudicial interest in the business because it relates to a decision made (whether implemented or not) or action taken by the Cabinet or another of the Council's committees or sub-committees and, at the time the decision was made or action was taken, I was a member of the Cabinet, committee or sub-committee and I was present when that decision was made or action was taken, however I am attending the meeting for the purpose of making representations, answering questions or giving evidence relating to the business as the public are also allowed to attend the meeting for this purpose, whether under a statutory right or otherwise	<input type="checkbox"/>	<i>You may make representations, answer questions or give evidence but must leave the room once you have finished and cannot vote</i>
7.	A Standards Committee dispensation applies.	<input type="checkbox"/>	<i>See the terms of the dispensation</i>

* **“Personal Interest”** in the business of the Council means either it relates to or is likely to affect:

- 8(1)(a)(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) any body -
- (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
- of which you are a member or in a position of general control or management;
- (iii) any employment or business carried on by you;
- (iv) any person or body who employs or has appointed you;
- (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
- (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
- (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
- (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
- (ix) any land in your authority's area in which you have a beneficial interest;
- (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
- (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer.

or

A decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision.

“a relevant person” means

- (a) a member of your family or any person with whom you have a close association, or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph 8(1)(a)(i) or (ii).

“body exercising functions of a public nature” means

Regional and local development agencies, other government agencies, other Councils, public health bodies, council-owned companies exercising public functions, arms length management organisations carrying out housing functions on behalf of your authority, school governing bodies.

A Member with a personal interest who has made an executive decision in relation to that matter must ensure any written statement of that decision records the existence and nature of that interest.

NB Section 21(13)(b) of the LGA 2000 overrides any Code provisions to oblige an executive member to attend an overview and scrutiny meeting to answer questions.

EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

HELD: 30 JUNE 2011

Start: 7.30pm

Finish: 9.35pm

PRESENT: Grice (Chairman)

Councillors: Baldock Hennessy
Mrs Blake Kay
Blane Ms Melling
Coyle Nolan
Cropper O'Toole
Fillis R A Pendleton
Gagen Pope
Gibson Sudworth
Greenall

Officers: Director of Transformation (Ms K Webber)
Assistant Director Housing and Property Maintenance
(Mr B Livermore)
Deputy Treasurer (Mr M Kostrzewski)
Acting Borough Solicitor (Mr T P Broderick)
Principal Overview and Scrutiny Officer (Mrs C A Jackson)

In attendance:

Councillors: Furey (Leader of the Labour Group)
Hodson

Also in attendance: Secretary, West Lancashire Pensioners' Forum (Mr R Brookfield)

1. APOLOGIES

There were no apologies for absence.

2. MEMBERSHIP OF THE COMMITTEE

In accordance with Council Procedure Rule 4, Members noted the termination of membership of Councillors G Jones and Moran and the appointment of Councillors Ms Melling and R A Pendleton for this meeting only, thereby giving effect to the wishes of the Political Groups.

3. URGENT BUSINESS

There were no items of urgent business.

4. DECLARATIONS OF INTEREST

Councillor Greenall declared a personal and prejudicial interest in item 10(a) (Special Meeting of Cabinet held on 13 April 2011) as, at the time of the decisions, he was a Member of Cabinet and had been present when the decisions were taken. He left the Chamber during consideration of this item.

EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE HELD: 30 JUNE 2011

Councillor Mrs Blake declared a personal interest in item 7 relating to the Petition Review Request – Designation of West Lancashire Pensioners' Forum as a Key Stakeholder and Creation of a Public Forum, as the Council's Older People's Champion and also as a Member of the Older People's Partnership Board.

Councillor Nolan declared a personal and prejudicial in item 7 relating to the Petition Review Request as a member of the West Lancashire Pensioners' Forum and left the Chamber during consideration of this item.

Councillor Hennessy declared a personal interest during consideration of item 7 relating to the Petition Review Request when the discussion referred to various groups involved in the Council's consultation processes referencing her former membership of the Older People's Partnership.

Councillor Furey declared a personal interest in item 11 Implementing Self-Finance Council Housing as it related to Council owned homes stating that he was a tenant. Also in relation to item 10(b) Minutes of the Cabinet Meeting held on 14 June 2011 when considering Minute 29 relating to Partnership Proposals with Lancashire County Council (LCC)/One Connect Ltd. Councillor Furey declared a personal interest because of his employment and noted that if the discussion moved onto financial matters this could become a prejudicial interest.

Councillors Cropper and O'Toole declared personal interests as Members of Lancashire County Council during the discussion on item 10(b) Minutes of the Cabinet 14 June 2011 - Minute 29 relating to the Partnership Proposals with LCC/One Connect Ltd.

5. DECLARATIONS OF PARTY WHIP

There were no declarations of a party whip.

6. MINUTES

RESOLVED: That the minutes of the meeting held on 31 March 2011 be approved as a correct record and signed by the Chairman.

7. PETITION REVIEW REQUEST - DESIGNATION OF WEST LANCASHIRE PENSIONERS' FORUM AS A KEY STAKEHOLDER AND CREATION OF A PUBLIC FORUM

Consideration was given to the report of the Director of People and Places advising that a review had been requested of the steps that the Council had taken in response to a petition received on behalf of the West Lancashire Pensioners' Forum (WLPF). The report, as circulated and contained on pages 7 to 20 of the Book of Reports, set out the steps taken to respond to the petition and included the Council's response to the Petition's Organiser (Appendix A) and the Petition Organiser's request (Appendix B) for a review of that response.

The Petition's Organiser, the Secretary of WLPF, attended the meeting and at the invitation of the Chairman addressed the Committee and in his address gave reasons why he did not feel the Council had adequately responded to the petition.

EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE HELD: 30 JUNE 2011

Members discussed the points the Petition's Organiser had raised in his address and in the petition documentation, along with the comments of the Director of Transformation, as set down in the Director of People and Places report. This included reference to the WPLF role and the request put forward within the petition that a public Forum be formally established with a view to meeting at the Council offices, four times a year, as a representative older people's group to provide a formal platform of consultation for that group.

Members sought additional information of the Petitioner, who consented to take questions and responded to those put to him, including those relating to the original petition, the WLPF membership and its representation throughout the Borough.

The Director of Transformation was in attendance and at the invitation of the Chairman also responded to comments.

Members additionally made reference to the consultation mechanisms already established by the Council and the various stakeholder groups involved in its consultation processes.

In reaching its decision the Committee also took into consideration the options that were available to them as set down at paragraph 7.3 of the report.

RESOLVED: That the steps taken by the Council in response to the petition are adequate.

(Note: Councillor Nolan left the Chamber during consideration of this item. The Director of Transformation also left the meeting after consideration of this item.)

8. CALLED-IN ITEMS

There were no items under this heading.

9. KEY DECISION FORWARD PLANS - 1 MAY 2011 - 30 JUNE 2011

There were no items under this heading.

10. RELEVANT MINUTES OF CABINET

Consideration was given to the following Minutes of Cabinet.

11. MINUTES OF THE SPECIAL CABINET MEETING HELD ON 13 APRIL 2011

Consideration was given to the minutes of the special meeting of Cabinet held on 13 April 2011. A member raised questions/comments in relation to:

Minute 150 (Proper Officer Provisions and Scheme of Delegation). Expected timing of report from the Business Plan Working Group to Cabinet. It was reported that a report relating to the work of this Group was scheduled to be considered by Council at its meeting on 20 July 2011.

EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE HELD: 30 JUNE 2011

RESOLVED: That the Minutes of the special meeting of Cabinet held on 13 April 2011 be noted.

(Note: Councillor Greenall left the Chamber during consideration of this item).

12. MINUTES OF CABINET MEETING HELD ON 14 JUNE 2011

Consideration was given to the minutes of the meeting of Cabinet held on 14 June 2011. Members raised questions/comments in relation to:

Minute 6 (Queen Elizabeth II Fields). Valuation of Council owned fields that are proposed to be included in the Queen Elizabeth II Fields Challenge Programme.

Minute 7 (Car Parking Arrangements – 52 Derby Street). – Parking arrangements generally in Ormskirk and link to the proposed Traffic Management Strategy for Ormskirk .

Minute 8 (Use of Section 106 Monies) – Projects identified for use of the commuted sums.

Minute 10 (Community Infrastructure Levy (CIL) and Proposed Amendments to Public Open Space Contributions) – Timetable in relation to preparation of the Draft Charging Schedule. The aims and benefits of the CIL system and the skill base of individuals involved with the self-build schemes.

Minute 33 (Local Enterprise Partnership (LEP) – Outcome of discussion in relation to Regional LEP Fund.

13. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business on the grounds that they involved likely disclosure of exempt information as defined in paragraph(s) 1, 2, 3 and 7 of Part 1 of the Schedule 12 A of that Act, as set out on the agenda of the Cabinet meeting held on 14 June 2011, and, as, in all the circumstances of the case, the public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

Minute 22 (Housing Repairs and Heating Contracts) – Tendering processes.

Minute 26 (CCTV Monitoring Suite Location) – Future location of the Council's CCTV monitoring suite.

Minute 28 (1-11 & 29-39 Firbeck) - Proposals in relation to these properties.

RESOLVED: That the Minutes of the meeting of Cabinet held on 14 June 2011 be noted.

14. OPEN TO THE PUBLIC

RESOLVED: That following consideration of the above item the public be entitled to return to the meeting for the remaining item of business.

15. IMPLEMENTING SELF-FINANCE COUNCIL HOUSING

Consideration was given to the report of the Director of Transformation as contained on pages 41 to 66 of the Book of Reports which sought comments from the Committee in relation to the Government's intention to move to a system of self-financing for Council Housing and gave details of the timetable of actions necessary to meet the requirements of self-financing of Council Housing, intended to be part of the Localism Act if enacted.

Members discussed the issues raised in the report and appendices and made comments relating to:

- The financial implications to the Council under the self-financing proposals related to debt settlement.
- The high level of risk related to the GRA.
- The contents of the responses to Council Housing Finance at the Department of Communities and Local Government (DCLG) and the CIPFA consultation.
- The extent of the financial issues currently faced by the Council's housing tenants' and the impact of other related proposed changes.

RESOLVED: A. That the report be noted.

B. That the following comments be reported to Cabinet:

- (a) That Cabinet considers the implications of recent cuts to Housing Benefit and how this will impact on rental income.
- (b) That Cabinet fully examines the introduction of "Universal Credit" and its impact on the self-financing scheme.
- (c) That Cabinet notes that "Rent Rebate" of £13.5m was paid direct onto tenant's rent accounts during 2010/11. That "Universal Credit" proposes to end direct payments onto rent accounts, as housing costs will be paid direct to tenants.
- (d) That Cabinet notes that large numbers of council tenants are in receipt of rent rebate. As at 25/03/2011, 4379 tenants claimed an average of £64.00 per week each.

.....
Chairman



AGENDA ITEM: 7

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Solicitor

**Contact for further information: Mrs J Denning (Extn. 5384)
(E-mail: jacky.denning@westlancs.gov.uk)**

SUBJECT: PETITION REVIEW REQUEST – PUBLIC EQUALITY AND HUMAN RIGHTS FORUM

Wards affected: Borough Wide

1.0 PURPOSE OF THE REPORT

1.1 To consider a request to review the steps that the Council has taken in response to a petition received in respect of the above, as required by the Local Democracy, Economic Development and Construction Act 2009.

2.0 RECOMMENDATIONS

2.1 That the Committee determines whether it considers the steps taken by the Council in response to the petition are adequate.

2.2 That if the Committee does not consider the steps taken to be adequate, consideration be give as to what action to pursue within existing terms of reference.

3.0 BACKGROUND

3.1 The Local Democracy, Economic Development and Construction Act 2009 requires every local authority to adopt a 'Petition Scheme' that sets out how it will handle petitions which must be complied with as adopted. In accordance with the procedure if a 'petition organiser' does not feel that the Council has dealt with the petition adequately, he/she can request the Executive Overview and Scrutiny Committee to review the steps taken to respond.

4.0 STEPS TAKEN TO RESPOND TO THE PETITION

4.1 A petition was received on 21 July 2011 containing 33 signatures, details are attached at Appendix A.

4.2 An acknowledgement letter was sent to the 'petition organiser' on 22 July 2011 which advised that a formal response would be sent to him within 15 working days and detailed what steps the Council may take to deal with the petition i.e.:

- Take the action requested
- Give a written response setting out the Council's views about the request
- Refer to the relevant overview and scrutiny committee
- Refer to Cabinet (executive functions)
- Consider at a meeting of the Council
- Hold an inquiry
- Undertake research
- Hold a public meeting
- Hold a consultation
- Hold a meeting with petitioners
- Call a referendum

4.3 On 3 August 2011 a letter was sent to the 'petition organiser' from the Director of Transformation, a copy of which is attached at Appendix B.

4.4 On 5 August 2011 a letter was sent to the 'petition organiser' which advised that the following step had been taken to deal with the petition:

"The Director of Transformation, in consultation with the Leader and the Public Realm and Human Resources Portfolio Holder, has provided a written response setting out the Council's views about the request."

5.0 REVIEW REQUEST

5.1 A request to review the steps taken was received, within the deadline, on 5 September 2011. A copy of the request is attached at Appendix C.

6.0 COMMENTS OF THE DIRECTOR OF TRANSFORMATION

6.1 The Council places a great deal of importance on ensuring that equality issues are a consideration when making decisions which impact on local people. It has an Equality Impact Assessment process in place, and is involved in/supports a range of listening and involving mechanisms to ensure it can gauge the views of its local community. It is not considered that further mechanisms are necessary at this point in time.

7.0 PROCEDURE FOR DEALING WITH REVIEW REQUESTS

7.1 The 'petition organiser', Mr R Brookfield, has been notified of the time, date and place of the this meeting and has also been asked if he would like to speak at that

meeting on why he considers that the authority's decision on the petition is inadequate, subject to the permission of the Chairman.

7.2 At the meeting

- Should the 'petition organiser' wish to speak, with the permission of the Chairman, he will be able to address the Committee in accordance with Overview and Scrutiny procedure rules.
[Note: The Chairman will normally allow the 'petition organiser' to address the Committee at the beginning of the item, for a maximum of three minutes.]
- Members of the Committee will be able to ask officers questions, through the Chairman.
- With the agreement of the 'petition organiser', Members of the Committee may be able to ask him questions through the Chairman

7.3 Following consideration of the steps taken, the review request and the comments of the relevant officer, the Committee should decide if it considers the petition was dealt with adequately or it may use any of its powers under the Local Government Act 2000 to deal with the matter.

7.4 If the Committee considers that the petition was not dealt with adequately it can:

- Request the relevant officer to bring back a more detailed report on the issue.
- Make a recommendation to Cabinet / Council as appropriate
- Request the Corporate / Environmental Overview & Scrutiny Committee to undertake a Review on the subject matter (subject to current work programmes and resources).
- Set up a Working Group to look at the issue in more detail (subject to the Committees work programme and resources).

7.4 Once the 'review request' has been considered the 'petition organiser' will be informed of the results within 5 working days. The results of the 'review request' will also be published on the website.

8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

8.1 Petitions are another method to enable local people to raise concerns with the Council providing a feedback mechanism for the community and improving access for all.

9.0 FINANCIAL AND RESOURCE IMPLICATIONS

9.1 There are no significant financial or resource implications other than officer and Member time in dealing with this request.

10.0 RISK ASSESSMENT

10.1 The Council is required to comply with Sections 10 to 22 of the Local Democracy, Economic Development and Construction Act 2009.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as Appendix 4 to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

- A. Copy of petition details – 21 July 2011
- B. Letter to R Brookfield, Secretary of the West Lancashire Pensioners' Forum from Director of Transformation – 3 August 2011
- C. Review request from Mr R Brookfield, Secretary of the West Lancashire Pensioners' Forum – Received 5 September 2011.
- D. Equality Impact Assessment






PETITION

West Lancashire Pensioners' Forum, being dissatisfied with the record of West Lancashire Borough Council on equality rights and human rights for West Lancashire elderly and disabled residents, **PETITIONS** West Lancashire Borough Council to provide a Public Equality and Human Rights Forum at which members of the public will have the right to raise, with officers and members, issues of equality and human rights that concern them.

Background; many vulnerable residents of West Lancashire, such as the 1,000 members of the Dial-A-Ride service, were disproportionately affected by the total elimination of the funding that provided their means of being able to leave their homes to be socially included in as normal a life as their disabilities allow.

West Lancashire Pensioners' Forum wants West Lancashire Borough Council to avoid the institutional processes that lead to discrimination as part of the cultures that are to be found in many public organisations. Barriers that prevent fair access to services and equal employment opportunities can discriminate against people on the grounds of age and disability.

What do you want the council to do? We **Petition** council to meet with the officers of the West Lancashire Pensioners' Forum as soon as possible to establish a Public Forum that will meet regularly at the Council offices to discuss issues of equality and human rights before decisions are made about us, our homes, our safety, our wellbeing, our community, and address all issues of age equality and discrimination, and that Council puts forward to the West Lancashire Pensioners' Forum a draft document in the form of a proposed constitution of such a Forum.


Lead petitioner: Name: Raymond Brookfield Esq, Secretary of the West Lancashire Pensioners' Forum; Email address: 
Telephone: Home , Address:  Halsall, Ormskirk, West Lancashire L39 

We, the undersigned, request West Lancashire Borough Council to consider this petition.

Received
21 July 2011



Director of Transformation
Kim Webber B.Sc., M.Sc.

PO Box 16
52 Derby Street
Ormskirk
West Lancashire
L39 2DF

Telephone: 01695 577177
Email: kim.webber@westlancs.gov.uk

3rd August 2011

Raymond Brookfield Esq.
Secretary of West Lancashire Pensioners'
Forum

(By e-mail)

KW/CMT
Ms. K. Webber
01695 585005
5005

Dear Mr. Brookfield,

Petition: Public Equality and Human Rights Forum

Thank you for your petition in respect of the above, received on 21st July 2011, in which you petition that:

"..... Council meet with the officers of the West Lancashire Pensioners' Forum as soon as possible to establish a Public Forum that will meet regularly at the Council Offices to discuss issues of equality and human rights before decisions are made about us, our houses, our safety, our wellbeing, our community, and address all issues of age equality and discrimination, and that Council puts forward to the West Lancashire Pensioners' Forum a draft document in the form of a proposed constitution of such a Forum."

In response to this request I would like to stress the importance the Council places on ensuring that equality issues are a consideration when making decisions which impact on local people.

In connection with this the Council has an Equality Impact Assessment process in place, and is involved in/supports a range of listening and involving mechanisms to ensure it can accurately gauge the views of its local community, including those of groups with protected characteristics in the community including older, and disabled, people.

Whilst respecting the views of the Forum as expressed in the Petition, the Council takes the view that, at this point in time, there are sufficient mechanisms in place for communities to raise issues of equality and human rights with the Council, and that there is no need for a Forum of the type requested.

Yours sincerely,

Kim Webber
Director of Transformation

Mr R Brookfield
Sec West Lancashire Pensioners Forum

Halsall
Ormskirk
L39

4th September 2011.

Dear Ms Webber

Petition: Public Equality and Human Rights Forum

Thank you for your response of 3rd August 2011 to our petition. I and my fellow members profoundly disagree with Council's view that at this point in time, nor indeed at any other point in time, have there been sufficient mechanisms in place for communities to raise issues of equality and human rights with the Council, and that there is no need for a Forum of the type requested. If there were such mechanisms, why have we not been invited to attend them and present our case for our equality and human rights to them?

Council's view might be better sustainable if proof had been provided of a single instance when the disabled and elderly community had, by invitation, publicly met and discussed with council members and council officers what our petition asks for... "to discuss issues of equality and human rights before decisions are made about us, our houses, our safety, our wellbeing, our community, and address all issues of age equality and discrimination". Having done our own research we know Council couldn't provide such proof because such an event has never occurred, but if council believes it has, please let me know the details of it?

Your response states... "In response to this request I would like to stress the importance the Council places on ensuring that equality issues are a consideration when making decisions which impact on local people". Really? In that case please supply proof that equality for disabled residents has ever been an issue? Council has failed to consult or involve residents with disabilities in the way that was set out in its disability equality scheme, which stated "the Council will continue to work towards achieving the targets set for 2009 and has confirmed its commitment to meeting its statutory duty within the resources it has available". What chance did we have to discuss in any forum what those "resources it has available" might have been, knowing as we do now there were NO discernable resources? Did council not understand its statutory duty under the Equality Act 2006 was to achieve the purpose of making discrimination unlawful in the exercise of public functions?

We've been unable to identify any response to our needs; nor any effective consultation with us; we have identified adverse effects on us; there is no better communication with us; equality isn't conspicuous in mainstream services; for "fairness and proportionality" just look at Dial-A-Ride, a victim of an illegal blanket policy that did not allow for 1,000+ different cases to be treated differently; and for member equality training we ask, what member training?

Dial-A-Ride affected our community in every ward but received no support from the elected members who voted against it. In March 2011 council wrote this, below, in its Draft Equality Scheme April 2011-March 2015; Our community leadership role. The Council enjoys a unique position in the community and will use that position to influence and promote equality in every aspect of community life. We will do this by: Talking to our residents in order to become better aware of the needs, interests and ideas of all sections of our community. We will actively encourage people to contribute to the development of our services and strategies. It also contains this gem "Supporting Elected Members on equality issues and issues that affect particular communities in their wards and areas of work".

By August 2011, with the Equality Scheme in place for just five months, council has refused to talk to one section of its community, our elderly and disabled community, that wants to contribute to the promotion of equality. "Active encouragement to contribute" has become, "no dialogue with elderly and disabled residents". It was stated in council minutes, February 2010, "...there is no longer a dedicated equality resource within the Council". Is it any wonder we consider the dignity of elderly and disabled residents is irrelevant to this council?

We are intrigued by council's claim to "accurately gauge" our views from whatever this range of mechanisms is. With this council "gauge" means "guess". Our opinion is there is only one way to let council know what our views are and that's to face them and tell them.

Returning to the fact of council now stating; "Whilst respecting the views of the Forum as expressed in the Petition, the Council takes the view that, at this point in time, there are sufficient mechanisms in place for communities to raise issues of equality and human rights with the Council, and that there is no need for a Forum of the type requested", on behalf of the West Lancashire Pensioners' Forum I disagree and therefore make a formal request that the Executive Overview and Scrutiny Committee review the adequacy of the step that the Council has taken, or proposed to be taken, in response to the petition.

Yours sincerely

R Brookfield

**West Lancashire Borough Council
EIA process for services, policies, projects and strategies**

Question 1

Using information that you have gathered from service monitoring, surveys, consultation, and other sources such as anecdotal information fed back by members of staff, in your opinion, could your service/policy/strategy/decision (including decisions to cut or change a service or policy) disadvantage, or have a potentially disproportionately negative effect on, any of the following groups of people:

- People of different ages – including young and older people
- People with a disability
- People of different races/ethnicities/nationalities
- Men
- Women
- People of different religions/beliefs
- People of different sexual orientations
- People who are or have identified as transgender
- People who are married or in a civil partnership
- Women who are pregnant or on maternity leave or men whose partners are pregnant or on maternity leave
- People living in areas of deprivation or who are financially disadvantaged

No.

Question 2

What sources of information have you used to come to this decision?

There is no adverse impact on equality in relation to the equality target groups as the rules on petitions are intended to enable public access to the decision-making process of the authority and as such contribute towards open and inclusive governance.

Question 3

How have you tried to involve people/groups in developing your service/policy/strategy or in making your decision (including decisions to cut or change a service or policy)?

No – not a decision just a protocol for implementing a previous decision

Question 4

Could your service/policy/strategy or decision (including decisions to cut or change a service or policy) help or hamper our ability to meet our duties under the Equality Act 2010? Duties are to:

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity (removing or minimising disadvantage, meeting the needs of people)

- Foster good relations between people who share a protected characteristic and those who do not share it

No

Question 5

What actions will you take to address any issues raised in your answers above?

No issues raised.



AGENDA ITEM: 9(a)

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Solicitor

**Contact for further information: Mrs J Denning (Extn. 5384)
(E-mail: jacky.denning@westlancs.gov.uk)**

**SUBJECT: CALL IN ITEM – MEANS TESTING FOR PUBLIC SECTOR HOUSING
DISABLED ADAPTATIONS**

Wards affected: Borough wide.

1.0 PURPOSE OF THE REPORT

1.1 To advise the Executive Overview & Scrutiny Committee of the reason for the call in of the decision on the above item, as set out in Minute No. 47 of the meeting of Cabinet held on 13 September 2011.

2.0 RECOMMENDATIONS

2.1 That the Committee determines whether it wishes to ask for a different decision.

2.2 That if the Committee does wish to ask for a different decision, the Committee indicates which of the options set out at paragraph 5.1 below, it wishes to pursue.

3.0 DETAILS RELATING TO THE CALL IN

3.1 The report attached as an Appendix to this report was considered at a meeting of Cabinet on 13 September 2011.

3.2 The decision of Cabinet reads as follows:

**“47. MEANS TESTING FOR PUBLIC SECTOR HOUSING DISABLED
ADAPTATIONS**

Councillor Mrs Hopley introduced the report of the Director of Transformation which sought approval to means test the Council's public sector tenants when applications

are made for disabled adaptations and to consult on this for introduction from the 1 April 2012.

Councillor Mrs Hopley referred to the Minute of the meeting of the Landlord Services Committee (Cabinet Working Group) held on 5 September attached at Appendix 2 to the report, which endorsed the recommendations to Cabinet.

In reaching the decision below, Cabinet considered the Minute of the Landlord Services Committee (Cabinet Working Group) and the details set out in the report before it and accepted the reasons contained therein.

- RESOLVED: A. That the principle of introducing means testing for Public Sector Disabled Adaptations, be approved, subject to a consultation exercise being carried out.
- B. That the Assistant Director Housing and Regeneration, in consultation with the Housing Portfolio Holder, implement the scheme subject to satisfactory consultation responses.”

3.3 The following reason for call in was given in the requisition:

“We object to the principle of means testing for public sector disabled adaptations.”

3.4 The requisition also provided an alternative decision which was:

“That means testing is not introduced for public sector disabled adaptations.”

3.5 The following Members of the Executive Overview & Scrutiny Committee signed the requisition for call-in in accordance with the provisions of Overview & Scrutiny Committee Procedure Rule 15:

Councillor J Gibson
Councillor I Moran
Councillor N Hennessy
Councillor J Fillis
Councillor B Nolan

4.0 COMMENTS OF THE ASSISTANT DIRECTOR HOUSING AND REGENERATION

4.1 This proposal is considered fair and equitable, as this would bring us in line with our colleagues in Private Sector Housing, who already means test their applicants.

4.2 Reintroduction of means testing for public sector disabled adaptations would enable the council to maximise the amount of disabled adaptations carried out with the limited budget available.

5.0 CONCLUSION

- 5.1 Following consideration of the decision of Cabinet, the requisition for call in and the comments of the Assistant Director Housing and Regeneration, the Executive Overview & Scrutiny Committee can decide if it wishes to ask for a different decision. If the Committee does not wish to ask for a different decision then the decision of Cabinet takes immediate effect. If the Committee does wish to ask for a different decision, it may:
- a. refer the decision back to Cabinet (as the decision making body) for reconsideration, setting out the different decision; or
 - b. refer the matter to Council. If the matter is referred to Council and Council does not object, then the decision of Cabinet will take effect immediately from that Council meeting date. If the Council does object, then the decision and the objection will be referred back to Cabinet (as the decision making body) for reconsideration.
- 5.2 The Secretary of State in his Guidance recommends that Overview & Scrutiny Committees should only use the power to refer matters to the full Council if they consider that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget.
-
-

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

An Equality Impact Assessment has been considered as part of the attached report.

Appendices

Report of the Director of Transformation.



AGENDA ITEM: 6(I)

Cabinet: 13 September 2011

Report of: Director of Transformation

Relevant Head of Service: Assistant Director Housing and Regeneration

Relevant Portfolio Holder: Councillors Mrs Hopley and Owens

Contact for further information: Rick Hague (Extn. 5183)

(E-mail: rick.hague@westlancs.gov.uk)

SUBJECT: MEANS TESTING FOR PUBLIC SECTOR DISABLED ADAPTATIONS

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To seek approval to means test the Council's public sector tenants when applications are made for disabled adaptations and to consult on this for an introduction from the 1st April 2012.

