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The Regulation of Registered Housing Associations

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In anticipation of the Committee for Social Development's scrutiny of both the Minister for Social Development's proposals for a Social Housing Reform Programme and the DSD consultation on the draft housing strategy, this paper provides an overview of the regulation of Registered Housing Associations in Northern Ireland and Great Britain. The paper explores the definition of regulation; what makes good regulation; why it is important that social housing is regulated; the arguments for and against independent regulation; regulatory structures in England and the devolved administrations; some views from the social housing sector; and, the role of tenants and service users in regulation.

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Key Points

- This paper is the first of a series of papers provided to assist the Committee for Social Development in its scrutiny of elements of both, the **proposals of the Social Housing Reform Programme** announced by the Minister in January 2013, and the Department for Social Development's consultation on **a housing strategy for Northern Ireland**. The paper explores the regulatory regimes for Registered Housing Associations in Northern Ireland, England, Scotland and Wales. It also explores other issues relating to regulations including the role of tenants and other service users.
- The Minister for Social Development has recently announced his proposals for the future regulation of Registered Housing Associations, i.e. the retention of elements of the regulatory infrastructure within government via an **enhanced DSD Regulation and Inspection Unit**. It is further proposed to establish an **independent Social Housing Rent Panel** whose role would be to agree annual rent levels based on rental policy.
- The PwC strategic review of the Northern Ireland Housing Executive had recommended the **establishment of an independent regulator** and this has been supported by many housing representative organisations and other interest groups. The Minister for Social Development may in due course provide further details around the rationale for his decision in relation to regulation.
- The issue of good regulation and effective regulatory infrastructures in a general sense has been a popular theme in policy development over the last two decades. With regards to the regulation of social housing there has been a policy shift towards **independent regulation in England and Wales** with the establishment of an **independent Regulation Committee** (within the Homes and Communities Agency) in England and the new independent regulator for Social Housing in Scotland (known as the "**Scottish Housing Regulator**". In **Wales**, however, the regulation and inspection of Registered Housing Associations is **retained within Government** structures, but is overseen by a **Regulatory Board** (comprising of representatives from various interest groups from outside government) and a **Tenant Advisory Panel**.
- It has been argued that social housing regulation has, in general, demonstrated a tendency to focus on **providers rather than tenants** and that tenants are largely disenfranchised from regulatory processes. However, there has been a policy shift, particularly in Scotland and Wales, towards placing tenants and their representative organisations at the heart of regulation. There may be capacity to assess how well tenants are involved in the current regulatory processes in Northern Ireland and how improvements need to be implemented.

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1 Introduction

On the 9 January 2013, the Minister for Social Development, in a [written statement](#), announced his proposals for a Social Housing Reform Programme for Northern Ireland. Amongst many other important issues, the statement included proposals for the future regulation of Registered Housing Associations in Northern Ireland. The Minister proposed to retain elements of the regulatory infrastructure within government by enhancing the role of the Department for Social Development's Regulation and Inspection Unit. It further proposed to establish an Independent Social Housing Rent Panel whose role would be to agree annual rent levels based on rental policy¹.

This decision diverges somewhat from that recommended by PwC in its strategic review of the Northern Ireland Housing Executive, i.e. an independent regulator for Northern Ireland (set up as an arms-length Executive Agency within DSD) which would provide (a) independent inspection and governance across all tenure types, including service and economic regulation and (b) independent setting rent levels for social and affordable landlords. There appears to remain a significant level of support from bodies such as the Northern Ireland Federation of Housing Associations, the Chartered Institute for Housing and Housing Rights Service for an independent regulator. Further details to the Ministerial Written Statement as to the rationale for the proposed future regulator infrastructure will undoubtedly be met with great interest across the housing sector.

In anticipation of the Committee for Social Development's scrutiny of the both various aspects of the Minister's Statement and its response to the consultation on the proposed housing strategy for Northern Ireland, this paper provides an overview of the Regulation of Registered Housing Associations in both Great Britain and Northern Ireland. The paper is not intended to be in any way definitive of all the relevant issues (e.g., it *does not* examine rent setting or the cost or effectiveness of different regulatory models) rather it is intended to give the Committee a basic understanding of some of the key issues in relation to regulation.

The paper explores the following areas:

- What is regulation?
- What constitutes good regulation?
- Why is it important to regulation Registered Housing Associations?
- What are the arguments for and against independent regulation?
- What are the barriers to independent regulation?
- Views from the social housing sector on an independent regulator for Northern Ireland.

¹ Department for Social Development. News Release. "Written statement to the Assembly by Social Development Minister Nelson McCausland. 9 January 2013.

- The current regulatory structures in Northern Ireland, England, Scotland and Wales.
- The role of tenants and other service users in social housing regulation.

2 What constitutes good regulation? Why should Registered Housing Associations be regulated?

What is “regulation”?

The Welsh Regulatory Framework for Housing Associations offers the following succinct definition of regulation and provides a rationale as to why it is important to have a regulatory framework for registered housing associations²:

“Regulation sets out the expectations to be met by housing associations, developing them to meet changing circumstances. It aims to ensure that they are met and, if not, that appropriate remedial action is taken, through formal intervention if necessary.

The regulation of housing associations is important. It helps ensure that tenants, potential tenants, and people who use services, get a fair deal. It protects them from poor or failing landlords and provides ways in which they can influence the way that associations work. It also encourages the continuous improvement of services.

More generally, a good regulatory framework helps protect tax payers by safeguarding the public funding invested in housing associations. It also gives lenders, such as banks or buildings societies, the confidence to provide loans and finance new homes and to improve existing homes.”

What is good regulation?

The issue of regulation in general has been a popular theme in policy development and has received particularly intensive government attention over the last two decades. Successive UK Governments have commissioned large scale investigations into both promoting better regulation not just in social housing but across the wide spectrum of public and private sector bodies.

In an effort to promote good regulation, a [Better Regulation Commission](#)³ was established under the then Labour Government in 2006 and was tasked with advising the government on reducing regulatory and administrative burdens and to ensure that regulation and its enforcement followed five principles to good regulation that were

² Welsh Government (2011) The Regulatory Framework for Housing Associations Registered in Wales, p1.

³ Better Regulation Commission archived website - <http://webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/whatwedo/bre/reviewing-regulation/commission/page44086.html>. The Commission was operational until January 2008.

identified by an earlier established Better Commission Taskforce. The **five principles of good regulation** are proportionality; accountability; consistency; transparency and targeted.

Table 1: Better Commission Taskforce – Five Principles of Good Regulation⁴

<p>PROPORTIONALITY</p>	→	<p><u>Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified to be minimised.</u></p> <ul style="list-style-type: none"> • Policy solutions must be proportionate to the perceived problem – “don’t use a sledgehammer to crack a nut” approach. • Alternative options for achieving policy objectives must be considered, not just prescriptive regulation. • Enforcement regimes should be proportionate to the risk posed. • Enforcers should consider an educational, rather than a punitive approach where possible.
<p>ACCOUNTABILITY</p>	→	<p><u>Regulators must be able to justify decisions and be subject to public scrutiny.</u></p> <ul style="list-style-type: none"> • Proposals should be published and those effected consulted before decisions are taken. • Regulators should clearly explain how and why final decisions have been reached. • Regulators and enforcers should establish clear standards and criteria against which they can be judged.
<p>CONSISTENCY</p>	→	<p><u>Government rules and standards must be joined up and implemented fairly</u></p> <ul style="list-style-type: none"> • Regulators should be consistent with each other and worked together in a joined up way. • New regulations should take into account other existing or proposed regulations - domestic, European and international. • Regulation should be predictable in order to give stability and certainty to those being regulated. • Enforcement agencies should apply regulations consistently across the country.
<p>TRANSPARENCY</p>	→	<p><u>Regulators should be open and keep regulations simple and user-friendly</u></p> <ul style="list-style-type: none"> • Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all parties. • Effective consultation must take place before proposals are developed, to ensure that stakeholders views and expertise are taken into account. • Regulations should be clear and simple and guidance issued before the regulations come into effect. • Those being regulated should be made aware of their obligations and be given time and support to comply. • The consequences of non-compliance should be made clear.

⁴ Better Regulation Task Force (2005) Regulation – Less is More: Reducing burdens, Improving Outcomes, p51.

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Regulation should be focused on the problem and minimise side effects

- Regulation should focus on the problem and avoid a scatter gun approach.
- Where appropriate, regulators should adopt a “goals based” approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.
- Enforcers should focus primarily on those whose activities give rise to the most serious risk.
- Regulations should be systematically reviewed to test whether they are still necessary and effective.

In addition to these five principles, a white paper published by the Department of the Taoiseach into regulation identified an additional sixth principle – **Necessity**. That is, to require higher standards of evidence before regulating including the use of better quality data in which to base regulatory decisions; to reduce red tape through customer service initiatives; and, to keep regulatory institutions and frameworks under review in light of issues such as convergence and market changes⁵.

