

Consultation on the introduction of a regulatory framework for social housing provision in Jersey

Summary

This consultation outlines proposals to introduce a regulatory framework for social housing provision in Jersey, which will cover the Affordable Housing Gateway, Andium Homes and the housing trusts.

The purpose of introducing regulation is to provide assurance that appropriate standards are observed in the delivery of social housing to tenants, prospective tenants and other service users.

The consultation explains the rationale for introducing a regulatory framework and identifies areas of social housing provision that could be made subject to regulation:

- Fair and transparent access to social housing;
- Consumer-orientated service delivery;
- Accountability and redress; and
- Financial viability, governance and good administration.

The consultation seeks the views of stakeholders on a suitable model of regulation, and the extent to which a regulatory framework might complement existing statutory, contractual and voluntary measures that already regulate social housing provision.

Date published: 9th November 2016

Closing date: 23rd December 2016

Supporting documents

[P.33/2013 'The Reform of Social Housing'](#)

[Health, Social Service and Housing Scrutiny Sub-Panel 'Housing Transformation Programme Review'](#)

[Jersey Housing Strategy 2016](#)

Consultation

Department for Community and Constitutional Affairs
Strategic Housing Unit

How we will use your information

The information you provide will be processed for the purpose of consultation. The Department for Community and Constitutional Affairs will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information Jersey Law 2011.

Please note that we may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, please ensure that your response is marked clearly if you wish your response or name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

How to submit your comments

You can contribute your views to the consultation in a variety of ways:

- Respond to the online consultation document
- Complete the online survey at: www.gov.je/consult
- Email us at SHU@gov.je with your comment
- Write to us at:

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- Drop-in information events are planned for various times and locations. More details will be made available on the States of Jersey Facebook page or the [@StatesOfJersey](https://www.facebook.com/StatesOfJersey).

Next steps in the process

After the closing date for submissions, we will analyse responses and publish a report of that analysis in early 2017.

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Consultation

Department for Community and Constitutional Affairs
Strategic Housing Unit

1. Forward by the Minister for Housing

This consultation paper is seeking your views on proposals to introduce a regulatory framework for social housing provision in Jersey. This framework will cover the homes and housing services provided by social housing providers – Andium Homes and the housing trusts – and the Affordable Housing Gateway, as the access point into social housing.

More than 5,600 households in Jersey live in social housing properties. These include some of the most vulnerable people in our community. This makes it important to ensure that social housing provides tenants with high quality and secure homes, and responsive services that are delivered in a consistent manner regardless of who a tenant's landlord is.



Introducing a regulatory framework is an important way of ensuring that this does happen.

A regulatory framework will protect tenants by setting out the standards that they can expect from their housing provider and the Affordable Housing Gateway – whether this is in assessing their housing need, the repair and maintenance of their home, the rent they pay, or dealing with a complaint.

These standards will help tenants to better understand what should be expected from social housing, which they can use to help shape service delivery and improve the things that matter to them most.

The public also decides who can access social housing so it is right that we are looking at the role of the Affordable Housing Gateway as part of this consultation. Every day, the Gateway makes difficult decisions about who can live in social housing so it is essential that this process is as open, fair and transparent as possible and seen to be so.

I encourage you to take the time to read this consultation document and respond with your comments. Social housing providers have a strong reputation in the community for providing high quality homes, security of tenure and support for their tenants. We want to ensure this continues so that even more households can benefit from living in social housing.

A robust regulatory framework that is tailored to our local needs and which places tenants at its heart will help us to achieve this.

Deputy Anne Pryke
Minister for Housing

1. Introduction

- 1.1. Social housing is accommodation provided to eligible households whose housing needs are not met by the open market. It fulfils an important social function by making available good standard accommodation to low income households who are in housing need. Social housing is predominately accommodation to rent, but also encompasses affordable home purchase schemes for first time buyers.
- 1.2. Social housing provision includes the Affordable Housing Gateway – the point of access into social housing – and a number of housing providers, including Andium Homes and individual housing trusts: Clos de Paradis Housing Trust, CTJ Housing Trust, F.B. Cottages Housing Trust, Jersey Homes Trust and Les Vaux Housing Trust. The Income Support system also enables the payment of rents up to a maximum of 90% of the market equivalent rent, providing a sustainable funding model for social housing delivery.
- 1.3. The demand for social housing exceeds the supply and, consequently, tenants and prospective tenants have reduced freedom of choice over their housing situations. Social housing is also made available to people who are often vulnerable and need support to sustain their tenancies. It is therefore important to ensure that safeguards exist to protect and advance the interests of people who live in, and make use of, social housing.
- 1.4. Safeguards can be put in place through the adoption of a regulatory framework, which provides a system of rules and standards to be achieved by the Affordable Housing Gateway and social housing providers. A regulatory framework outlines expectations for service delivery, and provides an infrastructure to assess and monitor the performance of the Affordable Housing Gateway and social housing providers in achieving these expectations. If performance is inadequate, a regulatory framework also enables appropriate remedial action to be taken in order to improve performance.
- 1.5. This consultation is seeking views on the introduction of a regulatory framework for social housing, and the form that the framework might take. The consultation sets out the areas of social housing provision that could be made subject to regulation, and potential approaches for the implementation of a regulatory framework. The main features of the proposals outlined in this consultation are:
 - a) **The Affordable Housing Gateway will be placed on a statutory footing** in order to provide a set of policies in respect of determining eligibility for accessing social housing. This will include a requirement for the Minister for Housing to develop (in consultation with stakeholders) and then publish a statement of the criteria used to determine access to social housing.
 - b) **Setting performance standards for social housing provision** with respect to the quality of services, and financial management and governance arrangements.

