

Consultation response

Shelter response to CLG consultation Local decisions: a fairer future for social housing

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Shelter is a national campaigning charity that provides practical advice, support and innovative services. More than one million people a year come to us for advice and support via our website, helplines and national network of services.

We help people to find and keep a home in a place where they can thrive, and tackle the root causes of bad housing by campaigning for new laws, policies, and solutions.

This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 40 advice and support services
- Shelter's free housing advice helpline which runs from 8am–8pm (8am-5pm on Saturdays and Sundays)
- Shelter's website (shelter.org.uk/getadvice) which provides advice online
- The CLG-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, who are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in antisocial behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.

We also campaign for new laws and policies – as well as more investment – to improve the lives of homeless and badly housed people, now and in the future.

Summary

We agree with the CLG assessment¹ that the proposals contained in this consultation would lead to 'the most radical reform of social housing in a generation'. We are therefore greatly concerned about the manner in which this consultation has been conducted, specifically:

- That the consultation period has been eight weeks including the Christmas and New Year break;
- That the closing date for the consultation is also the date of the second reading of the Localism Bill, which seeks to introduce a number of the proposals, so that no assessment of responses will be possible before Parliament begins to debate the measures;
- No impact assessment of the measures has been published during the consultation period. This means that respondents and parliamentarians have little evidence on which to base their responses to the proposals.
- Many of the consultation questions are directed at social landlords and councils, rather than people who are homeless, in housing need or prospective social tenants.

Our response focuses on the following proposals set out in the consultation paper:

Homelessness: discharge of duty

- Homelessness does not simply equate to rooflessness and is not merely a temporary state of affairs between different short-term lettings. It is the inability to secure a settled home for one's household and is usually associated with poverty and lack of family support.
- We welcome the Government's commitment to 'tackling homelessness and protecting the most vulnerable in society'² and we support the retention of the current homelessness priority need groups and the retention of the duty on councils to secure suitable accommodation for people in these groups³. It is very important that councils have a duty to assist people, including children, who have who have been through the devastating experience of homelessness to secure a settled home.
- However, the original intention of the homeless legislation was that it should be used by councils to assess and, where entitled, assist all homeless people who ask for help. Despite court decisions which have repeatedly stressed that 'housing options' activities should take place within the framework of the homelessness legislation, in practice 'housing options' are presented as a pre-condition to assistance. As a result, the rights and duties provided by the legislation assist only a minority of people, namely those who are permitted to make a homelessness application.
- In 2009/10, an estimated total of 165,200 households were assisted by 'housing options' services outside the statutory homelessness framework⁴. This is more than four times the number of homelessness acceptances and 85 per cent more than the number of homelessness decisions

¹ CLG Press Notice: *Radical reforms to social housing*, 22 November 2010
<http://www.communities.gov.uk/newsstories/newsroom/1775875>

² CLG (November 2010), *Local Decisions: a fairer future for social housing* (paragraph 6.1)

³ CLG (November 2010), *Local Decisions: a fairer future for social housing* (paragraph 6.10)

⁴ CLG (August 2010) *Homelessness Prevention and Relief: England 2009/10 Experimental Statistics*

made within the statutory framework in the same period. The majority of 'housing options' cases (61 per cent) involved the household being assisted to obtain alternative accommodation, half of which was private rented accommodation rather than a secure social home. The lack of appropriate assessment, support and advice this suggests concerns us greatly.

- We strongly oppose the proposal to allow councils to discharge the homelessness duty, without the applicant's agreement, with an offer of a suitable private letting with a minimum 12 month fixed term. This measure will not alleviate homelessness. Where applied, this measure will ultimately strip the homelessness legislation of its force and leave the most vulnerable families with little more support than non-statutory homeless people approaching the council on a housing issue, even though the needs of homeless people in 'priority need' are deemed by legislation to be greater.
- It could result in homeless households in 'priority need' (typically, households with children and vulnerable adults, who may be experiencing considerable insecurity in other aspects of their lives) facing a cycle of insecure accommodation, eviction and reapplication to the council. The lack of security of tenure in the private rented sector is a major cause of homelessness. In 2009/10, the loss of an assured shorthold tenancy was the third biggest cause of statutory homelessness⁵ (11 per cent of cases accepted as being owed main homelessness duty).
- Until the security, affordability and the quality of the private rented sector are addressed, we do not consider it a suitable destination for some of the poorest and most vulnerable households. Around one third of people who seek help from Shelter are private rented sector tenants, compared to only 14 per cent of all households⁶.
- Importantly, it will sever the link between 'reasonable preference' for social housing and homeless households, who, we argue, are among those who need security the most⁷. It would, instead push homeless people into the private rented sector, which can be of poor quality, insecure and unaffordable, particularly in the light of forthcoming cuts to housing benefit. Independent research⁸ concludes that the housing benefit changes are likely to result in 35,000 households approaching their council for homelessness advice and assistance, with local authorities owing the full homelessness duty to 19,000 families with dependent children. The cuts will push housing benefit claimants into the bottom third of the private rented sector where the worst conditions⁹ and most neglectful landlords prevail and where plentiful supply is not assured¹⁰.

⁵ CLG Homelessness Statistics, 2009, 2010

⁶ English Housing Survey 2008-09 there were 3.067 million households in the private rented sector in England (accounting for 14.2% of total number of households).

⁷ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 1.28) states: *[local authorities] 'will have the freedom to decide who should qualify to be considered for social housing, while continuing to ensure that priority for social housing goes to those who need it most'*.

⁸ Fenton, A. (September 2010) *How will changes to Local Housing Allowance affect low-income tenants in private rented housing?*, Cambridge Centre for Housing and Planning Research

⁹ CLG (2010) *English Housing Survey Headline Report 2008-09* shows that 44 per cent of private tenants live in non-decent homes.

¹⁰ Shelter (September 2010) *Research summary: survey of environmental health officers* found that 47% of respondents had encountered examples of landlords engaging in the harassment or illegal eviction (or both) of tenants and 99% of respondents had come across landlords who persistently refuse to maintain their property in a safe condition - 36% of respondents said they came across such cases frequently.

- Instead, we support the law's current recognition that homeless people should be entitled to a settled home: usually an offer of secure social rented housing. We support the right of homeless people to choose whether to accept an assured shorthold tenancy with a private landlord as a discharge of the council's duty. Rather than being pushed into the private rented sector via a discharge of duty, homeless households can be encouraged to accept a private fixed-term tenancy by improving the offer.

Security of tenure in social housing

- We strongly oppose the removal of security of tenure in general needs social housing whereby councils will be able to discharge their homeless duty through the new tenancy, and existing relets of socially rented homes can be let on 'affordable rents'. This is likely to reduce the number of homes available at social rents and push homeless households into 'affordable rent' homes.
- People need homes and not simply housing. Security of tenure is a feature of a settled home. The measure would result in future tenants, and future generations, facing a lifetime of insecure housing with associated 'exported' costs to education and health budgets. For example, a longitudinal survey of public housing tenants in Brisbane¹¹ provided evidence that in many cases improved housing has a positive impact on educational outcomes for children. In relation to security of tenure, stability and affordability are two aspects that emerged most often during discussions.
- The only practical benefit to be gained from removing security of tenure is, over time, an increased number of relets as a result of a decision not to reissue the tenancy, repossession and eviction. We await the publication of the impact assessment setting out the government's estimate of how many homes will be vacated as a result of the proposed new fixed term social tenancies. It depends on how many landlords would let on this tenure and what policies landlords would adopt to determine the circumstances in which tenancies would be reissued at the end of the fixed term. If the tenancy is not reissued for reasons of under-occupancy, the tenant may be offered a transfer to a smaller social home. So no net vacancies may be created by this means. The main benefit would be in creating vacancies of much-needed larger, family homes. However, it is extremely difficult to project how many vacancies of family homes would be created each year and whether they would be in the localities where they are most needed, and this benefit needs to be carefully considered against the negative consequences.
- We believe that, on balance, this benefit will be greatly outweighed by the financial, economic and social costs of this policy in terms of:
 - Pushing more people in need of secure housing into unsustainable owner-occupation.
 - Excluding more people who cannot afford owner-occupation from security of tenure.
 - Costly, intrusive and resource-intensive tenancy reviews. We await the impact assessment's estimation of the cost of reviews.
 - Costs associated with challenging reviews (very likely if a home is at stake) and enforcing review decisions, including possession proceedings and eviction warrants.

¹¹ Khan A and Phibbs P (2005) *Education and Public Housing Building for Diversity*
<http://www.nhc.edu.au/downloads/2005/Refereed/4Khan.pdf>

- Means testing creating a powerful disincentive to tenants improving their financial means, in direct conflict to the consultation's assertion that social housing 'should provide a firm basis on which to build a successful future'¹² and at risk of nullifying any improvements in incentives provided by the universal credit.

- Risk that the worry about, and complexity of, reviews will be detrimental to the well-being of vulnerable tenants with potential knock-on costs for support and health budgets. Reporting circumstances for in-work housing benefit is a huge burden for customers¹³.