The five principles of good regulations remain relevant to policy development within the Northern Ireland Executive and Departments. Northern Ireland has had a Better Regulation Strategy since 2001 which was reviewed in 2006/07. The Department of Enterprise, Trade and Investment publishes an annual report on the progress of its Implementation Action Plan. The Better Regulation Strategy also covers the private and community and voluntary sectors⁶. According to the Department for Social Development, these five principles are already enshrined within the current regulatory framework for Registered Housing Associations in Northern Ireland⁷. Therefore, the Committee for Social Development may wish to keep these principles under consideration during scrutiny of both the current regulatory regime for social housing and any proposals for the future of housing regulation and any potential housing regulator for Northern Ireland.

Less Regulation, Better Regulation or Regulation as a last resort?

The current UK Coalition Government states that reducing regulation is one of its key priorities. In a report published in 2010, “Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort”, the UK Government states that:

“Reducing regulation matters. Through eliminating the avoidable burdens of regulation and bureaucracy, the Government aims to promote growth,

⁵ Department of the Taoiseach (2004) “Regulating Better: A Government White Paper setting out the six principles of Better Regulation, p10.

⁶ Department of Enterprise, Trade and Investment. Northern Ireland Better Regulation Strategy - www.detini.gov.uk/deti-better-regulation-index/better-regulation-strategy.htm

⁷ Regulatory Framework for Registered Housing Associations in Northern Ireland (2006), pp 4-5.

innovation and social action...Freeing businesses and civil society groups from unnecessary burdensome regulation, and simplifying the complex regulatory system, can free up the capacity they have to innovate, diversify and grow...⁸

The Coalition Government maintains that it recognises that in some cases, regulation is the most effective way of achieving policy outcomes and/or complying with European obligations. However, in order to “*eliminates the avoidable burdens of regulation and bureaucracy*”, it has stated that it will take a number of actions⁹:

- Remove existing regulation that impedes growth.
- Introduce new regulation only as a last resort.
- Reduce the overall volume of new regulation.
- Improve the quality and design of new regulation.
- Reduce the regulatory costs to business and civil society groups.
- Move to a risk based enforcement regime where inspections are minimised.

Additionally, it has identified a number of *alternative approaches* to regulation, and seeks to ensure that the traditional “command and control” regulation is seen as the last resort and not the first resort. The Committee may wish to consider these alternative approaches and whether any of these should be built, or are appropriate for, a potential new social housing regulatory regime for Northern Ireland.

The Coalition Government’s approaches to regulation are as follows¹⁰:

- **Self-Regulation:** an approach initiated and undertaken by those whose behaviour is regulated (e.g. adopting its own code of practice and ethics).
- **Co-Regulation:** similar to self-regulation but involves some degree of explicit government involvement (e.g. the industry working with government to develop a code of practice enforced by the industry itself or by government).
- **Information and education:** can be used to empower customers of the regulated body to take their own informed decisions (e.g. disclosure policies).
- **Economic instruments:** to modify behaviour of bodies by adjusting the economic incentives for poor performance (e.g. through subsidies, quotas, competition).
- **No new intervention:** to Coalition Government suggests that in many instances it may not be necessary for government to initiate new action at all (e.g. use existing regulation, simplify or clarify existing legislation; improve existing enforcement, make legal remedies more accessible for cheaper, or do nothing at all).

⁸ HM Government (2010) Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort, p2.

⁹ HM Government (2010) Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort, p4.

¹⁰ HM Government (2010) Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort, 4.

For the Coalition Government, regulation is now set within the context of three factors, i.e. the 'localism agenda' which aims to enhance power and accountability at a more local level; reducing the fiscal deficit by making financial savings across government and the public sector; and, the Government's policy objective to reduce the number of gangos¹¹.

In considering these alternative approaches to regulation, however, it is important to note that the Coalition Government's priorities and drivers in relation to regulation may differ to that of the Northern Ireland administration and an assessment should be made as to whether these alternative approaches are appropriate or transferable to the housing infrastructure in Northern Ireland. However, it is interesting to note that both the Chartered Institute of Housing and the Northern Ireland Federation of Housing Associations (in their response to the consultation on a new housing strategy for Northern Ireland) both favoured the concept of an independent regulator and a co-regulatory model^{12 13}. Both responses also concurred with the findings in the Cave Review of Social Housing in there must be a **greater role and focus on tenants** as a central part of any new regulatory regime.

Why is it important to regulate Registered Housing Associations

There appears to be some consensus as to *why* social housing should be regulated. In 2006, the Department for Communities and Local Government commissioned an extensive independent report on social housing regulation (known as the **Cave Review**). The report was published in 2007 and was the first comprehensive review of social housing regulation in GB in over 30 years. The review maintained that there were a number of reasons why regulation across the social housing domain was justified, i.e.:

- That tenants have limited bargaining power in dealings with their social landlords.
- Across the social housing sector there are limited pressures on social landlords to improve efficiency and service quality.
- That housing has an impact on the whole community, not just individuals.
- That there is strong justification for regulation as social housing bodies receive substantial public subsidy and it is public subsidy which makes private investment in the social housing sector attractive to private investors¹⁴.

In a further separate Review of Social Housing Regulation commissioned by the Department of Communities and Local Government and published in 2010, it was similarly argued that the rationale for state intervention of social housing was based on

¹¹ Communities and Local Government (2010) Review of Social Housing Regulation, p4.

¹² See consultation responses by the Chartered Institute of Housing, pp19-20

www.cih.org/resources/PDF/NI%20policy%20docs/Housing%20Strategy%20Consultation%20111212-Final.pdf

¹³ See consultation response by the Northern Ireland Federation of Housing Associations, p27.

www.nifha.org/filestore/documents/NIFHA%20Housing%20Strategy%20response%20December%202012.pdf

¹⁴ Cave, M. (2007) Every Tenant Matters: A review of social housing regulation, p36.

www.peabodytenants.co.uk/documents/every_tenant_matters_by_martin_cave_review_of_social_housing_regulation_.pdf

a number of factors – i.e. the lack of competitive pressures towards good, efficient service provision; the presence of substantial public subsidy; and that a substantial amount of private sector lending to housing associations was made on the basis that they are regulated¹⁵.

A **review of social housing regulation in Scotland** also argued that scrutiny through regulation should provide “*independent assurances that services are well managed, safe and fit for purpose and that public money is being used properly*”. It recommended a modernised framework for housing regulation should have four main elements, i.e.:

- Services are focused on and contributing to the **Government’s Purpose and Strategic Objectives**.
- Services are **performing well** – they are **responsive, efficient, continually improving** and **achieving outcomes**.
- Service users are **given assurances** about the standard of service they receive and, where appropriate, **given protection**.
- Organisations are able to **provide evidence of continuous improvement** through robust self-evaluation, and scrutiny is targeted at those **organisations where performance is poor**¹⁶.

In terms of who should regulate social housing, there has been in recent years a renewed focus on social housing regulation and a significant modernisation of regulatory structures through independent social housing regulators. The Scottish Government has, for example, recently established a **new independent housing regulator for social housing in Scotland**. The **PwC report** on the review of the Northern Ireland Housing Executive has similarly recommended the establishment of an **independent housing regulator** but across *all* housing tenures in Northern Ireland. The previous Labour Government established the **Tenant Services Authority (TSA)**, an independent regulator for registered providers of social housing in England.

However, the Coalition Government disbanded the TSA, subsuming its functions into the **Homes and Communities Agency** (an NDPB) which is a body that now assumes responsibility for both housing investment and housing regulation. This disbandment of the TSA was a reflection of the Coalition Government’s commitment reduce the number of ‘qangos’. Sections 3 and 4 of this paper looks at the different regulatory structures in other jurisdictions in further detail.

¹⁵ Department for Communities and Local Government (2010) Review of Social Housing Regulation, p4. www.gov.uk/government/uploads/system/uploads/attachment_data/file/6260/1742903.pdf

¹⁶ Scottish Government (2009) A draft Housing Bill and consultation paper. www.scotland.gov.uk/Publications/2009/04/27095102/6

What are some of the arguments for and against an independent regulator? What are the barriers to the independence of a housing regulator?

A report by the Better Regulation Taskforce on Independent Regulations identified a number of benefits of having an independent regulator (the report focuses on independent regulators in general and not social housing specifically) – i.e. more consistency in decision-making; long term decisions rather than short term; more transparency; better accountability; more trust between the regulated and the regulator; and, freedom from political interference¹⁷.

In terms of the **barriers to independent regulation** the Better Regulation Taskforce review of independent regulators identified four main ways in which the independence of a regulator can be compromised:

1. **Financial independence:** if there is undue control from the parent Department in relation to the financing of an independent regulator.
2. **Personnel independence:** important that the independent regulator can appoint its own staff, particularly for those regulators who need specialised staff. Following staffing terms and conditions of the parent Department can place a restriction on the freedom to appoint and dismiss.
3. **Operational independence:** important that the objectives of regulation set by government are clear, confused policy objectives led to a confused delivery.
4. **Enforcement independence:** an important aspect of independence is the ability of the regulator to decide for itself how to enforce their decisions in line with clearly set out guidelines.

The Better Regulation Taskforce also highlighted that it was crucial that an independent regulator is accountable to Government Ministers and should be called to account if necessary by relevant parliamentary committees¹⁸.

The Cave Review of social housing regulation (which supported independent social housing regulation) succinctly summarises the perceived arguments for and against an independent regulator of social housing as thus¹⁹:

ARGUMENTS FOR INDEPENDENT REGULATION

- An independent authority will be seen as genuinely independent by all parties.
- An independent authority will have a clear uncluttering focus that is free from other influences and priorities.
- A new body will establish a culture and values which are most appropriate for the housing domain, a multi-sectoral approach.