- c) **Establishing reporting requirements for social housing provision** as a means of measuring performance and improving the availability of information so that the Affordable Housing Gateway and social housing providers can be held to account for the services they deliver.
- d) **Making provision for a means of appeal and redress** in order to enable concerns about services provided by the Affordable Housing Gateway and social housing providers to be investigated and settled if a person believes that a performance standard has not been achieved.

1.6. The key principle underpinning these proposals is that a regulatory framework must be robust to ensure that the requisite rules and standards are observed by the Affordable Housing Gateway and social housing providers. At the same time, a regulatory framework must be proportionate to the size and scale of Jersey's social housing sector, and seek to regulate areas of activity where people currently lack adequate protections. It must not deter social housing providers from doing what they do best – providing affordable accommodation to people in housing need.

1.7. Some aspects of social housing provision are already regulated and it is important to consider if these arrangements – whether statutory, contractual or voluntary means of regulation – might be adequate in protecting people who live in, and make use of, social housing and associated housing services. The consultation looks at potential options for clarifying and expanding existing arrangements, or drawing them together into a single regulatory framework for social housing.

2. Background

2.1. Regulation of social (affordable)¹ housing was first proposed in P.33/2013 *'The Reform of Social Housing,'* which was adopted by the States Assembly in 2013. The proposition proposed the introduction of regulation in order to separate the landlord, policy and regulatory functions that were held by the Minister for Housing, a conflict of interest that Professor Christine Whitehead of the Cambridge Centre for Housing & Planning Research identified as "clearly inappropriate"² especially in respect of regulation of the housing trusts.

2.2. The regulation of social housing was one of several measures set out in P.33/2013 to transform the provision of social housing in Jersey, including:

- **The establishment of a Strategic Housing Unit to lead on policy:** established in 2014. Located in the Department for Community and Constitutional Affairs.

¹ In this consultation, 'social housing' is used as an umbrella term referring to housing that is owned and managed by non-profit organisations who provide social housing at below market rents. The term is used to reflect the role that the public has in determining access to social housing and the fact that public subsidy is provided to support housing provision.

² Whitehead C. – "A review of Social Housing in Jersey" (2009) p.48

- **A rents policy to place social housing on a sustainable financial footing:** the policy of charging up to 90% equivalent market rents applies to new tenancies. This rents policy enables investment in new social housing and refurbishment of existing accommodation. Not all social housing providers have adopted the policy and some maintain rents at below the 90% market equivalent level.
- **Incorporation of the Housing Department:** Andium Homes was incorporated in 2014 and is responsible for landlord functions, developing new housing and refurbishing existing housing stock.
- **Regulation of social housing providers:** a system of regulation to secure the policy objectives of the Minister for Housing.

2.3. In respect of the proposal to introduce regulation of social housing, P.33/2013 proposed the following features for a regulatory framework:

- A definition of social housing to which regulation would apply;
- A register of social housing providers;
- An independent housing regulator;
- Performance measures for social housing providers; and
- Monitoring and enforcement powers.

2.4. Regulation has not yet been implemented because of concerns that were raised by the former Health Social Services and Housing Scrutiny Panel when P.33/2013 was brought forward. In the Panel's review of the proposition, it expressed concerns about whether statutory regulation was appropriate, stating that "*more clarity and agreement on the purpose and operation of a regulator*"³ was needed prior to a draft law being brought to the States Assembly.

2.5. The Panel lodged an amendment to P.33/2013, which was subsequently adopted by the States Assembly. In lodging the amendment, the Panel recommended that "*prior to introducing a social housing regulator, alternatives for regulation must be presented that are appropriate to the size and nature of the social housing sector in Jersey.*"⁴ It is important to note that the Panel did not disagree with the principle of regulation but it was of the opinion that the Minister should look at alternative options before bringing forward proposals for statutory regulation.