- Fixed-term tenure acting as a disincentive to tenants investing in maintaining and improving their homes, with possible knock-on costs for landlords' maintenance budgets, as would an increasing number of vacancies.

- Fixed-term tenure acting as a disincentive to tenants socially investing in their homes and communities. For example, private tenants with assured shorthold tenancies are less likely than those with secure tenancies to vote and register with local services, such as doctors and dentists¹⁴.

- Increasingly transient communities, undermining social diversity and cohesion and with a knock-on effect on local services. High levels of residential turnover are perceived as destabilising, undermining attachment to place and contributing to neighbourhood decline and social exclusion¹⁵.

- A potentially weaker position for tenants in the landlord-tenant relationship. There is a danger that tenants will be reluctant to demand due repairs or better customer services because of a fear, real or perceived, that this would negatively influence the outcome of their forthcoming tenancy review.

- Potential churn between two insecure rental tenures, whereby social tenants refused a renewal of tenancy will be pushed into the private rented sector to make way for private rented sector tenants qualifying for an allocation of social housing. Without the addition of new, secure social homes, the measures will make no underlying impact on the housing crisis.

- We conclude that if the intended outcome of the policy is to create more vacant social homes, by refusing to reissue tenancies to people who are judged to no longer need them, the removal of security of tenure is a disproportionate, inequitable and inefficient way to achieve this. It is taking a sledgehammer to crack a nut.

- Instead, we favour a different means to deliver this policy, which would avoid the enormous cost and upheaval likely to be caused by fixed-term tenancies. Many social landlords already have scope to gain possession against tenants where there is suitable, alternative accommodation available to them. Possession Ground 9¹⁶ for assured tenancies (the general suitable alternative accommodation ground) has the potential to be used to gain possession against a tenant (i) under-occupying their home, who has been offered a transfer to smaller property or (ii) who has failed a means-test on the basis that owner-occupied (including shared-ownership and shared equity) or intermediate rent homes are available for their occupation. If the government intends to create more social housing vacancies, we urge the retention of security of tenure and consideration of the scope of Possession Ground 9 to deal with tenants no longer considered to be in need of their homes.

¹² CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 1.5)

¹³ Karabiner, S. And Raha, C. (2009) *Housing Benefit - a literature review*, DWP

¹⁴ Reynolds, L. (May 2005) *Safe and Secure? The private rented sector and security of tenure*

¹⁵ Taylor, M. (July 2008) *Transforming disadvantaged places: effective strategies for places and people*, York: JRF (page 7)

¹⁶ Housing Act 1988, Schedule 2

- We strongly support the commitment to ensure that the existing tenancies of secure and assured tenants of social landlords are protected and respected¹⁷. It honours the Conservative Manifesto¹⁸ promise to 'respect the tenures and rents of social housing tenants'. However, we are very disappointed that it is only the tenure and rents of existing, rather than future, social housing tenants that are being respected, especially as Housing Minister Grant Shapps said in April 2010 that 'the Tories had no plans to change security of tenure for existing or future tenants or raise their rents towards market levels'¹⁹. This could result in existing tenants and owner-occupiers on estates or in blocks of flats living in increasingly transient neighbourhoods, where fixed-term neighbours are less inclined to financially or socially invest in their homes and communities, and where there are increasingly higher densities of children and people living in poverty.

Allocation of social housing

- We welcome the Government's belief that 'social housing should continue to be prioritised for the most vulnerable and those who need it most' and that 'the best way to ensure a consistent approach to meeting housing need is to continue to set the priorities for social housing centrally'²⁰. We therefore strongly support the proposal to retain the 'reasonable preference' requirements²¹. A key benefit of the English homeless legislation, and the rules relating to 'reasonable preference' for social housing is that it ensures the poorest and most vulnerable are not excluded from the mainstream social rented sector²².
- However, it is important that homeless people are in practice, as well as in legislation, given 'reasonable preference' for social housing. We are concerned that the proposed changes to homeless legislation undermine 'reasonable preference' for homeless people. Already, the link between homelessness and 'reasonable preference' for social housing has weakened because (as described above) many homeless people are no longer assessed under homeless legislation and found to be statutory homeless. If the government's proposals for the discharge of homelessness duty go ahead, the link could become even weaker. Instead of being duty-bound to provide temporary accommodation until the household has been given 'reasonable preference' for a social letting, councils will be able to discharge duty to homeless households into short-term private lettings. On becoming private tenants, they will no longer, by virtue of the homelessness, be entitled to reasonable preference for a social letting. Therefore, far fewer people who have experienced homelessness will receive 'reasonable preference' for settled and affordable social housing.

¹⁷ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.14)

¹⁸ Conservative Party (2010) *Invitation to join the Government of Great Britain: The Conservative Manifesto 2010* (page 75)

¹⁹ Inside Housing (9 April 2010) *Healey and Shapps start war of words*

²⁰ CLG (November 2010), *Local Decisions: a fairer future for social housing* (paragraph 4.15)

²¹ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 4.15)

²² Fitzpatrick, S. And Stephens, M. (November 2007) *An International Review of Homelessness and Social Housing Policy*, CLG: London

Introduction

We are greatly concerned about the manner in which this consultation has been conducted. We agree with the CLG's assessment that the proposals contained in the consultation would lead to 'the most radical reform of social housing in a generation'²³. A number of changes proposed in this paper (such as discharge of homelessness duty, open waiting lists, transfers within the allocation framework), would reverse the legislative measures contained in the Homelessness Act 2002. This Act shifted the emphasis away from crisis-driven intervention to a more strategic and preventative approach to homelessness and housing need. It concerns us greatly that have been given such a short time to consider and respond to a proposed reversal of some of the important measures in the 2002 Act.

Combined with forthcoming changes to the housing benefit system, the proposals will have a major impact on the ability of homeless people and others in housing need to access and keep a secure, affordable and decent home that is suitable to their needs. It is therefore critical that these proposals should be properly considered by homeless people, people in housing need and social tenants, and the organisations that work with and represent them, as well as social landlords, housing professionals and councils. It is therefore unacceptable that the consultation does not follow established best practice guidance as issued by the Better Regulation Executive.

Specifically, the guidance states that consultations should normally last at least 12 weeks and that a longer period should be considered when a consultation takes place over the Christmas break or if the policy under consideration is particularly complex. This consultation has not met these criteria. The consultation period is eight weeks including the Christmas and New Year break.

In addition, it is important that any changes to housing policy are properly evidence-based. The guidance states that consultation documents should be accompanied with a consultation stage impact assessment. This was not published alongside the consultation paper, which states that 'impact assessments of the legislative changes set out in this paper will be published for the introduction of the Localism Bill'²⁴. However, the Bill was introduced on 13 December and, to date, no impact assessment has been published. This makes it difficult for respondents to consider the likely benefits and costs of the proposals, particularly the proposal to further reduce security of tenure in the social rented sector and the proposal to discharge the full homelessness duty via the offer of a short-term private rented letting.

We argue that these proposals, particularly if they were to be used in combination, would result in financial, economic and social costs that would greatly outweigh any benefit of creating vacant social lettings. We also argue that the proposals are likely to have a disproportionate impact on aspects of equality, which an Equalities Impact Assessment is likely to reveal. We object to respondents being asked to submit responses without considering the evidence contained in the necessary impact assessments.

The Localism Bill, which is the main legislative vehicle for these changes, has its second reading in the House of Commons on 17 January, which is the date this consultation closes. This means that CLG will not have published a summary of, and response to, submissions to this consultation before Parliament debates the measures. In addition, Parliament will be unable to consider evidence contained in the impact assessment during the second reading debate. This undermines the opportunity for parliamentary scrutiny.

Finally, we object to the narrow phrasing of many of the consultation questions, which seek the views of only social landlords or local authorities. The need for a home is a basic human right. Any changes to our housing system should be focussed on improving the prospects of current and future homeless

²³ CLG Press Notice: *Radical reforms to social housing*, 22 November 2010

<http://www.communities.gov.uk/newsstories/newsroom/1775875>

²⁴ CLG (November 2010) *Local Decisions: a fairer future for social housing* (page 7)

people, people in housing need and tenants. A consultation that asks few questions about the flexibilities, choice, fairness and rights that are desired by people in housing need, and concentrates instead on the flexibilities and choice available to councils and social landlords, is in danger of being unbalanced.

Shelter is keen to respond as constructively as is currently possible to the proposals contained in the consultation paper. We have therefore provided as full a response as is currently possible to the consultation questions and more general proposals. However, we wish to put on record that (i) for the reasons set out above, our response cannot be as full as possible, and, (ii) there is a very real question about the propriety of a consultation process which concludes before all the relevant material has been provided and whilst the Bill is already in its second reading. This response is therefore made subject to our grave concerns about the adequacy of the consultation process.

Consultation Questions

Section 2: Tenure

Increasing social landlords' freedom on tenancies

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

The consultation proposes two potential new forms of tenure:

- From April 2011, housing association 'Affordable Rent' tenancies will be introduced. These will have a higher rent than social rent up to a maximum of 80% of local market rents and be offered on a fixed-term of at least two years. They will be offered on a proportion of housing association existing vacancies from April 2011 and on newly built homes 'in due course'. Councils will be allowed to discharge their homelessness duty through the new tenancy.
- Following legislation in the Localism Bill, local authority flexible tenancies will be introduced - offering a proposed minimum fixed term of two years, to be set out in primary legislation.