2.0 RECOMMENDATIONS

2.1 That Cabinet approve in principle the introduction of means testing for Public Sector Disabled Adaptations subject to a consultation exercise being carried out.

2.2 That the Assistant Director Housing and Regeneration, in consultation with the Housing Portfolio Holders, implement the scheme subject to satisfactory consultation responses.

3.0 BACKGROUND

3.1 The background to this report is that the Housing Grants Construction and Regeneration Act 1996 introduces a means testing mechanism whereby applicants for disabled facility grants will receive support for adaptations subject to their level of income. For the vast majority of applicants, no contribution would be necessary.

- 3.2 The means test is worked on a formula prescribed by Government and before work proceeds, applicants are advised regarding the grant that they will receive for works and the contribution they would need to make in support of the alterations.
- 3.3 When the Council introduced the policy on carrying out disabled adaptations, it made a conscious choice to implement the legislation for owners and Private Tenants but because the vast majority of Council Tenants at that time, were fully supported, that no means test takes place for Council Tenants. This would then remove unnecessary bureaucracy.

4.0 ISSUES FOR CONSIDERATION

- 4.1 The budget for Disabled Adaptations has been under pressure for many years and additional resources have had to be allocated to ensure that disabled people were not waiting excessive periods for their alterations to be carried out.
- 4.2 Because of the demand for alterations, further thought and consideration has been given to whether means testing should be introduced. Some informal testing has taken place and, based on that, we believe that around 15% of applicants would potentially be eligible to make a partial financial contribution to the work. Without carrying out full assessments it is difficult to estimate exactly the amount of revenue that would be drawn in and clearly this would be based on individual circumstances at that particular time.
- 4.3 Based on assumptions that have been made and comparisons to the amount of contributions made by Private Sector Tenants and Owners, we believe that a further £2000 could be generated to the fund for disabled adaptations if Council Tenants were means tested. It is anticipated that there would be small contributions needed to be made by Tenants for the work and this would be used to “stretch” the budget to enable a further piece of work to be undertaken for someone waiting, particularly if funds are limited.
- 4.4 In order to take this matter forward, I am seeking approval from Cabinet to agree the principle of introducing means testing which would have the result of bringing extra income into the account which could be used to carry out work for those Tenants who are waiting and would mean that existing Council Tenants would be treated the same as Private Sector Tenants and Owner Occupiers. This seems a sensible and equitable way of taking the matter forward.
- 4.5 Clearly some Tenants would be disadvantaged from the present policy by having to make a contribution and because of this I am suggesting that we carry out a consultation exercise to see the reaction to this scheme.
- 4.6 Subject to the consultation exercise, if people were generally comfortable that for the greater good this should be implemented and to ensure equality between Council Tenants and Private Sector Tenants then this could be implemented from next April and a delegation be made to the Assistant Director Housing and Regeneration in consultation with the Housing Portfolio Holders to implement this.

4.7 Should the consultation result in people being concerned regarding this matter, then I would bring a further report back to Cabinet for consideration.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

5.1 The sustainability of disabled adaptations has been a concern for many years and as Tenants are living longer and work needed in their home continues to be required. The introduction of means testing will enable budgets to be stretched to meet demand which, with an aging population, is likely to increase.

5.2 This report would ensure equality between Council Tenants and Private Sector Tenants in the way that they were treated for financial contributions towards work needed to alter their home because they have a disability.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

6.1 There are no direct financial resource implications to the Council. There will be additional administration necessary in introducing the means testing arrangements but I believe that this can be introduced within existing resources.

6.2 The introduction of means testing will simply stretch the resources that we have available for disabled adaptations and mean that more Tenants can be assisted because the additional income derived from the contribution of Tenants who, because of their financial circumstances, are eligible to pay an element of the cost will enable those that are waiting to have their work carried out, have it completed more quickly.

7.0 RISK ASSESSMENT

7.1 In these difficult financial times, reintroducing means testing would provide an opportunity to ensure that scarce resources are targeted more effectively at those most in need. However, there is a risk that the level of income generated by means testing will be so small that it would not cover the costs of completing the tests but, as this can be achieved within existing resources; there are no additional costs to the Council.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

1. Equality Impact Assessment
2. Minute of the Landlord Services Committee (Cabinet Working Group) – 5 September 2011 (To follow)

**MINUTE OF THE LANDLORD SERVICES COMMITTEE (CABINET WORKING GROUP)
5 SEPTEMBER 2011**

41. MEANS TESTING FOR PUBLIC SECTOR DISABLED ADAPTATIONS

The Working Group considered the report of the Director of Transformation which set out recommendations to Cabinet seeking approval to means test the Council's public sector tenants when applications are made for disabled adaptations and to consult on this matter prior to introduction from 1 April 2012.

RESOLVED: That the recommendations to Cabinet be endorsed.



Appendix A

West Lancashire Borough Council

EIA process for means testing for Public Sector Disabled Adaptations

Question 1

Using information that you have gathered from service monitoring, surveys, consultation, and other sources such as anecdotal information fed back by members of staff, in your opinion, could your service/policy/strategy/decision (including decisions to cut or change a service or policy) disadvantage, or have a potentially disproportionately negative effect on, any of the following groups of people:

- People with a disability

The introduction of means testing for public sector (Council Tenants) disabled adaptations would have an impact on people with a disability who currently do not pay a contribution but where the means test would mean that this would have to be paid in the future. Whilst this disadvantage is a small percentage of tenants with a disability, it also benefits other tenants who are eligible for assistance as the budget will be stretched to provide additional support.

Question 2

What sources of information have you used to come to this decision?

Answer 2

Informal discussions have taken place with colleagues who undertake means testing arrangements for Private Sector Housing.



Question 3

How have you tried to involve people/groups in developing your service/policy/strategy or in making your decision (including decisions to cut or change a service or policy)?

Answer 3

Initial soundings have been taken through the Service Evaluation Group and the Landlord Services Committee on Tenant views. These will be reported to Cabinet verbally. However, it is felt that wider consultation should take place, particularly with groups that represent disabled people.

Question 4

Could your service/policy/strategy or decision (including decisions to cut or change a service or policy) help or hamper our ability to meet our duties under the Equality Act 2010? Duties are to:

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity (removing or minimising disadvantage, meeting the needs of people)
- Foster good relations between people who share a protected characteristic and those who do not share it

Answer 4

By introducing means testing for all applicants provides equality between Public and Private Sector Housing.

Question 5

What actions will you take to address any issues raised in your answers above?

Answer 5

A formal consultation process will be undertaken if Cabinet approve the principle of means testing Council Tenants.



AGENDA ITEM: 9(b)

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Solicitor

**Contact for further information: Mrs J Denning (Extn. 5384)
(E-mail: jacky.denning@westlancs.gov.uk)**

SUBJECT: CALL IN ITEM – ELMSTEAD DEVELOPMENT – INITIAL PROPERTY ALLOCATION

Wards affected: Tanhouse / Borough wide.

1.0 PURPOSE OF THE REPORT

1.1 To advise the Executive Overview & Scrutiny Committee of the reason for the call in of the decision on the above item, as set out in Minute No. 55 of the meeting of Cabinet held on 13 September 2011.

2.0 RECOMMENDATIONS

2.1 That the Committee determines whether it wishes to ask for a different decision.

2.2 That if the Committee does wish to ask for a different decision, the Committee indicates which of the options set out at paragraph 5.1 below, it wishes to pursue.

3.0 DETAILS RELATING TO THE CALL IN

3.1 The report attached as an Appendix to this report was considered at a meeting of Cabinet on 13 September 2011.

3.2 The decision of Cabinet reads as follows:

“55. ELMSTEAD DEVELOPMENT PROPERTY ALLOCATION

Councillor Mrs Hopley introduced the report of the Director of Transformation which provided an update in respect of the Elmstead new build development and sought

approval to allocate the 17 Council properties through the Choice Based Lettings system (Home finder) using a local connection criteria for the initial allocations only.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

RESOLVED: That taking into account the minute of the Landlord Services Committee (Cabinet Working Group), attached as an Appendix to the report, initial allocation of properties at Elmstead be approved, using the local connection criteria of applicants living in Tanhouse 1&2 (Egerton, Ennerdale, Enstone, Elmridge, Elmstead and Elswick).

3.3 The following reason for call in was given in the requisition:

“The initial allocation of properties on Elmstead is subject to the normal allocation criteria.”

3.4 The requisition also provided an alternative decision which was:

“That initial allocations of properties at Elmstead be approved, using the normal allocation criteria.”

3.5 The following Members of the Executive Overview & Scrutiny Committee signed the requisition for call-in in accordance with the provisions of Overview & Scrutiny Committee Procedure Rule 15:

Councillor J Gibson
Councillor I Moran
Councillor N Hennessy
Councillor J Fillis
Councillor B Nolan

4.0 COMMENTS OF THE ASSISTANT DIRECTOR HOUSING AND REGENERATION

4.1 The use of a defined local connection criteria using Tanhouse 1&2, for the initial lettings only, would support the integration of these new rental properties into the existing settled community. Using the normal process could allow any applicant from the housing register to access these properties some of whom, although having housing need, may not be currently residing locally or in the Borough.

4.2 This initial lettings arrangement would also reflect the disruption local residents have endured during the construction phase particularly those living in this area. This arrangement would also allow those local eligible applicants who wish to downsize to access the new properties and therefore release larger family homes for other applicants. There are applicants who have expressed a wish to downsize who have attended the initial consultation meetings locally.

4.3 The use of the Tanhouse 1&2 local connection criteria is restricted to the initial letting only and after that will revert back to the normal lettings process.

5.0 CONCLUSION

- 5.1 Following consideration of the decision of Cabinet, the requisition for call in and the comments of the Assistant Director Housing and Regeneration, the Executive Overview & Scrutiny Committee can decide if it wishes to ask for a different decision. If the Committee does not wish to ask for a different decision then the decision of Cabinet takes immediate effect. If the Committee does wish to ask for a different decision, it may:
- a. refer the decision back to Cabinet (as the decision making body) for reconsideration, setting out the different decision; or
 - b. refer the matter to Council. If the matter is referred to Council and Council does not object, then the decision of Cabinet will take effect immediately from that Council meeting date. If the Council does object, then the decision and the objection will be referred back to Cabinet (as the decision making body) for reconsideration.
- 5.2 The Secretary of State in his Guidance recommends that Overview & Scrutiny Committees should only use the power to refer matters to the full Council if they consider that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

An Equality Impact Assessment has been considered as part of the attached report.

Appendices

Report of the Director of Transformation.



AGENDA ITEM: 6(t)

CABINET: 13th September 2011

Report of: Director of People and Places / Transformation

Relevant Head of Service: Housing and Property Maintenance Services

Relevant Portfolio Holder: Councillor Mrs V Hopley / Councillor I Grant

**Contact for further information: Mrs Louisa Blundell (Ext 5212)
(E-mail: louisa.blundell@westlancs.gov.uk)**

SUBJECT: ELMSTEAD DEVELOPMENT-INITIAL PROPERTY ALLOCATION

Wards affected: Tanhouse Ward

1.0 PURPOSE OF THE REPORT

1.1 To update Members on the progress of the Elmstead new build development and seek Member approval to allocate the 17 Council properties at Elmstead through the Choice Based Lettings system (Home finder) but for the initial allocations only to use an agreed local connection criteria.

2.0 RECOMMENDATION

2.1 That subject to consideration of the minute of the Landlord Services Committee (Cabinet Working Group), attached as an Appendix to the report, initial allocation of properties at Elmstead be approved, using the local connection criteria of applicants living in Tanhouse 1&2 (Egerton, Ennerdale, Enstone, Elmridge, Elmstead and Elswick).

3.0 BACKGROUND

3.1 This Council submitted a bid to the HCA at the end of July 2009 requesting Social Housing Grant of £807,000. The bid identified a Council owned land site in Elmstead, Skelmersdale for the development of 17 new affordable homes for social rent. This Council land was held for housing purposes.

3.2 The total cost of this scheme is £1,721,000, which will be funded from £807,000 of grant and from £914,000 of Council funding.

- 3.3 The proposed development was granted planning permission in April 2010 and following a successful tender process, Fawley Construction Limited was awarded the contract and started on site in January 2011.

4.0 CURRENT POSITION

- 4.1 The construction of the new build properties at Elmstead in Skelmersdale remains on target, the development consists of eight two-bedroom houses, five three-bedroom houses and four two-bedroom bungalows. The properties will be high-quality, energy-efficient properties that are well-insulated and this is likely to mean lower fuel bills for the tenants.

Completion and handover of the first four properties are scheduled for October 2011. Handover of all 17 properties is scheduled as follows:

Plots 1 & 2	11/10/2011
Plots 3 & 4	11/10/2011
Plots 5 - 10	15/11/2011
Plots 11 - 13	29/11/2011
Plots 14-17	13/12/2011 [Bungalows]

- 4.2 Officers are now looking to allocate these properties, which are the first new Council homes to be built for 15 years. Their development has been supported by the residents of Tanhouse and in particular those living in Elmstead, Elmridge and Elswick, some of whose properties are adjacent to the construction site and will have had some minor local disruption.
- 4.3 It is therefore proposed that the allocation of the initial tenancies to these new properties be undertaken outside the normal allocations policy using the local connection as applicants living in ***Egerton, Ennerdale, Enstone, Elmridge, Elmstead and Elswick***
- 4.4 The use of this exception in the initial allocation would enable properties to be offered to existing Council tenants with a local connection to the Tanhouse area which would assist in integrating into the community the tenants of the new build properties with existing tenants and residents in adjacent properties.
- 4.5 As with any existing tenants wishing to downsize, those relevant applicants expressing an interest in one of the new build properties, which will result in release of a larger property, will be given a Band A priority on the Housing Register.
- 4.6 Should any properties remain unallocated having used the above criteria then they will be advertised through Home finder and allocated in the normal manner. All future allocations will also comply with the normal allocations policy.

5.0 CHANGES TO HOUSING BENEFIT REGULATIONS

- 5.1 From April 2013 Housing Benefit for working age (16 – pension age) tenants will only cover the size of property that they are assessed to need. Tenants will be expected to notify changes within a year as household members move out and

the implication of the reduction in the number of persons in the household will be a reduction in housing benefit paid. It may also be a problem for people living on their own particularly if there aren't any other suitable properties.

- 5.2 A number of tenants living in Council accommodation in Tanhouse have attended consultation events held at the Sea Cadets Meeting Room. They not only expressed an interest in the new properties but some informed that they would wish to downsize. This would enable the Council to offer their property to a tenant/s with appropriate housing need for larger accommodation.

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 6.1 To provide more appropriate and affordable housing to meet the needs of local people, is a corporate priority. The use of a 'local connection criteria' for initial allocation of these properties would also support community sustainability in the area.

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 There are no financial or resource implications associated with the approval of the recommendation to use Home finder to advertise the properties at Elmstead with local connection criteria for the first tenancies.

8.0 RISK ASSESSMENT

- 8.1 There are no significant risks in exercising this arrangement as it will only apply on the first initial letting.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Minute of the Landlord Services Committee (Cabinet Working Group) – 5 September 2011 (To follow)

**MINUTE OF THE LANDLORD SERVICES COMMITTEE (CABINET WORKING GROUP)
5 SEPTEMBER 2011**

40. ELMSTEAD DEVELOPMENT PROPERTY ALLOCATION

The Working Group considered the joint draft report of the Director of People and Places and Director of Transformation which detailed progress on the Elmstead new build development and sought the views of members in respect of allocation of the 17 new Council properties.

Members considered the recommendations to Cabinet regarding the initial allocation of properties using the local connection criteria for applicants living in Tanhouse 1&2 and discussed matters in respect of :

- Fairness
- Sustaining a community
- Downsizing
- Local connections policies in other part of the Borough
- 50/50 split
- Cash back for relocation
- Changes to housing benefit regulations

- RESOLVED: A. That the recommendation to Cabinet, that the initial allocation of properties at Elmstead using the local connection criteria of applicants living in Tanhouse 1&2 (Egerton, Ennerdale, Enstone, Elmridge, Elmstead and Elswick), be endorsed.
- B. That the Assistant Director Housing and Regeneration to provide more detailed information to tenants in respect of the changes to housing benefit as soon as it becomes available.

CABINET**HELD: 13 SEPTEMBER 2011**

Start: 7.30pm

Finish: 9.10pm

PRESENT:

Councillor I Grant (Leader of the Council, in the Chair)

Councillors		<u>Portfolio</u>
M Forshaw		Planning and Technical Services
A Fowler		Health and Leisure
Mrs V Hopley		Landlord Services and Community Safety
A Owens		Deputy Leader & Housing (Finance), Regeneration and Estates
D Westley		Resources and Transformation

In attendance	Mrs Atherley	Grice
Councillors:	Furey	Hodson
	Gagen	R A Pendleton

Officers

Chief Executive (Mr W Taylor)
Director of People and Places (Mrs G Rowe)
Director of Transformation (Ms K Webber)
Assistant Director Housing and Regeneration (Mr R Livermore)
Assistant Director Community Services (Mr D Tilleray)
Borough Economic Regeneration and Strategic Property Officer
(Mrs J Traverse)

Borough Treasurer (Mr M Taylor)
Transformation Manager (Mr S Walsh)
Deputy Borough Planner (Mr I Gill)
Assistant Member Services Manager (Mrs J Denning)

30. APOLOGIES

An apology for absence was received on behalf of Councillor Ashcroft.

31. SPECIAL URGENCY (RULE 16 ACCESS TO INFORMATION PROCEDURE RULES)/URGENT BUSINESS

There were no items of urgent business.

32. DECLARATIONS OF INTEREST

The following declarations were received:

1. Councillors Forshaw and Hodson declared a personal and prejudicial interest in Agenda Item 6(m) 'Landlord Accreditation Scheme' as private Landlords and Councillor Fowler declared a personal interest due his employment as a Mortgage Broker.
2. Councillors Grant, Mrs Atherley, Fowler, Forshaw and Westley declared a personal interest in all items in the Capital Programme containing reference to Parish Councils as Members of a Parish Council.

33. MINUTES

RESOLVED: That the minutes of the meeting held on 14 June 2011 be received as a correct record and signed by the Leader, subject to Minute 3. 'Declarations of Interest' being amended to read:
"Councillor Owens declared a personal and prejudicial interest in agenda item 5(k) 'Proposed Appointment of Partner Registered Provider', as his sister-in-law was an employee of one of the suggested partners."

34. COMMENTS FROM EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE - IMPLEMENTING SELF FINANCING FOR COUNCIL HOUSING

Councillor Grant introduced the report of the Director of People and Places which set out comments referred from the Executive Overview and Scrutiny Committee at its meeting held on 30 June 2011, in respect of a report considered 'Implementing Self-Financing for Council Housing', also considered by Cabinet at its meeting on 14 June 2011.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That Minute 15 'Implementing Self-Financing for Council Housing' of the Executive Overview and Scrutiny Committee on 30 June 2011 and the comments from the Assistant Director Housing and Regeneration, detailed in paragraph 4 of the report, be noted.
- B. That Call In is not appropriate for this item as the matter has previously been considered by the Executive Overview and Scrutiny Committee.

35. MATTERS REQUIRING DECISIONS

Consideration was given to reports relating to the following matters requiring decisions as contained on pages 389 to 761 of the Book of Reports:

36. RISK MANAGEMENT

Councillor Westley introduced the report of the Director of People and Places which set out details on the Key Risks facing the Council and how they were being managed.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

RESOLVED: That the progress made in relation to the management of the risks shown in the Key Risks Register, attached at Appendix A to the report, be noted and endorsed.

37. REVENUE OUTTURN 2010-11

Councillor Westley introduced the report of the Director of People and Places which set out the key features of the financial outturn position for the last financial year.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the outturn position including the proposed contributions to reserves set out in Appendix 2 to the report be noted and endorsed.
 - B. That call in is not appropriate for this item as the report is to be submitted to the next meeting of Executive Overview and Scrutiny Committee on 29 September 2011.

38. REVENUE MONITORING 2011-12

Councillor Westley introduced the report of the Director of People and Places which provided an early assessment of the financial position on the Revenue Accounts in the new financial year.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the financial position of the Revenue Accounts be noted.
 - B. That call in is not appropriate for this item as the report is to be submitted to the next meeting of Executive Overview and Scrutiny Committee on 29 September 2011.

39. CAPITAL PROGRAMME OUTTURN 2010-11

Councillor Westley introduced the report of the Director of People and Places which provided a summary of the capital outturn position for the 2010/2011 financial year.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the final position, including slippage, on the Capital Programme for the 2010/2011 financial year be noted and endorsed.
 - B. That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 29 September 2011.

40. CAPITAL PROGRAMME MONITORING 2011-12

Councillor Westley introduced the report of the Director of People and Places which provided an overview of the current progress on the Capital Programme.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the progress on the Capital Programme as at the end of July, 2011 be noted.

- B. That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 29 September 2011.

41. FEE CHARGING FOR STREET NAMING AND NUMBERING SERVICE

Councillor Forshaw introduced the report of the Director of Transformation which detailed the Council's responsibilities in relation to street naming and numbering and sought to formally adopt the Street Naming and Numbering process and approve the introduction of charging for the Street Naming and Numbering function.

The Director of Transformation circulated a revised recommendation to take into account the consultation currently being undertaken on the Major Service Review and consideration of it at the Council meeting on 19 October 2011.

In reaching the decision below, Cabinet considered the details set out in the report before it and the revised recommendations and accepted the reasons contained therein.

- RESOLVED:
- A. That the Street Naming and Numbering service process be approved, as detailed in Appendix 1 to the report.
 - B. That the fee charging schedule for the Street Naming and Numbering service set out in Appendix 2 to the report be approved and implemented by 1 November 2011, subject to the Council's decision (on 19 October 2011) on the consultation currently being carried out.
 - C. That authority to amend the policy, process and the charges, in the future, be delegated to the Borough Planner in consultation with the relevant portfolio holder.

42. DRAFT NATIONAL PLANNING POLICY FRAMEWORK

Councillor Forshaw introduced the report of the Director of Transformation which set out the Draft National Planning Policy Framework (NPPF) and its potential implications for the Council's Planning Service and sought approval for the draft response officers had prepared on behalf of the Council to the consultation.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the proposed responses to the Consultation Questions set out in Appendix A and B to the report be approved for submission to the Department for Communities and Local Government (CLG) along with a covering letter setting out the Council's general support of the draft NPPF, subject to particular aspects of concern within the document.

- B. That the Borough Planner, in consultation with the Portfolio Holder for Planning and Transportation, prepare a covering letter to CLG to reflect the content of the report, following consideration of any agreed comments from the Executive Overview & Scrutiny Committee and Planning Committee.
- C. That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 29 September 2011.

43. THE SEFTON/WEST LANCASHIRE VISITOR ECONOMY PROJECT (LOCAL SUSTAINABLE TRANSPORT FUND)

Councillor Forshaw introduced the report of the Director of Transformation which detailed the Council's involvement in the successful joint Local Sustainable Transport Fund bid between Sefton and West Lancashire Borough Council and sought authority for future Member and officer involvement.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That officers continue to work on the project to ensure that West Lancashire benefits from this funding and that cross boundary opportunities, to promote the visitor economy, are not missed.
 - B. That the establishment of a Project Board be supported, and officers support the Project Board and Working Group, as appropriate.
 - C. That Councillors Forshaw and Fowler be appointed to the Project Board as representatives of West Lancashire Borough Council.
 - D. That the Borough Planner, in consultation with the Planning Portfolio Holder, agree the terms of reference for the Project Board and Working Group.
 - E. That the Borough Planner negotiate and enter into a formal Governance Agreement with Sefton MBC and Lancashire County Council.

44. EVENT SAFETY ADVISORY GROUP

Councillor Fowler introduced the report of the Director of People and Places which detailed information regarding the formation of a new multi-agency Group to provide a co-ordinated approach to events in West Lancashire, with the purpose of ensuring public safety and sought approval of a 'Safer Events Policy' for this Council, including the establishment of the Event Safety Advisory Group, together with its Terms of Reference.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the 'Safer Events Policy', as attached at Appendix A to the report, be approved.
- B. That the Assistant Director Community Services, in consultation with the relevant Portfolio Holder, be given delegated authority to review and make minor amendments to the policy as necessary, significant changes to the policy being referred back to Cabinet.

45. SUNBEDS (REGULATION) ACT 2010

Councillor Fowler introduced the report of the Director of People and Places which sought authority for officers to take enforcement action in respect of the Sunbeds (Regulation) Act 2010.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: That delegated authority be given to the Assistant Director Community Services to appoint authorised persons under the Sunbeds (Regulation) Act 2010, to authorise any prosecutions necessary under that Act and to administer the relevant provisions of the legislation.

46. REVISIONS TO THE INDUSTRIAL DEVELOPMENT ACT 1982

Councillor Owens introduced the report of the Director of Transformation which sought approval to submit comments on the proposed revisions to the Industrial Development Act 1982 (IDA).

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the proposed response to the Department for Business, Innovation and Skills (BIS) consultation paper on revisions to the IDA, attached as an Appendix to the report be approved.
- B. That the Borough Economic Regeneration and Strategic Property Officer, in consultation with the Portfolio for Regeneration and Estates, be authorised to make final amendments to the response and submit to the BIS, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.
- C. That Call In is not appropriate for this item as the report is being referred to Executive Overview and Scrutiny Committee on 29 September 2011.

47. MEANS TESTING FOR PUBLIC SECTOR HOUSING DISABLED ADAPTATIONS

Councillor Mrs Hopley introduced the report of the Director of Transformation which sought approval to means test the Council's public sector tenants when applications are made for disabled adaptations and to consult on this for introduction from the 1 April 2012.

Councillor Mrs Hopley referred to the Minute of the meeting of the Landlord Services Committee (Cabinet Working Group) held on 5 September attached at Appendix 2 to the report, which endorsed the recommendations to Cabinet.

In reaching the decision below, Cabinet considered the Minute of the Landlord Services Committee (Cabinet Working Group) and the details set out in the report before it and accepted the reasons contained therein.

- RESOLVED:
- A. That the principle of introducing means testing for Public Sector Disabled Adaptations, be approved, subject to a consultation exercise being carried out.
 - B. That the Assistant Director Housing and Regeneration, in consultation with the Housing Portfolio Holder, implement the scheme subject to satisfactory consultation responses.

48. LANDLORD ACCREDITATION SCHEME

Councillor Mrs Hopley introduced the report of the Director of People and Places which sought approval to introduce a Landlord Accreditation Scheme in partnership with the Residential Landlords Association (RLA). She advised that following a meeting on Friday, 9 September Edge Hill University/the Student Union had agreed to support and make a contribution of £1,500 towards the scheme.

Councillor Hopley referred to schemes in Leeds and Oxford City Councils that had extended licensing to cover Houses in Multiple Occupation, regardless of their size, and circulated a Motion in that respect.

In reaching the decision below, Cabinet considered the comments from Councillor Hopley, the Motion circulated and the details set out in the report before it and accepted the reasons contained therein.

- RESOLVED:
- A. That the Assistant Director Community Services work with the RLA to develop and implement an Accreditation Scheme and be given delegated authority to review and update the scheme as required, in consultation with the relevant Portfolio Holder.
 - B. That the Assistant Director Community Services explore the advantages and disadvantages of the Council introducing an additional licensing scheme which would cover all Houses in Multiple Occupation regardless of their size and bring back a report to Cabinet.

(Note: Councillors Forshaw and Hodson declared a personal and prejudicial interest and left the room during consideration of this item.

49. QUARTERLY PERFORMANCE INDICATORS (APRIL 2011 TO JUNE 2011)

Councillor Westley introduced the report of the Director of Transformation which presented performance monitoring data for the quarter ended 30 June 2011.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the Council's overall good performance against the indicator set for the quarter ended 30 June 2011, be noted.
- B. That Call in is not appropriate for this item as the report is being submitted to the next meeting of the Corporate Overview and Scrutiny Committee on 22 September 2011.