2.6. The Minister for Housing published a Housing Strategy in March 2016 and now wishes to revisit proposals to introduce regulation of social housing provision. Social housing providers have an essential role to play in the delivery of the Housing Strategy and the supply of housing in the years ahead, as does the Affordable Housing Gateway. In view of the expected expansion of social housing, and the resultant increase in tenants, the need for an effective form of regulation has become greater.

³ Health, Social Services and Housing Scrutiny Panel – "Housing Transformation Programme Review" (2013) p.4

⁴ Health, Social Services and Housing Scrutiny Panel – "Housing Transformation Programme Review" (2013) p.51

3. Why we need to regulate social housing

- 3.1. Social housing is accommodation provided at below market rents to households who have difficulty meeting their housing needs in the open market. Approximately 5,600 households in Jersey live in social housing, 14% of the total housing stock. It is expected to increase to more than 6,600 by 2020 as new social housing is built in the years ahead.
- 3.2. The demand for social housing exceeds the supply, and there are approximately 1,000 households waiting to gain access to accommodation at any time. Consequently, tenants and prospective tenants have restricted choice over their housing situations in comparison to the private rented sector, and less ability to change landlords if they are dissatisfied with the service. This creates a risk that tenants and prospective tenants may experience disadvantage in accessing services, especially where a person is a low income household, elderly or a vulnerable person.
- 3.3. A regulatory framework aims to remove the disadvantage that people may experience, firstly, by prescribing rules and standards in respect of social housing provision. These expectations specify a quality and level of service that must be achieved by the Affordable Housing Gateway and social housing providers which, in turn, provides assurance that services respond effectively to the needs of tenants and prospective tenants.
- 3.4. Secondly, a regulatory framework puts in place measures to strengthen the position of tenants and prospective tenants in the provision of social housing. Such measures include access to information, engagement, and providing accessible means of appeal and redress. These help to create a more equitable relationship between tenants and prospective tenants as service users, and the Affordable Housing Gateway and social housing providers as service providers.
- 3.5. Jersey's social housing providers have a strong reputation in delivering secure and good standard accommodation to people in need, and the introduction of a regulatory framework must not be viewed simply as a means to address the risk of service failure. Regulation is also a way of encouraging innovation and consumer-oriented service delivery. A regulatory framework specifies desired standards of service quality, which social housing providers work to achieve in their activities, and provides a means through which they can monitor performance, drive service improvements and share good practice.
- 3.6. Finally, a regulatory framework provides a structure for the relationship between the public and social housing providers. In Jersey, as in other jurisdictions, the public establishes the policy requirements that apply to social housing provision, and it is the responsibility of independent housing providers, Andium Homes and the housing trusts, to deliver accommodation and housing services in accordance with these policies. The policy objectives that apply to social housing providers include:
 - Providing accommodation to households in housing need;

- Adopting an affordable 90 percent rents policy; and
- Delivering good standard and secure accommodation.

3.7. A regulatory framework provides the public with assurance that these policy objectives will be implemented, and gives social housing providers certainty in respect of the nature and scope of the policy objectives they are expected to deliver. It also provides a way of overseeing the subsidy that social housing providers receive in return for adopting public policy objectives. These subsidies include:

- Individual rent allowances through the Income Support system – Income Support payments are also available to private sector landlords and lodging house owners who provide accommodation to people that qualify for Income Support. However, these rates are capped whereas social housing providers receive payment of up to the full 90% of the equivalent market rent.
- Funding for housing refurbishment and development, e.g. a £250 million bond has been made available to Andium Homes in order to build new homes and refurbish existing stock to achieve the Decent Homes Standard;
- The rezoning of land for the purpose of building social housing; and
- Support in accessing private borrowing.

3.8. Because significant public investment is made in social housing, safeguards must exist to ensure that resources are being used effectively and investment delivers value. A regulatory framework does this by setting economic standards relating to financial management and governance arrangements, providing assurance of financial probity and future viability. Equally, regulation can help social housing providers to access private investment by demonstrating they operate in a well-regulated environment.

3.9. On the basis of the above analysis, the consultation proposes that the principle aim of a regulatory framework should be **to protect and advance the interests of tenants and prospective tenants**. This aim is supported by a number of objectives:

- a) To ensure that appropriate quality and levels of service are observed in the provision of social housing;
- b) To strengthen the position of tenants and prospective tenants in the provision of social housing through engagement and access to information.
- c) To protect public investment in social housing provision by ensuring that social housing providers are efficient and financially viable.
- d) To further enhance the reputation of the social housing sector by ensuring that social housing provision contributes to broader public policy objectives.

