

**MAIDSTONE BOROUGH COUNCIL**  
**CABINET MEMBER FOR REGENERATION**  
**REPORT OF THE DIRECTOR FOR PROSPERITY &  
REGENERATION**

**Report prepared by Duncan Bruce**  
**Date Issued: 22 October 2009**

**1. HOUSING AND REGENERATION ACT 2008 (REGISTRATION OF  
LOCAL AUTHORITIES) ORDER 2009 CONSULTATION**

**1.1 Issue for Decision**

- 1.1.1 To approve the response to the Communities and Local Government's consultation document on the registration of Local Authorities under the new Cross Domain approach to the regulation of social housing.
- 1.1.2 The consultation deadline is 30 October 2009. The consultation document includes the draft Registration Order and it is anticipated that the Order will be laid before Parliament this session.

**1.2 Recommendation of the Director for Prosperity and Regeneration**

- 1.2.1 That the Cabinet Member for Regeneration approves the response to the consultation document.

**1.3 Reasons for Recommendation**

- 1.3.1 The Cave Review of Social Housing Regulation, published in July 2007, recommended the creation of a stand-alone, independent regulator of social housing across the domain i.e. in respect of both housing association and local authorities (commonly known as cross-domain regulation).
- 1.3.2 The Cole Report<sup>1</sup> was asked to review how far the framework for the regulation for housing associations being introduced in the Housing and Regeneration Act 2008 could be transferred to the local authority and ALMO sectors. It was tasked with identifying any areas of incompatibility between the sectors, and to seek workable compromises.

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<sup>1</sup> The Cole Report "Delivering Cross-Domain Regulation for Social Housing", 2008

- 1.3.3 When examining the present landscape of Local Authority/ALMO/Housing Association/Charity social housing provision, the Cole Report admitted that "Tenure configurations are becoming more fluid. Local authorities have nominations rights over some local housing association properties, housing associations may have acquired ex-council right to buy stock as part of regeneration programmes, the council may have transferred its entire stock to a housing association, and so on." *This confusing landscape is to be simplified with one cross-domain regulator, but in so doing non-stock holding local authorities will be disadvantaged if they are excluded from shaping the regulation of RSLs operating in their area.*
- 1.3.4 The Tenant Services Authority (TSA) became the regulator of housing associations in December 2008, using interim powers previously held by the Housing Corporation. The TSA does not currently regulate local authority landlords. Under the proposals the TSA would, for the first time, work across the whole domain of social housing in order to raise the standard of services for tenants, no matter who their landlord.
- 1.3.5 The TSA's new powers of regulation are based on the registration of social housing providers. The term Registered Social Landlord (RSL) will be replaced with the term Registered Provider of Social Housing (RP). It is proposed that the TSA would regulate all local authority landlords in a largely similar way to housing associations. This would include local authorities whose stock is managed by another organisation, for example, arm's length management organisations (ALMOs) and tenant management organisations (TMOs). It is also proposed that all local authorities which currently retain ownership of social housing stock (regardless of their management arrangements) would be automatically registered with the TSA.
- 1.3.6 The TSA would focus its regulation on landlord services (those services which are delivered to tenants, for example repairs and maintenance and customer service). *It would not regulate local authorities' wider strategic role, or other housing functions which are not limited to those local authorities that act as landlords.* This limited role is set out in the Cole Report (Recommendation 2), which naturally has the effect of limiting the scope of this consultation.
- 1.3.7 Given the proposed scope of regulation above, Maidstone BC, as a non-stockholding authority, would seemingly not need to consider registration. *But, in order to develop our strategic housing function further, we want to be an organisation which the TSA would be obliged to consult with concerning the regulation of RSLs operating in its area.*

1.3.8 Whilst Annex A is our formal response to the consultation, the following four paragraphs (quoted in full) are of particular relevance to the Council and are discussed below.

Section 1, paragraph 9:

‘The new regulatory framework should also help support local authorities in delivering their strategic housing responsibilities (which are held by all local authorities regardless of whether they are landlords). These responsibilities include developing sustainable community and housing strategies and tackling homelessness. The TSA will have a role in ensuring that housing providers actively engage with local strategic priorities.’