In addition, housing associations will continue to be able to let on fixed term tenancies with a social rent.

These new forms of tenure will be available in addition to the existing introductory and secure tenancies currently available to local authorities and probationary and assured tenancies currently available to housing associations.

Housing associations can already let homes on fixed term tenancies at full market and 'intermediate rents': 10,050 intermediate rent homes have been delivered between 2003/04 and 2009/10²⁵. These are usually marketed at households on modest incomes who are not in housing need, with the idea that intermediate renting enables the household to save for a mortgage deposit. They are often linked to 'key worker' options and shared ownership. We recognise that such tenancies can be an appropriate option for such households. However, they are not usually suitable for people who have experienced homelessness or are in significant housing need.

Therefore, we strongly oppose the removal of security of tenure in general needs social housing. People need homes and not simply housing. Security of tenure is a feature of a settled home. The measure would result in future tenants, and future generations, facing a lifetime of insecure housing with associated 'exported' costs to education and health budgets. For example, a longitudinal survey of

²⁵ CLG (2010) Live Table 1000

public housing tenants in Brisbane²⁶ provided evidence that in many cases improved housing has a positive impact on educational outcomes for children. In relation to security of tenure, stability and affordability are two aspects that emerged most often during discussions. We particularly oppose the proposal that councils should be able to discharge their homeless duty through the new tenancy, and that existing and future vacant socially rented homes can be let on 'affordable rents'. This is likely to reduce the number of homes available at social rents and push homeless households into 'affordable rent' homes.

It is also likely to force an increasing number of social tenants into benefit dependency to pay their rents, creating work disincentives for 'affordable rent' tenants because they would require much higher levels of housing benefit to get by. One of the main advantages of social rents is that they allow people to enter into low paid employment without the need to claim housing benefit or face further withdrawals above the benefit threshold if they looked to increase their income. Because affordable rents will be based on market rents, this will particularly disadvantage households that live in areas where market rents are high, which tend to be areas where housing need is greatest.

Shelter also has a number of concerns relating to the practical delivery of the proposed system of Affordable Rents. The government has set out²⁷ that 'the association's calculation of the market rent would need to be based on a residential lettings estimate for a property of the appropriate size, condition and area. Valuations should be in accordance with a RICS recognised method.' This suggests that the responsibility for determining 80 per cent rents falls with housing associations. However no guidance is provided on how 'the appropriate size, condition, and area' should be defined.

Furthermore, the consultation document also sets out that 'where a tenant cannot afford to pay, the new Affordable Rents will be eligible for housing benefit'²⁸. However there is no guarantee within this system that the 80% affordable rents will not exceed the maximum LHA rate for a given area. This is a particular concern in:

- areas of London where the LHA rate is capped below the 30th percentile rent.
- BRMA areas where there are pockets of high market rents as Affordable Rent units in these pockets areas may exceed the 30th percentile rent for the larger BRMA area.

There should be safeguards in place to ensure that 'Affordable Rents' cannot exceed the LHA.

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

We do not have comment to make on this question.

A new local housing authority strategic policy on tenancies

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

We welcome the proposed duty on councils to develop and publish a local strategic policy on tenancies. Even in areas where councils prefer general needs social housing to retain security of tenure, this should provide transparency and accountability on their policy on existing fixed term tenancies, such as probationary tenancies.

²⁶ Khan A and Phibbs P (2005) *Education and Public Housing Building for Diversity*
<http://www.nhc.edu.au/downloads/2005/Refereed/4Khan.pdf>

²⁷ Ministerial Written Statement on Localism Bill and Social Housing (9 December 2010)

²⁸ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.6)

We are concerned at the absence of any statutory regulation or tenancy standards governing decisions to end or extend starter tenancies or requiring housing associations to convert a `starter' assured shorthold tenancy into a fully assured tenancy when the tenant successfully completes the probationary period. We suggest that the regulator should publish guidance on extending and converting starter tenancies, which councils should take into account when developing their strategic policy on tenancies (see our response to question 6).

We welcome the suggestion that local authorities strategic tenancy policies should be consistent with their homelessness strategy and allocation scheme.

We also welcome the proposal that councils should be required to consult with other social landlords when drawing up their strategies. However, we question how councils could ensure that the tenancies offered by other social landlords in their area are in line with their strategic policy on tenancies. For example, where housing associations operating in the locality decided to let on 'Affordable Rent' tenancies in order to develop new housing, there would be no scope for the council to prevent them from doing so, even if this was at odds with the strategic policy on tenancies, local housing strategy and local homelessness strategy. Scope for housing associations to let on 'Affordable Rent' tenancies could seriously undermine the strategic housing role of local authorities.

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

We welcome the proposed power to prescribe by legislation other persons or bodies with which local authorities should consult, such as tenants and local voluntary and community organisations.

We believe that councils should be required to consult with the similar bodies as those they should consult with when drawing up their homelessness strategies, such as:

- Homeless people
- People on waiting lists for social housing
- Private tenants
- Front-line staff in homelessness and housing-related services
- People in groups that can face discrimination and marginalisation in housing and/or are over-represented in homelessness and housing need statistics (BME groups, immigrant groups, disability groups, older people's groups, care-leavers, ex-offenders, victims of domestic violence).

A new tenancy standard

Question 5: Do you agree that the Tenancy Standard should focus on key principles? If so, what should these be?

We think that it is very important that, to ensure they are accountable to their tenants and the wider public, social landlords have detailed guidance on how they should operate (see question 7 below).

Question 6: Do you have any concerns that these proposals could restrict current flexibilities enjoyed by landlords? If so, how can we best mitigate that risk?

Social landlords, and particularly housing associations, already have considerable flexibility to let on fixed term tenancies, in the form of assured shorthold tenancies, introductory tenancies and family intervention tenancies, and on non-secure or non-assured lettings of temporary accommodation or supported housing. Housing association landlords already have the power to extend probationary periods for tenants where there are ongoing concerns about anti-social behaviour. They can do so

without any requirement for a review process, while local authorities must give the tenant the opportunity to request a review if they propose to extend the probationary period on an introductory tenancy from twelve to eighteen months.

We are concerned at the absence of any statutory regulation or tenancy standards governing decisions to end or extend starter tenancies, or requiring housing associations to convert a 'starter' assured shorthold tenancy into a fully assured tenancy when the tenant successfully completes the probationary period. We suggest that such regulation should be introduced.

Publication of landlord policies on tenancies

Question 7: Should we seek to prescribe more closely the content of landlord policies on tenancies? If so, in what respects?

We are opposed to the introduction of further fixed-term tenancies in the social rented sector. However, if these measures were to go ahead, it is unacceptable that the only means of accountability should be a duty for social landlords to publish and maintain a policy setting out:

- the circumstances in which future tenants will be granted security of tenure or fixed-term tenancies
- if the latter, the length of the fixed term, and
- the circumstances in which tenancies will be reissued at the end of the fixed term²⁹.

For the sake of equality, consistency and accountability, it is essential that the process for granting, reviewing and reissuing fixed-term tenancies should be set out:

- in primary legislation in the case of the types of household who should be offered full security of tenure and fixed terms longer than the statutory minimum, and
- in a Statutory Code of Guidance, in the case of the circumstances in which tenancies will be reissued. This should be similar to the Statutory Code of Guidance on Homelessness.

For example, if a means test threshold were to be applied by the landlord in deciding whether to reissue a fixed-term tenancy, it is unacceptable that the landlord could decide an arbitrary figure for this threshold and change the threshold at any time via amendment to their policy. This would leave tenants in constant uncertainty over whether the threshold would be set below their financial means and they would subsequently lose their home.

If the proposed tenure reforms go ahead, we question whether landlords will choose to make use of the new forms of tenure. For example, a poll by *Inside Housing*³⁰ found that four of the twelve Liberal Democrat controlled councils polled by *Inside Housing* said that they were against the introduction of short-term tenancies, seven said they were undecided and one supported the reforms. Research by the Chartered Institute of Housing found that almost three quarters of its members said they do not support proposed fixed-term tenancies³¹. It could also lead to a damaging 'postcode lottery' of means-test thresholds, particularly in metropolitan areas, which would result in areas with more generous thresholds seeing an increase in applications for social housing and could therefore kick-start a 'race to the bottom' among social landlords in terms of thresholds. If a means-test threshold were to be applied by councils, it should be set in relation to a formula set out in a Statutory Code of Guidance, based on local average or median incomes.

²⁹ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.45)

³⁰ *Inside Housing*, 10 December 2010, *Councils split over fixed-term tenancies*

³¹ *Inside Housing*, 20 December 2010, *Housing sector rejects fixed-term tenancies, says report*.

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

As stated in response to question 4 (above) potential tenants, and particularly those in marginalised groups, should be consulted by councils in developing their local strategic tenancy policies.