4. Proposals to regulate the Affordable Housing Gateway

- 4.1. The Affordable Housing Gateway is the point of access for households into social housing. It is managed by the Department for Social Security and operates an applications process and waiting list for applicants, from which social housing providers allocate their housing. The Affordable Housing Gateway is responsible for determining whether a person is eligible for social housing based on an assessment of whether they can meet their housing needs in the open market. This housing need is then linked to accommodation and support services offered by social housing providers and other social services.
- 4.2. The first proposal being considered in this consultation is placing the Affordable Housing Gateway on a statutory footing. This will provide a legal framework for the Minister for Housing to assess eligibility for social housing and to determine housing need in Jersey. In this context, a legal framework will require the Minister to prepare and, following a consultation process, publish a scheme of the policies and procedures used to assess whether a household is able to access social housing. A scheme exists already and this proposal would make the scheme a statutory requirement.
- 4.3. The proposal to introduce a scheme in law is an important component of a regulatory framework. Because housing need is a normative concept – the categories of person able to access social housing are determined on the basis of a set of norms and standards – legislation will create a robust, objective and transparent set of rules for identifying housing need in Jersey.
- 4.4. It is proposed that a scheme created under law will provide for:
 - **Defining eligibility** – the conditions in respect of which categories of household may gain access to social housing;
 - **Assessing housing need** – ranking of eligibility according to assessed housing need (a banding system);
 - **Managing a waiting list** – administration of applications such as accommodation requirements, offers and refusal of accommodation, and reviews and a complaints procedure;
 - **Complaints and appeals** – making it a requirement for the Minister for Housing to establish a system for receiving complaints and appeals in respect of the decisions made by the Affordable Housing Gateway; and
 - **Consultation and publication** – an obligation for the Minister for Housing to consult with stakeholders when developing a scheme or making changes to policies set out in a scheme, and thereafter making available a scheme to the public.
- 4.5. The introduction of a scheme will help to protect and advance the interests of tenants and prospective tenants. Because the demand for social housing exceeds supply, and social housing is subject to rationing, the decision-making process has to be fair, open,

and equitable – and seen to be so. A scheme will improve knowledge and awareness among tenants and prospective tenants by demonstrating the way in which decisions are made, and provide means of appeal should a person wish to challenge a decision.

5. Regulating service delivery, financial management and governance

- 5.1. The primary feature of a regulatory framework is the introduction of a system of rules and standards that must be observed in the provision of social housing. These will define the expected quality, level and specifications for services that must be delivered by the Affordable Housing Gateway and social housing providers. It is proposed that the rules and standards will set out the arrangements in respect of service delivery and financial management and governance arrangements.
- 5.2. A regulatory framework will describe the requisite levels or quality of service that must be achieved in social housing provision. A set of rules and standards will be set in these core areas of service provision:
 - **Allocations and lettings** – to provide assurance that accommodation is allocated fairly and in a transparent manner according to housing need.
 - **Rents and service charges** – to provide assurance that social housing rent levels are charged in accordance with the 90 percent rents policy.
 - **Tenancy management** – to provide assurance of compliance with requirements in respect of tenancies and security of tenure.
 - **Quality, repair and maintenance** – to provide assurance tenants live in safe and secure homes, which are kept in a good standard of repair.
 - **Communication, engagement and complaint handling** – to provide assurance that tenants and prospective tenants have opportunities to engage in decisions which affect them, and have access to a complaints procedure.
 - **Neighbourhood and community** – to provide assurance that tenants feel safe, live in well-maintained communities and are supported to live independently.
- 5.3. Rules and standards in respect of service delivery will ensure that services provided by the Affordable Housing Gateway and social housing providers are efficient and responsive to the needs of people who live in, and make use of, social housing. The nature of the requirements will be shaped by good practice and subject to full consultation in order to ensure they are deliverable. As such, it is expected that the Affordable Housing Gateway and social housing providers will be achieving many of the requirements already.
- 5.4. The rules and standards will be set with a reference to outcomes. Insofar as possible, the requirements will avoid detailed description of the means by which rules and standards must be achieved, but reflect the outcomes that should be achieved for

tenants and prospective tenants in service delivery. For example, a requirement for a social housing provider to carry out monthly estate inspections is an action, not an outcome. Instead, an outcome might be “homes are well-maintained,” which would provide flexibility around how a social housing provider decides to implement the outcome in their services.

5.5. Moreover, the rules and standards relating to financial management and governance arrangements will apply to all social housing providers, and include requirements in the following areas:

- Effective governance arrangements to deliver aims, objectives and services;
- Compliance with governing documents and statutory requirements;
- Effective management of resources, assets and liabilities;
- Effective internal controls and risk management arrangements;
- Financial forecasting and business planning.