¹⁷ Better Regulation Taskforce (2003) Independent Regulators, p11.

¹⁸ Better Regulation Taskforce (2003) Independent Regulators, p18.

¹⁹ Cave, M. (2007) Every Tenant Matters: A review of social housing regulation, p122.

- A new body will be able to develop a culture and approach which is attractive to new entrants, especially the private sector.
- The new role envisaged for the new regulator will get off to the best possible start if it is not located with other organisations that will be perceived as having legacies that would inhibit their ability to make a fresh start.

ARGUMENTS AGAINST INDEPENDENT REGULATION

- There could be a lack of clarity in roles and boundaries in relation to other bodies and difficulties of co-ordination.
- Independence limits opportunities for the sharing of back office functions which could save resources.
- Creation of a completely new organisation would take more time.

2 An independent regulator for Northern Ireland? - some views from the social housing sector

The [recent strategic review of the Northern Ireland Housing Executive](#)²⁰ and the [consultation on a new housing strategy for Northern Ireland](#)²¹ have provided the opportunity for the social housing sector, housing and tenant representative organisations and the Committee for Social Development to comment upon the proposed structures for the regulation of the housing sector.

There is consensus from bodies such as the Chartered Institute of Housing (CIH), the Federation of Housing Associations and the Housing Rights service that the housing regulator for Northern Ireland should be independent. In its response to the consultation on a housing strategy for Northern Ireland, CIH maintained that,

“CIH would also take this opportunity to restate our thinking on the need for an independent housing regulator in light of the potential creation of new housing associations/social enterprises from the Housing Executive’s landlord role”²².

The Northern Ireland Federation of Housing Associations (NIFHA) has stated that,

“We should be moving towards independent proportionate, risk-based and outcome-focused regulation for housing associations; perhaps based on the principles of co-regulation.”

“Responsibility for the regulation and inspection of social housing should be transferred to an independent body, as it has been in England and

²⁰ PwC (2011) Executive Summary: Review of the Northern Ireland Executive www.niassembly.gov.uk/Documents/Social-Dev/Housing/NIHE%20Review/pwc_report.PDF

²¹ Department for Social Development (2012) Facing the Future: Housing Strategy for Northern Ireland consultation document. www.dsdni.gov.uk/index/consultations/archived-consultations/housing-strategy-consultation.htm

²² Chartered Institute of Housing (2012) Consultation Response - Facing the Future: Housing Strategy for Northern Ireland, pp19-20) www.cih.org/resources/PDF/NI%20policy%20docs/Housing%20Strategy%20Consultation%20111212-Final.pdf

*Scotland...Revisions to the regulatory and inspection scheme should provide robust safeguards to protect the private status of housing associations, not least to ensure they can continue to secure private finance.*²³

In response to the Minister for Social Development's written statement on the proposals for a social housing reform programme²⁴ relating to the new regulatory structures for housing, NIFHA has stated that it believes that there is a compelling case for independent regulation of rented housing and it will continue to make a case ahead of the introduction of the housing bill²⁵.

The Housing Rights Service response to the consultation on the housing strategy also supported independent regulation,

*"We believe that housing regulation should be an 'independent' function; separate from policy responsibility and should not be located within Government...The emphasis on regulation should not only be on housing provider accountability and compliance but also on service delivery outcomes for tenants".*²⁶

In evidence to the Committee for Social Development on the Review of the Housing Executive, the Chief Executive of NIHE, Dr John McPeake, stated that it supported the proposal by PwC for a new independent regulator across the whole housing sector in Northern Ireland. However, Dr Peake further stated that,

"...We also support the view of PricewaterhouseCoopers that the new regulator should be independent. That would be the best solution, but we recognise that they are alternative to that.

....At the end of the day, the regulator should be independent of the Department, but that is not the only model, and we are very conscious that...there are regulators that operate successfully from within government. So, we are not going to die in the ditch over that. Much discussion will be about principles that are subscribed to, the openness and transparency of that process and the objectivity of it. That can be delivered more or less regardless of whether the regulator is independent or not, even though we believe wholeheartedly that the independent regulator is

²³ Northern Ireland Federation of Housing Associations, (2012) Consultation Response, Facing the Future: Housing Strategy for Northern Ireland, p2 & pp19&20

www.nifha.org/filestore/documents/responses_to_consultations/NIFHA_Housing_Strategy_response_December_2012.pdf

²⁴ Department for Social Development News Release. "Written Statement to the Assembly by Social Development Minister Nelson McCausland". 9 January 2013.

²⁵ Northern Ireland Federation of Housing Associations. News Release, "Reforms good news for tenants, taxpayers and people in housing need. 9 January 2013. www.nifha.org/press-room/index.php/364/

²⁶ Housing Rights Service. Response to the consultation on a housing strategy for Northern Ireland, p5. www.housingrights.org.uk/component/docman/doc_download/452-housing-strategy-response-dec-12

*the best solution. It is not the only solution and other systems are workable.*²⁷

The Committee for Social Development, in its response to the Department for Social Development on the review of the NIHE, were of the view that any independent regulator with responsibility for rent setting remains totally independent to minimise the risks of substantial increases in rent, particularly for the most vulnerable tenants²⁸.

3 The current system for Registered Housing Association regulation in Northern Ireland

The Department for Social Development is responsible for the funding, monitoring, regulation and issuing guidance and policy directives to Registered Housing Associations in Northern Ireland. The [Housing Association Guide](#) (HAG) which covers issues such as development, finance, governance, housing management and procurement, is the main mechanism by which DSD delivers its regulatory responsibilities²⁹ in relation to Housing Associations. The Department states that the Guide,

*“...sets out the Department’s guidelines for Registered Housing Associations requiring robust policy and procedural standards across all Associations and equitable quality service provision for social housing tenants. It also contains the rules and procedures that Associations must comply with in order to meet the conditions for the receipt of capital grant from the Northern Ireland Housing Executive..., provided by DSD.”*³⁰

The Guide underwent a fundamental review with many of the revised requirements in the Guide becoming operational, on a phased basis, in 2010. The primary statutory basis for the regulation of Registered Housing Associations is the [Housing \(Northern Ireland\) Order 1992](#)³¹. The 1992 Order gives the DSD the power to establish and maintain a register of Housing Associations, the Order also covers areas such as rental charges, tenancy agreements, the management of accommodation, acquisition and disposal of land etc.

Article 21 of the 1992 order states that at any time DSD, or a person, authorised by DSD, can compel a Registered Housing Association to produce accounts or other documents relating to the Association’s business and that any officer, employee or member of the Committee of the Registered Housing Association to provide an

²⁷ Northern Ireland Assembly Official Report. NIHE oral evidence to the Committee for Social Development on the Review of the Northern Ireland Housing Executive. 26 April 2012.

²⁸ Committee for Social Development’s response to the Department for Social Development re review of the NIHE. 11 October 2011. www.niassembly.gov.uk/Assembly-Business/Committees/Social-Development/Committee-Consultations/Housing/Northern-Ireland-Housing-Executive-Review/Committees-Response-to-Department-re-NIHE-Review/

²⁹ Housing Association Guide - www.dsdni.gov.uk/index/hsdiv-housing/ha_guide.htm

³⁰ DSD website [accessed 18 December 2012] - www.dsdni.gov.uk/index/hsdiv-housing/ha_guide.htm

³¹ Housing (Northern Ireland) Order 1992 - www.legislation.gov.uk/nisi/1992/1725

explanation of any of accounts or other documents. Other articles contained within the 1992 Order give DSD power to, e.g. remove committee member of a Registered Housing Association; lay down accounting and auditing requirements for Registered Housing Associations; conduct an inquiry into the affairs of a Registered Housing Association; and power to petition for the winding up of a Registered Housing Association³².

The Inspection of Registered Housing Associations

The inspection of Housing Associations is currently conducted by an **Inspection Unit** within DSD's Housing Division. The team is responsible for providing DSD's Accounting Officer and the Northern Ireland Audit Office (NIAO) with an assurance on the probity, regulatory and integrity of expenditure in the operation and administration of Registered Housing Associations³³. There are four elements to the team's terms of reference – to assess compliance with regulatory requirements; to consider how the association is performing in terms of good quality, cost effective housing and services; to measure a housing association's ability to achieve improvement in its operations; and, to provide an independent opinion on the adequacy and effectiveness of internal control.