They should also be consulted on the landlord's tenancy policy, which should be governed by a Statutory Code of Guidance.

Minimum fixed terms

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

We very strongly believe that security of tenure is an essential feature of any home. People need homes, not just short-term housing. A home is somewhere that feels secure, where people are free to settle for the long-term, invest their money and time to suit their needs and preferences, and raise their families without the fear of enforced upheaval. Homes are places where people have memories, have become part of the community and grow old.

Research shows that, particularly for the most vulnerable tenants, whose lives may otherwise be in a state of flux, the security represented by their housing can be an especially valuable good:

*'The issue of security emerged as particularly important. The security and stability offered by the social rented sector, which was frequently contrasted with the perceived insecurity of the private rented sector, provided an anchor point in lives that had often been in a state of flux and were characterised by uncertainty and turbulence. Confident about their residential security, social tenants often talked about being able to turn their attention to addressing other challenges in their life. For people more distant from the labour market, these challenges included health problems, disabilities and caring responsibilities. For people closer to the labour market these challenges included securing and maintaining work. The finding suggests that any moves to undermine security of tenure in the social rented sector are likely to have an adverse impact on levels of worklessness, as well as undermining the wellbeing of some of the most vulnerable tenants.'*⁶²

There is a clear link with the principle of universal credit. The threat of losing their homes will act a significant disincentive to social tenants finding employment, particularly in the months approaching a review and where employment prospects are likely to be within low paid occupations. Where households are expected to move into more costly private sector provision, this will counter any tapering of benefits that household are likely to receive under the universal credit and will reduce the likelihood that work will pay.

For those who cannot afford, or don't wish to, buy their own home, it is important that rented housing provides security of tenure. Since the late 1980s, private rented housing has been dominated by insecure tenancies and, as a result, the social rented sector is now the only rented sector likely to provide a secure rented home. If security of tenure is removed from general needs social housing, there is a danger that people excluded from owner-occupation will face a lifetime of insecure housing and social housing will increasingly become a tenure of transience rather than one of destination and choice.

³² Robinson, D. (2008) 'Worklessness and Social Housing' in Fitzpatrick, S. and Stephens, M. (eds.) (2008) *The future of social housing*, London: Shelter

We also believe that the financial and social costs of removing security of tenure in the social sector, and increasing transience and residualisation, far outweigh the benefits of freeing up a limited number of homes to offer to people on waiting lists, many of whom are likely to have applied for social housing because they cannot access a secure and affordable home by any other means.

The only practical benefit to be gained from removing security of tenure is, over time, an increased number of vacant homes as a result of refusal to reissue the tenancy, repossession and eviction. It is impossible to calculate how many vacancies would be created without knowing how many landlords would let on this tenure and what policies landlords would adopt to determine the circumstances in which tenancies would be reissued at the end of the fixed term. If the tenancy is not reissued for reasons of under-occupancy, the tenant may be offered a transfer to a smaller social home. So no net vacancies may be created by this means. The main benefit would be in creating vacancies of larger, family homes. It is extremely difficult to project how many vacancies of family homes would be created each year and whether they would be in the localities where they are most needed. We await the publication of the impact assessment setting out the government's estimate of how many homes will be vacated as a result of the proposed new fixed term social tenancies.

While the debate about under-occupation is focused on social housing, it should be noted that this tenure already makes the most efficient use of its stock. In 2008/09 there were 7.8 million under-occupied homes in England³³, however only 429,000 (6 per cent) of these were social rented homes. The vast majority of under-occupied homes were owner occupied (88 per cent or 6.85 million). Overall 11% of social rented homes were under-occupied, compared to 16% of private rented homes, and 47% of owner-occupied homes. Over-crowding is a greater problem for the social rented sector as 39% of over-crowded households are in the social rented sector - which accounts for only 20% of households.

We argue that this benefit will be greatly outweighed by the financial, economic and social costs of this policy:

- Every fixed term tenancy would require a costly and resource-intensive review process to establish who normally resides in the dwelling and their financial means. Establishing these facts is much more complicated than it may seem, as welfare benefits staff will testify. We await the impact assessment's estimation of the cost of reviews.
- The financial costs would increase if the tenant challenged the review (very likely if their home was at stake) and possession proceedings and eviction ensued.
- Means testing of tenants to establish a need for a renewed tenancy would act as a powerful disincentive to financial improvement for all members of the household, including adult children. This conflicts with the consultation's assertion that social housing 'should provide a firm basis on which to build a successful future' and could nullify any improvements in incentives provided by the Universal Credit.
- Insecure social housing would have an adverse impact on the well-being of vulnerable tenants because regular tenancy reviews and the fear of losing the home would create anxiety and practical difficulties in providing evidence of need. It would potentially create knock-on costs for support and health budgets. Research shows that reporting changes of circumstances for in-work housing benefit is a huge burden for customers³⁴.
- Secure social tenants often financially invest in maintaining and improving their homes, such as fitting new kitchens, heating systems, decorative and garden improvements. Fixed term tenancies act as a disincentive to do so and would likely increase maintenance and management costs for landlords, as would an increasing number of vacancies.
- Insecure tenancies also deter tenants from socially investing in their homes and communities. Research shows that insecure tenancies contribute to greater transience and low social capital. A quarter of private renters (who tend to have fixed term tenancies) say they do not know anyone in their neighbourhood. Research in Camden showed that private tenants with assured shorthold

³³ 2008-09 EHS-LFS combined dataset

³⁴ Karabiner, S. And Raha, C. (2009) *Housing Benefit - a literature review*, DWP

tenancies are less likely than those with secure tenancies to vote and register with local services, such as doctors and dentists³⁵.

- Insecure tenancies may lead to increasingly transient communities (particularly where older, long-standing tenants are forced out of their homes due to under-occupancy) undermine social diversity and cohesion and can have a knock-on effect on local services. For example, research shows that 'high levels of residential turnover are perceived as destabilising, undermining attachment to place and contributing to neighbourhood decline and social exclusion.'³⁶
- Insecure tenure inevitably gives tenants a weaker position in the landlord-tenant relationship. It is proposed that landlords should decide the circumstances in which tenancies will be reissued at the end of the fixed term. At a time when the scope of social landlord regulation is being rolled back, there is a danger that tenants will be reluctant to demand due repairs or better customer services because of a fear, real or perceived, that this would negatively influence the outcome of their forthcoming tenancy review, particularly where they would struggle to secure another suitable home. This is a common dilemma for private fixed-term tenants, who come to Shelter services.
- The consultation states that, where the tenancy is not renewed, 'the tenant may need advice and support to find suitable alternative accommodation in the private rented sector, or to access low cost home ownership'³⁷. The proposals have the potential to create churn between two insecure rental tenures, whereby social tenants refused a renewal of tenancy will be pushed into the private rented sector to make way for private rented sector tenants qualifying for an allocation of social housing. Without the addition of new, secure social homes, the measures will make no underlying impact on the housing crisis.

If the intended outcome of the policy is to create more vacant social homes, by refusing to reissue tenancies to people who no longer need them, we conclude that removal of security of tenure is a disproportionate, inequitable and inefficient way to achieve this. Many social landlords already have scope to gain possession against tenants where there is suitable, alternative accommodation available to them. Possession Ground 9 for assured tenancies (the general suitable alternative accommodation ground) has the potential to be used to gain possession against a tenant (i) under-occupying their home, who has been offered a transfer to smaller property or (ii) who has failed a means-test on the basis that owner-occupied (including shared-ownership and shared equity) or intermediate rent homes are available for their occupation. If the government intends to create more social housing vacancies, it should consider the scope of Possession Ground 9. In addition Possession Ground 16 of the secure tenancy grounds (under-occupation by a member of the family following a succession) can be used to gain possession to deal with some instances of under-occupation.

A fixed-term tenancy of any length can be no substitute for a secure home. However, a two year fixed term provides very little security indeed, particularly when there is a suggested requirement to give the tenant six months notice that the tenancy will not be renewed. This would mean that a review of the tenant's circumstances would need to get underway barely a year after the fixed term began. Tenants, including those whose tenancies are subsequently renewed following review, will feel constantly in the shadow of the review and renewal process. It could also result in landlords evicting 'model tenants' and model neighbours who have never breached the terms of their contract and have been active members of their local community but who (perhaps because of a better paid job) are not longer considered sufficiently 'needy' enough to merit a reissue of the tenancy. Consequently, there would be much less incentive for tenants to act responsibly in terms of contractual terms, such as timely payment of rent.

If a minimum fixed term were to be set, should be based on evidence of impact by assessing the benefits gained from the creation of vacant dwellings as a result of a refusal to reissue the tenancy, against the financial, economic and social costs to the household, landlord, council and national government. We are not aware of any such evidence. Such a fundamental change to the security of tenure of future social housing tenants should, at the very least, be piloted before any national roll-out, so that decisions on fixed terms can be based on evidence rather than conjecture.