5.6. The financial management and governance requirements will help to safeguard public investment in social housing provision by ensuring that any subsidy that may be provided to a social housing provider is used effectively, delivers value and achieves its intended policy objectives. Financial management and governance requirements will provide assurance that financial viability is maintained and social housing assets will not be put at risk. This provides greater certainty that social housing will continue to be available to tenants now and in the future.

6. The model of regulation

6.1. The rules and standards for social housing provision, as set out in section 5, must also be set within a framework so that regulation has a structural and procedural form. This will give the requirements legitimacy, affect and shape. There are three potential options for a framework:

- **Utilising the Rent Safe landlord accreditation scheme** – requirements in respect of service delivery could be established through this Environmental Health initiative launched in July 2016. The scheme could be extended to cover social housing provision, ensuring a consistent approach to regulating rented accommodation. Additional requirements that were relevant to social housing providers could be developed such as communication and engagement, and support services for vulnerable tenants. Andium Homes and the housing trusts would thus become ‘accredited’ social housing providers.
- **Introducing a Jersey Social housing Charter** – requirements in respect of service delivery would be established through a standalone ‘Charter’ for social housing provision. The Charter would specify the requisite rules and standards that need to be observed in social housing provision, reflecting the requirements described in section 6. This proposal is the same as the recommendation made by the Health, Social Services and Housing Scrutiny Panel that expectations for service delivery

should be set out in a 'Jersey Homes Charter'.⁵ This follows the example of the 'Scottish Social Housing Charter,' which is the basis of Scotland's regulatory framework for social housing.

- **A code of practice for financial management and governance** – a code of practice would set out principles regarding how social housing providers must conduct their business activities. The code of practice would reflect good industry practice for financial management and governance arrangements.
- 6.2. In practice, there would be little difference in the requirements set by Rent Safe or a Charter – both would provide a framework of rules and standards for social housing provision. The key difference is whether it is decided to opt for a separate framework for social housing through a Charter, or to adopt an existing States of Jersey initiative for rented accommodation through the Rent Safe scheme.
- 6.3. Overall, it is proposed that there will be two frameworks for establishing the rules and standards for social housing provision. One will be a consumer-oriented initiative that covers service delivery, while the other will provide guidance in respect of how a social housing provider manages itself and its resources. By setting out the rules and standards in this manner, it will help tenants and prospective tenants to enhance their understanding about the quality of services they should expect from social housing provision.
- 6.4. Social housing providers are regulated in some areas of their activities already – company law, building regulations, public health legislation and tenancy law – and a regulatory framework will not seek to replace these requirements. However, in these situations rules and standards would reflect the statutory requirements, and achieving the requirements of a regulatory framework would depend on the relevant laws being adhered to in service delivery.
- 6.5. The Minister for Housing is of the opinion that access to applicants from the Affordable Housing Gateway waiting list, and decisions regarding financial support – such as direct financial support from the States of Jersey and the transfer of surplus government-owned land; financial guarantees for private investment; Income Support payments; and conditions attached to Planning Obligation Agreements – will only be provided on the basis that an social housing provider has signed up to the eventual regulatory framework.
- 6.6. A regulatory framework also needs a legal basis to ensure that it is clear, robust and enforceable. This also provides assurance that the rules and standards introduced by a regulatory framework are implemented. There are two options for giving a regulatory framework legal affect – either by way of a legislative framework or a contractual arrangement with each social housing provider.

⁵ Health, Social Services and Housing Scrutiny Panel – "Housing Transformation Programme Review" (2013) p.50

- 6.7. Under the first option – regulation by legislation – the regulatory framework would be established by way of a social housing law. The legislation would make provision for such things as the registration process for social housing providers, the appointment of a regulator, the specification of the regulatory requirements and standards, and the monitoring and enforcement powers of a regulator. Whilst there may be concerns about the proportionality of introducing legislation, this need not be an interventionist solution if the powers and sanctions that legislation establishes are limited in their scope and effect.
- 6.8. Alternatively, the second option of regulation by contract would see new contractual arrangements entered into between the Minister for Housing and each social housing provider in order to secure the adoption of the rules and standards introduced by a regulatory framework. There is already a transfer agreement between the Minister for Treasury and Resources and Andium Homes and, similarly, agreements were entered into between the former Housing Committee and the housing trusts where the States provided financial assistance for a development or transferred States-owned land for new housing supply. It may therefore be possible to enter into new agreements that reflect the regulatory rules and standards, and which would establish the relationship between the Minister and each social housing provider and their various obligations.