50. PROGRESS ON THE ICT DEVELOPMENT PROGRAMME 2010/11 AND THE PROPOSED DEVELOPMENT PROGRAMME 2011/12

Councillor Westley introduced the report of the Director of Transformation which detailed progress on the ICT development programme in 2010/11 and set out the proposed ICT development programme for 2011/12.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That progress on the ICT development programme in 2010/11 be noted.
- B. That the proposed ICT development programme detailed at Section 5.2 of the report be approved, taking account of the capital funding available in 2011/12.

51. TENANT INVOLVEMENT STRATEGY

Councillor Mrs Hopley introduced the report of the Assistant Director Housing and Regeneration which set out the West Lancashire Borough Council Tenant Involvement Strategy (TIS).

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the report be noted and the TIS be endorsed.
- B. That the use of £60,000, from the budget provided for Service Improvement, be approved as detailed in paragraph 9.1 of the report.

52. CONSULTATION - IMPLEMENTING SOCIAL HOUSING REFORM: DIRECTIONS TO THE SOCIAL HOUSING REGULATOR

Councillor Mrs Hopley introduced the report of the Assistant Director Housing and Regeneration which set out the Government's consultation paper on 'Implementing Social Housing Reform: Directions to the Social Housing Regulator' and the proposed response.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the proposed response to the Department of Communities and Local Government (CLG) consultation paper on 'Implementing Social Housing Reform: Directions to the Social Housing Regulator', as set out in appendix C, be approved, taking into account the Minute of the Landlord Services Committee (Cabinet Working Group), attached at Appendix D to the report.
 - B. That the Assistant Director of Housing and Regeneration, in consultation with the Portfolio Holder for Housing, be authorised to make final amendments and submit the response to the CLG, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.
 - C. That call in is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on the 29 September 2011.

53. CONSULTATION ON A NEW MANDATORY POWER OF POSSESSION FOR ANTI-SOCIAL BEHAVIOUR

Councillor Mrs Hopley introduced the report of the Director of Transformation which set out the Council response to the Consultation proposing a mandatory order of possession where Anti-Social and criminal behaviour has been perpetrated by a tenant or someone for whom the tenant is responsible.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED:
- A. That the proposed response to the Department of Communities and Local Government (CLG) consultation paper on 'A New Mandatory Power of Possession for Anti-Social Behaviour', attached at Appendix 3 to the report be approved, taking into account consideration of the Minute of the Landlord Services Committee (Cabinet Working Group), attached at Appendix 4 to the report.
 - B. That the Assistant Director Housing and Regeneration, in consultation with the Portfolio for Housing, be authorised to make final amendments to the response and submit to the CLG, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.

- C. That Call In is not appropriate for this item as the report is being referred to Executive Overview and Scrutiny Committee on 29 September 2011.

54. HEALTH AND SAFETY ANNUAL REPORT 2011

Councillor Grant introduced the report of the Director of People and Places which provided an update on the progress made in relation to the Health and Safety Management of the Council.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the Annual Health and Safety Report 2011, be noted and endorsed.
- B. That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 29 September 2011.

55. ELMSTEAD DEVELOPMENT PROPERTY ALLOCATION

Councillor Mrs Hopley introduced the report of the Director of Transformation which provided an update in respect of the Elmstead new build development and sought approval to allocate the 17 Council properties through the Choice Based Lettings system (Home finder) using a local connection criteria for the initial allocations only.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

RESOLVED: That taking into account the minute of the Landlord Services Committee (Cabinet Working Group), attached as an Appendix to the report, initial allocation of properties at Elmstead be approved, using the local connection criteria of applicants living in Tanhouse 1&2 (Egerton, Ennerdale, Enstone, Elmridge, Elmstead and Elswick).

56. HOUSING SERVICE IMPROVEMENT PLAN

Councillor Mrs Hopley introduced the report of the Director of Transformation which set out the Housing Improvement Plan to ensure that that the Council is doing all it can to provide an excellent service for tenants and is meeting all the requirements of the regulator, the Tenant Services Authority (TSA).

The Leader advised:

- That Helena Housing Association had been appointed as the Council's 'Critical Friend'.
- That Gas Inspections for Council housing had met the 100% target

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the comments of the Landlord Services Committee (Cabinet Working Group) at its meeting on 5 September 2011, as detailed in the Minute at Appendix B, be noted.
- B. That progress on the Housing Service Improvement Plan be noted.
- C. That Call in is not appropriate for this item as the report will be presented to the Corporate Overview and Scrutiny Committee on 22 September 2011.

57. KEY DECISION FORWARD PLAN - QUARTERLY REPORT ON SPECIAL URGENCY DECISIONS - 1 APRIL - 30 JUNE 2011

Councillor Grant introduced the report of the Director of People and Places which advised that no decisions had been made during the last quarter in respect of Access to Information Procedure Rule 16 (Special Urgency).

RESOLVED: That it be noted that Access to Information Procedure Rule 16 (Special Urgency) was not exercised during the quarter ending 30 June 2011.

58. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business on the grounds that it they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of that Act and as, in all the circumstances of the case, the public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

59. MATTERS REQUIRING DECISIONS

Consideration was given to reports relating to the following matters requiring decisions as contained on pages 765 to 781 of the Book of Reports:

60. STRATEGIC ASSET MANAGEMENT PROJECT

Councillor Owens introduced the report of the Director of Transformation which detailed progress on the Strategic Asset Management Project and the outcome of the Knowsley Ward review and sought authority to dispose of the assets identified.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the contents of the report, including the work undertaken by officers to date and the progress on the assets identified as Category 1s for Burscough West, be noted (Appendix A).
- B. That the thirty eight sites identified within Appendix B to the report, relating to Knowsley Ward, be actioned as recommended.

- C. That the Assistant Director Housing and Regeneration be authorised to dispose of all sites marked * in Appendices A and B and site NMI (land at Todds Lane, Banks).

61. ASSET MANAGEMENT BUSINESS PLAN - CONSULTANCY WORK

Councillor Owens introduced the report of the Director of Transformation which sought approval to appoint consultants to provide independent options and recommendations in relation to the Council's income generating property portfolio.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained in it.

- RESOLVED: A. That the Borough Economic Regeneration & Strategic Property Officer be authorised to prepare a consultants brief, seek quotations and appoint the most suitable company to undertake an options appraisal and provide recommendations in relation to the Council's income generating property portfolio and operational assets.

THE LEADER



AGENDA ITEM: 12

CABINET: 13 September 2011

**EXECUTIVE OVERVIEW AND
SCRUTINY: 29 September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Treasurer

Relevant Portfolio Holder: Councillor D. Westley

**Contact for further information: Marc Taylor (Extn. 5092)
(E-mail: marc.taylor@westlancs.gov.uk)**

SUBJECT: REVENUE OUTTURN

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To set out key features of the financial outturn position for the last financial year.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the outturn position including the proposed contributions to reserves set out in Appendix 2 be noted and endorsed.

2.2 That call in is not appropriate for this item as it is to be submitted to the next meeting of Executive Overview and Scrutiny Committee.

3.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

3.1 That the outturn position be noted.

4.0 BACKGROUND

4.1 Regular monitoring reports on the budget position have been produced during the course of the 2010-11 financial year, and this report draws together details of the final outturn position. The audit of the accounts by our External Auditors is nearing completion but they have not raised any significant issues on the

accounts to date. However if any issues are raised then these will be reported back to Members in due course.

- 4.2 The Council set a total GRA budget of £16.420m for this year. The previous budget monitoring forecast reported to Cabinet in March projected a favourable budget variance of £400,000 or 2.4% of this budget. The HRA was also expected to meet its budget target for the year.

5.0 GRA OUTTURN POSITION

- 5.1 The final outturn position shows an overall favourable variance of £520,000, which is equivalent to 3.2% of the total budget. This continues the track record of delivering outturn performance in line with the budget that has consistently been achieved by the Council in recent years. It also means that another year's successful performance has been achieved, which is a credit to the Council, given the very difficult financial climate that it is operating in. The delivery of this managed underspend has also provided funding, which was used to support the 2011-12 budget position.

- 5.2 The final outturn position shows an improvement of £120,000 compared to the previous projected outturn position of £400,000. This projected outturn position was calculated on a prudent basis and consequently the improvement at the year-end was not unexpected, and follows the pattern of previous years. It also reflects the fact that the Council budgeted for a 0.5% pay award in 2010-11, and it was only confirmed at a late stage that this provision would not be required.

- 5.3 There has been a significant saving achieved this year on travel concessions of £240,000 through more effective procurement and additional government grant funding. However the responsibility for travel concessions was transferred to the County Council in April 2011, and consequently this saving will not be repeated. If this one off factor is excluded then the underlying variance was £280,000 or 1.7% of the budget.

- 5.4 Some of the key features of the outturn position include:

- The active management of staffing levels combined with savings from deleting the posts of the Deputy Chief Executive and his Assistant have generated a significant saving on employee costs
- Income performance has generally been good with most services achieving their budget targets. While some areas have seen a dip in income (for example in treasury management as a result of the continued low level of interest rates) other areas have exceeded their budget targets (such as the CRA portfolio)

- 5.5 The outturn position for individual services is shown in Appendix 1, and shows that every division met its budget targets.

6.0 GRA RESERVES AND BALANCES

- 6.1 When the Council met in February 2011 it agreed to use £275,000 of the projected underspend for 2010-11 to support the budget for 2011-12. Consequently this leaves a balance of £245,000 (£520,000 outturn less

£275,000) to be allocated. Proposals on how this unallocated funding should be utilised are contained in Appendix 2, and Members are asked to consider and endorse these proposals.

- 6.2 The level of GRA balances at the year end was £1.149m, which is an adequate level given the Council's overall financial context and is in line with the Council's Reserves policy. There is also £1.755m set aside in the Restructuring Reserve to pay for future staff exit costs.

7.0 HOUSING REVENUE ACCOUNT

- 7.1 The Council set a gross expenditure budget for the Housing Revenue Account (HRA) of £21.078m in February 2010. In overall terms the Council has kept within this target and achieved its budget objectives over the course of the year.

- 7.2 Although slightly up on the previous year, Right to Buy sales of 18 has meant that Rental Income has remained relatively stable. It is worth noting that whilst the proceeds from these asset sales provide funding for the Capital Programme, these sales also result in reduced levels of income to the HRA.

- 7.3 During the course of the year there were a number of spending challenges on the budget, and details on these issues were provided to Cabinet in the quarterly monitoring reports. In particular, severe inclement weather over the last quarter resulted in a significant number of heating equipment failures and the demand for Disabled Adaptations was greater than forecast.

- 7.4 In discussions, tenants expressed the view that these issues should be key priorities for investment by the Council. To bridge the funding gap, capital works budgets were realigned and additional revenue support was provided from savings in the Repainting Programme, Repairs Contingency, and other miscellaneous HRA expenditure programmes without detriment to service provision.

- 7.5 When the Council set the budget for 2010-11 it approved the transfer of £290,000 from the Working Balance to support spending priorities. Consequently the level of HRA Working Balances has reduced by this amount over the year to £632,000 at the year end. This level of Working Balances continues to remain adequate for prudent financial management.

8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 8.1 There are no direct sustainability implications arising from this report.

9.0 RISK ASSESSMENT

- 9.1 The formal reporting of performance on the General and Housing Revenue Accounts is part of the overall budgetary management and control framework that is designed to minimise the financial risks facing the Council.
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

This report does not have any direct impact on members of the public, employees or elected members, and consequently an Equality Impact Assessment is not required.

Appendices

Appendix 1 – GRA Outturn Position

Appendix 2 – Proposed Use of Unallocated Underspend

APPENDIX 1 GRA OUTTURN POSITION

Budget area	Net Budget £000	Variance from Budget £000	Variance %
Assistant Chief Executive	3,134	-260	-8.3%
Community Services	4,868	-185	-3.8%
Housing and Property Maintenance	1,529	-110	-7.2%
Legal, Democracy and Financial Mgt.	2,824	-100	-3.5%
Planning	1,953	-135	-6.9%
Regeneration and Estates	350	-280	See note
Street Scene	5,848	-285	-4.9%
Central Savings targets	-455	455	See note
Central Budget Items	-3,631	380	10.5%
TOTAL BUDGET REQUIREMENT	16,420	-520	-3.2%

NOTES

The budget figures for each Division have been updated to include year-end capital accounting adjustments and the allocation of central budget items to divisions. These are technical accounting adjustments that do not affect the bottom line budget requirement, which has remained unchanged during the year at £16.420m.

The Regeneration and Estates division has a relatively small budget requirement because it contains the Community Related Assets portfolio, which generates a significant amount of external income.

Central savings targets cover budgets for staff efficiency, Gershon efficiency improvements and savings from Organisational Re-engineering. The actual savings that are made in relation to these items are contained within Divisions. Consequently savings made elsewhere will offset the apparent variances on these budget items.

General

It should be recognised that some areas of the budget are within the Council's control, for example the filling of vacant posts to achieve salary savings. However other areas such as external income can be volatile where we are exposed to market forces. In addition some service areas are demand led where it can be difficult to directly control expenditure.

Assistant Chief Executive – Favourable variance £260,000

There are a number of issues giving rise to the overall favourable position. The main saving made is in relation to Concessionary Travel, largely through lower reimbursement rates being paid to bus operators and additional grant funding. The other major variance for the division relates to savings on salary costs resulting from the active management of staff vacancies.

Benefits expenditure was higher than budget following the same pattern as last year. However additional grant was received to partially offset the increase and there was a higher than anticipated recovery of overpaid benefits.

Community Services – Favourable variance £185,000

The largest single contributory factor to the favourable variance was a managed saving on staffing.

Car park income from pay and display machines was on target. Income from fines was in excess of budget and reflects the increased level of enforcement now in operation. Income from regular and casual stallholders on Ormskirk Market was less than budget. The shortfall was due to the level of holidays, sickness and closures due to inclement weather.

There are a number of minor variances in other service areas but these do not have a significant net effect on the bottom line for the division.

Housing and Property Maintenance – Favourable variance £110,000

The active management of staffing levels and vacancies has generated a significant favourable budget variance within the division, and repairs and maintenance costs have also been effectively controlled.

However there are a number of adverse variances on utility costs, particularly in relation to water and electricity bills. There was also an adverse variance on the Home Loans scheme which was the subject of a report to Cabinet in March.

Legal Democracy and Financial Management – Favourable variance £100,000

The division has achieved an overall favourable variance through a number of different means including savings on extending our insurance contracts, reduced audit fees, lower pension costs, and managed staff savings. Income from Local Searches, which had been under pressure in previous years due to the difficult financial climate, has also stabilised and was just below its budget target for the year. A favourable variance was also achieved on Elections and Register of Electors.

There were also a range of savings made on Civic Administration expenditure during the year including Member Allowances, training, travel and IT costs.

Planning – Favourable variance £135,000

There is a small adverse variance on both development control and building control income as a result of the difficult economic climate and due to factors that are outside the Council's control. Both variances, however, are less than previously anticipated.

This adverse income variance is more than offset by managed savings on staffing and other savings that have enabled the division to achieve an overall favourable variance. Publicity was also less than anticipated due to works being carried forward into the new financial year and an additional grant being received at the end of the year.

Regeneration and Estates – Favourable variance £280,000

Although the economic climate has remained very challenging the Estates team have been working very hard to maintain occupation levels within the commercial assets portfolio and as a result exceeded budget targets. However, the Investment Centre occupation rates have decreased over the financial year which resulted in a loss for this ring fenced account.

Overall divisional performance has been very good as expenditure levels have been closely managed, and income levels have been exceeded, apart from the Investment Centre.

Street Scene – Favourable variance £285,000

The successful commissioning of the £3.5m waste transfer facility has allowed incremental improvements to operational arrangements, which are on-going. Costs and income levels have been closely monitored throughout the year resulting in an overall favourable variance. This includes a significant saving made on the management of staffing costs. However, there have been some cost and operational pressures, such as fuel increases, usage of vehicle hire as leases have expired in anticipation of the garage tender exercise, and severe winter weather conditions.

Central budget and savings items

This heading covers a range of corporate budgets including savings targets, treasury management, and capital charges. Central savings targets for staff efficiency, Gershon efficiency improvements and savings from Organisational Re-engineering are all held in this area. The actual savings that are made in relation to these items are contained within Divisions. Consequently savings made elsewhere will help to offset the adverse variances on these budget items.

Interest rates continue to remain at historically low levels and this has had an adverse impact on treasury management income. There have also been additional capital charges incurred in excess of the budget provision.

APPENDIX 2

PROPOSED USE OF UNALLOCATED UNDERSPEND FROM 2010-11

Housing and Property Maintenance

Carry forward unspent Home Improvement Agency funding of £25,700, which has been committed but not spent in the old year.

Planning

Carry forward £20,000 of unspent Habitat Survey grant funding to help meet the cost of habitat studies and other work required for the LDF.

Carry forward the unspent budget of £8,398 on LDF Publicity and Promotions to meet commitments on preparing the LDF, which were not able to be completed in the last financial year as a result of unavoidable delays.

Carry forward an unspent budget on LDF consultancy to meet commitments of £12,648 for work that was not able to be completed in the old year.

Regeneration and Estates

Cabinet agreed funding for a Temporary Marketing post in September 2010. However £20,710 of this funding had not been spent by the year end and it is requested that this be carried forward.

Provide funding of up to £50,000 for the development of an Asset Management Business Plan, which is the subject of a separate report elsewhere on this agenda.

Street Scene

Provide funding to complete CCTV coverage for the depot site. Given the assets on the site and following completion of the transfer facility, it would make good business sense to provide CCTV coverage for the remainder of the depot. This scheme would need to be properly costed but is not expected to be more than £50,000.

Corporate

Add remaining underspend to central contingencies to cover a range of items including potential increases in fuel and energy prices and any additional costs that may arise from the introduction of zoning changes in Street Scene. This could also support the income budget from the Property Based Payment Mechanism for Refuse and Recycling, which is likely to come under pressure in the future.



AGENDA ITEM: 13

CABINET: 13th September 2011

**EXECUTIVE OVERVIEW AND
SCRUTINY: 29th September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Treasurer

Relevant Portfolio Holder: Councillor D. Westley

**Contact for further information: Marc Taylor (Extn. 5092)
(E-mail: marc.taylor@westlancs.gov.uk)**

SUBJECT: REVENUE MONITORING

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To provide an early assessment of the financial position on the Revenue Accounts in the new financial year.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the financial position of the Revenue Accounts be noted.

2.2 That call in is not appropriate for this item as it is to be submitted to the next meeting of Executive Overview and Scrutiny Committee.

3.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

3.1 That the financial position of the Revenue Accounts be noted.

4.0 BACKGROUND

- 4.1 In February 2011 the Council approved budgets for the Housing and General Revenue Accounts for the 2011-2012 financial year. It is good practice that monitoring reports are produced on a regular basis to ensure that Members are kept informed of the financial position of these accounts.

5.0 PREVIOUS YEAR PERFORMANCE

- 5.1 The revenue outturn report contained elsewhere on this agenda shows that budget targets were successfully met for both the GRA and the HRA in the previous year. This continues the Council's track record of good financial management that has been achieved over many years.
- 5.2 Consequently it can reasonably be expected that this strong financial performance will be carried forward, in many cases, into the new year. However the difficult economic climate will undoubtedly cause pressures, and in particular may make income targets more difficult to achieve.

6.0 EMPLOYEE COSTS

- 6.1 Employee costs form a significant proportion of the Council's total budget and consequently are very important from a budget management perspective. In recent years the level of the pay award has been the subject of lengthy national negotiations between the local government employers' organisation and unions, and consequently has been an area of uncertainty for budget monitoring. However this year the local government employers have already confirmed a pay freeze for all Council workers.
- 6.2 Negotiations between local government employers and unions are currently taking place in relation to pensions. At the request of the Secretary of State for Communities and Local Government, employers and union representatives have commenced discussions to consider how pension savings, equivalent to a 3.2% increase in employee contribution rates, could be achieved. The Government have stated their intention to begin a formal statutory consultation exercise by the end of September on this objective with any changes coming into effect from April 2012. Consequently while this will not be an issue that will affect budget monitoring in the current year, it could potentially have a budget impact in future years and so will need to be kept under review.

7.0 GENERAL REVENUE ACCOUNT (GRA) POSITION

- 7.1 The Council has set a revenue budget of £14.278m for the General Revenue Account for the year. This budget was based on freezing the Council tax at the same level as the previous year in line with most other authorities.
- 7.2 In recent years an annual savings target for staff efficiencies of £250,000 has been included in the GRA budget. In addition this year a savings target of £350,000 was agreed for part year savings to be delivered by the Council's

Business Plan processes. Taken together this means that £600,000 of in year savings need to be generated to meet budget targets.

- 7.3 The decision taken by Council in July to approve a package of Major Service Review (MSR) proposals will deliver a significant element of the necessary savings. The majority of these proposals will be implemented in February 2012 – although the posts of the Chief Executive and his Executive Assistant will be deleted at the end of October. Consequently the MSR proposals will provide a part year saving in 2011-12 and a full year saving in 2012-13.
- 7.4 Similarly the decision taken by Council in July to approve a partnership agreement with the County Council and One Connect Limited will also contribute significantly to the savings targets. As this partnership is due to start on 1st October it should provide a half year saving in 2011-12 and a full year saving in 2012-13.
- 7.5 The external income that the Council generates can be one of the most volatile areas of the budget, with income going up and down due to factors outside our direct control. This area is particularly depressed at the moment given the state of the economy. However at the current time income levels, while under pressure, are currently performing close to budget in most areas.
- 7.6 The main exception to this position is in relation to the Investment Centre's income which is below budget at the current time. The Asset Management Business Plan report elsewhere on this agenda sets out more detail on this issue, and the additional costs on empty property business rates that are being incurred on vacant properties.
- 7.7 A statutory instrument to revoke the fee for personal searches of the Local Land Charges Register was made by the Government last year, and details of this issue were reported to Cabinet in November 2010. The Council may face potential liabilities as a result of this change in Government policy and consequently this issue will need to be kept under review.
- 7.8 A further spending pressure in the current year is likely to come from increasing fuel and energy costs. Price increases in these areas have been well publicised and there will inevitably be an impact on Council costs as a result.
- 7.9 Putting all of these factors together, at the current time it is expected that the bottom line position for the GRA will be within its overall budget target, although with some favourable and some adverse variances. However there are a number of areas of possible variation within the budget, as highlighted above, and these will continue to be monitored closely.

8.0 HOUSING REVENUE ACCOUNT (HRA) POSITION

- 8.1 The Council set an original budget for the Housing Revenue Account based on generating external income of £22.273m.
- 8.2 The approved budget assumed 16 Right To Buy Council House sales. In the last financial year house sales began slowly with the bulk of the sales occurring in the second half of the year. To date 3 properties have been sold in the current year, which more or less mirrors what happened last year. If this pattern remains the same there is every expectation that the rental income budget target will be achieved. Achieving fewer sales has a positive affect on HRA rental income but means that there are only limited capital receipts being generated that can be used for capital investment.
- 8.3 Day to Day Response Repair costs have been running ahead of budget in the year to date. However, successful tendering has generated saving which means that resources can be realigned to bridge this particular issue.
- 8.4 Consequently at the current time there is every expectation that the HRA will achieve its budget targets.

9.0 RESERVES AND BALANCES

- 9.1 It is expected that the level of reserves will reduce over the course of the year. This partly reflects the budget that was agreed in February which included a contribution of £254,000 from the Budget and Efficiency Savings Reserve, and £347,000 from the LABGI Reserve. It also reflects the funding that will be required from the Restructuring Reserve of £1.083m to pay for the exit costs from the MSR initiative.
- 9.2 However the use of this reserve funding is part of the Council's medium term financial strategy, and the overall level of reserves and balances continues to be adequate for prudent financial management.

10.0 SUSTAINABILITY IMPLICATIONS / COMMUNITY STRATEGY

- 10.1 There are no direct sustainability implications arising from this report.

11.0 RISK ASSESSMENT

- 11.1 The formal reporting of performance on the General and Housing Revenue Accounts is part of the overall budgetary management and control framework that is designed to minimise the financial risks facing the Council.

12.0 CONCLUSIONS

12.1 At this stage in the financial year the overall picture is that the GRA and the HRA are broadly on course to meet their budget targets, although the economic downturn and other factors could have a significant impact on the final outturn.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

This report does not have any direct impact on members of the public, employees or elected members, and consequently an Equality Impact Assessment is not required.

Appendices

None



AGENDA ITEM: 14

CABINET: 13 September 2011

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Treasurer

Relevant Portfolio Holder: Councillor D Westley

**Contact for further information: Mrs K Samosa (Ext. 5038)
(E-mail: karen.samosa@westlancs.gov.uk)**

SUBJECT: CAPITAL PROGRAMME OUTTURN 2010/2011

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

1.1 To provide a summary of the capital outturn position for the 2010/2011 financial year.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the final position, including slippage, on the Capital Programme for the 2010/2011 financial year be noted and endorsed.

2.2 That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 29th September 2011.

3.0 RECOMMENDATION TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

3.1 That the final position on the Capital Programme for the 2010/2011 financial year be noted.

4.0 BACKGROUND

4.1 Members have been kept informed of the financial position of the Capital Programme with regular monitoring reports. The last such Report was presented

to Cabinet and Executive Overview and Scrutiny in March 2010 and reported on a Capital Programme of £11.013m. This report provides Members with the final position on capital schemes for the 2010/2011 financial year.

- 4.2 It should be noted that the final accounts for the 2010/2011 year are subject to audit and the figures contained in this report are, potentially, subject to change. However, the Audit is nearing completion and no issues have been raised on the capital programme to date. Members will be informed in due course of any significant matters arising from the Audit.
- 4.3 The position on the current Programme is discussed elsewhere on this Agenda.

5.0 CAPITAL PROGRAMME

- 5.1 Net changes totalling £0.03m, approved at Council in February 2010 when the Medium Term Capital Programme was set, have been incorporated into the 2010/2011 Programme.
- 5.2 The Capital Programme at the end of the 2010/2011 financial year was, therefore, £11.043m. This is analysed by Division in Appendix A.
- 5.3 The key results for the year on the capital programme are that reasonable progress has been made in delivering schemes and that overall spending is within budget with no significant issues on overspends. Specific issues are discussed in Appendix B.

6.0 CAPITAL EXPENDITURE

- 6.1 The total capital expenditure for 2010/2011 was £8.097m. This represents 73% of the total Budget for the year. This is a higher percentage spend of the total Programme compared to the 70% (£8.776m) reported for 2009/2010 and the 72% (£7.656m) comparator for the 2008/2009 Programme.
- 6.2 100% spend against the Budget is never anticipated due mainly to reasons beyond the Council's control. For example, some schemes are reliant on a significant amount of match funding and external contributions and others are demand led or dependant upon decisions made by partners. It is recognised that in such cases, schemes can be subject to considerable lead in times and delays because of the decision making processes in other organisations. As such, these schemes only start when their funding details have been finalised. Another reason is that some contracts include retentions or contingencies that will only be spent some time after completion of the contract. Approvals for schemes that are affected by such issues are to be slipped into the 2011/2012 Programme and are discussed in section 8.
- 6.6 Spending, scheme progress and slippage are analysed in the appendices.

7.0 CAPITAL RESOURCES

- 7.1 A breakdown of the resources of £11.043m identified to fund the programme is shown in Appendix A.

7.2 The main area of the capital resources budget that is subject to variation is in relation to capital receipts. These are the useable proceeds from the sale of Council assets (mainly houses under Right to Buy sales) that are available to fund capital expenditure. These receipts can vary significantly depending on the number and value of assets sold.

7.3 18 Right to Buy sales have been generated against the revised target of 15 for the year. This means that there are sufficient receipts to fund the required element of the Programme. In addition to receipts from Council house sales, other asset sales in the year generated a further £0.097m of capital receipts. The use of these additional receipts is incorporated in the Medium Term Capital Programme.

8.0 SLIPPAGE OF APPROVALS

8.1 Schemes that are not completed within the financial year for which they are scheduled are slipped into the following financial year along with their unused expenditure and resource approvals.