³⁵ Reynolds, L. (May 2005) *Safe and Secure? The private rented sector and security of tenure*

³⁶ Taylor, M. (July 2008) *Transforming disadvantaged places: effective strategies for places and people*, York: JRF (page 7)

³⁷ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.53)

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

Whilst we are opposed to an increase in fixed-term tenure in the social sector, if the measures were to go ahead, then all those households who are to be given longer than the minimum fixed term should be prescribed in primary legislation rather than in the social housing regulator's Tenancy Standard.

Households with dependent children should certainly be among those offered a longer fixed term, as suggested in paragraph 2.49, along with households without children who need the stability of a longer fixed term, such as those who currently fall into homelessness priority need categories.

The appropriate minimum fixed term for certain, specified groups should be based on evidence of impact by assessing the benefits gained from the creation of vacant dwellings as a result of a refusal to reissue the tenancy, against the financial, economic and social costs to the household, landlord, council and national government.

A guarantee of social housing for life for some new tenants

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

Yes. Although we are opposed to the increased use of fixed term tenure in the social rented sector, if the measures go ahead but certain groups are to continue to qualify for secure or assured tenants, then these groups should be set out in primary legislation. Specified groups should be based on evidence of impact by assessing the benefits gained from the creation of vacant dwellings as a result of a refusal to reissue the tenancy against, the financial, economic and social costs to the household, landlord, council and national government. They may include groups who are categorised as having 'priority need' in homelessness legislation, namely:

- Pregnant women
- Dependent children
- 16 and 17 year olds
- Under 21 year olds previously in care
- People vulnerable due to old age, mental illness or physical disability
- People vulnerable as a result of leaving the armed forces, prison or fleeing violence

However, our reading of the proposals is that these groups would not retain security of tenure - they, too, could be issued with fixed term tenancies. The consultation paper states³⁸: 'we recognise that the needs of some are likely to remain broadly constant over the long term and social housing (although not necessarily the same social home) to remain permanently the most appropriate form of tenure for them because of the stability and security it provides.' If they are not necessarily to remain in the same home, then there would have to be some means to end the tenancy if the landlord decided that they should no longer remain in the same home.

This is why we advocate the retention of security of tenure and the use of Ground 9 (see our response to question 9) to gain possession where there is suitable alternative accommodation available to the tenant. This would remove the need to guarantee a home in the social sector or the very complex and difficult issue of specifying which types of household should be entitled to such a guarantee.

³⁸ CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.50)

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

Yes (see our response to question 11 above).

Preserved security for existing secure and assured tenants

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

We strongly support the proposal that landlords should be required to offer existing secure and assured tenants who move to another socially rented home a further secure or assured tenancy. Failure to do so would renege on the commitment to preserve the rights of existing social tenants.

In terms of the practical outcome, we agree that existing tenants may be reluctant to move if it would entail a lesser degree of security. This would hamper mobility within the sector and the potential for social tenants to transfer to take up offers of employment, training or education. It would potentially have an adverse impact on the number of vacancies of larger, family homes because under-occupiers would face a reduction in tenancy rights if they down-sized or relocated to an area with less housing need.

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

We do not agree. We believe that future secure and assured tenants should retain their rights to security of tenure if they move. If landlords are given the freedom to decide this and choose to offer a fixed term tenancy to tenants who move, then the practical outcome as set out in response to question 13 (above) would be the same - tenants with security would be reluctant to move and this would have an adverse affect on mobility and vacancies. It would also lead to problems for tenants wishing to move to a home let be a different social landlord, perhaps in a new area, if the new landlord refused to offer security that would have been retained with the existing landlord. Again, this could lead to a 'race to the bottom' among landlords, as set out in our response to question 7 (above).

Advice and assistance for tenants moving out of social housing

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

If the measures go ahead, we strongly welcome the proposal that social landlords should be required to provide advice and assistance to tenants prior to the expiry of the fixed term. However, this duty should apply in relation to tenancy reviews and not at the point where the landlord is minded not to reissue a tenancy. More vulnerable tenants, for example those with learning difficulties, will require a great deal of advice and assistance to deal with the tenancy review. The duty should also be required by primary legislation rather than the Tenancy Standard.

We strongly oppose the suggestion that a tenant may be refused a reissue of the tenancy even where they are 'unable to obtain alternative accommodation and becomes homeless' (paragraph 2.54). We strongly urge the government to consider and confirm in what circumstances it would be appropriate for a social landlord to refuse to reissue a tenancy where this would result in homelessness. If reissue of tenancy is to be based on an assessment of need, to create a vacancy for a needier household, there must be a suitable alternative available for the current tenant's occupation as an out-going tenant. If the intended outcome is to create vacancies where the tenant has an alternative available, we favour

continuing security of tenure and the use of Possession Ground 9. This would necessarily require landlords to advise and assist with a suitable alternative home in order to obtain vacant possession.

Where a landlord decides not to renew a fixed term tenancy, and as a result brings possession proceedings against the tenant to evict him/her, the tenant may well have a 'public law' defence to the possession claim, either on conventional judicial review grounds, or on grounds of proportionality and Article 8 ECHR (right to respect for the home, and for private and family life), following the recent decision of the Supreme Court in the case of *Manchester City Council v Pinnock*. In that case, the Supreme Court endorsed the remarks of the European Court of Human Rights in the earlier case of *McCann v UK*:

'The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end.'

In the case of housing associations and other private registered providers, there may additionally be a defence, or challenge by way of judicial review, on the basis of Article 6 ECHR (right to a fair and public hearing... by an independent and impartial tribunal established by law), in view of the absence of a statutory review process in respect of a decision not to renew a tenancy.

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

From Shelter's perspective as an adviser of homeless people and tenants, the government should prescribe the factors to be taken into account in deciding whether to reissue a tenancy via a Statutory Code of Guidance (see our response to question 7).

Section 4: Allocating Social Housing

Open waiting lists

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

As an adviser of homeless people, people in housing need and tenants, we oppose the proposal to legislate to allow councils to determine who should qualify to join the waiting list for social housing. We support open waiting lists (as introduced by the Housing Act 2002) as a means to ensure the widest possible access to social housing. Social housing should be a sector of choice and destination rather than simply a safety net for the most needy.

Open waiting lists are a good indicator of need and demand for social rented housing that can be used as evidence to inform local plans and housing strategies. For example, CLG planning guidance lists local housing registers as a data source in estimating the number of households in housing need in Strategic Market Housing Assessments for planning purposes³⁹.

There are difficulties in substantiating whether waiting list numbers rose steeply in 2002-2003 mainly as a result of open waiting lists encouraging people 'in no real need' from putting their names down. Councils were not required to collect data on the number of applications from people in reasonable

³⁹ CLG (August 2007) *Strategic Housing Market Assessments: Practice Guidance: Version 2* (page 43, table 5.2)

preferences categories, as against people with lesser need, until 2007. The increase could be related to a rise in people in housing need or the expansion of priority need groups. Subsequent increases in numbers may be because most councils have not reviewed and updated their waiting lists. However, we fail to see why open waiting lists with large numbers of applicants are a problem for councils or applicants, provided those most in need get priority.

We also question the assertion that open waiting lists and choice-based lettings 'may also have encouraged a commonly held - but mistaken - perception that anyone will be able to get into social housing if they wait long enough and that this leads to false expectation. We are not aware of any evidence to support this. In our role as an adviser of people in housing need, we know that people are typically well aware of the time they are likely to have to wait for social housing in their area. For example, Shelter Housing Watch website enables local people to readily look up the social housing waiting list times in their area⁴⁰. We support their right to choose whether to apply. We question the suggestion that 'where local authorities restrict access to their waiting list, people who do not qualify for social housing may look for advice and support to help them secure appropriate alternative accommodation' and 'a strong housing options approach will help meet this need'. People on waiting lists can already avail themselves of advice and support from housing options services to find suitable alternative accommodation. Such services should be in addition to, rather than an alternative to access to the waiting list for social housing.

We suggest that CLG should undertake research into waiting lists to ascertain the levels of need of applicants, their motivation to making an application and their perception of how long they may have to wait for an offer.

We particularly object to the suggestion that councils could impose residency criteria. People often need social rented housing in an area where they are not currently resident, for example to escape domestic violence, enter into drug or alcohol rehabilitation or take up an offer of employment, training or education. We also oppose the suggestion that councils could exclude of applicants with a poor tenancy record and we urge the government to consider and confirm what criteria would constitute a 'poor tenancy record', for example in relation to unsubstantiated neighbour nuisance, unmet support needs, or rent arrears caused by housing benefit maladministration and how long substantiated behaviour would continue to bar application. Nineteen per cent of tenants in the private rented sector and 24 per cent in the social rented sector who are in rent arrears cite housing benefit delays as the reason. Among housing association tenants it is the most common reason for rent arrears, cited by 32%⁴¹.

A worry for us is that restrictive waiting lists could lead to more people being excluded from lists because of incorrect decisions by councils. We already assist people who seek our advice on challenging councils' decisions on waiting list points/banding, unlawful waiting list policy and exclusions from lists. Currently such challenges are within the scope of legal aid. However, the government's current review of legal aid⁴² proposes to remove challenges of waiting list decisions from the scope of the scheme. We are opposed to this proposal. If it goes ahead and councils are able to restrict access to waiting lists, we are concerned about the ability of poorer applicants to hold their councils to account by challenging to incorrect decisions.