The [Regulatory Framework for Registered Housing Associations in Northern Ireland](#) (2006)³⁴ outlines the role of the inspectors,

“In accordance with its regulatory function the Department for Social Development's inspectors will seek to satisfy themselves that associations are achieving the required regulatory outcomes and are ‘capable of handling public finance and the continuing proper stewardship of social rented housing and publicly funded assets’. As the funder and regulator of registered housing associations in Northern Ireland the Department for Social Development is responsible, through its scrutiny role, to oversee the corporate governance arrangements of these organisations.”³⁵

The Regulatory Framework also provides an account of the Department's objective, goals and principles with respect to its regulatory role:

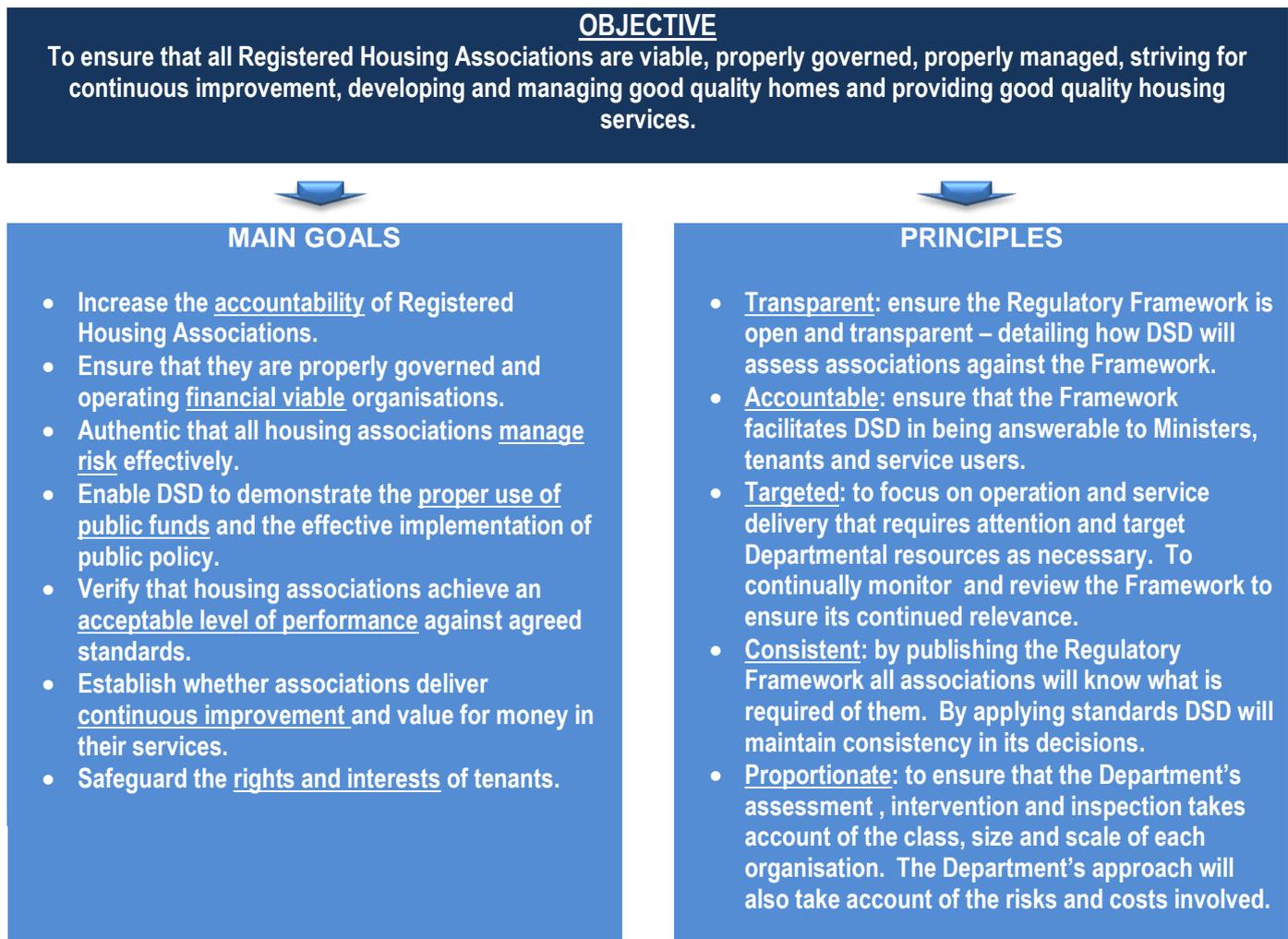
³² Criteria for registration of a Housing Association [accessed 18 December 2012] - www.dsdni.gov.uk/index/hsdiv-housing/registered_housing_associations/registration_criteria.htm#appendix1

³³ Housing Association Guide, Governance Guide, Section 4 - www.dsdni.gov.uk/index/hsdiv-housing/ha_guide/haggg-contents/haggg-inspections.htm

³⁴ Regulatory Framework for Housing Associations in Northern Ireland (2006) - www.dsdni.gov.uk/revised_regulatory_framework_for_registered_housing_associations_in_ni.doc [accessed 18 December 2012].

³⁵ Regulatory Framework for Registered Housing Associations in Northern Ireland (2006), p2.

Table 1: Regulatory Framework for Registered Housing Associations in Northern Ireland – Objective, Goals and Principles³⁶.



The Framework states that inspections should:

- Inform the public about the performance of associations now and there likely performance in future, and so enhance local accountability.
- Focus on service users’ experiences of registered housing associations.
- Take account of the use of money, people and assets, and should promote economy, efficiency and effectiveness.
- Should act as a catalyst for improvement.
- Should identify what works, to inform policy and practice.
- The scale of inspection should be proportionate to risk.
- The methodology and criteria on which judgements are based should be explicit and based on evidence on what works in improving services. This principle should apply to inspection itself, which should assess its own effectiveness.

³⁶ Regulatory Framework for Registered Housing Associations in Northern Ireland (2006), pp 4-5.

According to the Housing Association Guide, the inspection process has three stages – (a) pre-inspection research (b) fieldwork and (c) reporting. There are four main areas that the inspection focuses on – corporate governance; finance; property development; and property management.

A list of the latest Registered Housing Inspection Reports published by DSD is available at www.dsdni.gov.uk/index/hsdiv-housing/registered_housing_associations/housing-rha_inspection_programme/rha_inspection_reports.htm

Further information on the inspection process is available at www.dsdni.gov.uk/index/hsdiv-housing/ha_guide/haggg-contents/haggg-background-inspection-of-housing-associations.htm

A set of [Indicators](#) are used to monitor the performance of Registered Housing Associations in Northern Ireland. The performance indicators include, e.g.³⁷:

- **Housing Association stock details:** e.g. number of bedsits/number of one, two, three and four plus bedroom properties; number of bed spaces and Special Needs Units.
- **Rent Management:** % of rent successfully collected; % of rent arrears; % rent losses.
- **Housing Management:** % of total housing stock vacant; % of housing stock not available for letting.
- **Repairs:** % of emergency, urgent and routine repairs completed on target.
- **Rents:** Average weekly rent for various types of properties according to size, new build etc., controlled/de-controlled rent³⁸.

The objective of each inspection is to evaluate and provide an opinion on the internal workings and control procedures within the Association in four main areas – financial management; property development; property management; and corporate governance and housing management. Further details of these areas is provided below³⁹:

FINANCIAL MANAGEMENT

To ensure that the Association operates a viable business with adequate recourse to financial resources in order to meet its current and future business commitments in accordance with the Housing Association Guide.

PROPERTY DEVELOPMENT

To examine an approach taken by an Association in relation to the delivery of the social housing development programme and assessing the controls used to manage risk, its performance in meeting key targets, the procedures adopted in relation to

³⁷ Registered Housing Association 2010-11 performance indicators [accessed 18 December 2012].

³⁸ 2010/11 Performance for each Registered Housing Association available at www.dsdni.gov.uk/index/hsdiv-housing/registered_housing_associations/performance_indicators/pi-2010-2011.htm

³⁹ Information extracted from DSD Inspection of Helm Housing Association, Round 2, Final Report, January 2012, p2 [accessed 18 December 2012].

procurement and the development process including use of the disposal proceeds fund.

PROPERTY MANAGEMENT

To examine the approach taken by the Association in relation to the procurement of repairs, maintenance and miscellaneous works and adaptations, ensuring that its strategy is to maximise planned and cyclical maintenance in order to reduce response maintenance while improving the services to meet tenant's needs.

CORPORATE GOVERNANCE

To ensure that the Association is governed by an effective Board that is operating a framework which effectively identifies and manages risk, operates according to statute, regulation and constitutions. To examine the approach taken by the Association into the services it provides to its tenants and to ensure that it seeks to be responsive to the needs and views of its tenants.

What happens after inspection?

According to the Housing Association Guide, there are a number of options available to DSD for Housing Associations that receive a 'no assurance' rating following an inspection visit. The Guide states that the approach taken will be dependent upon a number of factors including past performance; the nature and extent of weaknesses uncovered; the role/responsibility of the Housing Association's Board and Management for the performance; and whether the financial viability of the Housing Association has been compromised.

The range of Departmental options following 'no assurance' inspections are as follows⁴⁰:

OPTIONS	COURSE OF ACTION
Option 1: Action Plan	Association will provide details of how it will address issues raised in the inspection including timescales for implementation. DSD will ensure that the Action Plan represents a reasonable response to the issues raised and that the timescales for implementation are acceptable.
Option 2: Change of Housing Association Board/Management	A change of Board or Management, either partially or totally, could be sought if DSD consider that the 'no assurance' rating was a result of failures of the Board or Management. For example, where two or more successive inspections have received a 'no assurance rating' and where the same issues have arisen over a number of inspections and there has been a continuous failure to address these issues. The Housing Association Guide states that where poor performance extends beyond the inspection period, most of the responsibility for this will rest with the Board, as it has the responsibility and authority to affect change within the Association.