8.2 The total slippage figure for capital schemes from 2010/2011 is £2.932m. This is a reduction to the £3.673m that was slipped from the 2009/2010 Programme and compares to £2.675m slipped from the 2008/2009 Programme.

8.3 Further analysis on the slippage is provided in the appendices.

9.0 EXPLANATION OF VARIANCE

9.1 Divisional Managers have considered the position of individual schemes at the year-end and have taken the opportunity of revising budget allocations to take account of new information affecting the spending profiles of their schemes. This has facilitated the funding of scheme overspends against approvals from those schemes that have underspent against their approvals.

9.2 The budgeted expenditure for the 2010/2011 Capital Programme was £11.043m. Taking account of expenditure of £8.097m and slippage of £2.932m, there is a total budget requirement of £11.029m. This means that there is an overall adverse variance on programmed approvals of £0.014m. This comprises a number of small variances on schemes that are funded from a combination of revenue contributions and grants. Funding variances have arisen from utilising external funding sources available.

9.3 The remaining capital programme is being delivered within the budget that was set and issues regarding scheme under/overspends are discussed in Appendix C.

10.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

10.1 The Capital Programme includes schemes that the Council plans to implement to enhance service delivery and assets. Individual project plans address sustainability and Community Strategy issues and links to Corporate Priorities. The Capital Programme also achieves the objectives of the Prudential Code for

Capital Finance in Local Authorities by ensuring capital investment plans are affordable, prudent, and sustainable.

11.0 RISK ASSESSMENT

11.1 Capital assets shape the way services are delivered for the long term and, as a result, create financial commitments. The formal reporting of performance against the Capital Programme is part of the overall budgetary management and control framework that is designed to minimise the financial risks facing the Council.

12.0 SUMMARY

12.1 The capital programme is being delivered on time and within budget. The budget for 2010/2011 was £11.043m, and expenditure for the year was £8.097m. This represents 73% and shows reasonable performance in delivering the programme. £2.932m of approvals have been slipped into the 2011/2012 Programme when the expenditure will be incurred.

12.2 Sufficient capital resources were available to fully fund the capital expenditure incurred in 2010/2011.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and/or stakeholders. Therefore, no Equality impact assessment is required.

Appendices

- A Capital Expenditure and Resources Compared to Budget
- B Divisional Manager Comments
- C Analysis of Significant Slippage

2010/2011 CAPITAL PROGRAMME OUTTURN
EXPENDITURE AND RESOURCES BUDGET

	Budget Approval	Actual		Slippage		Variance	
	£'000	£'000	%	£'000	%	£'000	%
<u>Divisional Expenditure</u>							
Parish Capital Schemes	50	31	63%	19	37%	0	0%
Assistant Chief Executive	254	204	80%	50	20%	0	0%
Property Management	642	392	61%	259	40%	-9	-1%
Planning	32	34	107%	5	14%	-7	-22%
Regeneration & Estates	62	66	106%	3	5%	-7	-11%
Street Scene	273	276	101%	0	0%	-3	-1%
Community Services	1,122	689	61%	394	35%	39	3%
Private Sector Housing	1,528	797	52%	703	46%	28	2%
Public Sector Housing	7,080	5,608	79%	1,500	21%	-28	0%
<u>Expenditure Total</u>	11,043	8,097	73%	2,932	27%	14	0%
<u>Financed by:</u>							
Capital Receipts	2,103	1,351	64%	751	36%	0	0%
Specific Capital Grants	1,776	1,201	68%	718	40%	-142	-8%
Housing Allocation	757	760	100%	0	0%	-3	0%
Major Repairs Allowance	3,546	3,221	91%	288	8%	37	1%
Internal Contributions							
Housing Revenue Account	1,105	928	84%	177	16%	-0	0%
General Revenue Account	882	592	67%	168	19%	123	14%
Internal Borrowing	874	44	5%	830	95%	0	0%
<u>Resources Total</u>	11,043	8,097	73%	2,932	27%	14	0%

CAPITAL PROGRAMME 2010/2011
DIVISIONAL MANAGER COMMENTS
AT 31st MARCH

Parish Capital Schemes
<p>Spending on grants to Parishes is determined by the progress that Parishes make on individual schemes and is not within the direct control of the Council. Parishes must complete schemes within 2 years or risk losing their funding. Unspent approvals, therefore, have been slipped into the new financial year.</p>
Assistant Chief Executive
<p>Expenditure against the ICT Infrastructure budget was to keep the Council's ICT equipment up to date and to maintain its speed, integrity, and security.</p> <p>Works are progressing in relation to the integration of front office processes on the Electronic Document Management scheme and the Server Virtualisation and Web Improvement Programme are progressing.</p> <p>Unspent approvals have been slipped into 2011/2012 to enable completion of these schemes and enable further OR projects to be rolled out.</p>
Street Scene
<p>The new wheelie bins for the rollout of Alternate Weekly Collection in Skelmersdale have been purchased and distributed and the Vehicle Tracking Scheme has been completed. New external security enhancements at The Robert Hodge Centre, funded by a revenue contribution, have been added to the Programme.</p>
Regeneration and Estates
<p>The Council is currently working on two separate phases of the Skelmersdale Town Centre Regeneration Project with a development partner but the economic conditions remain challenging. Consultancy costs are being shared with the Housing Community Agency and the current phase is nearing completion and a small budget approval has slipped into the new financial year.</p> <p>The Investing in Business Regeneration Programme has been completed.</p>

CAPITAL PROGRAMME 2010/2011
DIVISIONAL MANAGER COMMENTS
AT 31st MARCH

Planning

Conservation Grants are progressing and the unspent budget has been slipped into next year's Programme. The minor overspend on the Free Tree scheme was funded by a contribution from Revenue and the Buildings at Risk Scheme was fully utilised. Section 106 monies were used to fund a new Cycle Path in Pimbo.

Community Services

Government guidance is awaited for Contaminated Land schemes which are on hold. Following completion of the OR Project the Environmental Health System is progressing.

Consultancy works have been completed for the implementation of the new CCTV suite. The full scheme will commence in August 2011 and the budget has been slipped. Two Outdoor Gym Equipment projects have been completed and one has been slipped for completion in the new year.

Lottery funding for works on Play Engagement has been transferred to revenue to reflect the nature of the expenditure. Manor Road Park is complete and works on other parks, including Halsall Lane, Banks, and Mossy Lea are progressing and unspent approvals have been slipped into the new year. An overspend on Richmond Park has been funded from the underspends on Coronation Park (Ph 4) and Nye Bevan Re-Roofing which are complete. Tendered works on Stanley Coronation Park are due to take place over the summer and budgets have been slipped into 2011/2012.

Flood Alleviation schemes at Calico and Dock Brooks have been added to the programme and works, which have commenced, will continue into the new year.

Expenditure on the Leisure Trust contract is on budget for the year and Chapel Gallery, Aughton Street Pedestrianisation, and WiFi provision schemes are complete. Funding is committed on Allotments which has slipped into the new year.

CAPITAL PROGRAMME 2010/2011
DIVISIONAL MANAGER COMMENTS
AT 31st MARCH

Corporate Property

Works on programmed schemes, including Office Move and Refurbishment, have progressed in line with budget with the exception of roofing and construction works that were delayed due to severe weather over winter. This forms the basis of the slippage into the new financial year along with approvals for Moorgate Toilets.

Housing Private Sector

The Affordable Housing budget has been slipped into the new year following a report to Cabinet in March which approved the seeking of expressions of interest from Registered Providers for the future options on over the medium term.

A Cabinet report in March approved the suspension of the Loans Scheme pending a 12 month review following slow take up of loans. Approvals have, therefore, slipped into the new year.

A property in Firbeck has been acquired under the Clearance Programme and other acquisitions, at Firbeck and Lime Court, are progressing. The remaining budget has been slipped into 2011/2012.

The Disabled Facility Grants Budget is fully committed with some approvals being carried forward into the new financial year. There has been a delay in the Empty Homes Initiative due to a delay pending Government decision on dealing with empty properties. This advice is expected to be available in Autumn 2011.

CAPITAL PROGRAMME 2010/2011
DIVISIONAL MANAGER COMMENTS
AT 31st MARCH

Housing Public Sector

The Windows, Re-roofing, and Kitchen/Bathroom Programmes were rolled forward from the previous financial and have all completed in year. Unused approvals have been used to fund an overspend on the Heating Programme which was overspent due to unforeseen failures in heating systems as a result of severe weather conditions.

The Electrical Upgrades expenditure was less than originally projected by the contractor and the unused budget has been utilised on the additional Adaptations and Voids budgets undertaken where demand exceeded expectation.

The Energy Efficiency Programme was substantially complete but an element has slipped due to delays in obtaining appropriate external funding. Slippage on Sheltered Upgrades is due to tendering difficulties and late contractor commencement on site. Slippage on Structural Works follows the decision to defer part of the Programme to the new year to secure cost savings using traditional tendering.

The full Decent Homes budget was not fully required in year and the balance has been slipped into the new financial year. Area Bids have also been slipped due to delays in tenants putting forward proposals to use the budget. Approvals for Communal Areas have been slipped following the late contract start. Binstore Improvements have slipped to assist in the council wide project.

2010/2011 CAPITAL PROGRAMME OUTTURN
ANALYSIS OF SIGNIFICANT SLIPPAGE

Scheme	Division	Amount of Slippage	Reason for Slippage
		£'000	
Playground Improvements	CS	63	Works progressing at Banks and Mossy Lea Play Areas with completion expected Summer 2011.
Stanley Coronation Park	CS	90	Work has been tendered for and is due to commence Summer 2011.
CCTV (Camera Upgrade)	CS	220	This is a three year project that will now commence in 2011/2012.
Corporate Property Investment Programme	Prop Svcs	260	Roofing and construction works delayed due to adverse weather conditions and now nearing completion. Ongoing servicing, testing & remedial works are demand led and will be completed in 2011/12 as required.
Empty Homes Initiative	Hsg Priv	100	Delay pending Government decision on dealing with empty properties. This advice is expected to be available in Autumn 2011.
Housing Renewal Grants/Loans	Hsg Priv	128	A Cabinet report in March approved the suspension of the scheme pending a 12 month review following slow take up of loans.
Disabled Facilities Grants	Hsg Priv	79	Fully committed with some approvals being carried forward into the new financial year.
Clearance Programme	Hsg Priv	208	Purchases at Lime Court and Firbeck are slowly progressing and are dependent on settlement values.
Affordable Housing	Hsg Priv	216	A report to Cabinet in March approved the seeking of expressions of interest from Registered Providers for the future options on Affordable Housing over the medium term.
Sheltered Housing Upgrades	Hsg Pub	52	Tendering difficulties and subsequent late contractor commencing on site.
Environmental Improvements	Hsg Pub	52	Tenant proposals are awaited before the Environmental Improvement Programme can be finalised.
Energy Efficiency Programme	Hsg Pub	60	Programme substantially complete but slipped due to delays in obtaining appropriate external funding.
Elmstead Regeneration	Hsg Pub	1,234	Various technical delays have meant that the Elmstead Programme will now be completed in 2011/2012.



AGENDA ITEM: 15

CABINET: 13 September 2011

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of People and Places

Relevant Head of Service: Borough Treasurer

Relevant Portfolio Holder: Councillor D Westley

**Contact for further information: Mrs K Samosa (Ext. 5038)
(E-mail: karen.samosa@westlancs.gov.uk)**

SUBJECT: CAPITAL PROGRAMME MONITORING 2011/2012

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

1.1 To provide an overview of the current progress on the Capital Programme.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the progress on the Capital Programme as at the end of July, 2011 be noted.

2.2 That Call In is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 29th September 2011.

3.0 RECOMMENDATION TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

3.1 That the current progress on the Capital Programme be noted.

4.0 BACKGROUND

4.1 It is an agreed policy and best practice that monitoring reports are produced on a regular basis to ensure that Members are kept informed of the financial position of the Capital Programme. This is the first such report for the 2011/2012 financial year.

5.0 CAPITAL PROGRAMME BUDGETS

- 5.1 A Capital Programme totalling £8.014m was approved at Council on 23rd February 2011.
- 5.2 At Council in February, Members were advised that Government Grants for Flood Alleviation schemes were being considered by the Environment Agency. These grants have now been ratified and £0.107m has been added to the 2011/2012 Programme.
- 5.3 Slippage totalling £2.932m from the 2010/2011 Programme is included for consideration elsewhere on this Agenda and has been added to the 2011/2012 Programme.
- 5.4 Also included in the 2010/2011 Programme was section 106 funding for Parish Play Areas. This approval was to be phased over two financial years meaning that £0.139m has been added to the 2011/2012 Programme.
- 5.5 Taking account of these amendments means the total Capital Programme for 2011/2012 is now £11.192m. This is analysed by Service in Appendix A.

6.0 CAPITAL EXPENDITURE

- 6.1 Normally, new capital schemes are profiled with relatively low spending compared to budget in the early part of the financial year with increased spending as the year progresses. This reflects the fact that many new schemes have considerable lead in times, for example, because of the need to undertake the tendering process and award contracts at the start of the scheme. Other schemes are dependant on external partner funding and these schemes can only begin once their funding details have been finalised.
- 6.2 This pattern has been repeated in the current year with £1.653m of expenditure having been incurred by the end of July. This compares to £1.526m at the same point in 2010/2011 and £1.2m in the previous year. There is also currently around £0.406m of committed expenditure. It is anticipated that most schemes will progress and use their approval for the year. All schemes, however, will be reviewed over the coming months and a Revised Medium Term Programme will be reported to Members in the autumn.
- 6.3 A key scheme in the Programme is the refurbishment of the Derby Street Offices. This is now well underway and expected to be completed this year.

7.0 CAPITAL RESOURCES

- 7.1 Total budgeted resources for the year are £11.192m. This is analysed in Appendix A and includes funding for the slippage and the other adjustments discussed in section 5.

- 7.2 The main area of the capital resources budget that is subject to variation is in relation to capital receipts. These are the useable proceeds from the sale of Council assets (mainly houses under Right to Buy legislation) that are available to fund capital expenditure. These receipts can vary significantly depending on the number and value of assets sold.
- 7.3 In recent years, receipts from this source have fallen dramatically and the budget for usable capital receipts to be generated from Council House sales in the year is £0.175m from 16 sales. At the beginning of August, however, 3 sales had been completed which is just below target for the quarter.
- 7.4 In addition to receipts from council house sales the Council has also has a programme to sell plots of its land. £0.05m is included in the 2011/2012 Capital Programme from this source although, to date, no income has been generated. The Asset Management Plan is discussed elsewhere on this agenda.
- 7.5 Budgeted capital receipts from in year asset sales (£0.225m), however, provide a relatively small proportion (2%) of the funding of £11.192m for the Programme. Consequently, no significant resourcing issues are expected during the year.

8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 8.1 The Capital Programme includes schemes that the Council plans to implement to enhance service delivery and assets. Individual project plans address sustainability and Community Strategy issues and links to Corporate Priorities. The Capital Programme also achieves the objectives of the Prudential Code for Capital Finance in Local Authorities by ensuring capital investment plans are affordable, prudent, and sustainable. This report monitors progress against the plans.

9.0 RISK ASSESSMENT

- 9.1 Capital assets shape the way services are delivered for the long term and, as a result, create financial commitments. The formal reporting of performance against the Capital Programme is part of the overall budgetary management and control framework that is designed to minimise the financial risks facing the Council. Schemes within the Programme that are reliant on external contributions or decisions are not started until funding is secured and other resources that are subject to fluctuation are monitored closely to ensure availability.

10.0 CONCLUSIONS

- 10.1 The capital programme for 2011/2012 has a total budgeted expenditure of £11.192m, including slippage from the 2010/2011 Programme. While a relatively small amount of capital expenditure has been incurred to date, it is expected that most schemes will spend in line with their approvals during the course of the year.
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and/or stakeholders. Therefore, no Equality impact assessment is required.

Appendices

A Service Capital Programme Budgets

CAPITAL PROGRAMME
2011/2012
EXPENDITURE AND RESOURCE BUDGETS
As at July 2011

Directorate/Service	Budget £'000
EXPENDITURE	
People and Places	
Community Services	
Private Sector Housing	1,853
Other Community Services	1,359
Street Scene	0
Transformation	
Planning	37
Housing and Regeneration	
Housing Public Sector	6,375
Corporate Property	1,292
Regeneration	43
Corporate Services	233
	11,192
RESOURCES	
Capital Grants	1,205
MRA	4,434
GRA	547
HRA	541
Capital Receipts	3,637
Internal Borrowing	830
	11,192



AGENDA ITEM: 17

CABINET: 13th September 2011

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29th September 2011**

Report of: Director of Transformation

**Relevant Head of Service: Borough Economic Regeneration & Strategic
Property Officer**

Relevant Portfolio Holder: Councillor A Owens

**Contact for further information: Georgina Isherwood Extn. 5123)
(E-mail: gina.isherwood@westlancs.gov.uk)**

SUBJECT: REVISION OF INDUSTRIAL DEVELOPMENT ACT 1982

Wards affected: Borough Wide

1.0 PURPOSE OF THE REPORT

1.1 To seek approval to submit comments on the proposed revisions to the Industrial Development Act 1982 (IDA).

2.0 RECOMMENDATION TO CABINET

2.1 That the proposed response to the Department for Business, Innovation and Skills (BIS) consultation paper on revisions to the IDA, attached as an Appendix to the report be approved.

2.2 That the Borough Economic Regeneration and Strategic Property Officer, in consultation with the Portfolio for Regeneration and Estates, be authorised to make final amendments to the response and submit to the BIS, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.

2.3 That Call In is not appropriate for this item as the report is being referred to Executive Overview and Scrutiny Committee on 29 September 2011.

**3.0 RECOMMENDATION TO EXECUTIVE OVERVIEW AND SCRUTINY
COMMITTEE**

- 3.1 That the response to the BIS consultation, set out in the Appendix to the report, be noted and agreed comments be referred to the Borough Economic Regeneration and Strategic Property Officer for consideration, in consultation with the Portfolio for Regeneration and Estates.

4.0 BACKGROUND

- 4.1 The Council has been consulted on the desirability of revising the IDA. The IDA provides for financial support to be provided by the government to industry in the United Kingdom. The government proposes updating this Act so that it more accurately reflects current economic realities. In the Government's view there are several outdated requirements in the IDA, which have stood unchanged since 1982. The full text of the act can be found at <http://www.legislation.gov.uk/ukpga/1982/52>. Comments have to be made by 19th October 2011. Comments will be collated and summarised for the Secretary of State to review. A response will then be published online at www.bis.gov.uk/IDArevision.

5.0 CURRENT POSITION

- 5.1 Comment is asked on four aspects of the proposed changes to the IDA:
- The removal of the automatic assisted area status of Northern Ireland. The Assisted Areas Map allows the provision of legally permitted state aid for regional development purposes in certain areas to undertakings looking to expand, modernise or locate in specified parts of the UK. The European Commission currently allocates a population ceiling on total assisted area coverage to Member States on the basis of objective metrics of deprivation - currently up to 23.9% of the UK population can be covered with assisted area status. Certain areas, namely Cornwall & the Scilly Isles and West Wales and the Valleys, are mandated for inclusion in the map in the light of their relative deprivation compared to other parts of the EU. In addition, Member States have the freedom to designate other areas for assisted area status up to the population ceiling based on their relative deprivation and providing they meet criteria set out by the Commission in the regional aid guidelines. The ensuing assisted area map must be approved by the Commission. The map is implemented in domestic UK legislation via section 7 of the IDA.
 - An increase in the per project limit for aid (from the current £10 million) after which a parliamentary resolution is required; and removing the distinction that excludes payments under foreign currency guarantees from that increased limit. In addition to regional aid under section 7 the Secretary of State may also provide financial assistance under s.8 of the IDA. The total amount that can be expended on such aid is capped, as is the sum that can be applied in respect of any one project. The per project limit has been set at £10 million since 1982. Where the government considers that this per project limit should be exceeded a resolution of the House of Commons has to be obtained. The government considers that the threshold per project should reflect modern industrial investment requirements to allow the UK to remain competitive. The proposal is that the limit (in section 8(8) of the IDA) be increased to £50 million - although

this consultation seeks opinions on, whether that is the correct amount. The requirement for a resolution for per project expenditure in excess of the new limit will remain.

- The inclusion of telecommunications and broadband in the definition of the “basic services” that the Government can contribute towards in a development area. The IDA allows a Minister to make grants or loans towards the cost of improving “basic services” in a development area where this would contribute to the development of industry in that area. The list of basic services in s.13(2) of the IDA currently includes transport, power, lighting, heating, water or sewerage or “any other service on which the development of the area ... depends.” Government policy is that the list should be expanded so that telecommunications and broadband are explicitly included.
- Widening the basis on which the Government can develop land it acquires. The IDA gives the Secretary of State powers to develop land and buildings acquired by him in an assisted area under the IDA or under the Local Employment Act 1972. The Government foresees that there may be cases where land and buildings are acquired by the SOS outside such areas (for example land owned by the Regional Development Agencies (RDAs) who it is proposed will be abolished by legislation). The proposal is that s.14 of the IDA be amended to extend the SOS’ powers to land that the government may acquire under the Public Bodies Act or the Localism Act or any similar legislation that transfers assets currently held by other public bodies such as the RDAs. This would, for example, allow the Secretary of State to manage out partially completed projects on such land.

6.0 PROPOSALS

6.1 It is proposed that the Council submits the comments set out in the Appendix.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

7.1 The comments made take into account issues of sustainability and the Sustainable Community Strategy.

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

8.1 There are no financial or resource implications arising from this report.

9.0 RISK ASSESSMENT

9.1 There are no risks associated with any of the proposed revisions.

10.0 CONCLUSIONS

10.1 It is important that the Council makes representations that will help to update some of the IDA’s provisions to more accurately reflect current economic realities.

Background Documents

Consultation Document: Revision of Industrial Development Act 1982 published by the Department for Business Innovation and Skills 20th July 2011.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Appendix 1: Recommended response to the proposed revisions to the Industrial Development Act 1982

APPENDIX 1

Recommended response on the proposed revisions to the Industrial Development Act 1982 (IDA).

Question 1: Should Northern Ireland's automatic inclusion as an assisted area in the UK be removed?

West Lancashire Borough Council (WLBC) believes that Northern Ireland's automatic inclusion as an assisted area in the UK should be removed. The IDA mandated the automatic inclusion of 100% of the Northern Ireland population in the UK regional aid map. This has resulted in relatively prosperous areas of Northern Ireland being eligible for aid when less well off areas in the rest of the UK (measured in terms of GDP per capita) have not. The continued automatic designation of 100% of Northern Ireland as an assisted area, irrespective of GDP per capita assessment, would limit the UK's flexibility to renegotiate the aid map as a whole, as it will indiscriminately use up a proportion of the UK's total assisted area allocation.

The removal of Northern Ireland's automatic inclusion would increase flexibility to allocate regional aid map coverage throughout the UK as a whole, whilst not necessarily result in the total omission of Northern Ireland from the assisted area classification.

Question 2 : Which of the options listed for uprating the per project financial limit for section 8 financial assistance should be adopted?

- 1. Revise the amount to £27 million to reflect the effect of inflation between 1982 and 2011**
- 2. Revise the amount to £50 million to reflect the increase in UK GDP between 1982 and 2011**
- 3. Leave the amount unchanged at £10million**

WLBC believes that option 2 should be adopted. This would reflect the scale of national resource that could be deployed for industrial development. There is no direct cost to Government from this change as it permits increased funding to respond to economic circumstances but imposes no duty on Government to engage in such funding.

Question 3: Should the ability to provide per project foreign currency guarantees without a financial cap be removed and instead aligned with the sterling limit?

WLBC understands that this proposed change would mean that no distinction is drawn between aid paid in the form of sterling or foreign currency

transactions when applying the financial caps. The revised cap should apply irrespective of what currency is used. This will ensure greater transparency and oversight of aid for industrial development.

Question 4: Should the IDA be updated to include telecommunications and broadband in the list of basic services the improvement of which can be funded in a development area?

WLBC supports the inclusion of telecommunication and broadband within the list of basic services. There is no direct cost to Government from this change. The benefit is that Ministers would have the flexibility to directly fund broadband services in areas of inadequate provision to promote industrial development in areas of digital exclusion.

Question 5: Should the IDA be amended to extend the Secretary of State's powers relating to land acquisition and development

WLBC supports this proposal. Making this amendment will enable the Government to appropriately manage out land assets and liabilities acquired, for example, through the dissolution of the RDAs. The cost of not doing this would be that government would be unable to realise the full value of such land.



AGENDA ITEM: 18

CABINET: 13 September 2011

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of Transformation

Relevant Head of Service: Assistant Director Housing and Regeneration

Relevant Portfolio Holder: Councillor V Hopley

**Contact for further information: Mr B Livermore (Extn. 5200)
(E-mail: bob.livermore@westlancs.gov.uk)**

**SUBJECT: CONSULTATION - IMPLEMENTING SOCIAL HOUSING REFORM -
DIRECTIONS TO THE SOCIAL HOUSING REGULATOR**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To consider the Government's consultation paper on implementing social housing reform: direction to the Social Housing Regulator and to make appropriate comments upon this.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the proposed response to the Department of Communities and Local Government (CLG) consultation paper on the 'Implementing Social Housing Reform: Direction to the Social Housing Regulator', as set out in appendix C, be approved, subject to consideration of the Minute of the Landlord Services Committee (Cabinet Working Group), attached at Appendix D to this report.

2.2 That the Assistant Director of Housing and Regeneration, in consultation with the Portfolio Holder for Housing, be authorised to make final amendments and submit the response to the CLG, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.

2.3 That call in is not appropriate for this item as the report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on the 29 September 2011.

3.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

- 3.1 That the proposed response to the CLG's consultation on Social Housing Reform, set out in Appendix C to the report, be noted and agreed comments be referred to the Assistant Director Housing and Regeneration for consideration, in consultation with the Portfolio Holder for Housing.
-

4.0 BACKGROUND

- 4.1 The background to this consultation is that the Government have already indicated their intention to make changes within the Localism Bill to give Tenants more say in how their services are provided and to give greater freedom and flexibility to Landlords in providing these services.
- 4.2 The Localism Bill, when enacted, will bring these proposed changes on to the statute book.
- 4.3 This consultation paper highlights the issues that will need to be addressed by the Social Housing regulator after direction from the Secretary of State (Appendix A). This has been clarified in a letter from the Housing Minister (Appendix B).

5.0 CONSULTATION AREAS

- 5.1 The consultation looks at a number of areas.

5.1.1 Regulatory Reform

- 5.1.1.1 The Government proposes to abolish the Tenant Services Authority (TSA) and transfer the responsibility for regulation to the Homes and Communities Agency.
- 5.1.1.2 Regulatory activity will change and proactive economical regulation of Housing Associations will continue. However, consumer regulation will in future focus on setting clear service standards at local level between Tenants and their Landlords where the Regulator's monitoring and enforcement powers will only used when necessary to address failures that give rise to actual or potential services detriment to Tenants.
- 5.1.1.3 This change will require Registered Providers (Local Authorities, Arms length Management Organisations (ALMO's) and Registered Social Landlords (RSL's or Housing Associations) to ensure that Tenants are given the opportunity to form Tenants' panels (or equivalent groups like the Council's Service Evaluation Group). These panels will be able to hold their landlord to account.

5.1.2 Tenure Reform

5.1.2.1 The Government has confirmed that it does not plan to allow existing tenancies to be changed.

5.1.2.2 The Government will however, direct the Regulator on the tenancy standard to:

- Give greater flexibility on the length of tenancies (see letter at Appendix B).
- Give greater flexibility regarding succession rights.
- Place a duty on Local Housing Authorities to publish tenancy strategies upon which Registered Providers (RP's) should have regard to in formulating their own policies.
- Introduce probationary tenancies for private RP's.

5.1.3 Mobility

5.1.3.1 The Government is keen to ensure that all Tenants have the ability to move to alternative locations and accommodation.

5.1.3.2 The Government therefore plan to make a direction to the regulator in the content of a standard for Landlords on "methods of assisting Tenants to exchange tenancies".