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

We have not sufficient time to develop a response to this question. However, we urge councils and the government to consider costs of restricting access to waiting lists rather than just savings and benefits.

⁴⁰ www.localhousingwatch.org.uk

⁴¹ CLG figures S441: Reasons for rent arrears

⁴² Ministry of Justice (November 2010) *Proposals for the Reform of Legal Aid in England and Wales* (paragraphs 4.74 - 4.81)

For example, if councils were to introduce restrictions, a more thorough assessment of applicants may be needed.

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

We strongly support the idea that housing authorities should work with their local communities in developing their allocation priorities; in providing information on how housing is being allocated; and working actively to dispel myths and misperceptions that arise. Councils should work with voluntary and community groups, particularly if they represent hard to reach groups, such as homeless, private renting or BME households. Shelter is often consulted by local housing authorities about their allocation schemes and we greatly welcome this approach. For example, South Somerset council invites Shelter staff to bi-annual strategy days and forums to discuss their allocation scheme.

Reasonable preference

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

We strongly support this proposal with the caveat that homeless people must, in practice, be given 'reasonable preference' for social housing. Already, the link between homelessness and 'reasonable preference' for social housing has weakened because (as described above) many homeless people are no longer assessed under homeless legislation. However, it will become even weaker if the government's proposals for the discharge of homelessness duty go ahead. Instead of being duty-bound to provide temporary accommodation until the household has been given reasonable preference for a social letting, councils will be able to force homeless households into very short-term private lettings. On becoming private tenants, they will no longer, by virtue of the homelessness duty being discharged, be entitled to reasonable preference for a social letting. So, far fewer people who have experienced homelessness will receive reasonable preference for settled and affordable social housing.

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

We support the retention of the current reasonable preference categories.

Transferring tenants

Question 22: As a landlord, how would you expect to use the new flexibility created by taking social tenants seeking a transfer who are not in housing need out of the allocation framework? What sort of outcomes would you hope to achieve?

As an adviser of tenants and people in housing need, we are aware that social tenants are often unable to move to another social letting, and particularly unable to change their housing circumstances because they have insufficient priority under the council's allocation scheme. However, we are opposed

to the proposal to return to the position before the 2002 Act came into force by removing from the allocation framework most existing social tenants seeking a move.

Given the current context of massive under-supply of social rented housing, and the poor levels of security of tenure and affordability available in other sectors, social housing vacancies must be allocated to those in the greatest need.

We have concerns about 'chain lettings' (paragraph 4.21). These can have the effect of only smaller properties becoming available for waiting list applicants when many reasonable preference applicants may also be overcrowded or in need of larger homes. Existing overcrowded social tenants should already be categorised as having reasonable preference and should only be prioritised over other households in this category if they have been assessed as having greater levels of need.

As we noted in our response to the previous Government's consultation on a new draft Code of Guidance on allocation of social housing⁴³, we have some sympathy with councils having scope to provide for existing social tenants, who do not have reasonable preference, to transfer to similar sized accommodation where they can demonstrate good reason for seeking a move. For example, they may want to take up an offer of employment.

However, we are concerned about the quality of accommodation of properties that may be offered to applicants in the reasonable preference category as a result. It is argued that such transfers are broadly 'stock neutral' (every transfer creates another vacant dwelling which can be used to meet housing need). However, this policy may result in existing tenants falling outside of reasonable preference being allowed transfer to the more popular properties in the more popular areas, thereby vacating the more undesirable property, to be allocated to people in the greatest housing need.

We do not want to see a policy where those in the greatest need (households who have experienced homelessness and may have multiple medical and welfare needs) are only able to access inferior accommodation in the least desirable neighbourhoods. In such cases, it would be much more difficult for the tenancy to be successfully sustained.

Section 5: Mobility

We strongly support the Government's commitment to increase mobility within social housing and to improving opportunities for tenants who wish to move via mutual exchange and home swap schemes.

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

We have not had sufficient time to fully consider a response to this question. However, we question whether landlords would be willing to agree to a mutual exchange between a flexible or assured shorthold tenant and a secure or assured tenant if this would mean granting a new secure or assured tenancy as would likely be the case under the proposed new tenancy arrangements (see our response to questions 13 and 14 above).

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

⁴³ Shelter (October 2009) *Shelter's response to Fair and Flexible: Draft statutory guidance on social housing allocation for local authorities in England*

As an adviser of tenants, we believe that national mobility and mutual exchange schemes must be adequately resourced and easily accessible to tenants. Social housing management staff should have the resources to liaise with people who might be willing to move, be encouraged to prioritise mutual exchange and mobility scheme moves and be flexible with re-letting timescales ('void turnaround') if this would encourage people to move.

DETR guidance⁴⁴ states that 'staff who specialise in dealing with under-occupiers can play a very important role by spelling out the options, encouraging people to consider different areas or property types, giving confidence, overcoming all the obstacles to a move, and helping to find the right property. They can also take a pro-active role in identifying suitable voids for under-occupiers and in approaching people who have not yet registered an interest in moving. The interviews for this guide showed that tenants appreciate having a single point of contact – someone they can trust who understands their circumstances and aspirations. Landlords with a smaller stock and tenant base might not be able to sustain a full time post, but the job does combine well with other responsibilities – e.g. advising elderly people or dealing with pre-notified voids. In three of the London borough case study areas, each specialist post was facilitating about 50 – 100 moves a year. As with incentive schemes, it is difficult to say how many of these moves would have taken place anyway, or by how much they have been accelerated. However, the cost does compare favourably with new build or renovation schemes, and with the more generous incentive schemes.'

Section 6: Homelessness

We welcome the Government's commitment to 'tackling homelessness and protecting the most vulnerable in society'⁴⁵. We therefore strongly support the proposal to retain priority need groups and the homeless duty⁴⁶. It is very important that councils have a duty to assist people, including children, who have who have been through the devastating experience of homelessness to secure a settled home.

The original intention of the homeless legislation was that it should be used by councils to assess and, where entitled, assist all homeless people who ask for help. However, this is no longer the case. Despite court decisions which have repeatedly stressed that 'housing options' activities should take place within the framework of the homelessness legislation, in practice housing options are presented as a pre-condition to assistance. As a result, the rights and duties provided by the legislation assist only the minority of people who are permitted to make a homelessness application.

In 2009/10, an estimated total of 165,200 households were assisted by housing options services outside the statutory homelessness framework⁴⁷. This is more than four times the number of homelessness acceptances and 85 per cent more than the number of homelessness decisions made within the statutory framework in the same period. The majority of 'housing options' cases (61 per cent) involved the household being assisted to obtain alternative accommodation, half of which was private rented accommodation rather than a secure social home. Research by Crisis has found that homeless people often receive little assistance when approaching their council for help, with some authorities even failing to meet statutory obligations⁴⁸. The lack of appropriate assessment, support and advice this suggests concerns us greatly.

Greater flexibility to utilise the private rented sector

⁴⁴ DETR (April 2001) *Managing underoccupation: a guide to good practice in social housing* (paragraphs 1.7.6 to 1.7.7)

⁴⁵ CLG (November 2010), *Local Decisions: a fairer future for social housing* (paragraph 6.1)

⁴⁶ CLG (November 2010), *Local Decisions: a fairer future for social housing* (paragraph 6.10)

⁴⁷ CLG (August 2010) *Homelessness Prevention and Relief: England 2009/10 Experimental Statistics*

⁴⁸ Crisis (2009) *No one's priority*

We strongly oppose the proposal to allow councils to bring the homelessness duty to an end with an offer of accommodation in the private rented sector, without requiring the applicant's agreement. This measure will not alleviate homelessness. Homelessness does not simply equate to rooflessness and is not merely a temporary state of affairs between different short-term lettings. It is the inability to secure a settled home for one's household and is usually associated with poverty and a lack of family support. The outcome of this measure will be that homeless households in priority need (typically, households with children and vulnerable adults, who may be experiencing considerable insecurity in other aspects of their lives) will face a cycle of insecure accommodation, eviction and reapplication to the council.

A key benefit of the English homeless legislation, and the rules relating to 'reasonable preference' for social housing is that it ensures the poorest and most vulnerable are not excluded from the mainstream social rented sector. In many European countries, the poorest households are often excluded from the mainstream social rented sector and placed in inferior housing; this hinders their reintegration.⁴⁹

The proposal would further weaken the link between reasonable preference for social housing and homeless households who, we argue, are among 'those who need it most'. Instead of being duty-bound to provide temporary accommodation until the household has been given reasonable preference for a social letting, councils will be able to force homeless households into short-term private lettings. On becoming private tenants, they will no longer, by virtue of the homelessness, be entitled to reasonable preference for a social letting. Therefore, far fewer people who have experienced homelessness will receive reasonable preference for settled and affordable social housing.