⁴⁰ Housing Association Guide, Governance Guide - www.dsdni.gov.uk/index/hsdiv-housing/ha_guide/haggg-contents/haggg-background-no-assurance-rating-inspection-process.htm

<p>Option 3: Merger with another Housing Association</p>	<p>DSD will seek, or recommend a merger, where the inspection has revealed fundamental issues which would call into question the financial viability of the Association. The Guide states that in such circumstances the financial vulnerability of the Association would preclude the option of a change of Board and/or Management.</p> <p>DSD will have to approve any merger partner, and where appropriate, indicate whether any members of the Board and/or Management should be excluded from the merger.</p>
<p>Option 4: Inquiry</p>	<p>This is the ultimate sanction available to DSD. It will apply to those Associations who have been offered Option 1 and/or 2 but have refused to accept either.</p> <p>The Inquiry will involve the appointment of an independent professional to review the body of evidence following the inspection. The Inquirer may also request an independent financial audit to provide additional information.</p> <p>It is intended that the cost of the Inquiry will be met (at least in part) by the Association in question.</p>

What impact will a ‘no assurance’ rating have on the Registered Housing Association access to the housing development programme?

The Housing Association Guide states that Associations with a previous sound record of performance will not be removed from the Development Programme on this basis of a first “no assurance” rating. In these circumstances Option 1 (i.e. an Action Plan) will apply and the Association will be given “a reasonable period of time” to demonstrate that it has effectively addressed the concerns identified in the inspection. Progress against the action plan will be monitored by the Department on a quarterly basis prior to a “follow-up Inspection” between 6 and 12 months.

Where the DSD is not satisfied that sufficient progress is being made then consideration will be given to removing the Association from the Development Programme. Where an Association receives a second “no assurance” rating, it will automatically be removed from the Development Programme. The Guide also states that there are exceptional circumstances in which the nature of the findings in a first “no assurance rating” will necessitate an immediate move to Options 2-4, e.g. when the financial viability of an association has been compromised.⁴¹

Reports of the Comptroller and Auditor General for Northern Ireland

The Comptroller and Auditor General for Northern Ireland has expressed concerns over a number of years about the adequacy of the governance and inspection of housing associations in Northern Ireland. In his 2007/08 General Report he published a review of DSD’s Regulatory and Inspection Unit and commented on a number of areas including a need to complete the programme of inspections, the length of time taken to produce and deliver inspection reports, and the need to promote good

⁴¹ Housing Association Guide, Governance Guide.

practice⁴². In his report of the “*Governance Arrangements for the administration of the Social Housing Development Programme*” the Comptroller and Auditor General made *19 recommendations* applicable to DSD, the Housing Executive and Housing Associations in relation to improving the governance of the Social Housing Development Programme⁴³.

Of particular concern to both the Comptroller and Auditor General and Members of the Northern Ireland Assembly^{44 45} has been the number of Associations that had received unacceptable ratings in inspections, including a number that were suspended from receiving Housing Association Grant. The Comptroller and Auditor General has welcomed that the Inspection Unit of the Housing Division of DSD, “...*is now fully operational and has enhanced the oversight and governance regime over Housing Associations through its inspection process. There is evidence from their reports that it has been proactive in ensuring good practices are being promoted in and applied by Housing Associations.*”⁴⁶

In January 2012, the Minister for Social Development stated that the staffing levels of the Governance and Inspection Team would be increased in order to increase the monitoring of Associations and to ensure that lessons learned from negative past inspections, such as that of Helm Housing Association, were disseminated across the whole housing movement⁴⁷. The Department has, however, provided assurances to the Comptroller and Auditor General that the issues with Helm have now been addressed with the appointment of new Board Members and an interim Chief Executive. In his 2012 report the Comptroller and Auditor General stated that he still had concerns regarding the governance arrangements within the Housing Association sector as a whole and that he would continue to monitor this area and would potentially report further on issue⁴⁸.

The housing association sector plays a pivotal role in the provision of social and affordable housing in Northern Ireland (with a combined housing stock of over 36,000 units). It delivered 2,053 new homes in 2011/12 and attracted funding of £205m (consisting of £139m in Housing Association Grant and £66m in private finance.

⁴² Northern Ireland Audit Office. Financial Auditing and Reporting. General Report by the Comptroller and Auditor General for Northern Ireland 2010, p72. www.niauditoffice.gov.uk/index/publications/financial_audit_publications/financial_auditing_and_reporting/general_report_by_the_c_ag_for_ni_2010.pdf

⁴³ Northern Ireland Audit Office. Financial Auditing and Reporting. General Report by the Comptroller and Auditor General for Northern Ireland 2009, pp108-109.

⁴⁴ Northern Ireland Committee for Social Development Press Release, “Committee seeks assurances on future of Helm Housing Association”. 10 January 2012.

⁴⁵ Northern Ireland Assembly Official Report. Statement by the Minister for Social Development on Helm Housing Association, 16 January 2012. www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-11-12/16-January-2012/#a3

⁴⁶ Northern Ireland Audit Office. Financial Auditing and Reporting. General Report by the Comptroller and Auditor General for Northern Ireland 2010, 63.

⁴⁷ Department for Social Development News Release. “Statement from Minister Nelson McCausland on the Inspection of Helm Housing Association”. 16 January 2012. www.northernireland.gov.uk/es/index/media-centre/news-departments/news-dsd/news-releases-archive-dsd-jan-2012/news-dsd-inspection-helm-housing.htm

⁴⁸ Northern Ireland Audit Office (2012). Financial Auditing and Reporting. General Report by the Comptroller and Auditor General for Northern Ireland, pp24-28.

Collectively Housing Associations have secured £626.2m in private finance over the last two decades⁴⁹. A balanced regulatory structure which promotes innovation is therefore vital to continue both private lender confidence and value for public money and to ensure the continued growth in social and affordable housing in Northern Ireland.

4 Social Housing Regulators in other jurisdictions

There has been a policy shift in recent years towards the independent regulation of social housing in England and Scotland. In **Scotland** there is an independent Social Housing Regulator which assumed its full regulator powers in April 2012. In **England** the regulation of social housing is via an independent Regulation Committee within the Homes and Communities Agency (an NDPB within the Department for Communities and Local Government). **Wales** is the only jurisdiction within GB to maintain inspection and regulation within Government structures; however, it is overseen by a Regulatory Board comprising of a range of representatives from outside government and a Tenant Advisory Panel.

The Scottish Housing Regulator

The [Scottish Housing Regulator](#) is the independent regulator of *all social landlords* in Scotland (e.g. local authority housing services, Housing Associations and housing co-operatives). The Regulator was established in April 2010, under the Housing (Scotland) Act 2010 and assumed its full regulatory powers in April 2012. It is a body corporate and is part of the Scottish Administration; however, it is not part of the Scottish Government and is classified as a Non-Ministerial Department (NMD).

The Regulator is led by a board of non-executive members (comprising of a Chair and three other members), appointed by Scottish Ministers following an open public appointments process. The Regulator is led by a Chief Executive who is a senior Civil Servant. It has an annual budget of £4 million in 2012/13 which will decrease to £3.8 million in 2013/14 and to £3.7 million in 2014/15⁵⁰.

The Regulator has regulatory responsibility for over 180 Registered Social Landlords (e.g. Housing Associations, housing co-operatives) in Scotland as well as the landlord and homelessness functions of 32 local authorities. The average size of Registered Social Landlord (RSL) stock in Scotland is around 1,500 properties, the largest RSL has around 45,000 properties⁵¹.

The Housing (Scotland) Act 2010 requires to regulator to monitor, assess and report regularly on the performance of social landlords housing activities, financial well-being

⁴⁹ Northern Ireland Federation of Housing Associations. Press Release. "Housing Associations on track to deliver 8,000 homes. 16 May 2012.

⁵⁰ Information extracted from the Scottish Housing Regulator website - www.scottishhousingregulator.gov.uk/

⁵¹ Scottish Housing Regulator Corporate Plan 2012-15, p6.

and standards of governance, and to intervene where appropriate. In the interests of openness and transparency, the Regulator maintains a publicly available and easily accessible online [Register of all Registered Social Landlords](#) in Scotland which contains information on each RSLs housing stock numbers and property types; contact details; accounts over the last five years; inspection and performance reports; RSL plans for improvement; corporate governance constitution and rules (e.g. regarding board membership, annual general meetings etc.)⁵². This offers a degree of empowerment for the tenant in that they are able to assess the services of their RSL in comparison to others.

Why is there a need for a regulator for social housing in Scotland? According to the [Regulator's Corporate Plan](#), Scottish Ministers and the Scottish Parliament created the independent housing regulator in *“recognition of the unequal bargaining power and limited choice available to social tenants and others, such as homeless people, in relation to their landlords and homelessness authorities”*.⁵³

The Regulator's Objectives and Principles

The Scottish Housing Regulator has one **single statutory objective**:

1. *“safeguard and promote the interests of current and future tenants of social landlords, people who are or may become homeless, and people who use housing services provided by Registered Social Landlords (RSLs) and local authorities.”*

The Regulator's five specific **objectives** are as follows:

- Objective 1:** To actively identify risks to the interests of the tenants, homeless people and other service users, and to take the necessary action to protect them.
- Objective 2:** To challenge landlords to improve their performance.
- Objective 3:** To respond quickly, decisively and effectively where a landlord is failing.
- Objective 4:** To help maintain lender and public funder confidence in social housing.
- Objective 5:** To be a transparent, responsive and Best Value organisation, and to align resources to its priorities.