5.1.4 Affordable Rent

5.1.4.1 The Government propose to direct the Regulator on affordable rents which have been introduced where rent charges can be up to 80% of market rent to ensure the maximisation in delivering new social housing.

5.1.4.2 Existing social rent policy will continue to apply between 2011 & 2015.

5.1.5 Tenant Cash back

5.1.5.1 The Government propose to give social housing tenants opportunities to be involved in the management of repair and maintenance services for their homes.

5.1.5.2 Where Tenants take the opportunities offered, they will share in the resulting efficiencies, potentially building up worthwhile savings through the scheme. It is anticipated that this will help Tenants also gain practical and transferable skills.

5.1.5.3 There will be no universal scheme rather Landlords will offer local solutions after giving Tenants the opportunity to be involved in shaping these arrangements.

5.1.5.4 There are a number of Tenant cash back pilot schemes being modelled and evidence from these will be shared so that local schemes can be successful.

5.1.6 Decent Homes Programme

- 5.1.6.1 Registered Providers will be expected to maintain their stock at a decent level to prevent non decency from arising. Therefore, the Government anticipate that temporary exemptions to the home standard will only be given in exceptional circumstances.

6.0 CONSULTATION RESPONSE

- 6.1 The consultation paper seeks responses to a number of detailed questions set out on pages 18-22 of Appendix A.
- 6.2 I attach a draft response to these questions which I propose to send and would seek comments on this so that this can be amended if necessary as the Council's response.

7.0 TENANTS' VIEWS

- 7.1 I propose to circulate this report to Landlord Services Committee prior to Cabinet's consideration and will advise on any views or comments expressed so that these can be taken into consideration.

8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 8.1 There is no direct impact for sustainability or the Community Strategy.

9.0 FINANCIAL IMPLICATIONS

- 9.1 There are no direct financial or resource implications in responding to the Consultation Paper.

10.0 CONCLUSION

- 10.1 The consultation is generally welcomed and the opportunity for the Council to work more closely with Tenants will, I hope, lead to better local decision-making.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Appendix A: The consultation paper

Appendix B: Letter from the Housing Minister

Appendix C: Draft response from West Lancashire Borough Council to the Consultation Paper

Appendix D: Minute of the Landlord Services Committee (Cabinet Working Group) – 5th September 2011.



Implementing social housing reform: directions to the
Social Housing Regulator
Consultation



Implementing social housing reform: directions to
the Social Housing Regulator
Consultation

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000
Website: www.communities.gov.uk

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Foreword

Over the last few decades waiting lists for social housing have grown to record proportions. At the same time a deepening sense of unfairness has grown about how this fundamental publicly-funded asset is used. We have allowed a lazy consensus to develop that failed to address these problems.

This Government has made it a top priority to make the system of social housing in England do what it is meant to do. We have introduced the most radical shake up of social housing for 50 years to create a fairer system that will allow us to build more affordable homes.

I am determined that good, affordable housing should be available for those who genuinely need it and that people who live in it should have the opportunity to achieve their aspirations. I believe that this is best done by trusting local authorities and social landlords to run their own businesses and by giving tenants more control over the decisions they make about their lives.

We are devolving power from the State to the people. Tenants will have more of a say in how their services are provided and we will give greater freedoms and flexibilities to landlords to provide these services. The Localism Bill, when enacted, will bring about many of the changes necessary to deliver our package of reforms but we also need to bring about regulatory changes to make the reforms work in practice.

This consultation outlines the areas on which the Secretary of State proposes to direct the social housing regulator to set standards. These are:

- **Tenure reform:** to allow social landlords to issue flexible tenancies, subject to conditions, to make better use of existing and future stock. In implementing these reforms, we will respect the rights of existing secure and assured tenants.
- **Mutual exchange:** to require landlords to enable access to internet-based mutual exchange schemes allowing tenants who want to move the best possible opportunity of finding a match, making the scheme truly national for the first time.
- **Tenant involvement:** to strengthen landlord accountability to tenants and support the Tenant Cashback model, providing new opportunities for social housing tenants to get involved in commissioning repair and maintenance services for their homes.
- **Rent:** to make changes to reflect the introduction of the Affordable Rent model.
- **Quality of accommodation:** to clarify that providers are expected to maintain their stock at a decent level.

These new flexibilities will help local authorities, social landlords and tenants to work together to make the system of social housing in this country fairer and help people stand on their own two feet. A system that does not block aspiration but instead acts as a springboard to help people make a better life for themselves and for their communities.

I look forward to reading your response to this consultation.

A handwritten signature in black ink, reading "Grant Shapps". The signature is written in a cursive, flowing style with a period at the end.

Rt. Hon. Grant Shapps MP, Minister for Housing and Local Government

Scope of the consultation

<p>Topic of this consultation:</p>	<p>Section 197 of the Housing and Regeneration Act 2008 ('the 2008 Act') gives the Secretary of State for Communities and Local Government certain powers to direct the Social Housing Regulator ('the Regulator') to set standards and about the content of standards. Once formally issued, the directions will be binding on the Regulator when it consults on and sets standards. Standards set by the Regulator will apply to registered providers of social housing ('registered providers'), commonly known as social landlords.</p> <p>The Secretary of State is proposing to use these powers to implement key elements of the Government's package of reforms to social housing. These reforms were outlined in the Government's summary of responses to a previous consultation document: <i>Local Decisions: a fairer future for social housing</i>¹ ('Local Decisions') and in its <i>Review of social housing regulation</i>².</p> <p>The Localism Bill currently before Parliament includes amendments to the Secretary of State's powers under section 197 of the 2008 Act. This consultation includes some proposals that are contingent upon these statutory changes being approved by Parliament. This is explained in more detail later in the document.</p>
<p>Scope of this consultation:</p>	<p>Section 197 of the 2008 Act requires the Secretary of State to consult on draft directions. This consultation paper proposes that the Secretary of State should:</p> <p>(a) withdraw all previous directions issued to the Regulator (directions were issued by the previous government on 10 November 2009 and 17 March 2010³); and</p> <p>(b) direct the Regulator to set standards (and about the content of those standards) on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. The draft directions are attached at Annex A.</p> <p>We are proposing to direct the regulator on tenure, mutual exchange and tenant involvement and empowerment in order to implement the Government's social housing reforms (as set out in the summary of responses to the <i>Local Decisions</i> consultation, the <i>Review of Social Housing Regulation</i> and elsewhere). In implementing these reforms, we will respect the rights of existing secure and assured tenants.</p> <p>The proposed direction on tenant involvement and empowerment also</p>

¹ <http://www.communities.gov.uk/publications/housing/localdecisionsresponse>

² <http://www.communities.gov.uk/publications/housing/socialhousingregulation>

³ <http://www.communities.gov.uk/publications/housing/tsadirectionresponses>

	<p>encompasses the Government's Tenant Cashback proposals, which are designed to enhance the opportunities available to social housing tenants to commission repairs and maintenance services for their homes.</p> <p>The proposed direction on rents reflects the creation of the Government's Affordable Rent model. It does not include any changes to the existing policy for traditional social rent. The proposed direction on quality of accommodation reflects the same policy as that which underpinned the previous direction.</p> <p>The scope of the consultation is limited to the proposed directions outlined later in this document.</p>														
Geographical scope:	This power affects the whole of England.														
Impact assessment:	<p>With one exception, impact assessments have already been published for all of the policy changes that the proposed directions would implement:</p> <table border="1" data-bbox="416 965 1417 1417"> <thead> <tr> <th data-bbox="416 965 916 1115">Proposed direction</th> <th data-bbox="916 965 1417 1115">Policy change (with link to accompanying Impact Assessment)</th> </tr> </thead> <tbody> <tr> <td data-bbox="416 1115 916 1151">Tenure</td> <td data-bbox="916 1115 1417 1151">Tenure reform⁴</td> </tr> <tr> <td data-bbox="416 1151 916 1227">Mutual exchange</td> <td data-bbox="916 1151 1417 1227">Nationwide homeswap programme⁵</td> </tr> <tr> <td data-bbox="416 1227 916 1339">Tenant involvement and empowerment</td> <td data-bbox="916 1227 1417 1339">Reform of social housing regulation⁶</td> </tr> <tr> <td data-bbox="416 1339 916 1375">Rents</td> <td data-bbox="916 1339 1417 1375">Tenant Cashback</td> </tr> <tr> <td data-bbox="416 1375 916 1417">Quality of accommodation</td> <td data-bbox="916 1375 1417 1417">Affordable Rent⁷</td> </tr> <tr> <td data-bbox="416 1417 916 1453"></td> <td data-bbox="916 1417 1417 1453">No policy change</td> </tr> </tbody> </table> <p>The exception is the Government's Tenant Cashback proposals, for which an impact assessment is being published alongside this consultation document.</p>	Proposed direction	Policy change (with link to accompanying Impact Assessment)	Tenure	Tenure reform ⁴	Mutual exchange	Nationwide homeswap programme ⁵	Tenant involvement and empowerment	Reform of social housing regulation ⁶	Rents	Tenant Cashback	Quality of accommodation	Affordable Rent ⁷		No policy change
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⁴ www.communities.gov.uk/publications/localgovernment/localismsocialhousingfuture (see p.28-50)

⁵ www.communities.gov.uk/publications/localgovernment/localismsocialhousingfuture (see p.51-65)

⁶ www.communities.gov.uk/publications/localgovernment/localismsocialhousingreform

⁷ www.communities.gov.uk/publications/housing/rentimpactassessment

Basic information

To:	<p>Statutory consultees:</p> <ul style="list-style-type: none"> • the Regulator (currently the Tenant Services Authority) • the Homes and Communities Agency • the Audit Commission • bodies representing the interests of local housing authorities • bodies representing the interests of tenants of social housing • bodies representing the interests of registered providers • the Charity Commission <p>The Department will consider any consultation responses received from other interested bodies and individuals.</p>
Body/bodies responsible for the consultation:	<p>The Affordable Housing Regulation and Investment Division in the Department for Communities and Local Government is responsible for this consultation.</p>
Duration:	<p>The consultation starts on 7 July 2011 and finishes on 29 September 2011.</p>
Enquiries:	<p>For further information on this consultation document please email Directions@communities.gsi.gov.uk or telephone 0303 444 3779 or 0303 444 3653.</p>
How to respond:	<p>Consultation responses should be submitted by email to: Directions@communities.gsi.gov.uk</p> <p>Or by post to:</p> <p>Social Housing Directions Consultation Department for Communities and Local Government Zone 1/A4 Eland House Bressenden Place London SW1E 5DU</p>
Additional ways to become involved:	<p>Following the directions consultation, the Regulator intends to hold a consultation on the contents of its standards later in 2011. Bodies with an interest in those standards are advised to participate.</p>
After the consultation:	<p>The Government will publish all responses to the consultation and the final directions to the Regulator on the Department for Communities and Local Government website. This is expected in autumn 2011.</p>

Compliance with the code of practice on consultation:	This consultation document and consultation process have been planned to adhere to the Government code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria. The period of consultation will be 12 weeks.
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Introduction

1. This is a consultation on draft directions proposed to be given by the Secretary of State for Communities and Local Government to the Social Housing Regulator ('the Regulator') under section 197 of the Housing and Regeneration Act 2008 ('the 2008 Act'). These directions are needed in order to implement important elements of the Government's planned reforms to social housing. The Localism Bill, currently before Parliament, will deliver other elements of the reform programme.
2. The previous government issued directions to the Regulator in November 2009 and March 2010⁸. We are proposing to withdraw these directions and replace them with the draft directions attached at Annex A. Once issued formally, the directions will be binding on the Regulator when it consults on and sets standards for registered providers of social housing ('registered providers'). The Regulator will set standards in accordance with the directions.
3. The Localism Bill includes certain amendments to the Secretary of State's powers under section 197 of the 2008 Act. The proposed directions on tenure and mutual exchange are contingent on these statutory changes and therefore cannot be issued formally until the Bill has received Royal Assent and the relevant clauses have been commenced. However the Government intends to publish the indicative final form of the directions in autumn 2011 following this consultation, with the directions being issued formally in the event that the necessary powers are available.
4. The only organisation directly affected by the proposals included in this consultation is the Regulator. Two groups will be indirectly affected, via the standards set by the Regulator in accordance with these directions: registered providers and their social housing tenants.
5. The proposed directions have no pre-determined end date but they may be subject to change or revision. Any further amendments or changes will require a consultation.
6. The text in this consultation paper is not binding. The 'context' and 'commentary' sections are intended to enable a better informed consultation by explaining the rationale for the directions. **We invite your views on the questions listed in the 'commentary' section, and on the draft directions themselves, by 29 September 2011.**

⁸ www.communities.gov.uk/publications/housing/tsadirectionresponses

Context

Regulation of social housing

7. Social housing (as defined by the 2008 Act) is subject to regulation where it is provided by registered providers. Registered providers are local authorities or private bodies (known as private registered providers – these are mostly housing associations) that are registered with the Regulator. The current regulatory system, provided by Part 2 of the 2008 Act, has been in place since 1 April 2010. The current Regulator, the Tenant Services Authority, was established on 1 December 2008.
8. The principal regulatory tool is standards set by the Regulator. The Regulator currently has two standard-setting powers under the 2008 Act. Section 193 enables the Regulator to set standards for registered providers *“as to the nature, extent and quality of accommodation, facilities or services provided in connection with social housing.”* Section 194 permits the Regulator to set standards for private registered providers in *“matters relating to the management of their financial and other affairs.”*
9. Section 197 of the 2008 Act provides that the Secretary of State may direct the regulator to (a) set a standard under section 193; (b) about the content of standards under section 193; and to (c) have regard to specified objectives when setting standards under section 193 or 194. Directions to set a standard or about the content of standards can currently only be given where they relate to quality of accommodation, rent, or tenant involvement. A previous Secretary of State issued directions on these three issues in November 2009 and March 2010.
10. The Regulator currently has a range of monitoring powers which it can use to assess registered providers’ performance against the standards. Where a registered provider breaches one or more of the standards, the regulator can use its enforcement powers.

Reform of social housing regulation

11. The Government is taking forward significant reforms to the existing regulatory system. These reforms were outlined in our Review of Social Housing Regulation ('the Review'), published in October 2010⁹.
12. In line with the Government’s commitment to reduce the number of quangos, the Tenant Services Authority will be abolished and responsibility for regulation will be transferred to the Homes and Communities Agency. In order to ensure the continued independence of regulation, regulatory functions and powers will be vested in a separate statutory Regulation Committee within the Homes and Communities Agency. The Committee’s members will be appointed by the Secretary of State.

⁹ www.communities.gov.uk/publications/housing/socialhousingregulation

13. The Review also recommended a significant refocusing of regulatory activity. Proactive economic regulation of housing associations will continue, in order to safeguard public investment in social housing and support social housing supply (including by retaining lender confidence in the sector). However consumer regulation will in future focus on setting clear service standards, with the Regulator's monitoring and enforcement powers only used where necessary to address failures against those standards that give rise to actual or potential serious detriment to tenants (or potential tenants). Instead there will be greater emphasis on local mechanisms to scrutinise performance and stronger tools for tenants to hold registered providers to account on service delivery. The Review also recommended a localist approach to the resolution of routine service problems, with an enhanced role for elected councillors, MPs and tenant panels in the complaints process.
14. To help drive the shift to local challenge and scrutiny, the Review recommended that the Secretary of State should direct the Regulator to issue a new standard on tenant involvement and empowerment. This standard would require registered providers to ensure that tenants are given the opportunity to form tenant panels (or equivalent groups) that will enable them to hold registered providers to account and scrutinise service delivery. In order to support effective scrutiny by tenants, the standard would require registered providers to provide timely, useful information about their performance in a form which providers should seek to agree with their tenants. The proposed direction on tenant involvement and empowerment is designed to deliver these outcomes.

Delivering regulatory reform

15. Our planned reforms to regulation will be delivered through a mixture of statutory and administrative changes.
16. Part 6 of the Localism Bill will, subject to the approval of Parliament, deliver the necessary changes to legislation. As noted above, the proposed direction on tenant involvement and empowerment will help to strengthen registered provider accountability to tenants. The Regulator has indicated that it intends to consult later in 2011 on changes to its regulatory framework that arise from these reforms. In doing so, the Regulator would take account of any indicative final form directions published by the Secretary of State.

Reform of social housing

17. In November 2010, the Government published *Local Decisions: a fairer future for social housing*, setting out plans for radical reform of the social housing system¹⁰. The paper made clear the Government's intention to change the legislation governing the types of tenancies granted to social housing tenants; the way social housing is allocated; how local authorities discharge their main homelessness duty; as well as legislating to improve mobility for social tenants.

¹⁰ www.communities.gov.uk/publications/housing/socialhousingreform

18. These changes are intended to provide greater freedoms and flexibilities for local authorities and registered providers to meet local needs and local priorities; make better use of resources; promote fairness; and ensure that support is focused on those who need it for as long as they need it.
19. The statutory reforms to the social housing system which were set out in *Local Decisions* are being taken forward in the Localism Bill which is currently being considered by Parliament. However, in some cases, regulatory changes are also needed in order to deliver the reforms, as outlined below.

Tenure reform

20. Registered providers currently have very little flexibility over the types of tenancy they offer. Local authority providers are obliged by law to provide secure lifetime tenancies in most cases. Private registered providers (typically housing associations) have much more flexibility in statute but are constrained by regulatory requirements. The Regulator's Tenancy Standard, which applies to all registered providers, requires them to 'offer and issue the most secure form of tenancy compatible with the purpose of the housing and the sustainability of the community'. In practice this means that private registered providers are required to grant periodic assured tenancies to the vast majority of new tenants in general needs social rented housing.
21. The Government wants to give all registered providers much greater flexibility, enabling them to offer lifetime security where it is needed but also to set shorter terms for social rent as well as Affordable Rent properties where that makes more sense.
22. Through the Localism Bill, the Government is seeking to:
 - create a new local authority flexible tenancy with a minimum fixed term of two years with similar rights to secure tenants
 - respect the rights of existing secure and assured tenants
 - provide that all new secure and flexible tenancies include a right to one succession for spouses and partners, while giving registered providers the flexibility to grant whatever additional succession rights they choose
 - place a new duty on local housing authorities to publish tenancy strategies, to which registered providers should have regard when formulating their own tenancy policies
 - give the Secretary of State a power to direct the Regulator on the content of a Tenancy Standard
23. We are proposing to use the new power of direction, if approved by Parliament, to allow greater flexibility for registered providers on the types of tenancies that they may grant. That includes clarifying that private registered providers have the same flexibility on probationary tenancies as local authority landlords currently enjoy. Our aim is to support and encourage their use as an important tool for tackling anti-social behaviour, alongside, as required, interventions to help tenants change their behaviour and maintain their tenancy.

Mobility

24. The Government is committed to introducing a nationwide social home swap programme to ensure that social tenants wishing to move can maximise their chances of securing a suitable match. Our aim is to make it easier for tenants to see possible exchange partners and to increase tenants' choice and control over where they live.
25. If this ambition is to be delivered, it is important that all registered providers provide their tenants with access to good internet-based home swap services and ensure that appropriate support is provided for those tenants who do not have internet access.
26. The Localism Bill therefore provides a power for the Secretary of State to direct the Regulator on the content of a standard for registered providers on "*methods of assisting tenants to exchange tenancies.*" We are proposing to use this new power of direction, if approved by Parliament.

Affordable Rent

27. The Government's new Affordable Rent model, announced at the Spending Review, is designed to maximise the delivery of new social housing by making the best possible use of constrained public subsidy and the existing social housing stock. It will also provide a more diverse offer for the range of people accessing social housing.
28. Affordable Rent homes will be made available to tenants up to a maximum of 80 per cent of local market rent, with the option to offer flexible tenancies. Affordable Rent homes will be allocated in the same way that social rent properties are now, and existing lettings arrangements operated by local authorities and registered providers will continue to apply. Where appropriate, Affordable Rent properties will be made available through choice based lettings. The statutory and regulatory framework for allocations provides scope for local flexibility, and local authorities and registered providers may wish to exercise this discretion in relation to Affordable Rent in order to meet local needs and priorities in the most effective way possible. The 2011-15 Affordable Homes Programme framework provides full details of the Affordable Rent model¹¹.
29. In December 2010 the Regulator launched a consultation on a number of changes to its Tenancy Standard that were necessary in order to give registered providers the freedom to benefit from the opportunities that Affordable Rent provides¹². In April 2011, following the conclusion of the consultation, the Regulator issued a revised Tenancy Standard which is now in effect¹³.
30. Although the regulatory framework has already been amended to allow

¹¹ www.homesandcommunities.co.uk/affordable-homes

¹² www.tenantservicesauthority.org/server/show/ConWebDoc.20976

¹³ www.tenantservicesauthority.org/server/show/ConWebDoc.21239

registered providers to offer Affordable Rent properties, the Government considers that it makes sense to update the existing direction on rents to reflect the introduction of the new model. The proposed revisions are consequential upon the introduction of Affordable Rent and are therefore unlikely to have a material impact on the regulatory framework.

31. The Minister for Housing and Local Government has confirmed that the existing inflation-linked formula, inherited from the previous government, for annual rent increases in traditional social rented housing will continue to apply throughout the 2011-15 period as part of the Government's rent restructuring policy¹⁴. Therefore we are not proposing any other changes to the rents direction.

Tenant Cashback

32. The purpose of the Tenant Cashback model is to give social housing tenants opportunities to be involved in the management of repair and maintenance services for their homes. Rather than registered providers always carrying out or commissioning repairs, the model would give tenants opportunities to undertake or commission routine repair tasks themselves, as agreed with their landlords.
33. Tenants who choose to take up these opportunities will be able to take more responsibility for the upkeep of their homes and neighbourhoods. They will have a chance to share in resulting efficiencies, potentially building up worthwhile savings through the scheme. They may also gain practical and transferable skills.
34. We recognise that local circumstances, including the age, condition and type of housing, will need to be taken into account in each locality. We do not therefore propose to prescribe how registered providers should run local Tenant Cashback schemes. However we are proposing that registered providers should offer opportunities to their tenants to be involved in managing repairs and maintenance services and to share in savings made.
35. We are piloting the Tenant Cashback model to work through the detailed practicalities of how a scheme will work in practice. We envisage that evidence from pilot schemes will be made widely available to help registered providers to run their own schemes successfully.

Decent Homes programme

36. The target was for all social homes to meet the Decent Homes standard by December 2010. The great majority of social housing met the standard before this date and registered providers' statistical returns show that 92 per cent was expected to meet the standard by April 2011. Some landlords, particularly in the local authority sector, had formal agreements with the Regulator that some of their stock would be made decent after this date. (Some agreements had

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www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110214/wmstext/110214m0001.htm#110214600020

been granted by the Government Offices and were inherited by the Regulator with the introduction of cross-domain regulation.)

37. The extensions granted to these registered providers still stand. Providers should make every effort to revise their spending plans and improve their procurement efficiency to meet their agreed deadline before seeking to renegotiate it. In the Spending Review the Government earmarked £2.1bn to help tackle the backlog of non-decent homes in the social sector. This funding is essential in helping to ensure all social homes meet the Decent Homes standard and will help registered providers meet their commitments. Some providers with less than 10 per cent of their homes non-decent may have expected to receive further funding but will not do so following the Spending Review settlement. However it is expected that through effective use of other resources and procurement efficiencies they will still be able to improve their non-decent homes.
38. In future registered providers are expected to maintain their stock at a decent level, investing capital and using their asset management strategy to ensure pre-emptive improvements are delivered so that their homes do not fall into a non-decent state. Our expectation is that temporary exemptions to the standard for specific homes will only be given in exceptional circumstances.

Localism Bill: changes to direction powers

39. The Secretary of State has a power to direct the Regulator to set a standard and on the content of a standard. However he can only use this power in relation to the specific matters listed in subsection (2) of section 197 of the 2008 Act. Currently these matters are the quality of accommodation, rent and tenant involvement. As noted above, the Bill will add two further categories to this list – tenure (clause 133) and mutual exchange (clause 154). This consultation includes proposals to issue directions on tenure and mutual exchange, in the event that these clauses are approved by Parliament.
40. The Bill makes only one other change to this power – to provide that it can be used in relation to standards set under section 194 (i.e. economic standards) as well as standards set under section 193 (i.e. consumer standards). This change is necessary because, as part of the re-classification of the standards into 'consumer' and 'economic', standards on rents will – in future – be set under section 194 rather than under section 193 (as is provided by paragraph 4(5) of Schedule 17 to the Bill). The classification of the standard on rents as 'economic' will ensure that the Regulator can continue to monitor and enforce compliance with the standard on a proactive basis.
41. In relation to rents, our proposal is therefore to issue a direction in relation to a standard set under section 194, in the event that Parliament approves this clause.

Commentary on proposed directions

General principles

42. The Government is proposing to issue five directions, on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. In the case of the latter three, our approach is to revise and reissue the existing directions on these issues. The draft directions are attached at Annex A.
43. The Government's intention is that the standards resulting from these directions should apply to all registered providers, with the exception of rents (which will apply to private registered providers only).
44. The directions are intended to apply only to the low cost rental accommodation of registered providers, as defined by the 2008 Act. Low cost rental includes Affordable Rent as well as traditional social rented housing. However it is intended that the directions will not apply to intermediate rent (which is technically a form of low cost rental) or to low cost home ownership accommodation. It continues to be for the Regulator to decide within its statutory framework what standards are appropriate for these groups.
45. The Government believes that the draft directions should contain the minimum amount of detail needed to achieve the desired goals, and where possible should be set at a high level (while setting clear boundaries where necessary).

Direction on tenure

46. In framing the draft direction on tenure, we have carefully considered the right balance between central prescription and flexibility. The draft direction begins by setting an overall outcome that we are seeking to achieve, but then offers flexibility for registered providers to decide how to deliver this outcome locally. However it is essential that this is done in a transparent way (hence the proposed requirement on registered providers to publish and maintain a clear and accessible tenancy policy) and that there are certain minimum guarantees that all tenants can expect.
47. The proposed overall outcome at the start of the direction (*“that registered providers offer and issue tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability of the community and the efficient use of their housing stock”*) is intended to replace the required outcome on tenure in the Regulator's existing Tenancy Standard. The current required outcome (*“registered providers shall offer and issue the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community”*) effectively requires providers to grant lifetime tenancies to the vast majority of new tenants in general needs social rent housing.

Question 1: Does the draft direction on tenure set out the relevant factors that registered providers should consider when deciding what type of tenancy they should offer and issue?

48. The proposed requirement on registered providers to “*publish clear and accessible policies which outline their approach to tenancy management*” is of a similar form to the requirement in the existing Tenancy Standard. It also incorporates tackling tenancy fraud and preventing unnecessary evictions, issues covered in the ‘specific expectations’ section of the existing Standard. We propose that tenancy policies should set out how tenants or prospective tenants can appeal or complain against tenancy decisions – we envisage that registered providers will normally wish to refer to their existing complaints procedures, taking account, in respect of local authority landlords, of the statutory provisions for appeals which we are planning to introduce.
49. We expect that in developing, communicating and implementing their tenancy policies, registered providers will pay particular regard to the needs of more vulnerable tenants and their children, for example through the provision of tailored interventions where tenancy conditions are not being met and by providing additional support through any complaints or appeals process.

Question 2: Does the draft direction on tenure set out the right minimum requirements for a registered provider’s tenancy policy?

50. The Government believes that the minimum guarantee should be a two-year tenancy. However we would expect, and responses to the *Local Decisions* consultation suggest, that the vast majority of tenancies will be provided on longer terms – particularly for vulnerable households or those with children. Paragraph 2(3)(f) of the draft direction reflects that expectation. We are proposing that registered providers’ tenancy policies should explain how they will take account of the needs of vulnerable households, including through the provision of tenancies which provide a reasonable degree of stability for those households.
51. The draft direction makes clear that for new tenants, a flexible tenancy may be preceded by a probationary tenancy. Probationary tenancies are used by the majority of registered providers, prior to the grant of secure or assured tenancies, as an important tool to identify and deal with anti-social behaviour at an early stage. For the same reason, the Government wants to ensure that landlords are able to grant probationary tenancies prior to the fixed term of a flexible tenancy for new tenants.
52. The Government also wants to ensure that all registered providers have the same level of flexibility on the use of probationary tenancies, as part of encouraging their use for new tenants as standard practice. The draft direction therefore clarifies that private registered providers can extend probationary tenancies to up to 18 months (as local authority landlords can already).
53. The draft direction incorporates a requirement that the Standard must include a guarantee of a tenancy of no less security for existing social tenants who choose to move to another social rent home. This guarantee does not apply

where a tenant chooses to move to an Affordable Rent home, although registered providers will have discretion to provide the same level of security in this situation should they wish to do so. This approach matches the Government's proposals in paragraph 2.51 of the *Local Decisions* consultation. The guarantee will apply where tenants are decanted to another property (regardless of whether it is a social rent or Affordable Rent property).