7. Performance monitoring and assessment

- 7.1. It is important to ensure that the Affordable Housing Gateway and social housing providers achieve the rules and standards established by a regulatory framework. This is achieved through the implementation of a performance assessment and monitoring regime, which provides assurance that the interests of tenants and prospective tenants are protected and advanced in the provision of social housing.
- 7.2. Traditional regulation favours intensive and wide-ranging inspection and monitoring of compliance. However, this is considered disproportionate to the level of risk involved in social housing provision. This approach would also be expensive to monitor and may divert social housing providers away from their core business activities. It is proposed instead that social housing providers will be responsible for monitoring and assessing their progress in achieving the requirements of a regulatory framework.
- 7.3. This will require social housing providers to undertake a self-assessment of their performance based on a specified set of indicators set under a regulatory framework. The indicators include, but are not limited to:
- **Tenant satisfaction:** the percentage of tenants and prospective tenants satisfied with the services they receive from the Affordable Housing Gateway and social housing providers.
 - **Allocations:** working with the Social Affordable Housing Gateway to monitor the number of applicants allocated homes from the waiting list.

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- **Social housing providers stock details:** the number, size and type of accommodation they own and manage.
- **Rents:** the rental values for various types of accommodation; rent arrears; and rent losses.
- **Tenancies:** percentage of tenancy offers refused during the year.
- **Housing Quality:** percentage of housing stock that achieves the Decent Homes Standard.
- **Housing management:** percentage of total housing stock vacant; number of evictions.
- **Repairs:** percentage of tenants satisfied with the repairs service offered to them.

Information about performance will be published in an annual report as part of normal annual business reporting requirements carried out by social housing providers.

- 7.4. A requirement to report on performance will also include the Affordable Housing Gateway in applicable areas of service. This will be monitored directly by the Minister for Housing who has political oversight for the Affordable Housing Gateway. This will not be a self-assessment process and will be monitored by the Strategic Housing Unit, though the information generated will be used to ensure good performance and drive service improvements.
- 7.5. The information generated by a self-assessment process will help social housing providers to identify aspects of good performance and where they may need to make changes to their services. This reflects the expectation that a regulatory framework will encourage continuous improvement and consumer-oriented service delivery. Provided that social housing providers were using the information to monitor and improve services, there would be a limited requirement for independent regulatory oversight.
- 7.6. In addition, the information generated through monitoring and self-assessment will be made available to the public. This will ensure transparency and will improve knowledge and awareness among tenants and prospective tenants, so that they are able to hold the Affordable Housing Gateway and social housing providers to account for the services they provide. It also enables comparisons to be made between social housing providers, thus demonstrating who is performing well and not so well and helping to drive more consistent standards of services across the sector.
- 7.7. In respect of financial management and governance requirements, information will be required such as audited accounts, loan portfolio information and business plans and financial forecasts. This will enable social housing providers to demonstrate that they are appropriately managed and governed. However, the level of engagement on governance and financial management issues will vary depending on the size of the

social housing provider and the level of risk that it displays in terms of public and private investment.

8. A regulator for social housing provision

- 8.1. This part of the consultation considers who might be the most appropriate body to act as regulator for social housing provision. The consultation identifies two potential options for a regulator – the Minister for Housing or a non-governmental regulator.
- 8.2. The Minister for Housing already fulfils a quasi-regulatory role. While the Minister holds nominal statutory responsibility for regulation at present, there are informal means of regulation – for example, the Minister works with social housing providers in order to protect the interests of tenants and prospective tenants on a case-by-case basis. This informal approach has worked because there is a good working relationship between the Minister and social housing providers, and recognition that the Minister acts in the public interest.
- 8.3. The introduction of a regulatory framework would formalise these arrangements, and clearly define the role and powers that the Minister had to regulate social housing provision. The Minister is also accountable to the States Assembly for the decisions he/she makes, which would provide checks and balances to ensure the proportionality, fairness and equity of any decisions the Minister made as regulator. Appointing the Minister to oversee regulation would also have the advantage of being cost-effective. It would avoid duplicate administration by concentrating regulatory functions in the Department for Community and Constitutional Affairs.
- 8.4. An alternative option is to appoint an independent regulator for social housing provision, which was proposed in P.33/2013 as a means of fully separating the policy, regulatory and operational functions for housing. An independent regulator would have the advantage of being an arms-length body and therefore free from potential conflicts between policy and regulatory functions. This would provide comfort that the regulator is genuinely independent and seen to be so by all parties. An arms-length regulator would also have the benefit of industry expertise and knowledge, which would enable constructive challenge and support for continuous improvement among social housing providers.
- 8.5. Ultimately, who is responsible for regulating social housing provision is dependent on the type of regulatory model adopted. If social housing providers are made responsible for carrying out self-assessment of their performance and monitoring was carried out by an independent audit function, there would be a limited level of administration and oversight required by a regulator. The introduction of an arms-length regulator may therefore be considered a disproportionate response, especially in light of the expected costs of each model of regulation.
- 8.6. It was estimated in P.33/2013 that the cost of a part-time regulator would be in the region of £160,000 per annum, which would be met by social housing providers paying a fee. Whilst a regulator would have a reduced role to that originally envisaged in

P.33/2013, it is estimated that it could still cost £100,000 per annum to employ a regulator and to provide them with administrative resources. If the Minister were to act as the regulator, it is estimated that the cost would be approximately £50,000 per annum in order to provide senior officer support to administer, and have oversight of, the regulatory framework on behalf of the Minister.