It would, instead push homeless people into the private rented sector, which can be of poor quality, insecure and unaffordable, particularly in the light of forthcoming cuts to housing benefit. Independent research⁵⁰ concludes that the housing benefit changes are likely to result in 35,000 households approaching their council for homelessness advice and assistance, with local authorities owing the full homelessness duty to 19,000 families with dependent children. The cuts will push housing benefit claimants into the bottom third of the private rented sector where the worst conditions⁵¹ and most neglectful landlords prevail⁵².

We support the law's current recognition that homeless people should be entitled to a settled home: usually an offer of secure social rented housing. We support the right of homeless people to choose whether to accept an assured shorthold tenancy with a private landlord as a discharge of the council's duty. Instead, homeless households can be encouraged to accept an offer of private rented housing by improving the offer, rather than forcing the household to take it as a discharge of duty.

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

If this legislative change were to go ahead, we urge councils to consider whether a discharge of duty into a minimum 12 month fixed term private letting would be in line with their duties under the Homelessness Act 2002 to set a comprehensive multi-agency strategy for tackling homelessness in their areas, tackling the root causes of homelessness and developing policies for its prevention.

⁴⁹ Fitzpatrick, S. And Stephens, M. (November 2007) *An International Review of Homelessness and Social Housing Policy*, CLG: London (paragraphs 4.4 to 4.5)

⁵⁰ Fenton, A. (September 2010) *How will changes to Local Housing Allowance affect low-income tenants in private rented housing?*, Cambridge Centre for Housing and Planning Research

⁵¹ CLG (2010) *English Housing Survey Headline Report 2008-09* shows that 44 per cent of private tenants live in non-decent homes

⁵² Shelter (September 2010) *Research summary: survey of environmental health officers* found that 47% of respondents had encountered examples of landlords engaging in the harassment or illegal eviction (or both) of tenants and 99% of respondents had come across landlords who persistently refuse to maintain their property in a safe condition - 36% of respondents said they came across such cases frequently.

Forcing homeless households into a short-term private letting will result in some of the poorest and most vulnerable households (including children) becoming trapped in a cycle of insecure accommodation, homelessness and returning to the council for assistance. It will do nothing to tackle the root causes of homelessness, which include the inadequate supply of secure, decent and affordable housing.

Councils will need to think carefully about choosing to discharge duty into a minimum 12 month private letting, as this may ultimately push up the costs of providing a homelessness service. Shelter has calculated⁵³ that the cost of dealing with a homeless application (excluding overheads and the cost of temporary accommodation) is £605 per case.

Protective measures

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

We believe that councils will struggle to find private rented sector accommodation that could provide suitable and affordable accommodation for people owed the main homelessness duty. DWP research shows that the vast majority of households found to be homeless and placed in temporary accommodation are not working and are trapped in a perpetual cycle of worklessness poverty as a consequence of high rents in temporary accommodation⁵⁴. Research conducted by Shelter⁵⁵ in 2004 found that 77 per cent of 400 homeless households in temporary accommodation had no family member working. Research by Shelter in 2006⁵⁶ showed that as little as one-tenth of the mainstream private rental market was affordable to tenants on housing benefit and that one third of advertisements for private rented lettings barred housing benefit claimants.

Until the security, affordability and the quality of the private rented sector are addressed, we do not consider it a suitable destination for some of the poorest and most vulnerable households. Around one third of people who seek help from Shelter are private rented sector tenants, compared to only 14 per cent of all households living in this sector⁵⁷.

We fully agree with the analysis of the consultation paper that thousands of people currently lack good quality, stable, affordable homes and that stable social housing is particularly necessary for people who experience insecurity in other aspects of their lives, such as relating to health, employment or relationships⁵⁸. Yet this measure will push homeless people, including many children, who may be experiencing considerable insecurity in other aspects of their lives, into unstable, unaffordable and poor quality accommodation:

Quality

Private rented accommodation is often poor quality. Forty-four per cent of private tenants live in non-decent homes, compared to 32 per cent of social tenants and 26 per cent of owner-occupiers⁵⁹.

Stability

⁵³ Acclaim Consulting and Shelter (2010) *Research summary: Benchmarking local authority homelessness and housing options/advice services* (page 5)

⁵⁴ Wagstaff, M (July 2004) *A Single Housing Benefit Control for Temporary Accommodation: A Report for the Department for Work and Pensions*, DWP (page 46)

⁵⁵ Mitchell, F., Neuburger, J., radebe, D and Rayne, A. *Living in Limbo; Survey of homeless households living in temporary accommodation*, Shelter: London

⁵⁶ Reynolds, L. (2006) *The path to success? Shelter's research on Housing Benefit reform: the final report*

⁵⁷ English Housing Survey 2008-09 there were 3.067 million households in England (accounting for 14.2% of total number of households)

⁵⁸ CLG, November 2010, *Local decisions: a fairer future for social housing consultation* (page 12, paragraphs 1.1 and 1.2)

⁵⁹ CLG, 2010, *English Housing Survey Headline Report 2008-09*

If the proposal goes ahead and councils use this power to discharge their duty, the result will be people (including children and some very vulnerable adults) trapped in a cycle of insecure accommodation, homelessness and returning to the council for assistance. The lack of security of tenure in the private rented sector is a major cause of homelessness. In 2009/10, the loss of an assured shorthold tenancy was the third biggest cause of statutory homelessness⁶⁰ (11 per cent of cases accepted as being owed main homelessness duty), after family and friends no longer able or willing to accommodate (34 per cent) and relationship breakdown (20 per cent).

Affordability

- Private rented accommodation is often unaffordable to people who are currently in, or hope to secure, low paid work that is just above the threshold for qualification for housing benefit. Among tenants in the private sector, 24% spend more than half their income on rent, and 10 per cent of middle income (£10,000 - £40,000 per annum) households of all tenures constantly struggle to pay their housing costs⁶¹. According to latest research from the Association of Residential Letting Agents⁶², in the fourth quarter of 2010, 40 per cent of ARLA members reported an increase in tenants struggling to meet rental payments in the preceding six months - a rise from 35.9 per cent in Q3 2010.
- For those claiming housing benefit, this measure, combined with the forthcoming housing benefit change to link payments to the thirtieth percentile of rents, would, at best, push claimants into the bottom third of the private rented sector where the worst conditions⁶³ and most neglectful landlords prevail⁶⁴.
- However, as already mentioned above, the private rented sector is often inaccessible to the poorest households because it is unaffordable even with benefit support. This problem is likely to be exacerbated by the forthcoming cuts to housing benefit. Independent research⁶⁵ concludes that the housing benefit changes are likely to result in 35,000 households approaching their council for homelessness advice and assistance, with local authorities owing the full homelessness duty to 19,000 families with dependent children. Further research⁶⁶ shows that, in London, the housing benefit changes will immediately reduce the proportion of London neighbourhoods affordable to LHA claimants from 75% to 51%. This falls further to 36% by 2016 as a result of the measures' longer-term effects. Most inner London boroughs are likely to become almost entirely unaffordable to low-income tenants on LHA by 2016. The large clusters of neighbourhoods in outer East, South and West London which would remain affordable in 2016 are likely to house increasing numbers of low-income tenants as a result of the reforms. The areas which remain affordable are likely to be characterised by high rates of multiple deprivation and unemployment among the existing population. Thirdly, proposals to cap out-of-work benefits will further restrict the affordability of the private rented sector and could force larger homeless households to accept a considerable drop in income in order to secure accommodation.

The Localism Bill provides an opportunity for the government to strengthen legislation relating to standards in the PRS, a sector that increasingly houses large numbers of vulnerable people. Shelter would like to see a requirement inserted in the Bill requiring local authorities to introduce PRS accreditation schemes setting out the minimum standards for landlord compliance. These schemes

⁶⁰ CLG Homelessness Statistics, 2009, 2010

⁶¹ Shelter (2008) *Breaking Point - How unaffordable housing is pushing us to the limit* (page 10)

⁶² Association of Residential Letting Agents news release (12 January 2010) *Rise in tenant problems paying rent*

⁶³ CLG (2010) *English Housing Survey Headline Report 2008-09* shows that 44 per cent of private tenants live in non-decent homes

⁶⁴ Shelter (September 2010) *Research summary: survey of environmental health officers* found that 47% of respondents had encountered examples of landlords engaging in the harassment or illegal eviction (or both) of tenants and 99% of respondents had come across landlords who persistently refuse to maintain their property in a safe condition - 36% of respondents said they came across such cases frequently.

⁶⁵ Fenton, A. (September 2010) *How will changes to Local Housing Allowance affect low-income tenants in private rented housing?*, Cambridge Centre for Housing and Planning Research

⁶⁶ Fenton, A. (January 2011) *Housing Benefit reform and the spatial segregation of low-income households in London*, Cambridge Centre for Housing and Planning Research

have proven successful in areas including: Manchester City Council, Leeds City Council and the UK Landlord Accreditation scheme (including areas of London and Kent).

A recent court ruling on tenancy deposit protection means that rogue landlords can now get away with

failing to protect a tenant's deposit right up until the eve of the court hearing. This development critically undermines the original intentions of this vital piece of legislation, leaving significant numbers of people exposed to the risk of losing their deposit². The Localism Bill would be an ideal opportunity to clarify this law, so that it is workable for tenants and landlords and enables courts to give fair and consistent judgements. This would provide the vital protection the tenancy deposit legislation was designed to deliver and reduce unnecessary costs.