The following seven Principles, outlined in the Regulator's three year Corporate Plan (2012-15) are as follows⁵⁴:

⁵² The Register can be accessed at www.scottishhousingregulator.gov.uk/find-and-compare-landlords/rsl-register

⁵³ Housing Regulator, Corporate Plan 2012-15, p4.

⁵⁴ Scottish Housing Regulator Corporate Plan 2012-15, p4.

Independence	To ensure that the exercise of regulatory judgements are impartial without fear or favour, and free from undue influence.
Public Focus	To ensure that full account is taken of the perspective and needs of tenants and others in its work.
Accountability	For the conduct of its work, the impact, costs and decisions.
Transparency	Being open about how it regulates and the decisions it makes.
Targeted	Ensuring it focuses on areas of performance, risk and service delivery that are important to it fulfilling its objective.
Consistency	In how it applies its regulatory approach whilst recognising that landlords' different risk profile, local context, organisational set up and performance outcomes will mean that it will engage at the different levels in different ways.
Proportionality	Matching its response to the nature of the issue, the level of risk and the regulated body concerned.

The **regulatory tools** available to the Regulator are:

- **Inquiry powers** to obtain the information and assurances it needs from landlords to assess risks and investigate problems.
- The **setting of standards** of governance and financial management for RSLs.
- Use its **powers of intervention** to secure landlord improvement and protect the interests of tenants, homeless people and other service users.
- Require RSLs to seek the **Regulator's consent** to certain types of **organisational change** and **disposal of properties and assets**.
- Set **registration and de-registration** criteria for RSLs.

What activities will the Regulator be involved in?

The Regulator's three year corporate plan outlines the types of activities it will be involved in as follows:

Monitoring the new [Scottish Social Housing Charter](http://housingcharter.scotland.gov.uk/)⁵⁵ which sets the standard and outcomes that all social landlords should aim to achieve when performing their housing activities. The Regulator has already published a [set of indicators](#) that it will

⁵⁵ <http://housingcharter.scotland.gov.uk/>

use to monitor and assess landlords' achievements e.g. the percentage of tenants satisfied with the overall service provide by their landlord and average length of time taken to complete emergency and non-emergency repairs, tenant satisfaction with the repairs etc. The Regulator states that it will intervene if necessary where landlords are failing to achieve the Charter's outcomes and standards.

The Regulator will also be involved in **monitoring the governance** of RSLs to ensure that they have a good mix of skills and experience on the management boards and assess if the RLS demonstrates an effective approach to business planning and asset management.

The Regulator will inspect the **financial health** of RSLs to ensure that they are effectively servicing and repaying debt and have robust mechanisms for managing financial risks. Additionally, the Regulator aims to ensure that there is effective regulation of RSLs in order to **continue lender and funder confidence** in the social housing sector.

How will the Regulator involve tenants and other service users in the regulatory process?

The Regulator maintains that engagement with tenants, people who are homeless, and others who use the services of social landlords, is an important aspect of its work. It intends to facilitate this involvement and has published a three year '[Consultation and Improvement Strategy](#)' which has three aims⁵⁶:

- To understand the priorities and opinions of tenants and other service users and use this knowledge to shape the regulatory approach.
- To create meaningful opportunities for tenants and other service users and their representatives to work with the Regulator in developing its regulatory approach.
- To involve tenants and other service users in its scrutiny of social landlords.

Included in its activities to involve tenants and others the Regulator plans to - set up a **National Panel of Tenants and Service Users**; survey all Registered Tenant Organisations, liaise with bodies who work on behalf of service users (particularly to gain information on marginalised groups); commission tenant surveys and qualitative research; organise focus groups with tenants, service users and the representative organisations; and, talk with service users and tenants during inspections of social landlords.

⁵⁶ Scottish Regulator. Consultation and Improvement Strategy 2012-15, p5.
www.scottishhousingregulator.gov.uk/publications/consultation-and-involvement-strategy-2012-2015

What is the nature of the relationship between the Scottish Housing Regulator and the Scottish Government?

A [Framework Agreement](#) sets out the terms of an agreement between the Regulator and Scottish Ministers in relation to the governance, financing and operation of the functions of the Regulator. Under the Agreement Scottish Ministers are responsible for formulating and implementing housing policy, including policy on social housing and the legislative framework for the regulation of social housing. Ministers are also responsible for setting the Regulator's budget⁵⁷. The Housing (Scotland) Act 2010 provides for the Regulator to perform its functions independently of Ministers by specifying that Ministers must not give direction relating to, or otherwise to seek control, of the performance of the Regulator's functions⁵⁸.

An important aspect of the Framework Agreement is that the Government and the Regulator should maintain effective working relationships through regulator meetings (e.g. it agreement sets out that the Chair of the Regulator meet with the Minister with the portfolio for housing at least once a year, in addition to regular meetings between Government officials and the regulator). Furthermore, the Framework Agreement states that the Regulator must ensure that Government are informed in advance of any significant announcements or publications which may have implications for Government. In turn, the Government should inform the Regulator in advance of any significant announcements which may have implications for the Regulator or regulated sector⁵⁹.

In terms of the accountability of the Regulator, the Scottish Parliament has the power to require any Board Member of the Regulator to attend a Parliamentary Committee. In addition to this, the Regulator may be subject to investigation by the Scottish Public Services Ombudsman.

Housing Regulation in England – the Homes and Communities Agency

The former Tenant Services Authority (TSA) was established, under the Labour Government, as the independent social housing regulator and became operational in December 2008 following the recommendation of the Cave Report that there should be a single regulatory body for social housing in England that was independent from Government. In June 2010, Grant Shapps the then Minister with responsibility for housing, announced a review of the role and purpose of the Tenants Services Authority and the framework for social housing regulation. Prompted by the Coalition Government's priority for reducing the number of 'quangos' and the localism agenda

⁵⁷ Framework Agreement between Scottish Ministers and the Scottish Housing Regulator, p3.

⁵⁸ Framework Agreement between Scottish Ministers and the Scottish Housing Regulator, p3.

⁵⁹ Framework Agreement between Scottish Ministers and the Scottish Housing Regulator, pp3-6.

the TSA was abolished and the [Homes and Communities Agency](#)⁶⁰ took over responsibility for the regulation of social housing providers in England on 1 April 2012.

The Homes and Communities Agency (HCA) is an executive non-departmental public body, and is the national housing and regeneration agency for England, which became operational in December 2008. The HCA has responsibility for investment for new affordable housing, the improvement of the quality of existing social housing, the regeneration and development of land or infrastructure – and now – the regulation of social housing. The HCA may only exercise its regulatory functions through an **independent Regulation Committee** consisting of six members appointed by the Secretary of State. The Regulation Committees objectives are set out in the Localism Act 2011 (the same act that abolished the TSA). The Committee has two statutory roles – **economic regulation** and **consumer regulation**. The objectives relating to these two functions are set out below⁶¹:

Economic Regulation Objectives

- To ensure that registered providers of social housing are financially viable and properly managed and perform their functions efficiently and economically.
- To support the provision of social housing sufficient to meet reasonable demands (encouraging and promoting private investment in social housing).
- To ensure that value for money is obtained from public investment in social housing.
- To ensure that unreasonable burden is not imposed (directly or indirectly) on public funds.
- To guard against the misuse of public funds.

Consumer Regulation Objectives

- To support the provision of social housing that is well managed and of appropriate quality.
- To ensure that actual and potential tenants of social housing have an appropriate degree of choice and protection.
- To ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account.
- To encourage registered providers of social housing to contribute to the environmental, social and economic wellbeing of the areas in which the housing is situated.

A “Co-Regulation” Approach

The HCA’s regulatory approach is that of “co-regulation”, i.e. the landlord (particularly the board of social housing providers) is responsible for meeting the regulatory standards and provide mechanism by which tenants can scrutinise service delivery and hold boards to account. It is co-regulation in that the Homes and Communities Agency and the Regulation Committee may intervene in cases where there is a breach or potential breach in meeting standards⁶².

The principle of co-regulation has six elements:

1. **Boards of social housing providers** (and local councillors in the case of Local Authority Housing in England) **are responsible and accountable** for delivering their organisation’s social housing objectives.

⁶⁰ Homes and Communities Agency website - www.homesandcommunities.co.uk

⁶¹ Information extracted from the Homes and Communities Agency website - www.homesandcommunities.co.uk/ourwork/objectives

⁶² Homes and Communities Agency website - www.homesandcommunities.co.uk/ourwork/regulation-functions

2. Providers must **meet the regulatory standards**.
3. **Transparency and accountability** is central to co-regulation.
4. **Tenants** should have the opportunities to **shape service delivery** and **hold social housing providers to account**.
5. Providers should demonstrate that they **understand the particular needs of their tenants**.
6. **Value for money** goes to the heart of how providers ensure current and future delivery of their objectives.