- 8.7. Whilst the costs of a regulatory framework would be minimised as far as possible, it is likely that social housing providers will bear the costs of a regulatory framework. This may include direct financing via a fee arrangement in order to enable the oversight and monitoring of regulation. It is anticipated that this fee would be proportionate to the size of the social housing provider.
- 8.8. A regulator would have oversight of the process to ensure that this information is provided correctly and published in a timely manner. A regulator would only seek to intervene where concerns had been raised about the accuracy of the information provided or failure to meet one of the rules or standards set by the regulatory framework was likely to give rise to a serious and significant risk to tenants.
- 8.9. It should be noted that the Affordable Housing Gateway is a States-operated service and, as such, will not be made subject to the oversight of an independent regulator. Irrespective of the type of regulator that is adopted, oversight of the performance of the Affordable Housing Gateway will be the responsibility of the Minister for Housing.

9. Intervention and enforcement powers

- 9.1. It is important that a regulatory framework is able to deal with situations where social housing providers do not achieve the required rules and standards. Whilst this consultation places emphasis on the role of social housing providers carrying out self-assessment of their performance, there is a need for effective enforcement in the event of non-compliance if a regulatory framework is to achieve its purpose.
- 9.2. A regulatory framework set by legislation would prescribe the duties of a regulator, and the nature and extent of its enforcement powers. Based on the regulatory frameworks for social housing in other jurisdictions, a regulator could be given powers to apply a range of remedial and enforcement measures, including:
 - The right to obtain information
 - Inspection
 - Improvement notices
 - Enforcement notice – a specific instruction issued by the regulator with which the social housing would be legally bound to comply
 - Fines and compensation for service failure

In the event of continuous and serious non-compliance with the regulatory rules and standards, a regulator could seek to:

- Appoint additional independent board members to oversee the discharge of enforcement measures in order to comply with the regulatory framework; and

- Transfer of ownership and housing stock to a different social housing provider.
- 9.3. If there was cause for concern, a regulator would be given the power to seek further information and, where appropriate, apply a graduated series of remedial actions to enforce rules and standards, and improve management in the interests of tenants. The regulator would first assist a social housing provider to improve its performance and bring standards up to an acceptable level. However, where a social housing provider was unable or unwilling to take action effectively, a regulator would be given powers to make a proportionate intervention relative to the risk of a particular failure. Ultimately, penalties and enforcement actions would be appealable via the Court.
- 9.4. The enforcement measures outlined above are only applicable if they are set under law to give them legal enforceability. The scope of powers available to a regulator would be more limited if a contractual arrangement were put in place between the Minister for Housing and individual social housing providers.
- 9.5. An enforcement notice could be issued recommending an issue must be addressed within a reasonable timescale and, if not, the failure would be made public in order to incentivise the speedy correction. A contractual arrangement could also include provision to enable the use of arbitration, involvement of external experts etc., though disputes between parties would ultimately need to be resolved by the Court.

10. Opportunities for appeal and redress

- 10.1. The final proposed feature of a regulatory framework for social housing provision is the introduction of an external system of appeal and redress. This would enable any concerns and complaints about the Affordable Housing Gateway and social housing providers to be investigated and settled if a person believes that a performance standard has not been achieved. This proposal reflects the need for social housing provision to be fair and equitable in order to protect and advance the interests of tenants and prospective tenants.
- 10.2. One of the performance standards set out in section 6 is a requirement for the Affordable Housing Gateway and social housing providers to establish a means of responding to and dealing with complaints made by tenants and prospective tenants. However, there may be merit in making available an external system of appeal and redress in order to deal with situations where a person does not believe that a complaint has been addressed satisfactorily through an internal procedure.
- 10.3. It is proposed that an external system of appeal and redress for the Affordable Housing Gateway and social housing provider might encompass the following matters:
- Failure to comply with one or more of the rules, standards or principles established by a regulatory framework;
 - Unreasonable delay in dealing with a problem or complaint;
 - Unfair or negligent behaviour; and