Question 3: Does the draft direction set out the right minimum protections for tenants of registered providers?

54. As noted above, the Regulator published a revised Tenancy Standard on 13 April 2011 in order to enable registered providers to participate in Affordable Rent. The revised Standard provides greater flexibility for registered providers on the types of tenancy they can grant on Affordable Rent properties. The proposed direction will extend these flexibilities to traditional social rented housing as well. In doing so, the direction seeks to build on the requirements in the existing Standard. The key differences between the proposed direction and the current Standard are as follows:
- the draft direction provides more detail about the matters that tenancy policies should set out
 - the draft direction makes clear that, in relation to general needs housing, the alternative to Assured or Secure periodic tenancies is to offer fixed term tenancies. The draft direction also clarifies the maximum length of probationary tenancies
 - the draft direction sets out the circumstances in which existing social tenants are guaranteed the same level of security where they move home

Direction on mutual exchange

55. In formulating the draft direction on mutual exchange we have sought to build on the existing regulatory requirement to participate in mobility and mutual exchange schemes where available, and make clearer our expectation that registered providers should offer a better mutual exchange service to tenants.
56. The purpose of sub-paragraph 3(2)(a) of the draft direction is to require registered providers to subscribe to an internet based mutual exchange service which enables tenants to register their details for a mutual exchange and search for reciprocal matches.
57. Paragraphs 8.25-8.29 of the *Local Decisions* consultation document described work by Government and existing providers of internet-based mutual exchange services to develop a new national scheme which would enable tenants wishing to identify a mutual exchange to see all available matches. It is our intention that registered providers should subscribe to a provider who is part of this scheme (as provided by sub-paragraph 3(2)(b)(i)), but the draft direction retains the choice for landlords to subscribe to a number of individual providers if they prefer (see sub-paragraph 3(2)(b)(ii)). The intended outcome is that tenants

should be able to access easily the details of as many available reciprocal matches as possible.

58. We want also to ensure that registered providers proactively promote the option of mutual exchange to tenants, including access to a service which the registered provider has subscribed to on their behalf. This is provided for in sub-paragraph 3(2)(c) of the draft direction. Registered providers will need to provide support for tenants who may not have access to a computer, or may not be able to use a computer without assistance (see subparagraph 3(2)(d)). This point was made particularly in relation to older or more vulnerable tenants in response to our earlier consultation on *Local Decisions*. We are not seeking to prescribe how support might be offered but suggest this could include access to computers in public buildings, or housing officer support to register and search for matches on behalf of a tenant.
59. It is our intention that all registered providers should subscribe to a service on behalf of their tenants, and in the majority of cases this is likely to prove the most cost effective option. However it may be the case for smaller registered providers, where they perceive a full subscription to not offer value for money, that they would consider paying the subscription fee for individual tenants on request. Individual registered providers will have the flexibility to make this choice.
60. This new direction is intended to replace the required outcome on mobility in the Regulator's existing Tenancy Standard.

Question 4: Do you agree with the principle and detail of our proposed direction on mutual exchange?

Direction on tenant involvement and empowerment

61. We are proposing to amend the existing tenant involvement and empowerment direction in order to:
- implement several recommendations set out in the Review of Social Housing Regulation on strengthening the ability of tenants to hold registered providers to account¹⁵; and
 - reflect the Government's Tenant Cashback scheme
62. The draft direction reflects three key recommendations set out in the Review. Firstly, that there should be a clear expectation in regulation that tenants are able to scrutinise registered providers' performance. The text in sub-paragraph 4(2)(a) of the proposed direction is designed to deliver this outcome. In particular we are proposing that tenants should have a wide range of opportunities to influence and be involved in "*the scrutiny of their landlord's performance and the making of recommendations to their landlord about how performance might be improved.*" Alongside effective scrutiny, the Government

¹⁵ The draft direction is a further iteration of the indicative direction on tenant involvement and empowerment that was published as an annex to the *Review of Social Housing Regulation*.

wishes to ensure that registered providers provide further opportunities for tenants to take responsibility for managing their homes, and support tenants in exercising this choice, including through the Right to Manage where this is appropriate. Sub-paragraph 4(2)(b)(i) reflects this policy.

63. Secondly, that registered providers should welcome scrutiny via a tenant panel (or equivalent group). The text in sub-paragraph 4(2)(b)(ii) of the draft direction reflects this recommendation. The proposed text is designed to sit alongside the provisions in the Localism Bill for tenant panels that have been recognised as a designated person for the purpose of referring complaints to the Housing Ombudsman. It is recognised that tenant panels will not necessarily choose to fulfil the function of a designated person for the purpose of referring complaints.
64. Thirdly, that there should be a clear regulatory obligation on registered providers to provide timely, useful performance information to tenants in order to support effective scrutiny. The Review also proposed that the Regulator's statutory power to require registered providers to submit an annual report of their performance should be replaced with a regulatory obligation to provide an annual report of performance to tenants. The text in sub-paragraph 4(2)(b)(iii) of the draft direction reflects these commitments.
65. Sub-paragraph 4(2)(a)(v) of the draft direction reflects the Tenant Cashback model. The intention is to give tenants opportunities to be involved in the commissioning or carrying out of routine repairs, as agreed with their landlord, and to share in any financial savings made as a result. We believe that the publication of information about repair and maintenance budgets will help tenants to judge whether local schemes are sufficiently ambitious. Sub-paragraph 4(2)(b)(iii) is designed to achieve this outcome via registered providers' annual reports.

Question 5: Do you agree with the principle and detail of our proposed revisions to the direction on tenant involvement and empowerment?

Question 6: What type of models for involving social tenants in repair and maintenance services are registered providers likely to offer, how many tenants might participate in these and what costs and benefits might they result in?

Direction on rents

66. The Government is proposing to update the existing direction on rents to reflect the introduction of the new Affordable Rent model. The formula for traditional social rents will remain unchanged. The Government intends that the resulting standard will continue to apply to private registered providers only.
67. Our proposed amendments to the direction are consistent with the 2011-15 Affordable Homes Programme Framework. The wording is very similar to that already used by the Regulator in its recent amendments to the rent element of its Tenancy Standard. The revised direction is therefore unlikely to result in material changes to the existing regulatory framework.

68. In particular, the draft direction provides that:

- properties are to be treated as Affordable Rent where they are provided pursuant to a housing supply delivery agreement with the Homes and Communities Agency under the 2011-15 Affordable Housing Programme
- in line with the Housing Minister's statement to Parliament on 9 December 2010¹⁶, Affordable Rent properties are outside the Government's rent restructuring policy and the social rent formula
- Affordable Rent properties are subject to separate requirements relating to initial rent setting, annual increases and periodic rebasing as set out in the direction

Question 7: Do the proposed revisions to the rent direction adequately reflect the introduction of Affordable Rent?

Direction on quality of accommodation

69. We are proposing some minor revisions to the existing quality of accommodation direction. These changes are needed to reflect the fact that the original date for compliance with the Decent Homes Standard (31 December 2010) has now expired.
70. We are proposing to remove the fixed date for compliance from the direction. The resulting Quality of Accommodation Standard would instead work in much the same way as other standards, where compliance is required with immediate effect rather than within a certain period.
71. The existing direction gives the Regulator's scope to provide 'extensions' to the date by which registered providers must comply with the Quality of Accommodation Standard. The draft direction attached at Annex A retains this flexibility in a slightly modified form. As registered providers are expected to maintain their stock at a decent level on an ongoing basis, the direction would give the Regulator scope to grant a temporary exemption for specific properties where the requirements of the standard should be met by an agreed date. Our expectation is that such an exemption would only be granted to local authorities with a backlog of work now and then only in exceptional circumstances in the future.

Question 8: Do you agree with the proposed revisions to the Quality of Accommodation direction to reflect the expiry of the original target date for compliance?

Question 9: Energy efficiency is implicit in the revisions to the Quality of Accommodation Direction; should we make it more explicit?

¹⁶

www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101209/wmstext/101209m0001.htm#10120948000017

Annex A: Proposed directions

The Directions on Regulatory Standards

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

Citation, application and interpretation

1.—(1) These Directions may be cited as the Directions on Regulatory Standards and shall apply to registered providers from 1 April 2012.

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

- (a) in relation to a registered local authority, accommodation not accounted for within the local housing authority's Housing Revenue Account; and
- (b) in relation to private registered providers, rental accommodation to which grant has been given on the basis that the accommodation is intermediate rent, or accommodation specified as exempt from the rent influencing regime in the Rent Influencing Regime Guidance.

(3) In these Directions—

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

“Decent Homes Guidance” means A Decent Home: Definition and guidance for implementation published by the Department for Communities and Local Government in June 2006 and any guidance issued by the Department or its successors, in relation to that document,

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

“internet based” means a service which is accessed through the internet,

“let on Affordable Rent terms”, in relation to accommodation, means provided pursuant to a housing supply delivery agreement entered into between a registered provider and the Homes and Communities Agency under the Agency's 2011-15 Affordable Housing Programme Framework,

a “match” occurs where a property is identified which fulfils the required property details entered and there is a reciprocal match for the tenant of that identified property,

“mutual exchange” means an agreement between tenants to swap homes, whether or not the tenants are tenants of the same registered provider,

“mutual exchange property” means a property the tenants of which have registered an interest in arranging a mutual exchange with a mutual exchange service,

“mutual exchange service” means a service which enables tenants who have registered an interest in arranging a mutual exchange to search for other mutual exchange properties,

“property” means any low cost rental accommodation of a registered provider,

“property details” include the property type (flat, bungalow, house, etc), address and number of bedrooms,

“Rent Influencing Regime Guidance” means the Rent Influencing Regime Guidance published by the Housing Corporation in October 2001, the Rents guidance in the Explanatory Note to Decision Instrument 5 (Revision to the Tenancy Standard: Affordable Rent) published by the Regulator in April 2011 and any other guidance issued by the Housing Corporation, the Regulator or its successors, in relation to those documents,

“Right to Manage” means the exercise of the rights in relation to the management of premises provided for under sections 27 and 27AB of the Housing Act 1985,

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

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

“Social Rent Guidance” means the Guide to Social Rent Reforms published by the Department of Environment, Transport and the Regions in March 2001, the Written Ministerial Statement on Affordable Rent made on 9 December 2010 and any guidance issued by the Department or its successors, in relation to that document, and

“tenant” means a tenant of a registered provider of social housing.

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

(5) References in any document referred to by these Directions to—

(a) registered social landlords, or cognate expressions, shall be treated as references to private registered providers,

(b) the Housing Corporation shall be treated as references to the Regulator.

Tenure

2.—(1) The Regulator must set a standard relating to types of tenure and relating to the content of registered providers’ tenancy policies (“the Tenure Standard”).

(2) The Regulator must set the Tenure Standard with a view to achieving, so far as possible, that registered providers issue tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

(3) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that registered providers publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, tackling tenancy fraud and granting discretionary succession rights, and set out—

(a) the kinds of tenancies they will grant;

(b) where they grant tenancies for a fixed term, the length of those terms;

(c) the circumstances in which they will grant tenancies of a particular type;

(d) the circumstances in which tenancies may or may not be reissued at the end of the fixed term, in the same property or in a different property;

- (e) the way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term;
- (f) their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability; and
- (g) the advice and assistance to tenants on finding alternative accommodation they will give in the event that they decide not to reissue a tenancy.

(4) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that—

- (a) where registered providers grant general needs tenancies, these are for a minimum fixed term of two years⁽¹⁷⁾, in addition to any probationary tenancy period;
- (b) where registered providers use probationary tenancies, these are for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review;
- (c) registered providers grant those who were social housing tenants on the day on which section 132 of the Localism Act 2011 comes into force, a tenancy with no less security where they choose to move to another social rented home (this requirement should not apply where tenants choose to move to accommodation let on Affordable Rent terms); and
- (d) registered providers grant tenants who have been moved into alternative accommodation during any redevelopment works a tenancy with no less security of tenure on their return to settled accommodation.

Mutual exchange

3.—(1) The Regulator must set a standard relating to methods of assisting tenants to exchange tenancies, in particular the provision of access to an internet based mutual exchange service (“the Mutual Exchange Standard”).

(2) The Regulator must set the Mutual Exchange Standard with a view to achieving the following, so far as possible—

- (a) registered providers must subscribe to an internet based mutual exchange service which allows—
 - (i) a tenant to register an interest in arranging a mutual exchange through the mutual exchange service without payment of a fee;
 - (ii) the tenant to enter their current property details and the tenant’s requirements for the mutual exchange property they hope to obtain;
 - (iii) the tenant to be provided with the property details of those properties where a match occurs;
- (b) registered providers must subscribe to either—
 - (i) an internet based mutual exchange service which, with the consent of the tenant, shares the property details of each such tenant registered with that service with other providers of mutual exchange services, or
 - (ii) as many internet based mutual exchange services as necessary to provide tenants with access to as many mutual exchange properties as possible;

⁽¹⁷⁾ This does not apply where registered providers grant periodic secure or assured tenancies

- (c) registered providers must take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to the attention of its tenants; and
- (d) registered providers must provide reasonable support to tenants who do not have access to the internet.

Tenant involvement and empowerment

4.—(1) The Regulator must set a standard relating to the involvement by tenants in the management by registered providers of accommodation (“the Tenant Involvement Standard”).

(2) The Regulator must set the Tenant Involvement Standard with a view to achieving the following, so far as possible—

- (a) that tenants are given a wide range of opportunities to influence and be involved in—
 - (i) the formulation of their landlord’s housing related policies and priorities,
 - (ii) the making of decisions about how housing related services are delivered, including the setting of service standards,
 - (iii) the scrutiny of their landlord’s performance and the making of recommendations to their landlord about how performance might be improved,
 - (iv) the management of their homes, where applicable, and
 - (v) the management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made,
- (b) that registered providers support their tenants to develop and implement the opportunities in sub-paragraph (2)(a), including by—
 - (i) supporting their tenants to exercise their Right to Manage or otherwise exercise housing management functions, where appropriate;
 - (ii) supporting the formation and activities of tenant panels or equivalent groups and responding in a constructive and timely manner to them; and
 - (iii) the provision of timely and relevant performance information to support effective scrutiny by tenants of their landlord’s performance in a form which registered providers seek to agree with their tenants; such provision must include the publication of an annual report which should include information on repair and maintenance budgets.

Rent

5.—(1) The Regulator must set a standard relating to rent (“the Rent Standard”).

(2) The Rent Standard is to apply to private registered providers only.

(3) The Rent Standard is to apply in relation to the setting of rents in the financial year beginning on 1 April 2012 and subsequent financial years.

(4) In setting the Rent Standard the Regulator must have regard to the Social Rent Guidance.

(5) Subject to sub-paragraph (8), the Regulator must set the Rent Standard with a view to achieving the following, so far as possible—

(a) rents conform with pattern produced by the rents formula set out in the Rent Influencing Regime Guidance (“target rents”) with a 5% tolerance on individual rents (10% for supported housing and sheltered housing) (“rent flexibility level”) but subject to the maximum rent levels specified in that Guidance (“rent caps”),

(b) weekly rent for accommodation increases each year by an amount which is no more than—

$$\text{RPI} + 0.5\% + \text{£}2,$$

until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower,

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

(d) rent caps increase annually by—

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

(e) target rents increase annually by—

$$\text{RPI} + 0.5\%.$$

(6) Sub-paragraphs (4) and (5) do not apply to accommodation let on Affordable Rent terms.

(7) Subject to sub-paragraph (8), where accommodation is let on Affordable Rent terms the Regulator must set the Rent Standard with a view to achieving the following, so far as possible—

(a) rent for accommodation (inclusive of service charges) is set at a level which is no more than 80% of the estimated market rent for the accommodation (inclusive of service charges), based on a valuation in accordance with a method recognised by the Royal Institute of Chartered Surveyors,

(b) rent for accommodation increases each year by an amount which is no more than—

$$\text{RPI} + 0.5\%,$$

(c) rent for accommodation is re-set, based on a new valuation each time the accommodation is let to a new tenant or re-let to the same tenant.

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

Quality of accommodation

6.—(1) The Regulator must set a standard relating to the quality of accommodation (“the Quality of Accommodation Standard”).

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

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

(a) that accommodation—

(i) contains no category 1 hazard,

- (ii) is in a reasonable state of repair,
- (iii) has reasonably modern facilities and services, and
- (iv) includes facilities or services for the provision of a reasonable level of thermal comfort,

(b) that accommodation which is at the standard set out in the Decent Homes Guidance is maintained by the registered provider at that standard.

(4) Where, in relation to a registered provider, the application of the Quality of Accommodation Standard would not be reasonable the Regulator may agree a temporary period with the registered provider during which the requirements of the Quality of Accommodation Standard need not be fully met.

Annex B: Consultation criteria

The seven consultation criteria and this consultation

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

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

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

Please note that section 197(8)(b) of the 2008 Act requires the Secretary of State to publish each response to this consultation. Information provided in response to this consultation, including personal information, may also be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained

in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

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

Individual responses will not be acknowledged unless specifically requested.

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

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please inform the DCLG Consultation Co-ordinator.

The postal address is:

Zone 4/J2
Eland House
London
SW1E 5DU

The email address is consultationcoordinator@communities.gsi.gov.uk

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The Rt Hon Grant Shapps MP
Minister for Housing and Local Government

**Department for Communities and Local
Government**
Eland House
Bressenden Place
London SW1E 5DU

Tel: 0303 444 3460
Fax: 020 7828 4903
E-Mail: grant.shapps@communities.gsi.gov.uk

www.communities.gov.uk

28th July 2011

Dear Consultee,

Implementing social housing reform: consultation on directions to the Social Housing Regulator

I am writing to let you know that, following further consideration, particularly in light of concerns expressed during debate on the tenure reform provisions in the Localism Bill at Lords Committee, we are making a small but important change to our proposed direction to the Social Housing Regulator on tenure.

We have consistently said (and have repeated this in the directions consultation) that whilst, to provide maximum flexibility to best respond to specific circumstances, a minimum tenancy term of two years should be available to registered providers, we would expect the vast majority of tenancies to be provided on longer terms. We are now proposing that this expectation that tenancies of this length should only be used exceptionally should become a requirement within the Tenure Standard itself. If social landlords decide that there are exceptional circumstances where tenancies of less than five years may be appropriate, then they will be required to set out in their tenancy policy what those circumstances will be.

The revised draft tenure direction is annexed to this letter, with changes in bold. When you respond to the directions consultation document, you should do so on the basis that this draft direction represents the Government's proposed text. The consultation document remains unchanged in all other respects, including the consultation deadline of 29 September.

A handwritten signature in black ink, appearing to read "Grant Shapps".

GRANT SHAPPS MP

Tenure

1.—(1) The Regulator must set a standard relating to types of tenure and relating to the content of registered providers' tenancy policies ("the Tenure Standard").

(2) The Regulator must set the Tenure Standard with a view to achieving, so far as possible, that registered providers issue tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.

(3) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that registered providers publish clear and accessible policies which outline their approach to tenancy management, including preventing unnecessary evictions, tackling tenancy fraud and granting discretionary succession rights, and set out—

- (a) the kinds of tenancies they will grant;
- (b) where they grant tenancies for a fixed term, the length of those terms;
- (c) the circumstances in which they will grant tenancies of a particular type;
- (d) any exceptional circumstances in which they will grant tenancies for a term of less than five years⁽¹⁾ in general needs housing following any probationary period.**
- (e) the circumstances in which tenancies may or may not be reissued at the end of the fixed term, in the same property or in a different property;
- (f) the way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term;
- (g) their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability; and
- (h) the advice and assistance to tenants on finding alternative accommodation they will give in the event that they decide not to reissue a tenancy.

(4) The Regulator must also set the Tenure Standard with a view to achieving, so far as possible, that—

- (a) where registered providers grant general needs tenancies, these are for a minimum fixed term of **five years⁽¹⁾**, **or exceptionally for a minimum term of no less than two years**, in addition to any probationary tenancy period;
- (b) where registered providers use probationary tenancies, these are for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review;
- (c) registered providers grant those who were social housing tenants on the day on which section 132 of the Localism Act 2011 comes into force, a tenancy with no less security where they choose to move to another social rented home (this requirement should not apply where tenants choose to move to accommodation let on Affordable Rent terms); and
- (d) registered providers grant tenants who have been moved into alternative accommodation during any redevelopment works a tenancy with no less security of tenure on their return to settled accommodation.

⁽¹⁾ This does not apply where registered providers grant periodic secure or assured tenancies

Draft Response

Social Housing Directions Consultation
Department of Communities and Local Government
Zone 1/A4
Eland House
Bressenden Place
LONDON
SW1E 5DU

Dear Sir/Madam

IMPLEMENTING SOCIAL HOUSING REFORM; CONSULTATION ON DIRECTIONS TO THE SOCIAL HOUSING REGULATOR

I am writing to give you West Lancashire Borough Council's comments on the Consultation Paper regarding Directions on Social Housing.

Overall the Council welcomes the reforms and feels that making local decisions with our residents offers a positive way forward.

At this stage the Council has some reservations about the Tenant Cashback scheme and hopes that this does not become a 'white elephant' like the Right to Repair scheme which is costly to administer and which is not used by Tenants. However, the Council notes that it will not be a prescriptive scheme and that local decisions can be made following examination of the pilot schemes.

I will now respond in more detail to the specific questions posed in the Consultation Paper.

Q1. Does the draft direction on tenure set out the relevant factors that registered providers should consider when deciding what type of tenancy they should offer and issue?

The Council is unclear from the Consultation Paper how Registered Providers will comply with the Tenancy Standard and take into account the published tenancy strategy produced by the Local Authority. The Council believes that if Local Housing Authorities are required to consult on the question of flexible tenure there should be clear timescales to allow the Council to undertake this function and then for Registered Providers to consider how they take the strategy into account. It will be difficult for Registered Providers who work in a number of Local Authorities to have a consistent approach. One wonders whether the tenancy strategy would be best left to each Registered Provider to undertake?

The development of flexible tenures which will pay particular attention to vulnerable tenants and their children will no doubt have an intrinsic link to the

development of universal credits and the ability of certain groups to be able to pay affordable rents. It may not be possible to fully explore the impact of the tenure strategy until all the information is accessible.

Q2. Does the draft direction on tenure set out the right minimum requirements for a registered provider's tenancy policy?

Yes. The direction on tenure is helpful and the further letter dated 28th July 2011 helps to clarify the position.

The tenancy policy needs to reflect that circumstances can and may change and in these eventualities the policy needs to be flexible in determining the best and most beneficial way forward.

Q3. Does the draft direction set out the right minimum protections for tenants of registered providers?

Yes. The direction makes the position clear.

Q4. Do you agree with the principle and detail of our proposed direction on mutual exchange?

The Council supports the opportunity for Tenants to participate in Mutual Exchange schemes. The Council favours a National Scheme rather than have a plethora of schemes. The cost of participation falls on the Registered Provider and the Council feels that for the service to have any real commitment and value a payment by each Tenant would add worth to the process.

Q5. Do you agree with the principle and detail of our proposed revisions to the direction on tenant involvement and empowerment?

The Council has already established mechanisms which will facilitate the direction on the tenant involvement and empowerment standard. The Council is comfortable that this is a positive way forward.

Q6. What type of models for involving social tenants in repair and maintenance services are registered providers likely to offer, how many tenants might participate in these and what costs and benefits might they result in?

The Council works closely with our Tenants to organise a responsible and cost efficient repairs and maintenance service. The financial benefits of this arrangement has enabled greater funds to be diverted to meeting the Decent Homes Standard which benefits Tenants generally. The Council has limited experience of allowing Tenants to undertake repairs or to commission this themselves. There are some reservations about how schemes of this nature would be 'policed'. The Council do not wish to see a repeat of the Right to Repair scheme which has not proved popular and has incurred cost for very limited benefits. The Council is prepared to explore the benefits of the Tenant Cashback pilots with Tenants to see if there is a desire to progress any particular changes. However, at this stage, without the full knowledge of the benefits of the Tenant Cashback pilots, the Council feels that the wording should be amended to reflect

exploration of this with the Tenant Panel or equivalent rather than a commitment to introduce the scheme at this stage.

Q7. Do the proposed revisions to the rent direction adequately reflect the introduction of Affordable Rent

Yes. These are clear and understandable.

Q8. Do you agree with the proposed revisions to the Quality of Accommodation direction to reflect the expiry of the original target date for compliance?

The Council plans within its self financing business plan to continue to maintain the Decent Homes Standard. The Council therefore do not have any comments to make on this specifically. However, the Council have on a number of occasions expressed concern about environment conditions within the neighbourhood standard. This is an area that needs to be explored between West Lancashire Borough Council and Government because the full range of asset management options may not be able to be explored fundamentally.

Q9. Energy efficiency is implicit in the revisions to the Quality of Accommodation Direction; should we make it more explicit?

The Council do not feel further clarification about Energy Efficiency is necessary within the Quality of Accommodation Direction.

**MINUTE OF THE LANDLORD SERVICES COMMITTEE (CABINET WORKING GROUP)
5 SEPTEMBER 2011**

43. CONSULTATION - IMPLEMENTING SOCIAL REFORM - DIRECTIONS TO THE SOCIAL HOUSING REGULATOR

The Working Group considered the draft report of the Director of Transformation which set out a consultation paper from the Department of Communities and Local Government (CLG) on implementing social housing reform: direction to the Social Housing Regulator.

RESOLVED: That the consultation paper be noted although more detailed information would be required for a clearer understanding of what would be involved.



AGENDA ITEM: 6(r)

CABINET: 13 September 2011

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 September 2011**

Report of: Director of Transformation

Relevant Head of Service: Assistant Director Housing and Regeneration

Relevant Portfolio Holder: Councillor Mrs Hopley

**Contact for further information: Mr L R Gardner (Ex 5023)
(E-mail: Lee.Gardner@westlancs.gov.uk)**

**SUBJECT: CONSULTATION ON A NEW MANDATORY POWER OF POSSESSION
FOR ANTI-SOCIAL BEHAVIOUR**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To consider the Council response to the Consultation proposing a mandatory order of possession where Anti-Social and criminal behaviour has been perpetrated by a tenant or someone for whom the tenant is responsible.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the proposed response to the Department of Communities and Local Government (CLG) consultation paper on 'A New Mandatory Power of Possession for Anti-Social Behaviour', attached at Appendix 3 to the report be approved, subject to consideration of the Minute of Landlord Services Committee (Cabinet Working Group), attached at Appendix 4 to the report.

2.2 That the Assistant Director Housing and Regeneration, in consultation with the Portfolio for Housing, be authorised to make final amendments to the response and submit to the CLG, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.

2.3 That Call In is not appropriate for this item as the report is being referred to Executive Overview and Scrutiny Committee on 29 September 2011.

3.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW & SCRUTINY COMMITTEE

3.1 That the proposed response to the CLG's consultation, set out in Appendix 3 to the report be noted and agreed comments be referred to the Assistant Director Housing and Regeneration for consideration, in consultation with the Housing Portfolio Holder.

4.0 CONSULATION

4.1 The Government has been increasingly concerned regarding the time and expense of Anti-Social Behaviour cases dealt with by the County Court.

4.2 When a social landlord applies for possession of a property on the grounds of anti-social behaviour they find that to bring the matter to a full conclusion can take up to a year (longer if there are appeals) at a substantial cost to the social landlord which due to the legal aid provision, are rarely recovered from the tenant.