The Regulation Committee's relationship with the Homes and Communities Agency and the Secretary of State

The independent Regulation Committee's relationship with the Homes and Communities Agency is facilitated via a [protocol](#)⁶³. An important component of this is that the HCA must be satisfied that regulation functions are *only* operated through the Regulation Committee. In terms of staffing – the Director of Regulation support the Regulation Committee is an employee of the HCA and a member of the HCA's executive team. The Chief Executive of the HCA is permitted to attend meetings of the Regulation Committee and is also responsible for providing resources and corporate services to the Regulation Committee, e.g. the HCA will provide a secretariat for the Committee. The Secretary of State is permitted under statute to issue directions to the Committee on certain specified matters and the Committee is responsible for responding and implementing the directions⁶⁴.

Registration and Inspection

The HCA is responsible for **registering** providers of social housing. Any eligible provider of social housing can be registered with the HCA (providing they meet certain criteria e.g. an applicant must be an "English Body") and only registered providers will be subject to the HCA's regulations.

The Regulator primarily focuses on the activities of larger social housing providers (those that own/manage more than 1,000 homes). Whilst the same standards apply to smaller housing providers these are subjected to "less regulatory engagement" but will still be subject to e.g. the review of annual accounts and regulatory returns (but in a must shorter form than that for larger providers). The financial viability of the provider

⁶³ Protocol – Regulation Committee: Working arrangements for the Committee and the HCA - www.homesandcommunities.co.uk/sites/default/files/our-work/regulation_committee_protocol.pdf

⁶⁴ Protocol – Regulation Committee: Working arrangements for the Committee and the HCA - www.homesandcommunities.co.uk/sites/default/files/our-work/regulation_committee_protocol.pdf

is an “absolute requirement”⁶⁵, however the meeting governance standards is also a crucial component of the registration process.

Intervention and Enforcement

The Regulator’s approach to intervention and enforcement is set out in a [Regulatory Framework](#) which states that the Regulator can use its regulatory and enforcement powers in relation to *economic standards* where it suspects or has evidence of a failure of standards or where the provider has mismanaged its affairs, or where there is a risk that if the provider takes no action to address a potential failure in standard. In relation to *consumer standards*, the threshold for intervention by the regulator is significantly higher and relatively lighter touch in its approach and involves assessing whether the provider has failed a ‘serious detriment test’. The Regulator’s approach to intervention and enforcement must be underpinned by the principle of a statutory duty to minimise interference⁶⁶. The Regulatory Framework states that the Regulator’s general approach to exercising its enforcement powers must be the least intrusive power available taking into account proportionality, including where possible a graduated approach to the use of enforcement powers.

Housing Association Regulation in Wales

Between 2005-2009, inspections of Housing Associations in Wales was previously carried out by the Wales Audit Office with the programme of inspections agreed between the Welsh Government and Audit Office. In 2009, the Welsh Assembly Government changed the way in which it regulated housing associations with the establishment of a **Housing Regulation Team** within the Housing Division of the Welsh Government⁶⁷.

This move was prompted by the [Essex review](#) of affordable housing in Wales⁶⁸, which amongst other issues, made a series of recommendations regarding the regulation of housing associations. The review felt that the former regulatory regime was not fit for purpose and the review recommended that the then Welsh Assembly Government set up and run the new regulatory structure with increased staffing resources. It also recommended the establishment of an advisory Regulatory Board with membership from across the government, housing and financial sector to oversee the work of the new inspection unit.

⁶⁵ Homes and Communities Agency (2012) The Regulatory Framework for Social Housing in England, p52.

⁶⁶ Homes and Communities Agency (2012) The Regulatory Framework for Social Housing in England.

www.homesandcommunities.co.uk/sites/default/files/our-work/regfwk-2012.pdf

⁶⁷ Wales Audit Office, www.wao.gov.uk/reportsandpublications/housingassociations.asp

⁶⁸ The Essex Taskforce and was commissioned by the Welsh Minister for Housing to explore the barriers to the delivery of more affordable housing in Wales. The review team published its report in June 2008, www.chcymru.org.uk/shadomx/apps/fms/fmsdownload.cfm?file_uid=DCC35A68-0EE6-4B2F-94A0-BD238FF42801&siteName=chc_dev_final

Regulatory Structures in Wales

The **Regulatory Board for Wales**, supported by a Tenant Advisory Panel, was set up in 2010 to hold the Housing Regulation Team to account by overseeing the implementation of a Regulatory Framework and to advise Welsh Ministers on the performance of Housing Associations as a whole. The Regulation Board for Wales is said to comprise of two independent members as well as representation from local government, the representative body for housing associations in Wales, the Council of Mortgage Lenders, tenant's federation, a tenant participation organisation, and the Welsh Government⁶⁹. The chair of the Regulation Board is independent of Government and organisations that operate in the field of housing. The Welsh Government's Housing Regulation Team provides the Board with an annual report on its activities and in turn the Board submits a report to Welsh Ministers on the performance of the housing association sector.⁷⁰

The aim of the **Tenant Advisory Panel** is to ensure that tenant's views are reflected in the Regulatory Board's Work. The Tenant Advisory Panel consists of housing association tenants across Wales. There are 15 members of the panel in total (3 representing North Wales; 2 for mid Wales; 4 for south west Wales; and 6 for South East Wales. The aims of the Tenants Advisory Panel is to act as a service user panel from which the Regulatory Board can consult on housing issues, and support the Regulator in meetings its terms of reference⁷¹.

Tenant Advisory Panel members attend meetings with both the Regulatory Board and the Welsh Government Regulatory Team. The Panel operates on the basis of communicating tenant's opinions via existing tenant representation forums. The following diagram illustrates how the Advisory Panel links in with the regulatory structures⁷²:

⁶⁹ See

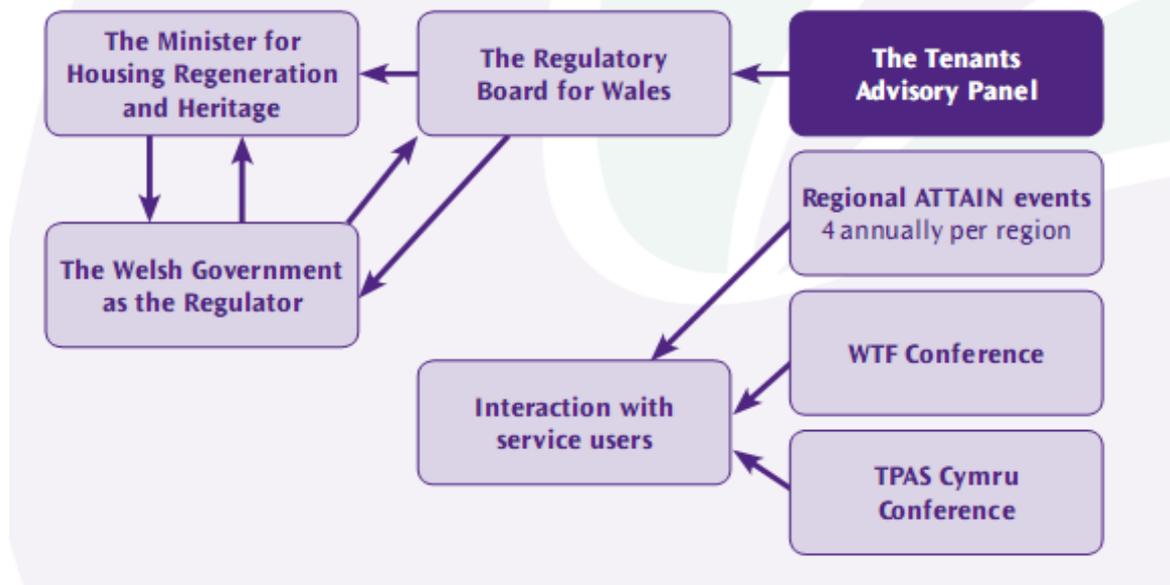
<http://wales.gov.uk/topics/housingandcommunity/housing/housingregulation/regulatoryboardforwales/?jsessionid=79889F52FC7488A9CA4C57BE447EF487?lang=en>

⁷⁰ Welsh Government (2011) The Regulatory Framework for Housing Associations registered in Wales, p4.

⁷¹ Tenant Advisory Panel leaflet - www.tapwales.org.uk/publications/tap/TAP%20Introduction%20Flyer.pdf

⁷² This diagram has been extracted from Tenant Advisory Panel leaflet - www.tapwales.org.uk/publications/tap/TAP%20Introduction%20Flyer.pdf

How do we link into the regulatory structure?



Approach to Regulation

There are four elements to the Welsh Ministers' regulatory approach to housing associations⁷³:

- **Proportionality:** an approach based on risk that takes into account local circumstances, local challenges and the track record of an association.
- **Transparency and openness:** being clear on how regulatory decisions are made and action taken, working in a way that encourages information sharing in an open and constructive manner.
- **Consistency:** ensuring that actions and decisions are consistent across the housing association sector whilst taking into account local circumstances.
- **Promoting improvement and learning:** providing insight and challenge, to help individual associations to improve and sharing learning from regulatory activity.

The Welsh Ministers' prioritise risk in terms of the likelihood that a risk will materialize; the impact and significance if such a risk did materialize; and the ability of the housing association to deal and manage that risk. In consideration of the impact of the risk the following factors will be taken into account – the impact on tenants and service users; the extent to which the community relies on the association for services; the size of the association e.g. how many houses it manages; the amount of public subsidy it

⁷³ Welsh Government (2011) The Regulatory Framework for Housing Associations Registered in Wales, p10.

receives; the length of time the association has been operating; and, the amount of private funding it has accessed.