The TSA rightly acknowledges that all local authorities have a strategic housing function, and that they (the TSA) are an essential partner in helping to deliver sustainable communities. The TSA recognises the contribution of all local authorities in creating places where people want to live. The last sentence of para 9 is of particular importance since it implies that the TSA will actively work to ensure that housing providers support our (and our partners’) local strategic priorities in respect to housing. Thus, the TSA may seek to impose something akin to a ‘duty to co-operate’ upon RSLs (RPs) where they will have to support the local areas wider housing ambitions. *Despite the ambition set out in the last sentence of Section 1, para 9, officers consider that the consultation should be wider in scope and has missed an opportunity to enable Local Authorities to exercise their strategic housing role fully.*

Section 2, paragraph 4:

‘The TSA would focus its regulation on landlord services (i.e. those services which are delivered to tenants, for example repairs and maintenance and customer service). It would not regulate a local authority’s wider strategic role and other housing functions which are not limited to those local authorities that own social housing stock. Those functions would continue to be assessed by the local public service inspectorates as part of the Comprehensive Area Assessment (CAA) – and information from the TSA about social housing outcomes in local areas would also form part of the evidence for CAA.’

and Section 3 paragraph 1:

‘We propose that the TSA would focus its regulation on landlord services (i.e. those common services which are delivered to tenants, for example repairs and maintenance and customer service). It would not regulate local authorities’ wider strategic role, or other housing functions which are not limited to those local authorities that act as landlords. Those outcomes would be assessed by the local public inspectorates and, as

stated, information from the TSA about social housing outcomes in local areas would also form part of the evidence for the inspectorates' CAA (see Section 2, paragraph 4).'

These two paragraphs anticipate the TSAs role in providing evidence on housing outcomes to other public inspectorates (i.e. the Audit Commission) for CAA purposes. It follows that all local authorities, when providing 'local place leadership', would want to have some influence over the performance of the social housing providers operating in their area. *This could be achieved either through a duty to co-operate (as above), or through Overview and Scrutiny, or a combination of the two.*

Section 3 paragraph 7:

**'Local authorities who do not own stock**

Where an authority does not own housing stock at the point at which the TSA registers local authorities but subsequently acquires, or intends to acquire, stock then it would be placed under a duty to notify the regulator so that it can be registered. Accordingly, since we propose that local authorities would be registered only where they own social housing stock, they would be removed from the register where the TSA is satisfied that they have disposed of all such stock.'

Given that no time limits are put forward concerning what period of grace a local authority has before it notifies the TSA to be registered/deregistered, *it may be advantageous if a category of registration such as 'Strategic RP' or 'Associate RP' be made available for those non-stockholding authorities who think they may (either temporarily or permanently) acquire stock. Such a registration status could be advantageous if, for example, the Council enters into a time-limited special purpose housing delivery vehicle/partnership arrangement with a developer.*

#### 1.4 Alternative Action and why not Recommended

- 1.4.1 The Council could choose not to respond to the consultation document but to do so would miss an opportunity to influence the implementation of an important part of the Cross Domain regulatory regime that could impact on how Maidstone achieves its ambitions for housing in the future.

## 1.5 Impact on Corporate Objectives

- 1.5.1 The Council's Strategic Plan includes a *place to live and enjoy* as one of its corporate priorities and this theme is further expressed through the Council's Housing Strategy and Homelessness Strategy. The ways in which the Council influences its RSL and other providers should be enhanced if all local authorities, including non-stockholding local authorities, are involved in framing the regulation of social housing providers.

## 1.6 Risk Management

- 1.6.1 If the Council's strategic housing function is not allowed to develop to include some degree of influence over how RSLs operating in our area are regulated, there is a risk that the Council's strategic aims and our partners' will not be aligned. Such a risk can be minimised by ensuring we influence future changes to the statutory social housing regulatory framework that promotes the well being and community cohesion within Maidstone.

## 1.7 Other Implications

### 1.7.1

1.	Financial	X
2.	Staffing	
3.	Legal	
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.7.2 Financial Implications - Charges for registration: The Housing and Regeneration Act 2008 gives the TSA a power to charge registration fees, subject to consultation on the principles and agreement by the Secretary of State. The consultation document suggests that there may be an initial registration fee and an ongoing annual fee. However, the LGA has lobbied the TSA and the CLG, and has won a deferral for all local authorities of any fee until 2011.