4.3 The current position is that when anti social behaviour grounds are proven and the tenant has a secure tenancy the Court still has to find it reasonable to award possession, and even if they do, they can still award a postponed or suspended order so that a warrant to evict the tenant cannot be applied for unless there are further proven allegations of anti-social behaviour.

4.4 The government therefore have proposed that where a person has had allegations of anti-social behaviour or criminal activity in the vicinity of the landlord's housing stock and those allegations have been proven before another court, e.g in Magistrates Court Proceedings, that the order for possession is mandatory. Therefore the allegations do not have to be proven again before a County Court for the order to be made. The only defence that would be available to the tenant is to argue that the application for possession is disproportionate to the aims of the social landlord. This is a much harder test to prove than whether it is reasonable to award possession.

4.5 The proposals have been put forward by way of a consultation document which requires a reply by 7th November 2011.

5.0 RIOTS AND LOOTING

5.1 After the publication of the Consultation the country suffered the effects of looting and rioting in areas such as London, Birmingham, Liverpool and Manchester.

5.2 It became apparent that a number of Social Landlords wished to evict those convicted of taking part in the social unrest but were unable to do so due to the current legislation.

5.3 The reason for this is that for a landlord to apply for possession the anti-social behaviour must affect the housing management function of that landlord. That means the behaviour must be in the vicinity of the housing estate on which the landlord manages or owns, so for example, if any West Lancashire tenant were

convicted of taking part in the riots and looting in Manchester or Liverpool, the Council could not apply for possession.

- 5.4 The Government has therefore amended the scope of the consultation on whether to remove the provision that the behaviour must affect the housing management function of that landlord for them to take action where that action involves criminal damage, arson and violent disorder. As the Government states "Where a social tenant or a member of their household decides to wreak havoc in someone else's community, social landlords should have the same scope to take action."

6.0 RESPONSE

- 6.1 The Council welcomes any increase in its powers to quickly deal with anti-social behaviour, it feels that a reply to this consultation is important as the Government appears not to have taken account of why trials take a long period of time to come to a conclusion.
- 6.2 The majority of cases that take up to a year, do so as the allegations have not been proven in a previous court and the Tenant disputes those facts. The Courts also have pressure on listings and have to give the Tenant time to obtain evidence and witnesses statements so that they have a fair hearing, means that the case take months to get to trial.
- 6.3 The new power, if brought into force, to take action for Anti-Social Behaviour outside the immediate vicinity of the housing estate of the subject tenant, will not save the Social Landlords any time or money as it would not have taken action in respect of that behaviour previously. However, the availability of such a facility is welcomed.
- 6.4 The proposal will however assist where a Court has convicted a tenant of illegal use of the property, namely drug cultivation, but the reply should point out the misconception contained in the consultation documents.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 7.1 If the Government implement the proposals in the Consultation it is likely to affect the level of fear of crime by reducing the level of crime and anti-social behaviour by adding a further deterrent (in that illegal and anti-social behaviour acts may result in a greater risk of loss of a Council / Social Landlord tenancy).

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 8.1 If possession orders become mandatory in certain cases, then the work required for drafting extensive witness statements and external legal costs of long trials will be reduced. The MAPS team would be able to intervene in more cases. However this could be counteracted by the eviction action taken against tenants that are involved in criminal behaviour outside the landlord's area (which previously a landlord we could not take action for).

8.2 Where it is envisaged that the MAPS team will be able to provide the same or improved level of service if the proposals are implemented, may result in an increase in legal actions taken for possession, and an attendant increase in the demand for in-house legal resources to take these actions to court.

9.0 RISK ASSESSMENT

9.1 No significant issues arise as a result of the consultation exercise. If the legislation is introduced, then a review of the risks will need to be undertaken.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

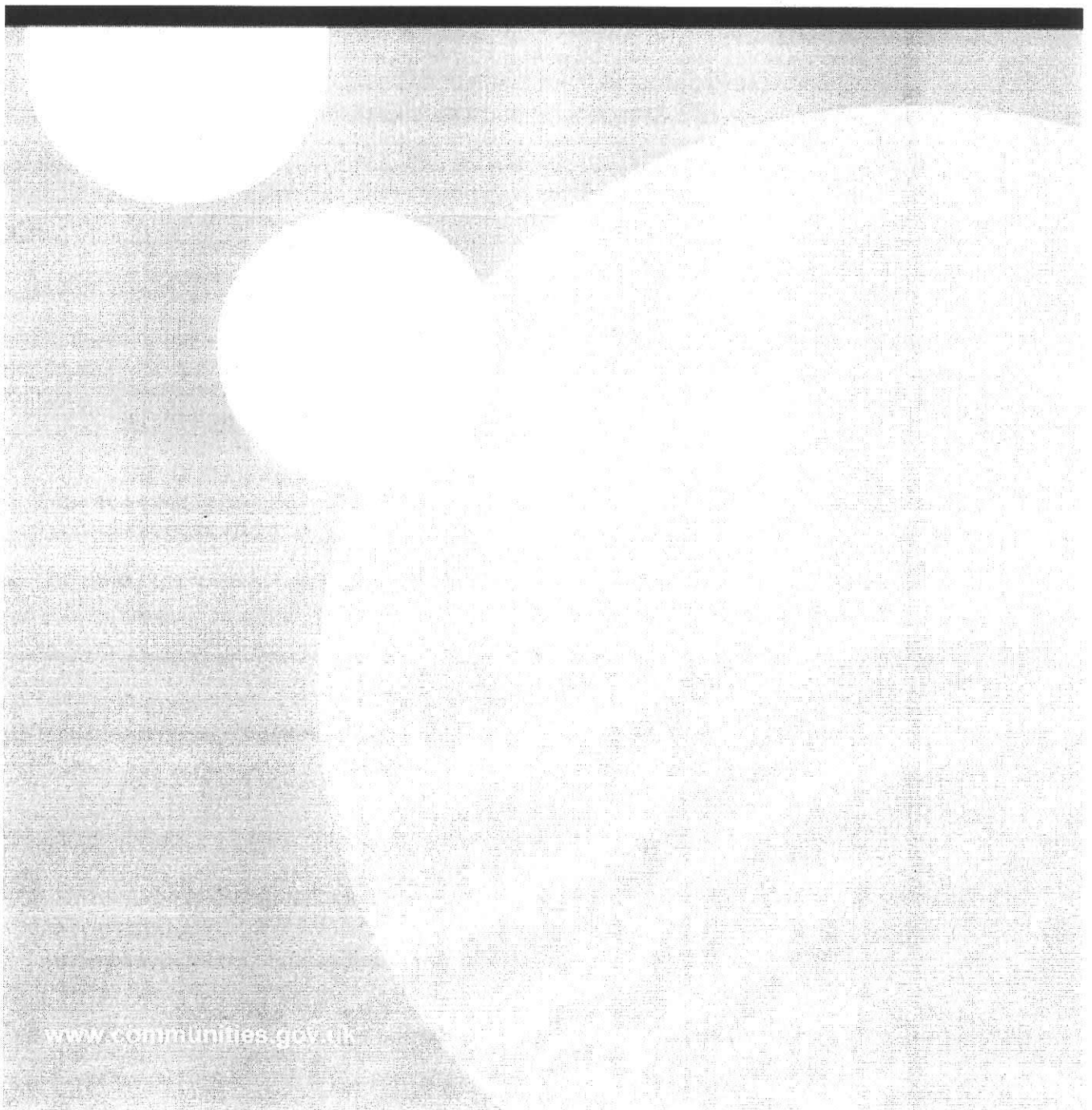
There is a significant direct impact on members of the public. However an Equality Impact Assessment is not required.

Appendices

1. Consultation Document
2. Letter from the Minister of Housing and Local Government
3. Proposed response to the consultation
4. Minute of the Landlord Services Committee (Cabinet Working Group) – 5 September 2011 (To follow).



A new mandatory power of possession for anti-social
behaviour
Consultation



www.communities.gov.uk

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Ministerial foreword



Anti-social behaviour represents one of the most serious abuses of a tenancy. No-one should have the right to make the lives of their neighbours a misery. We've done and are doing a lot to ensure that local agencies and tenants and residents have the right tools and skills to tackle anti-social behaviour head on.

We're supporting a team of expert practitioners to work with landlord and tenant groups to ensure that local responses to anti-social behaviour are effective and responsive to tenants' views.

We're providing clarity that housing association landlords have the same flexibility to use probationary tenancies as local authority landlords currently enjoy. We're supporting and encouraging their use as an important tool for tackling anti-social behaviour, by ensuring that landlords can use them alongside flexible tenancies.

The flexible tenancies we are introducing through the Localism Bill, and a more permissive regulatory framework, offer new opportunities for landlords to create incentives for tenants to behave in a way that respects their neighbours and make it easier for landlords to end tenancies when they do not.

The Home Office has recently finished consulting on proposals for a radically simplified and improved toolkit of powers which frontline practitioners can use to tackle anti-social behaviour in a way that works in the light of individual and local circumstances.

I am clear the eviction should only be pulled out of that that toolkit as a last resort. But where other remedies have been tried and failed and serious anti-social behaviour has already been proven, I am determined that seeking and obtaining possession of the property should not be the start of another long process.

Far too often I see the frustration of victims, and landlords and Parliamentary colleagues on their behalf, about a possession process that is dragging on for many months and sometimes longer. Too often the needs and rights of victims, who have sometimes had to endure intolerable behaviour for years on end, seem at the moment to be only a secondary concern.

Our proposals for a new mandatory power of possession offer a way of shortening the possession process in a way that is fair to victims and witnesses and is also fair to those at risk of losing their home. I hope that they will help to more quickly bring to an end the day to day misery that too often is inflicted for too long on those who seek simply to quietly enjoy their homes.

A handwritten signature in black ink, appearing to read 'Grant Shapps'.

Rt Hon Grant Shapps MP

The consultation process and how to respond

Scope of the consultation

Topic of this consultation:	Introducing a new mandatory power of possession for anti-social behaviour
Scope of this consultation:	This consultation seeks views on the detail and practicalities of a new mandatory power of possession to enable landlords to take swifter action to evict their most anti-social tenants. The Government's intention is that the necessary legislation be introduced alongside legislative changes required following the Home Office's recent consultation on reforming tools and powers to tackle anti-social behaviour.
Geographical scope:	England

Basic information

To:	This consultation is aimed at: <ul style="list-style-type: none"> those involved as front line practitioners in dealing with anti-social behaviour and the prosecution through the courts of those responsible for anti-social behaviour the public, particularly those who themselves have been victims of anti-social behaviour or have provided evidence as a witness in court cases
Body/bodies responsible for the consultation:	This consultation is being run by the Affordable Housing Management and Standards Division within the Department for Communities and Local Government
Duration:	This consultation will run for 12 weeks from 3 August to 5 pm on 27 October 2011
Enquiries:	For all enquiries, please email: asbconsultation@communities.gsi.gov.uk or telephone 0303 444 3664
How to respond:	By email to: asbconsultation@communities.gsi.gov.uk Or by post to: ASB Consultation Communities and Local Government Zone 1/J9 Eland House Bressenden Place London SW1E 5DU

After the consultation:	A summary of the responses to this consultation will be published on the Department's website within three months of the end of the consultation period.
Compliance with the Code of Practice on Consultation:	The consultation period has been set at 12 weeks in line with the Cabinet Office Code of Practice on Consultations. We have considered a longer period of consultation, since the consultation period includes the summer holidays. Given the brevity and limited scope of this consultation, we consider that 12 weeks represents an adequate period.

1. Introduction

Context

- 1.1 Prevention and early intervention should be at the heart of all landlords' approaches to tackling anti-social behavior. We know that up and down the country social landlords are engaged in creative and innovative work to provide diversionary activities for young people, to ensure that tenants understand the need to respect their neighbours and to nip anti-social behaviour in the bud before it becomes a problem.
- 1.2 We know that the large majority of complaints to social landlords are resolved through informal routes. Evidence suggests that over 75 per cent of anti-social behaviour cases are resolved through early intervention without resorting to formal tools¹. But where anti-social behaviour persists then we expect landlords to take more formal steps to resolve the problem.
- 1.3 The Home Office has set out and consulted on proposals for a radically simplified and streamlined toolkit of powers for social landlords and other agencies to tackle anti-social behaviour. We expect these to be used in a proportionate way with eviction a last resort in all but the most exceptional cases. The wider review of anti-social behaviour tools and powers though provides a good opportunity to look again at the interaction of the final sanction of eviction with other formal interventions which we want to encourage landlords to use before seeking possession.

The possession process for anti-social behaviour

- 1.4 The evidence suggests that social landlords use possession proceedings for anti-social behaviour sparingly. There are nearly four million social households in England but we estimate that there are only approximately 3,000 eviction orders made by the Courts annually against social tenants for anti-social behaviour².
- 1.5 It is clearly right that eviction for anti-social behaviour should remain exceptional: the loss of one's home is a serious sanction and eviction may simply displace the problem elsewhere rather than providing a long term solution. It is important that landlords work with other local agencies to provide support or interventions at the earliest opportunity when difficult or

¹ HouseMark anti-social behaviour benchmarking service: analysis of results 2010-11

² No data is available for local authority landlords or private registered providers with less than 1,000 units of stock but Regulatory and Statistical Return data shows that private registered providers with 1,000 units of stock or more evicted 1,523 tenants for reasons including anti-social behaviour in 2009-10. Assuming local authority landlords evict tenants for anti-social behaviour in roughly the same proportion to their total stock, that gives a figure of about 3,000 pa.

disruptive behaviour is identified, particularly where households with children are concerned. We know that this type of joined-up working effectively addresses these problems and helps remove the need for evictions. Effective interventions, such as Family Intervention Projects for example, delivered through partnerships between social housing providers and children's services, have been shown to be successful at reducing housing-related anti-social behaviour, and well as the number of possession notices issued by landlords.

- 1.6 But where landlords turn to possession as a last resort in order to provide respite to communities and as a serious sanction against perpetrators that process can take far too long.
- 1.7 Survey data from 61 landlords in England covering over 500 recent anti-social behaviour possession cases indicates that on average it took over seven months from the date of application to the court for a possession order to an outcome (the award of a possession order or the claim being dismissed). Multiple adjournments, for example because defendants don't turn up or turn up unrepresented, or because further evidence is required, or there are difficulties in finding court time for a trial which may last over a day, emerge as key drivers of delay. This is particularly frustrating in cases where housing related anti-social behaviour has been previously proved in another court but a full review of the facts is again undertaken.
- 1.8 Added to the period between application to the court for a possession order and the award of possession will be a notice period to the tenant prior to applying to the court for a possession order and, after the award of possession, probably another application to the court for a warrant for possession if the tenant does not vacate the property in accordance with the order made. The possession process itself is likely to come after many months and sometimes years during which neighbours and communities have suffered from anti-social behaviour as other interventions, such as warning letters, acceptable behaviour contracts and injunctions to tackle the perpetrator's behaviour have been tried and have failed.
- 1.9 The length of the possession process for anti-social behaviour puts pressure on court resources and creates significant costs for landlords met out of their tenants' rent. Research from 2005 suggested that those costs were in the region of £6,500 to £9,500³. For the most complex cases they may exceed £20,000.
- 1.10 Most importantly though lengthy possession proceedings mean that the suffering of victims is further extended. Where vulnerable or intimidated witnesses are needed to testify it may be particularly hard to keep them on

³ ODPM (2005), *Possession actions and evictions by social landlords*

board over many months. We need to give victims and witnesses the confidence that their landlords are able to act quickly and decisively to protect them.

Speeding up the anti-social behaviour possession process

- 1.11 We need to speed up the anti-social behaviour possession process in a way that properly and fairly considers both the rights of victims and witnesses and the rights of those at risk of losing their home.
- 1.12 We wish to do so in a way which, in keeping with our localist agenda, provides new flexibility for, rather than any new requirement on, landlords. We know that in some parts of the country, current arrangements work well and applications for possession are determined expeditiously. In those areas we would not anticipate any change.
- 1.13 Our objective is not to increase the number of evictions for anti-social behaviour and nor do we expect it to do so. We are seeking to facilitate faster outcomes not different ones.
- 1.14 We propose to do so by introducing a new, additional mandatory power of possession, which landlords may choose to use where serious housing related anti-social behaviour has already been proven. We propose to model this new route to possession on the process for bringing introductory tenancies to an end.
- 1.15 That new power would be available to private as well as social landlords, though in practice we would expect it to be used only very rarely by the former, given the availability of 'no fault' possession under section 21 of the Housing Act 1988. The next section sets out the details of those proposals and seeks the views of consultees.

2. A new mandatory power of possession for anti-social behaviour

The current legislative framework

- 2.1 Ground 2 of Schedule 2 to the Housing Act 1985 and Ground 14 of Schedule 2 to the Housing Act 1988 provide, for secure tenancies and assured (including assured shorthold) tenancies respectively, that the Court may grant possession where:

The tenant or a person residing in or visiting the dwelling-house—

(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or

(b) has been convicted of—

(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

(ii) an indictable offence committed in, or in the locality of, the dwelling-house.

- 2.2 In order to grant possession the Court must be satisfied that it is reasonable to do so.
- 2.3 We propose that this discretionary ground for possession for anti-social behaviour should remain available in all circumstances, including where a mandatory power is available. We are not aware that the current wording of the Ground is a matter of concern and we propose therefore that no changes should be made to how it is expressed.

Question 1: Do you agree that we should not amend the current discretionary ground for possession for anti-social behaviour?

A new mandatory power

- 2.4 We have looked at adding a new additional mandatory ground for possession for anti-social behaviour into Schedule 2 of the Housing Act 1985 and Schedule 2 of the Housing Act 1988. We consider however that in practice the distinction with the existing discretionary ground would be insufficiently clear. Instead we propose to introduce a new, clearly defined, route to possession for serious, housing-related anti-social

behaviour which has already been proven by another court, which we have termed a 'mandatory power'. We propose to base this, for all landlords, on the process for ending introductory tenancies⁴.

- 2.5 To exercise the mandatory power, the landlord would need to serve a notice of proceedings on the tenant, setting out the reasons why they are seeking possession, and advise the tenant of the date after which possession proceedings may be begun. The court would have to grant an order for possession on application by the landlord provided the correct procedure had been followed.
- 2.6 We think this provides a robust process for a mandatory power of possession for anti-social behaviour. The recent Supreme Court judgments in *Pinnock and Powell, Hall & Frisby* confirm that a human rights defence, based on the proportionality of the landlord's decision, is available in proceedings brought by a public authority under the current statutory provisions on which we propose to model the mandatory power.
- 2.7 We propose that local authority tenants should have a statutory right to request a review of the landlord's decision to seek possession under the mandatory power, by a more senior officer not involved in the original decision, and that housing association tenants should be able to request a similar review through their landlord's established complaints procedure. Making this review procedure available to the tenant, prior to the landlord seeking a possession order provides a further safeguard for the tenant.
- 2.8 We also propose that the discretion of the court to suspend a possession order would be limited. The giving up of possession could not be postponed to a date later than fourteen days after the making of the order, unless it appeared to the court that exceptional hardship would be caused by requiring possession to be given up by that date; and could not in any event be postponed to a date later than six weeks after the making of the order⁵.

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

⁴ Sections 127 to 129, Housing Act 1996

⁵ We propose to make an amendment to Section 89 of the Housing Act 1980 to extend its application to secure and assured tenancies in these cases only, not where possession is sought using a Ground.

The need for a new mandatory power

- 2.9 We think that a mandatory power, properly defined and closely linked to the new streamlined suite of anti-social behaviour powers that will be available to landlords, provides a route to significantly reduce the length of the possession process for serious anti-social behaviour and provide faster relief for victims and witnesses.
- 2.10 Clearly, tenants faced with losing their home must be provided with a proper opportunity to defend themselves, but we think that where the same facts have already been considered by another court, then the anti-social behaviour should not have to be proved a second time. Creating a mandatory power that carries over the earlier court decision into the possession proceedings, would provide the opportunity to shortcut that process.
- 2.11 Instead of a potentially lengthy trial, perhaps, following adjournments, many months after an initial directions hearing, a mandatory power should significantly increase the chance that the case can be determined quickly in a single hearing. The court will only need to establish that the criteria for awarding possession are met rather than needing to reconsider all the facts of the case.

Principles for a mandatory power

- 2.12 To ensure as far as possible that possession proceedings brought under the new mandatory power can be dealt with and resolved expeditiously by the courts, we need to ensure that that the mandatory power is underpinned by two key principles.
- 2.13 Firstly, we need to ensure that the landlord seeking possession can easily demonstrate to the court that the criteria for awarding possession are met. The mandatory power needs as far as possible to be based on a clear test which can be readily established.
- 2.14 Secondly, we need to ensure that where that test is met, it can be simply established that the anti-social behaviour is serious and housing related. Unless the court is in a position to dismiss quickly arguments that the landlord's action is not proportionate, a full facts based review is likely to be required and the practical advantages of seeking possession through a mandatory power rather than on discretionary grounds are likely to be lost.

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

Basis for a mandatory power

- 2.15 We are proposing therefore that landlords will be able to apply for possession for anti-social behaviour under a mandatory power where anti-social behaviour or criminal behaviour has already been proven by another court. We will further define the 'triggers' for seeking possession under a mandatory power in the light of final Home Office proposals on new tools and powers to be published in due course. Broadly however we propose these are as follows:
- **Conviction for a serious housing related offence** – to apply to offences committed by tenants, members of their household or regular visitors which take place in the locality of the property or between neighbours away from it. The type of offences we propose to capture include violence against neighbours; serious criminal damage with violence; drug dealing or cultivation in the property; murder; and rape. We think that 'indictable only' offences should broadly capture these.
 - **Breach of an injunction for anti-social behaviour** - given the persistent and/or serious nature of anti-social behaviour which is likely to lead to a court granting an injunction we think it is appropriate that a breach by a tenant, member of their household or regular visitor should provide a trigger for a mandatory power of possession. We propose, to ensure that the anti-social behaviour is housing related, that the mandatory power should only be available where a social landlord has either obtained or is party to the injunction.
 - **Closure of premises under a closure order** - we think that where a court has determined that activity taking place within a property is so serious to merit its closure, it is appropriate that a landlord can seek possession against the tenant using a mandatory power.
- 2.16 Clearly that does not mean that a landlord should always seek possession in these circumstances. We would expect, for example, a landlord to focus on re-housing a vulnerable tenant whose property had been taken over by a drug gang and in consequence been subject to a premises closure order.
- 2.17 Nor does it mean that a landlord should always seek possession using the mandatory power rather than discretionary grounds when these conditions are met. Whilst we think these 'triggers' as far as possible ring-fence the

mandatory power to serious, housing-related anti-social behaviour, and should create a strong presumption in favour of possession, landlords will still need to consider whether proportionality is easily demonstrated in each case.

- 2.18 It is likely, for example, that if a landlord were to seek possession using the mandatory power on the basis that a regular visitor to the property had a conviction for a serious offence in the neighbourhood from several years previously, a more detailed consideration of proportionality would be needed.

Question 4: Have we defined the basis for the new mandatory power correctly? If not, how could we improve the definition?

Using a Mandatory Power

- 2.19 We anticipate that introducing a mandatory power of possession for anti-social behaviour will reduce pressure on court resources, lower landlord costs and most importantly bring faster relief for communities. The extent of that impact though will depend on how widely landlords make use of this new flexibility.
- 2.20 In linking a mandatory power of possession to breach of an injunction, we intend both to place eviction clearly at the end of a continuum of interventions of increasing severity and provide a clearer line of sight to the threat of eviction, as an effective driver of improved behaviour at an earlier stage. We hope that this should in both regards tend to reduce the number of evictions that actually occur.

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

3. Next steps

- 3.1 We intend to publish our final proposals for a mandatory power of possession in the light of responses to this consultation and proposals for the final suite of new anti-social behaviour tools and powers. We intend to bring forward the necessary legislation alongside legislative changes required for those new anti-social behaviour tools and powers.

4. Summary of consultation questions

Question 1: Do you agree that we should not amend the current discretionary ground for possession for anti-social behaviour?

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

Question 4: Have we defined the basis for new mandatory power correctly? If not, how could we improve the definition?

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

5. Consultation criteria

- 5.1 The Government has a code of practice on consultations. The criteria below apply to all UK public consultations on the basis of a document in electronic or printed form, and will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements, the instructions below should otherwise generally be regarded as binding on UK departments and their agencies, unless ministers conclude that exceptional circumstances require a departure.

- 1 Formal consultation should take place at a stage when there is scope to influence the policy outcome.
 - 2 Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
 - 3 Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
 - 4 Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
 - 5 Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
 - 6 Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
 - 7 Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.
- 5.2 Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.
- 5.3 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
- 5.4 If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and

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

- 5.5 The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
- 5.6 Individual responses will not be acknowledged unless specifically requested.
- 5.7 Your opinions are valuable to us. Thank you for taking the time to read this document and respond.
- 5.8 Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

DCLG Consultation Co-ordinator
Zone 6/H10 Eland House
London SW1E 5 DU
e-mail: consultationcoordinator@communities.gsi.gov.uk



**To Leaders of Stock-holding
Local Authorities
and Chief Executives of Larger Housing
Associations**

The Rt Hon Grant Shapps MP
Minister for Housing and Local Government

**Department for Communities and Local
Government**

Eland House
Bressenden Place
London SW1E 5DU

Tel: 0303 444 3460
Fax: 020 7828 4903
E-Mail: grant.shapps@communities.gsi.gov.uk

www.communities.gov.uk

15 August 2011

Dear Leaders and Chief Executives

**EXTENDING SOCIAL LANDLORDS' POWERS TO SEEK POSSESSION FOR
CRIMINALITY AND ANTI-SOCIAL BEHAVIOUR**

Following the disgraceful looting and rioting across England in recent days, I am writing to let you know that we are today extending the scope of our consultation on strengthening the hands of landlords to effectively tackle anti-social behaviour and criminality (see www.communities.gov.uk/publications/housing/antisocialbehaviourconsult) which I announced on 3 August.

Our proposals for a new mandatory power of possession for serious, housing related anti-social behaviour remain unchanged, but, as the Prime Minister indicated last week and I set out on 10 August, we are now in addition proposing that the existing discretionary ground for possession for anti-social behaviour and criminality is broadened.

I want to ensure that where social tenants or members of their family are found guilty of serious anti-social behaviour or criminality of the sort we've witnessed in recent days, that will categorically provide a ground on which a social landlord may seek possession of the property.

We know that the threat of eviction can act as a powerful driver of improved behaviour. It cannot be right for that sanction to apply only to criminal behaviour towards neighbours or in the locality of the property as it does at the moment. Where a social tenant or a member of their household decides to wreak havoc in someone else's community, social landlords should have the same scope to take action.

Responses from a number of local authorities to the recent rioting and looting have made clear that there are concerns that the scope of the current discretionary power of possession for anti-social behaviour and criminality is not wide enough. Those responding to our consultation document of 3 August are asked therefore not to respond on the basis of the original text in paragraph 2.3 or to the original Question 1 but instead to the following proposal and question which have now been incorporated into the consultation document:

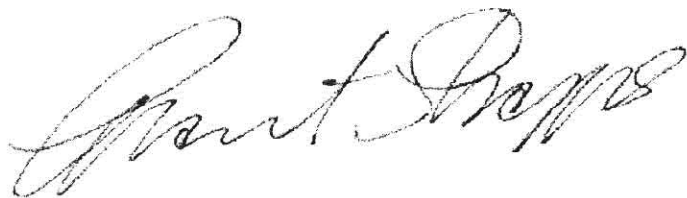
2.3 We propose that this discretionary ground for possession for anti-social behaviour and criminality should remain available in all circumstances, including where a mandatory power is available. We are aware however, particularly, in the light of recent rioting and

looting, that a number of landlords consider that it would be helpful to extend the scope of the discretionary ground, so that serious anti-social behaviour and criminality beyond the immediate neighbourhood of the property can clearly be taken into account.

We are therefore proposing to include additional provisions in Ground 2 of Schedule 2 to the Housing Act 1985 and Ground 14 of Schedule 2 to the Housing Act 1988 so that the court may grant possession where a tenant or member of their household has been convicted of violence against property (including criminal damage and offences such as arson), violence against persons at a scene of violent disorder or theft linked to violent disorder. There would in these circumstances be no requirement that the offence had been committed in the locality of the dwelling house, subject to it being committed in the United Kingdom.