Question 27: Do you consider that 12 months is the right period to provide as a minimum fixed term where the homelessness duty is ended with an offer of an assured shorthold tenancy? If you consider the period should be longer, do you consider that private landlords would be prepared to provide fixed term assured shorthold tenancies for that longer period to new tenants?

A fixed-term tenancy of any length can be no substitute for a secure home. However, a 12 month fixed term provides very little security indeed, particularly given that households deemed to be in priority need are, by definition [need to bullet - problems with formatting:

- Pregnant women
- Dependent children
- 16 and 17 year olds
- Under 21 year olds previously in care
- People vulnerable due to old age, mental illness or physical disability
- People vulnerable as a result of leaving the armed forces, prison or fleeing violence

Whilst we are strongly opposed to a discharge of duty into the private rented sector, if this measure were to go ahead and a minimum fixed term is set, this should be based on evidence of the financial, economic and social impact of different fixed terms. We are not aware of any such evidence.

Rather than force homeless households to take up an offer of private rented housing via discharge of duty, they can be encouraged to do so by improving the offer. Private sector leasing schemes can provide a better offer of private rented accommodation to homeless households. Councils or housing association managing agents can ensure that the dwelling is of suitable quality and adequately managed and can negotiate cheaper rents (such as those within the reduced housing benefit rates) in return for a longer contract, a management services and guaranteed rental payments. Private sector leased accommodation is widely used as temporary accommodation for homeless people. It seems perverse to require homeless households to accept as discharge of duty accommodation that may be inferior to that which is often provided as temporary accommodation.

Section 7: Overcrowding

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

Overcrowding can have a devastating impact on family relationships, health and the development and education of children. It is also has an important equalities dimension, for example Black and Minority Ethnic groups are more likely to experience overcrowding than white households.

We want to see the Government utilise the power created by the Housing Act 2004 to amend the overcrowding standards. The existing statutory standards for overcrowding have remained unchanged since their introduction in 1935 in response to the need to improve the slum living conditions of the inter-war period. As a result, they fail to reflect a modern understanding of what is acceptable in terms of living arrangements, counting living rooms and kitchens as bedrooms and assuming that it is unnecessary for couples to be able to share a room. The result is that households, particularly families with children, must endure very high levels of overcrowding before the statutory threshold is breached.

Whilst we favour the use of the bedroom standard as an appropriate measure of statutory overcrowding, we recognise that there would still be a range of circumstances within this, for example a couple with two teenage sons would experience a greater impact of their overcrowding than a lone parent with a newborn baby, even though both households would need a two bedroom home under the bedroom standard. We favour system of cumulative need in assessing households for allocation of social housing.

As we said in our response to the CLG consultation on overcrowding in 2006⁶⁷, in this respect it could be argued that the bedroom standard is not sensitive to the differing severity of overcrowding experienced by two households lacking an equal number of bedrooms.

This table sets out a basic tool we have devised as an example of how the bedroom standard might be developed to overcome this shortcoming.

Table: Award of priority according to severity of overcrowding in one bedroom property

	Lowest priority						Mid priority					High priority					
Single adult or couple	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
0-12 months	1	2	0	0	1	1	0	0	0	0	0	0	1	1	0	0	0
1-7 Male	0	0	1	0	1	0	2	0	1	0	0	0	0	0	1	0	0
1-7 Female	0	0	0	1	0	1	0	2	1	0	0	0	0	0	0	1	0
8 - 14 Male	0	0	0	0	0	0	0	0	0	1	0	0	1	0	1	0	2
8 - 14 Female	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	1	2
15 + or single adult or couple	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Bedroom Standard rating	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	#	-1	-1

It shows the different possible permutations of a household who require a two-bedroom home but are occupying a one-bedroom property. It then awards three levels of priority in line with how severe the particular example of overcrowding is judged to be.

⁶⁷ Shelter (September 2006) *Tackling overcrowding in England: A response to the CLG discussion paper*

The benefits of adapting the bedroom standard to allow for such a breakdown of severity of overcrowding include:

- allowing The Survey of English Housing to provide a more in-depth picture of the overcrowding problem without requiring any additional information.
- providing a simple and objective method for local authorities to increase the sensitivity of priority awarded in allocation systems. Currently priority is generally awarded simply in line with the number of additional rooms required.

We believe that councils and landlords need the following powers and duties to address overcrowding:

- The main method of ending overcrowding is through the increased supply of larger sized social rented homes in the right locations. Reform of the planning framework should require councils to collect robust data on the number of overcrowded households in their areas and to set out in their Local Plans how they intend to meet this need through the development of affordable family homes. Grants made to developers under the National Affordable Housing Programme should be made on a per-person rather than 'per unit' basis to encourage the building of much-needed larger homes.
- Overcrowding can also be alleviated by adapting existing homes, such as by providing grants for extensions, loft-conversions, de-conversions and reconversions. Such approaches have the added advantage of the household being able to remain in their existing home: this is often the means by which owner-occupiers deal with the need for more space for a growing family.
- There is more that could be done to assist under-occupying households who wish to relocate or down-size. Government research into under-occupation in social housing examined the varying approaches to such schemes and concluded that schemes which rely on incentives, such as payments per room traded down and help with removals are most successful. It also strongly recommended the use of specialist staff to work closely with under-occupiers. This allows personal trust to be developed alongside a knowledge of the under-occupiers' needs and preferences and can help to achieve compromise on their requirements. The same report also found that key housing management performance areas such as minimizing void rates and relet times can conflict with attempts to meet the needs of older tenants who want time to consider offers and extended periods for completing any move. Consideration should be given to providing exemptions from such management performance targets to reduce this conflict.
- We support the idea of giving existing tenants who are under occupying their homes, and who wish to move to a smaller home, appropriate priority to secure a transfer within an authority's allocation scheme. We also support the approach that scarce accessible and adapted accommodation is prioritised for people with access needs. However, such incentives must be sensitively administered. People must not feel pressurised into moving. This is particularly important for older people who may have lived in their homes for many years and for whom a move to a new home, away from the support of neighbours, services and familiar surroundings, might be traumatic and leave them feeling isolated.
- It is also important that new homes have adequate room sizes to accommodate family living. We are therefore concerned by the CLG announcement last November⁶⁸ that proposals for new Core Standards for housing development funded by, or on land owned by, the Homes and Communities Agency will not now be implemented. These included minimum internal space and storage space standards. Instead, a new Local Standards Framework will be developed and maintained by the building industry and councils and this will be implemented through the new National Planning Policy Framework, which is due to be introduced in April 2012 with the view that, in the long term, the standards that apply to private and public housing should be the same. Compared with other EU member states, the UK has both the smallest newly built dwellings and the smallest average room size⁶⁹.

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

⁶⁸ CLG news release (25 November 2010) *We're lifting the burdens from the backs of builders*

⁶⁹ Policy Exchange (2005) *Unaffordable housing: fables and myths*

As we stated in response to the CLG's 2006 consultation on tackling overcrowding⁷⁰, the issue of enforcement powers needs to be considered alongside any amendment to the overcrowding standards. The current criminal enforcement powers attached to the current statutory overcrowding standards are rarely used today. We believe these powers may not be necessary with an updated statutory standard, as the HHSRS now provides a range of enforcement options for local authorities to deal with overcrowding.

Enforcement action is a duty for local authorities under the HHSRS when a Category 1 hazard exists and a power is granted to take action when a Category 2 hazard is present. Local authorities have a wide array of possible enforcement methods under the HHSRS including service of an improvement notice, prohibiting use of the property, serving a hazard awareness notice or taking emergency remedial action. This allows local authorities the flexibility to act in a variety of ways to deal with overcrowding where enforcement action is necessary.

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

The Housing Health and Safety Rating System Operating Guidance, introduced as part of the 2004 Housing Act to replace the old fitness standards, includes an assessment framework to measure the overcrowding situation in a property. This looks beyond simply the size and composition of a household and the number of rooms they require. Instead it considers these aspects alongside other factors, for example whether there is sufficient space for the separation of different household activities, the size of rooms, the layout of the accommodation and the availability of indoor and outdoor recreation space.

Whilst we support the inclusion of such aspects in the HHSRS assessment framework used to measure overcrowding we do not feel that it is well suited for adoption as the statutory standard. Although the HHSRS Operating Guidance outlines considerations that should be taken into account when assessing overcrowding, it does not set out a clear and defined benchmark of acceptability, allowing considerable scope for interpretation. As a result, there is a danger of inconsistency of application, and indeed some local authorities have reportedly responded with guidelines intended to interpret and clarify the original guidance. For these reasons, we believe that the use of the HHSRS assessment framework should be limited to in depth assessment of households' housing circumstances for enforcement purposes under the provisions of the 2004 Housing Act.

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⁷⁰ Shelter (September 2006) *Tackling overcrowding in England: A response to the CLG discussion paper*