Outcomes and Measuring Success

The Welsh Government has established an impressive and comprehensive range of ‘**delivery outcomes**’ which measure the standard of performance of housing associations which focus on two areas – (a) governance and financial management and (b) landlord services. Undoubtedly this constitutes good practice and from which a new regulatory framework for Northern Ireland could draw upon⁷⁴.

Part A: Governance & Financial management

<p>We place the people who want to use our services at the heart of our work - putting the citizen first.</p>
<p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We know our current and potential service users and tailor our services and activities accordingly. • We encourage and support early tenant and service user involvement in shaping our services, reviewing our performance and developing our plans for the future. • We have a clear focus on outcomes for the people who want to use our services and take into account their current and future requirements, circumstances and barriers they face. • We are easy to contact, respond in a timely, efficient manner and ensure unnecessary contact is avoided. • We make it easy for people to understand what to expect from our services and how to access them. • We communicate information and advice in an appropriate, timely, effective manner, readily understood by the communities we serve. • We value and are responsive to the views of the people who want to use our services. • We are accountable to our tenants and service users. • We make it easy for people to tell us when things go wrong, or to make a complaint, so we can quickly put things right. We learn from complaints, using them to improve our services.
<p>We live public sector values, by conducting our affairs with honesty and integrity, and demonstrate good governance through our behaviour.</p>
<p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We are open about what we do, and publish balanced information about our activities. • We provide information on request, in an accurate, timely and efficient way unless there are justifiable reasons for withholding it. • Our activities and services reflect the diversity of the communities where we operate, are free from discrimination and promote equality of opportunity. • We treat the Welsh and English languages on the basis of equality. • We improve economic, social and environmental circumstances in the local community.

⁷⁴ Welsh Government (2011) The Regulatory Framework for Housing Associations Registered in Wales, pp18-21.

<p>We make sure our purpose is clear and we achieve what we set out to do - knowing who does what and why.</p> <p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We have strong, accountable leadership, with clear, informed, transparent decision-making to ensure we achieve our purpose. • Our governing body exercises proper control over our activities, and acts in the best interest of the organisation and its tenants and service users. • We are independent from other bodies (unless we are a subsidiary RSL) and operate in line with an appropriate constitution. • The whole organisation is aligned to delivery of its purpose and has the capacity, skills and tools to deliver successfully. • We achieve value for money in delivery and procurement, to make best use of our own and public resources. • Our planning, self-assessment and performance management supports delivery of our purpose, and ensures we continually improve. • Our culture supports the delivery of our purpose and outcomes, innovates, seeks new ideas and evaluates learning from others. <p>For Group Structures only</p> <ul style="list-style-type: none"> • Our group structure supports the delivery of our purpose and efficiently manages resources for the benefit of tenants, service users and the wider community. • We are explicit about interdependencies within the group, have clear and separate identities, control potential conflicts of interest and ensure our assets are not put at risk by subsidiaries.
<p>We are a financially sound and viable business.</p> <p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We are adequately resourced to meet current and future business and financial commitments. • We have a robust financial management framework. • We can identify and appraise risks and prudently manage those risks. • Our activities demonstrate the highest standards of financial probity.
<p>We engage with others to enhance and maximise outcomes for our service users and the community.</p> <p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We engage with all relevant parties and organisations and embrace the principles of partnership working to enhance our delivery. • We work collaboratively, and form appropriate alliances to develop and deliver enhanced services, managing risks appropriately and protecting our housing assets. • We have a strong relationship with Local Authorities in the geographical areas where we operate, that enable us to find effective solutions to local issues, and improve outcomes for communities. • Our work supports the Local Authority in the delivery of its strategic housing role.

Part B: Landlord services - how we deliver efficient and effective landlord services.

<p>We build and renovate homes to a good quality.</p> <p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We build good quality housing which is sustainable and meets the long-term needs of the area in which it is to be built and of existing and intended residents. • Our proposals for new and renovated homes demonstrate financial viability and represent value for money now and in future. We consider risks and manage them to protect our core housing activity.
<p>We let homes in a fair, transparent and effective way.</p> <p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We manage our homes to ensure that they are in demand, maintained, modernised and adapted, as people's needs change. We ensure that our adapted homes are available to those who need them. • We keep empty homes to a minimum to maximise the number of homes available and our revenue. • We work with other organisations to prevent and alleviate homelessness. • We ensure that access to our homes is fair and open, and we work with others to ensure routes into our housing are well publicised, easy to understand and simple to use. We give reasonable preference to those in greatest housing need or are homeless, maximising choice and sustaining communities. • We let homes we are proud of. Our ready to let homes meet resident expectations prior to moving in or as soon as practicable thereafter.
<p>We manage our homes effectively.</p> <p>We can demonstrate that:</p> <ul style="list-style-type: none"> • We use the most secure form of tenancy compatible with the purpose of the housing. • We make clear the rights and duties of the tenant and landlord from the start of a tenancy, and act to uphold these rights and duties in a fair and responsible manner. • We know and are responsive to people's individual housing support needs and help them to sustain their tenancies. • Our rents are affordable to households on low incomes, take account of the costs of managing and maintaining our houses, and enable us to service borrowings. • We set, apportion and collect rents and service charges in a clear, fair and accountable manner, giving a say on the nature and quality of services we provide which are not covered by rent. • We support tenants to prevent arrears of rent and service charges arising and act quickly to avoid arrears building up. We recover any arrears fairly and effectively, whilst helping tenants to meet their due payments. • Neighbourhoods, where our properties are located, are attractive, well-maintained, safe places to live, where people want to settle and stay and provide a good quality of life for our tenants and their neighbours.

We repair and maintain homes in an efficient, timely and cost effective way.
We can demonstrate that: <ul style="list-style-type: none"> • We have deliverable and affordable plans for the lifetime maintenance and improvement of our houses. • We deliver maintenance programmes efficiently and effectively. • We provide an efficient and effective responsive repairs service which meets the requirements of our tenants.
We provide fair and efficient services for owners.
We can demonstrate that: <ul style="list-style-type: none"> • We sell houses fairly and efficiently through Right-to-Buy/Right to Acquire schemes. • We provide fair, efficient and effective services to leasehold and shared ownership owners.

As the next section explores, tenants and other service users, which have arguably been overlooked in former regulatory regimes are now gradually being placed at the heart of recently developed regulatory infrastructures. This is certainly now a central theme of both the Welsh and Scottish regulatory regimes.

5 What role should tenants and others services users have in social housing regulation?

The Cave Review of social housing regulation argued that social housing regulation in general tended to focus upon providers rather than tenants. It suggested that tenant and other service users were largely disenfranchised from the regulatory processes and they should have a central role in regulation⁷⁵,

“The focus for the future should be on regulating social housing for the benefit of consumers. This conclusion is grounded in the view that increasing consumer power and choice is what tenants want, and it will, over time, improve the performance of providers and reduce the need for more regulation.”

The Scottish and Welsh regimes in particular are aiming to put social tenants and other service users at the heart their regulatory regimes. The Scottish Regulator was set up to “Safeguard and promote the interests of current and future tenants of social landlords, people who are or may become homeless and people who use housing services provided by Registered Social Landlords (RSLs) and local authorities”. Both Scotland and Wales have put in place national forums by which the voice of tenants can be heard, for example, via the Tenants Advisory Panel in Wales and the National Panel of Tenants and Service Users in Scotland.

Providing timely, transparent and easily understandable information for tenants and other service users, in addition to the establishment of effective tenant forums which

⁷⁵ Cave Review of Social Housing Regulation, p36 & p45.

actually influence policy are important vehicles for increasing tenant empowerment. For example, in Northern Ireland it could be argued that there is a lack of easily accessible information for tenants to assess how their association is performing (e.g. in relation to timely repairs etc.) in comparison to other associations. This lack of information disempowers tenants and separates them from the regulatory infrastructures. Tenants do contribute in a number of ways via participation in inspections and membership of housing association boards and tenants may also use other avenues to express their views (e.g. via elected representations and complaint procedures). The Committee for Social Development may, however, wish to assess the level of tenant involvement and whether improvements strengthening the tenant voice are viable. *[A follow-up paper will be produced by RaISe which explore in further detail tenant and service user empowerment in Northern Ireland].*

6 Conclusion

The Minister's recent announcement on proposals for a Social Housing Reform Programme signifies a major shift in the social housing sector in Northern Ireland. Registered Housing Associations will play a significant role with the potential transfer of 90,000 Housing Executive homes to the sector. As highlighted throughout this paper, balanced regulation is crucial to maintain and encourage private finance, to ensure that there is value for public money, and to facilitate innovation and diversification in the social housing market. The Minister has proposed improving the regulation and inspection of landlords by enhancing the Department's Regulation and Inspection Unit and the creation of an independent Social Housing Rent Panel. This differs from the independent regulator model proposed by PwC and supported by many in the social housing sector, and housing and tenant representative bodies. There are arguments both for and against independent regulation and undoubtedly the Committee will wish to explore these in greater detail as the Housing Reform Programme progresses.