1.7.3 The TSAs long-term aim is to be self-financing. The consultation document estimates the baseline running costs of the TSA at some £32m pa to cover RSL regulation only. The TSA estimates that the cost of regulating local authorities will be an extra 10% to 20%, or around £4.9m. If this sum is divided equally across all English councils (388) the annual fees for registration could be approx. £12-14,000. The TSA has given an undertaking that fee setting would be made subject to an assessment of new burdens upon local authorities, and that fees would be reasonable and proportionate to the costs to which they relate. *We would require that a differential fee structure, taking into account the numbers or proportion of social homes in the area, and if the authority holds any stock, be taken into consideration.*

## 1.8 Background Documents

1.8.1 The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009 – CLG

‘Every Tenant Matters’ 2007 – The Cave Review – CLG

‘Delivering Cross-Domain Regulation for Social Housing’ – The Cole Report 2008

Housing Strategy 2005, reviewed 2007 - MBC

Homelessness Strategy 2008 - MBC

**Maidstone Borough Council**

**The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009: Consultation Document  
Formal Response**

Key Questions	Maidstone Borough Council Response
<p>Overview:</p> <p><b>Q1:</b> Do you consider that the Cross Domain Order would provide a framework to allow:</p> <ul style="list-style-type: none"> <li>• The TSA to regulate local authority landlords in an effective and proportionate way?</li> <li>• The TSA to regulate in a manner which ensures that it can achieve its fundamental objectives?</li> </ul>	<p>The consultation limits its scope to stock holding LAs. This effectively excludes those local authorities from influencing the regulation of RSLs operating in their areas. This could result in non-alignment of RSL and LA strategic housing aims, which in turn could result in adverse comment from the Audit Commission.</p>
<p>Proposals – Registration:</p> <p><b>Q2:</b> Do you agree that all local authorities who currently retain ownership of social housing stock (regardless of management arrangements) should be subject to registration with the TSA?</p> <p><b>Q 3.</b> Do you agree that all social housing stock owned outright or acquired on a long-lease by a local authority should be subject to regulation by the TSA?</p>	<p>Given the complicated of landscape of social housing provision, more flexibility should be considered to register non-stockholding authorities.</p> <p>The issues around leasehold ownership and other forms of discounted equity are not resolved in the consultation.</p>
<p>Information provision:</p> <p><b>Q4:</b> We propose that information burdens arising from new regulatory framework should be minimised through making best use of information already in the system (information already produced by local authorities for public reporting and internal management purposes). Do you agree that this approach will enable the TSA to gain a good understanding of performance without adding burdens to local authorities?</p> <p><b>Q5:</b> We propose that the TSA would have the same power to set standards for local authorities on matters of housing management as for housing associations. Any nationally applied performance indicators would need to be set by</p>	<p>This approach to information collection and sharing is already prevalent in Kent due to the CAA and Kent Agreement processes.</p> <p>All District and Unitary councils in Kent currently complete quarterly returns for the CLG – is the TSA considering introducing its own quarterly return?</p> <p>Information held by the TSA should also include outcomes from Peer Reviews and any other relevant co-regulatory feedback. The number of housing indicators in the NI set is too small to be helpful or informative regarding where to focus improvement efforts. Any revision of the NI set would need to incorporate a focussed set of around 10 PIs reflecting homelessness, housing management and</p>

Government and included in the National Indicator Set when next refreshed. Do you agree that this approach would provide the TSA with the necessary powers to set standards across all providers of social housing?	private sector housing activity.
<p>Enforcement:</p> <p><b>Q6:</b> Do you agree that the proposed regulatory and intervention powers will be sufficient to enable the TSA to promote high standards for tenants?</p>	This is light on encouraging and rewarding improvement, concentrating only on intervention and enforcement. All Local Authorities need to be involved in this area, since it directly impacts upon our 'place shaping' role.
<p>Management Arrangements:</p> <p><b>Q7:</b> Do you agree with our proposals to pass the power to grant consent from the Secretary of State to the TSA in situations where local authorities wish to enter into a management agreement with another body to take over management of all or part of its housing stock?</p>	Proposals to pass the power to grant consent from the Secretary of State to the TSA are acceptable.
<p>Impact Assessment:</p> <p><b>Q8:</b> Do you think that the impact assessment broadly captures the types and levels of costs associated with the policy options?</p> <p><b>Q9:</b> Do you think that the impact assessment broadly captures the types and levels of benefits associated with the policy options?</p> <p><b>Q10:</b> Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options?</p>	There will be costs for this Council regarding performance monitoring, reporting and inspection that need to be met, and further consultation on fee setting is welcomed.



**NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED**

Is this a Key Decision?      Yes      ☐      No      ☒

If yes, when did it appear in the Forward Plan? \_\_\_\_\_

Is this an Urgent Key Decision?      Yes      ☐      No      ☒

Reason for Urgency

**How to Comment**

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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