Question 1: Do you agree that we should extend the scope of the current discretionary ground for possession for anti-social behaviour and criminality in this way?

Our 3 August consultation document remains unchanged in all other respects, except that we are extending the consultation to Monday 7 November to allow consultees 12 weeks to respond to these further proposals.

A handwritten signature in black ink, appearing to read 'Grant Shapps', with a stylized, cursive script.

GRANT SHAPPS MP

Question 1: Do you agree that we should extend the scope of the current discretionary ground for possession for anti-social behaviour and criminality in this way?

Any powers that speed up the proper handling of Anti-Social Behaviour (ASB) cases will be welcomed and a mandatory order for possession will assist in those cases where it is proposed it shall apply. Any streamlining in these cases will reduce costs and also provide quicker relief to affected residents.

The Council however does not believe that this mandatory power in the format suggested will have the wide ranging impact envisaged. The mandatory power will only be available in very few cases and therefore the time and cost of taking ASB cases to court, as detailed at paragraphs 1.8 and 1.9 of the consultation document, will not be reduced in the majority of cases.

In the majority of cases where social landlords decide to take possession proceedings for ASB issues, the allegations founding the claim have not previously been before a court. Indeed it is the Council's view that it is only on very rare occasions that they have.

Furthermore, the mandatory order for ASB may result in a change in tactics by Defendant solicitors which may increase the length of cases. At present if a tenant defends a possession claim made on the basis of ASB they tend to argue that the allegations are false and even if proven it is not reasonable to order outright possession. If the proposed process is to follow the same principles as introductory tenancies, then the only way an order for possession could be challenged (if relevant facts are proved to justify the order) would be by way of a proportionality argument (as laid down in *Pinnock*) and/or by Judicially Review (JR) of the Landlord's decision to go ahead with the possession proceedings.

The proposal to increase the powers of social landlords to evict as a result of criminal behaviour that does not affect the housing management functions of the social landlord is again welcomed. However this facility may well not affect the timescales of the cases highlighted in the consultation document, as these would be additional cases as previously landlords could not take action due to this issue of locality.

Further, the Council questions why the criminal behaviour should just be linked to incidents of violent disorder. These types of behaviour are socially unacceptable whether done as an individual or as part of a larger incident of social unrest.

Under paragraph 2.8 of the consultation document the wording seems to interchange the words "suspended" and "postponed". These are in fact different types of order, both used in possession cases. The Council is pleased to note the intention to restrict the Court's powers in respect of the length of time that the Court can make a Postponed Order or a Suspended Order. However, should the restriction apply not only to mandatory ASB

cases but to all ASB cases? It is appreciated that a suitable definition of ASB would have to be arrived at for this purpose.

The Council is however concerned that landlords would see an increase in the use of adjourned orders in possession cases. Defendants may argue for the granting of an order adjourning proceedings generally on terms, under the powers contained in the CPR, with a restriction that the Case could not be reinstated unless a specific event occurs which may find favour in some circumstances. The Council therefore feels that provision should be made to restrict the length and perhaps number of adjournments it allows in any ASB case.

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

Clearly the consultation document is correct in its acknowledgement that tenants faced with losing their home must be provided with a proper opportunity to defend themselves. But there seems to be a belief in the consultation document that where the same facts have already been considered by another court that they are then considered a second time in the County Court before possession is granted. This does not reflect the Council's view.

The streamlined provisions would apply only in 2 cases: (1) Where there has been an ASBO obtained against a member of that household and breached and such breach has resulted in a prosecution; (2) Where a closure order has been obtained. The problem is that not all ASBO breaches are prosecuted.

Where ASBO's and Closure Orders are prosecuted or applied for in the Magistrates Court they have to be proven to the criminal standard of proof. When evidence of these breaches are produced in the County Court, the Judge only has to find to the civil standard of proof so this evidence is not re-tried as the Defendant is not in a position to deny the offence occurred, what is tried are unproven allegations and issues of law.

Therefore what the Council feels that the legislation should provide is that if ASB allegations have been proven against a tenant or someone for whom they have responsibility, in another court, then the Council would not have to prove any other allegations for a mandatory order to be made if it chooses to proceed.

The Council would also ask that consideration be given to the impact these proposals would make on tenants that allow persons who visit their property and whilst there undertake Anti-Social Behaviour and Criminal Activity. It would appear that these proposals will have a direct affect on tenants and persons that live with tenants, but most tenancy agreements make it an obligation of tenant to be responsible for the conduct of visitors to the property as well. If tenants allow persons to regularly attend their property and engage in Anti-Social Behaviour and Criminal activity, then the extension of the proposed mandatory possession orders applying in such circumstances, should be considered.

Such consideration is most pertinent where the social landlord has obtained an injunction against the tenant, not to allow such a visitor to attend their property and have breached such injunction.

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

Under the suggested offences and provisions that are detailed in the consultation document regarding when these powers should be used the Council make the following comments: -

*a) **Conviction for a serious housing related offence** – to apply to offences committed by tenants, members of their household or regular visitors which take place in the locality of the property or between neighbours away from it. The type of offences we propose to capture include violence against neighbours; serious criminal damage with violence; drug dealing or cultivation in the property; murder and rape. We think that 'indictable only' offences should broadly capture these.*

The Council considers that these provisions could go further. Firstly, a distinction needs to be made between ASB and illegal use of the property. Housing ASB by definition needs to have an adverse effect on persons not of the same household. Drug cultivation is not ASB if it is not affecting anyone within the vicinity of the property. Therefore, the Council feels that the mandatory possession orders should include ASB and "illegal" use of Council properties.

The Council also believes that it should not just be limited to indictable only offences. The Council has significant problems with people who bypass electricity meters. This is extremely dangerous and the Council would wish to see this being included as part of the mandatory possession orders. Also issues of taking without consent within the vicinity of the housing stock, handling stolen goods within the property and especially offences that are racially aggravated or have a hate crime element and also persistent repeat offenders, should be included.

Illegal use of property is a major issue for housing providers. Illegal activity in properties may be dangerous (e.g.. bypassing utilities) and could attract further criminal activity: why should a Council have to wait for such activity to be attracted to the area before it can take action? The ASB legislation does include the ability to take action for propensity to cause a nuisance, but social landlords would not get possession on the likelihood of events happening, although they may obtain an injunction, especially if no suitable evidence of ASB or complaints from neighbours.

Recently the Council has been involved in a case where a tenant had 30 cannabis plants and had bypassed the electricity meter at the property. The neighbours did not report problems with him and they had no knowledge of the cannabis factory he was running and the Judge granted a 2 year suspended order, even though the tenant had been successfully prosecuted for the two offences.

It would appear that the consultation is initiated due to the delay in the County Courts dealing with these actions. If these new procedures reduce these types of actions to 2 months from issue to gaining the Order will it actually reduce the impact on the local community and save the Council costs if an outcome is required before action is taken? Consider the following scenarios: the Council gain evidence of ASB and illegal activity to start possession proceedings. It takes the County Court 8 months to deal with this and possession is granted. Alternatively the council wait for the prosecution in the Magistrates'/Crown Court, it takes 6 months to conclude that hearing and then a further 2 months in the County court. It has still taken 8 months to get possession and the community has had no benefit from the new procedure. Has the Council saved any money from this? It is unlikely as the same evidence would still have had to be obtained as in the interim they would need to incur the cost of gaining an injunction to protect the local community while the criminal case is ongoing.

b) Breach of an injunction for anti-social behaviour

This situation will rarely occur. In the Council's experience having gained an injunction against a tenant which they subsequently breach, it is standard practice (due to time, cost and tactics) to issue a committal application and a possession claim at the same time or at least join the matters together so that the breach of the order is tried at the same time as the possession claim.

The only way for this to work practically is that at trial of the alleged breach of the injunction and possession claim, if proven to the satisfaction of the court that the injunction was breached, the claim for possession becomes mandatory. This will assist the local community in that possession would be granted in all cases (subject to any arguments raised on proportionality) and send out the message that if you breach an injunction you may lose your home, but will not reduce the time it will have taken to get to court or the length and costs of the trial.

c) Closure of premises under a closure order

This is an example where a mandatory order would work. The only considerations are that these are used because possession proceedings take so long. If the possession procedure is speeded up, these provision may no longer be used or the alternative outcome is that the use of these procedures will increase as by getting a Closure Order means that possession is mandatory.

It is envisaged that the advice for dealing with ASB will be to apply for Closure Orders where possible as it makes it easier to get possession.

Question 4: Have we defined the basis for the new mandatory power correctly? If not, how could we improve the definition?

It is submitted that the problem with this proposal is not the definition; it is that the aims of the provisions will not have the required affect. By limiting the mandatory order to cases that have previously been proven in court, this

streamlined approach will only apply to a fraction of ASB possession claim and not the majority of the claims that take 8-12 months to come to trial (see above).

Of course the fraction that will be streamlined will reduce pressure on the County Court, but not it is suggested to the extent envisaged.

One scenario is that the work of the County Court may be reduced but to the detriment of the Magistrates Court which will see an increase in applications for Closure Orders so that when the Council applies to the County Court for possession the order is mandatory. This will not reduce Council costs.

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

As a landlord the Council would use any powers that reduce cost and provide a quicker and suitable outcome to our tenants to protect them from ASB. As stated it is envisaged that these types of cases will not occur often.

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

It is suggested that ways to speed up possession claims and reduce costs is to require the County Court to hear these cases within specific time limits.

The main example of where this could be speeded up is firstly in the listing requirements. Usually 4 weeks notice has to be given on a Notice of Seeking Possession before proceedings can be issued. This does not apply to ASB cases, but on issue the Court has to wait 4 weeks before they can list it for a first hearing. Removal of that requirement and the imposition of a requirement to list the case within 14 days of issue is suggested.

To further expedite proceedings it is suggested that there be a requirement of the Landlord to serve a standard disclosure document with the pleadings.

The addition of a requirement for Defendants to request documents before the first hearing. This would then mean at the first hearing the Defendant would have access to all the allegations and evidence and can then prepare their defence to the possession proceedings without delay. There could then be a further requirement to list for a final hearing no more than 28 days from the first hearing for trial to make sure the matter is heard as quickly as possible.

Further, more consideration should be given to restricting the courts discretion to adjourn proceedings (eg no longer than 28 days if, say, medical evidence is required or a to handle a Defendant's application for specific/further disclosure and then the adjournment cannot be for more than a further 28 days).

This would put increase pressure on the courts but it would mean that ASB possession cases would be in court no later than 10 weeks from issue.

The other main issue that needs to be considered is linking this mandatory order to Homelessness legislation. In some circumstances a person evicted for criminality or ASB can present as homeless and have to be re-housed by the Local Authority.

Under homeless legislation if someone is evicted and in priority need, the Council has to provide temporary accommodation for 28 days. If they then refuse to leave that accommodation the Council has to go to court to obtain possession which means the problem can continue for another 3 to 4 months.

To illustrate, where ASB is committed by a child or young adult, it is not unheard of for a family who have young children to present as homeless after an eviction, saying that the person who was perpetrator of the ASB is no longer living with them. Under these circumstances if they can show that they did everything in their power to stop the behaviour and failed, the Council has to re-house them. There then is the possibility that after a period of time the perpetrator is moved back in and the Council have to start again with possession proceedings if they cause more problems.

The Council would therefore suggest that Homelessness legislation and case law need to be reviewed. It would suggest that if someone is evicted as a result of ASB or criminal behaviour, the Council should retain a discretion to refuse assistance for such a person if they present as homeless. That discretion may be circumscribed but the basic principle requires addressing.

It would also be helpful if a review of the demotion procedure landlords could be considered. To issue proceedings for an order for demotion social landlords cannot issue immediately as in ASB cases (even though demotion is applied for under the grounds of ASB). So the Council or other social landlord has to wait 4 weeks for the notice to run out and then 4 weeks before the court can list for a first hearing. This is then a deterrent to Councils to use demotion in all but the most minor of ASB cases and also stops Council's pleading demotion in the alternative.

**MINUTE OF THE LANDLORD SERVICES COMMITTEE (CABINET WORKING GROUP)
5 SEPTEMBER 2011**

42. CONSULTATION ON A NEW MANDATORY POWER OF POSSESSION FOR ANTI-SOCIAL BEHAVIOUR

The Working Group considered a draft report of the Director of Transformation which set out a consultation being undertaken by the Department of Communities and Local Government (CLG) proposing a mandatory order of possession where Anti-Social and criminal behaviour has been perpetrated by a tenant or someone for whom the tenant is responsible.

The Working Group raised concern regarding the lack of action in respect of action taken against home owners.

RESOLVED: That the proposed mandatory order of possession be welcomed on the basis that each case would be considered on individual circumstances.



AGENDA ITEM:

**CABINET:
15 November 2011
EXECUTIVE OVERVIEW AND
SCRUTINY COMMITTEE
1 December 2011**

Report of: Borough Solicitor

Relevant Managing Director: Managing Director (People and Places)

Relevant Portfolio Holder: Councillors Mrs V Hopley and A Owens

**Contact for future information: Mrs Jacky Denning (Extn. 5384)
(E-mail: jacky.denning@westlancs.gov.uk)**

**SUBJECT: STEAMLINING COUNCIL HOUSE ASSET MANAGEMENT –
DISPOSALS AND USE OF RECEIPTS CLG CONSULTATION**

Wards Affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To advise that the Executive Overview and Scrutiny Committee at its meeting on 29 September 2011, were unable to consider the report of the Assistant Director Housing and Regeneration in respect of a consultation paper from the Department of Communities and Local Government (CLG) in respect of streamlining council house asset management.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the Assistant Director Housing and Regeneration submit the response to the CLG before the deadline of the 17 November 2011, as set out in Appendix A to the attached report.

2.2 That the Assistant Director Housing and Regeneration consider and forward to the CLG any additional comments agreed by the Executive Overview and Scrutiny Committee when the report is considered on 1 December 2011.

2.3 That call in is not appropriate for this item as the consultation deadline is 17 November 2011 and the report is being considered by Executive Overview and Scrutiny Committee on 1 December 2011.

3.0 RECOMMENDATION TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

- 3.1 That the report and response to the consultation attached at Appendix 1 and the decision of Cabinet detailed at Appendix 2, be endorsed.
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4.0 BACKGROUND AND PROPOSAL

- 4.1 At its meeting on 29 September 2011 the Executive Overview and Scrutiny Committee deferred consideration of a report from the Assistant Director Housing and Regeneration in respect of a consultation paper from the Department of Communities and Local Government 'Streamlining Council House Asset Management' to its meeting on 1 December 2011, however, the deadline for the consultation is 17 November.
- 4.2 It is therefore proposed that Cabinet consider the proposed response and this be forwarded to the CLG before the deadline. Comments from the Executive Overview and Scrutiny Committee can then be forwarded to the CLG following consideration of the report at its meeting on 1 December.
-
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. Report of the Assistant Director Housing and Regeneration.
2. Minute of Cabinet – 15 November 2011 (*Executive Overview and Scrutiny Committee only*)



APPENDIX 1

AGENDA ITEM: 21

**EXECUTIVE OVERVIEW &
SCRUTINY COMMITTEE:
29 SEPTEMBER 2011**

**CABINET:
15 NOVEMBER 2011**

Report of: Director of Transformation

Relevant Head of Service: Assistant Director Housing and Regeneration

Relevant Portfolio Holder: Councillor Mrs V Hopley & Councillor A Owens

**Contact for further information: Mr Darroll D McCulloch (Extn. 5203)
(e-mail: Darroll.McCulloch@westlancs.gov.uk)**

**SUBJECT: STREAMLINING COUNCIL HOUSING ASSET MANAGEMENT -
DISPOSALS AND USE OF RECEIPTS CONSULTATION**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To advise Members of the debate that is taking place between Officers and the Department of Communities and Local Government (CLG) and to endorse the response to the consultation document.

2.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

2.1 That the proposed response to the CLG's consultation on 'Streamlining Council Housing Asset Management: Disposals and Use of Receipts', set out in Appendix A to the report, be noted and agreed comments be referred to Cabinet for consideration on 15 November 2011.

3.0 RECOMMENDATIONS TO CABINET

3.1 That the proposed response to the CLG's consultation on 'Streamlining Council Housing Asset Management: Disposals and Use of Receipts', set out in Appendix A to the report, be approved, subject to consideration of the Minutes of Executive Overview and Scrutiny Committee (Appendix B) on 29 September and the Landlord Services Committee (Cabinet Working Group) (Appendix C) on 9 November 2011.

- 3.2 That call in is not appropriate for this item as the report has been considered by the Executive Overview and Scrutiny Committee and the consultation deadline is 17 November 2011.

4.0 BACKGROUND

- 4.1 Prior to 2004 the Government's capital regulations required 75% of capital receipts arising from the sale of eligible dwellings under the Right to Buy (RTB regulations) to be set aside for the purpose of redeeming debt and the remaining 25% to be available for local capital investment
- 4.2 The Local Government Act 2003 introduced new pooling arrangements for capital receipts arising from the sale of council dwellings. This requires Councils that sell dwellings under the RTB to pass 75% of the receipt, after allowing incidental costs of disposal and investments made in last three years, back directly to central government.
- 4.3 Since 2004 total revenue from RTB receipts in England has exceeded £6.2 billion nationally, of which more than £4.7 billion has gone back to central government.
- 4.4 The Government's justification for pooling has traditionally been based on the premise that capital receipts through the pooling rules are used to support other housing and capital programmes in England, that these receipts have not arisen in areas that need capital investment, and as central government had provided a large part of the initial investment to acquire or build these dwellings, the Government should benefit from a share of the receipt.
- 4.5 However, a Government Select Committee on the Future of New Towns in 2003 specifically looked at the issues relating to Skelmersdale and concluded that whilst the Council has engineered out much of the defects of the non-traditional building construction the design and layout of estates in Skelmersdale was dysfunctional and required significant investment to address.
- 4.6 In the period 2004/2005 to 2010/11 the Council has seen a net reduction in HRA income relative to HRA subsidy of 4.4% (£0.67m).
- 4.7 The cumulative HRA subsidy withdrawal since 1995/96 has been in excess of £76m.
- 4.8 In the period 1 April 2004 to 30 June 2011 the amount of capital receipts passed to central government has amounted to £12.7m.
- 4.9 Under the HRA Financing Reforms, Councils will be taking on direct responsibility for supporting debt on their operating assets. It would be sensible that Councils should also keep the capital receipts arising on disposal of those operating assets.

- 4.10 The former Administration proposed the removal of RTB receipts pooling under their HRA Self-Financing proposals.
- 4.11 However, the current Administration have, in the interests of the national economy, announced, as part of their Comprehensive Spending Review that RTB capital receipts pooling would continue until the end of the current Spending Review period.
- 4.12 Following a period of consultation, in February the Government issued its proposals with regard to implementing HRA Self-financing setting out, amongst other things, that RTB capital Receipts pooling would continue indefinitely.
- 4.13 On 26 August, 2011, Government issued a consultation document regarding the pooling of RTB capital receipts reinforcing the message that RTB receipts pooling will operate beyond the current spending review period. Details of the consultation are provided in Section 5 below.

5. CLG CONSULTATION

- 5.1 The Housing Minister Grant Shapps has indicated that the new proposals outlined in the above consultation provide councils more flexibility to trade their housing assts, use receipts to enable further investment in new homes and enable regeneration in the local area. Under the these proposals the Housing Minister believes it will provide Local Authorities with greater discretion to use and improve their council housing assets in a way that best suits the community.
- 5.2 A copy of the full consultation document may be accessed using the link below
<http://www.communities.gov.uk/documents/housing/pdf/1961898.pdf>

6. PROPOSED RESPONSE TO THE CONSULTATION

- 6.1 The closing date for this consultation is 17 November 2011.
- 6.2 For consideration and comment I have attached a proposed draft response to the consultation at appendix A

7. STAKEHOLDER CONSULTATION

- 7.1 This Report is being considered by the Tenants Services Evaluation Group (SEG) on 14th October which will feed into the Landlord Services Committee (Cabinet Working Group) on 9th November.

8. SUSTAINABILITY IMPLICATIONS / COMMUNITY STRATEGY

- 8.1 The results of the consultation will need to be fed into the assumptions contained within the Councils HRA Self-Financing Plan when Government announces its decision in 2012

9. FINANCIAL AND RESOURCE IMPLICATIONS

9.1 As this is a consultation there are no immediate financial implications.

10. RISK ASSESSMENT

10.1 There are risks associated with the proposals if they are carried through by Government.

10.2 Of particular concern is the inability to offset the cost of redeeming the debt from the capital receipt prior to pooling and the low volume and value of Right to Buy Sales assumed in the Governments debt settlement model which could make the Council's HRA Self-financing Business Plan unsustainable in the longer term.

10.3 Other areas of concern are the practicalities of opening up vacant properties to tenants who may wish to exercise a desire to purchase using their existing Right to buy discount which could accelerate estate decline as the more desirable properties are sold. And the proposal to allow tenants without the qualifying Right to Buy to be able to purchase property thereby disadvantaging those that have waited for their opportunity to buy.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision to respond to the consultation does not have any direct impact on members of the public, employees, elected members and/ or stakeholders. Therefore no Equality impact Assessment is required.

Appendices

- A Proposed Response to the consultation
- B Minute of the Executive Overview and Scrutiny Committee – 29 September 2011 (Cabinet only)
- C Minute of the Landlord Services Committee (Cabinet Working Group) – 9 November 2011 (Cabinet only)



Council Housing Capital Assets Consultation
Department for Communities and Local
Government
Zone 1/H10
Eland House
Bressenden Place
London
SW1E 5DU

Bob Livermore FCIH
Executive Manager Housing and
Property Maintenance Services

PO Box 16 - 52 Derby Street
Ormskirk West Lancashire L39 2DF
Telephone: 01695 577177
Website: www.westlancs.gov.uk
Fax: 01695 572331
Email: bob.livermore@westlancs.gov.uk

Date: 16 November 2011

Your ref:

Our ref: RVL/DMcC/CC

Please ask for: R V Livermore

Direct dial no: 01695 585200

Extension: 5200

Dear Sir,

**RE: STREAMLINING COUNCIL HOUSING ASSET MANAGEMENT – DISPOSALS
AND USE OF RECEIPTS - CONSULTATION**

Thank you for the opportunity to comment on the above consultation document.

We are pleased that the Housing Minister, Grant Schapps, has proposed changes that will allow councils more flexibility to trade their assets, and use the receipts to enable further investment in new homes and regenerating the local area.

We detail below our response to the questions asked in the consultation document:

1. Consultation Question 1:

We commend the Government in proposing to limit Secretary of State consent to dispose of housing land at market value where the disposal results in a tenant becoming the tenant of a private landlord or where the disposal is of dwelling to a wholly owned subsidiary of the local authority.

However, we have concerns that this might overly complicate or delay disposal in instances which involve only one or a few tenants particularly if this was replicated elsewhere throughout the country in cases where estate regeneration was taking place. As any disposal would be subject to consultation with tenants we would suggest that there should be a de-minimus level above which Secretary of State consent would be required.

2. Consultation Question 2

We could not identify other situations where the Secretary of State should provide specific consent to disposal at market value

3. Consultation Question 3

We agree with the government's proposal that local authorities should continue to have discretion to dispose of reversionary interests without Secretary of State consent.

4. Consultation Question 4 & 5

A decision to dispose of land at less than market value would be determined according to business need and to assist in securing regeneration with external partners. We believe therefore that local authorities should have discretion to determine discounts applied in respect of land disposal. We believe the definition of certain specified purposes needs reviewing.

5 Consultation Questions 6, 7, and 8

Whilst we appreciate the government is offering greater opportunity to sell dwellings we do have concerns over the practicalities of offering vacant dwellings for sale to existing tenants at discount. This could result in spiralling decay in some parts of less desirable estates if vacant properties in more desirable areas had to be offered up for sale and the consequential costs of not being able to relet whilst the sale went through.

6 Consultation Questions 9, 10 and 11

We do not foresee any issues with what is proposed for West Lancashire Borough Council

7. Consultation Question 12 - Pooling of Housing capital Receipts

- 7.1 Our major concern with the proposals relate to the fact that the current and proposed pooling arrangements under Right to Buy remain unchanged beyond the period of the current Spending Review up to 2015.
- 7.2 Under the self-financing settlement, we will take on debt associated with each individual house or flat in our possession. It is therefore essential that when we disposes of houses and flats under the Right to Buy we must have the option of clearing the debt associated with it before any form of pooling is made. This will enable the Council to maintain a healthy balance sheet for their social housing, which is vital for continued investment in housing. Both of which are being denied under the current and proposed regulations.
- 7.3 West Lancashire Borough Council has a portfolio of approximately 6300 dwellings, 80% of which are located in the former New Town of Skelmersdale. Based on a Radburn design of largely non-traditional construction, property values are particularly low relative to properties elsewhere in the country. Accordingly, under a Right to Buy the proceeds are relatively low. Under the current and proposed pooling arrangement the Council retained proportion of the receipt (25%) will not be enough to discharge the debt associated with the debt settlement assigned to the Council. Table 1 below based on actual sample of property sales in Skelmersdale demonstrate this point clearly:

Table 1 Right to Buy Receipts 2010 - 2011

Property type	Gross Value	Amount to be Pooled (after RTB discount etc)	Pooled amount for Council (25%)	Indicative Debt Settlement	Shortfall after using all Council receipts
	£'000	£'000	£'000	£'000	£'000
2 Bed Hse	75.0	49.0	12.2	15.3	3.1
3 Bed Hse	79.5	53.5	13.4	15.3	0.9
2 Bed Flat	44.7	22.3	5.6	15.3	9.7
2 Bed Hse	71.5	46.5	11.6	15.3	3.7
2 Bed Hse	49.8	26.4	6.6	15.3	8.7
3 Bed Hse	52.0	28.5	7.1	15.3	8.2
Total	372.5	226.2	56.5	91.8	34.3

7.4 Under the Government Debt Settlement model property sales are assumed to be relatively small for the lifetime of the 30 Year Business Plan rising from around 20 in year 1 to 42 by Year 30.

7.5 Whilst Right to Buy sales are within these estimates then there should be no problem in financing this within the business plan. However, our experience is that Right to Buy Sales are demand led and are difficult to estimate. Despite the economic uncertainty we are experiencing strong interest in Right to Buy but prospective buyers are being affected by the lack of available mortgage lending. Table 2 below illustrates the actual Right to Buys over the last 9 years:

Table 2 RTB Profile

Year	RTB Sales
2002.03	230
2003.04	444
2004.05	321
2005.06	232
2006.07	131
2007.08	92
2008.09	27
2009.10	12
2010.11	18

7.6 Clearly as the economy improves it is likely that demand for Right to Buy will also increase. Our concern is that unless the debt is redeemed from the receipts prior to pooling then this will make the HRA Self-Financing Plan unsustainable in the medium to longer term. Taken to a very extreme case if all stock was sold under the Right to Buy the Council would be left with an overhanging debt of around £36m.

- 7.7 The fact that we cannot settle the debt from the Council's proportion of capital receipts will also inhibit the ability to borrow to aid new development which we do not believe was the intention behind the proposals.
- 7.8 We therefore believe the principles set out in the consultation paper **do not** satisfy the aim stated in paragraph 3.2 e "rationalise and extend the provisions on capital allowance (including making the paying off of Housing Revenue account debt permissible expenditure)" as it does not allow RTB debt to be offset against proceeds prior to pooling. For the reasons outlined above we strongly believe this requires reconsideration.

We look forward to hearing from you.

Yours sincerely

R V LIVERMORE
ASSISTANT DIRECTOR
HOUSING AND REGENERATION

MINUTE OF THE EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE – 29 SEPTEMBER 2011

38. STREAMLINING COUNCIL HOUSE ASSET MANAGEMENT - DISPOSALS AND USE OF RECEIPTS CLG CONSULTATION

This item was not considered at the meeting held on 29 September 2011 and will be included on the agenda for the next scheduled meeting of the Executive Overview and Scrutiny Committee (1 December 2011).