- Heavy-handed or unsympathetic treatment of a complaint.
- 10.4. If a complaint was upheld, the resultant action could be the issuing of an apology to the person making the complaint and an undertaking to correct the matter. Moreover, an external system of appeal and redress would provide a means for the Affordable Housing Gateway and social housing providers to put things right and improve service provision. This reflects the requirement to ensure that appropriate standards are observed in the provision of social housing, and the need to deliver continuous improvements.
- 10.5. The views of stakeholders are being sought as to whether an external system of appeal and redress is a proportionate response to ensuring that the interests of tenants and prospective tenants are protected and advanced. There are several ways that a tenant or prospective tenant may raise a complaint about the delivery of services already:
- The Affordable Housing Gateway is under the oversight of the States Complaints Panel, which deals with complaints about decisions made by ministers or departments;
 - The Residential Tenancy Law and public health legislation afford tenants the same types and levels of protections as tenants in the private sector; and
 - Tenants can apply to the Court if they believe that they have suffered as a result of a breach of the law.
- 10.6. However, legal proceedings may not always be the most appropriate means to settle a complaint and are unlikely to be able to deal with the majority of complaints, which are small in nature and relate to service quality. Therefore, an alternative external system of appeal and redress would enhance the position of tenants and prospective tenants and provide them with a more accessible and cost-effective route to achieving redress.

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11. Response form

About you

Are you responding as an individual or an organisation?

- Social housing tenant
- Member of the public
- Organisation

Full name or organisation's name

Telephone number

Email address

The Strategic Housing Unit would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

Would you be happy for the Strategic Housing Unit to contact you about any events it plans to hold as part of this consultation?

- Yes No

Question 1 - The Need for Regulation

Please refer to section 3 of the consultation document when answering these questions.

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a) Do you agree that social housing – including the Affordable Housing Gateway and social housing providers – should be subject to some form of regulatory oversight in the provision of homes and housing services to tenants and prospective tenants?

Agree Neither Agree or Disagree Disagree

b) Please give reasons for your response.

Question 2 – The Aim of Regulation

Please refer to section 3 of the consultation document when answering these questions.

a) Do you agree that the aim of a regulatory framework should be **to protect and advance the interests of tenants and prospective tenants**?

Agree Neither Agree or Disagree Disagree

b) Please give reasons for your response.

c) Do you agree that the aim of protecting and advancing the interests of tenants and prospective tenants should be supported by the following objectives:

- To ensure that appropriate quality and levels of service are being observed in the provision of social housing;

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- To strengthen the position of tenants and prospective tenants in the provision of social housing through engagement and access to information;
- To protect public investment in social housing provision by ensuring that social housing providers are efficient and are financially viable;
- To further enhance the reputation of the social housing sector by ensuring that social housing provision contributes to broader public policy objectives.

Agree

Neither Agree or Disagree

Disagree

d) Please give reasons for your response.

e) Can you think of any other objectives for a regulatory framework?

Question 3 – The Affordable Housing Gateway

Please refer to section 4 of the consultation document when answering these questions.

a) Do you agree that the Affordable Housing Gateway should be placed on a statutory footing and include a requirement for the Minister for Housing to develop and publish a scheme of the criteria used to determine access to social housing?

Agree

Neither Agree or Disagree

Disagree

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b) Please give reasons for your response.

c) What types of information do you think should be included in a statement of the criteria used to determine access to social housing? Please tick as many options as you want.

The categories of household eligible for social housing (e.g. over 50 years old, families, and people with serious medical conditions and disabilities)

Assessment of housing need and determining priority (i.e. a banding system)

Income thresholds and savings limits

How accommodation is allocated

Assessment of bedroom requirement

Information on downsizing to smaller accommodation

How to make a complaint about, or appeal a decision of, the Affordable Housing Gateway

d) What other types of information do you think should be included in a scheme of the criteria used to determine access to social housing?

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Question 4 – Rules and Standards

Please refer to section 5 of the consultation document when answering these questions.

a) Do you agree that the rules and standards established by a regulatory framework should include service delivery, financial management, and governance arrangements?

Agree

Neither Agree or Disagree

Disagree

b) Please give reasons for your response.

c) Do you agree that rules and standards should be set by reference to outcomes, i.e. focus on what is being achieved for tenants as opposed to how it is being achieved?

Agree

Neither Agree or Disagree

Disagree

d) Please give reasons for your response.

e) Are there any other areas of social housing activities you think should be made subject to regulation?

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Question 5 – The Model of Regulation

Please refer to section 6 of the consultation document when answering these questions.

a) Do you agree that expectations for service delivery should be specified by the Rent Safe Landlord accreditation scheme or a Jersey Social housing Charter?

Agree

Neither Agree or Disagree

Disagree

b) Which option do you prefer? Please give reasons for your response.

c) Do you agree that financial management and governance arrangements should be set out in a code of practice?

Agree

Neither Agree or Disagree

Disagree

d) Please give reasons for your response.

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Question 6 – Statutory or Contractual Regulation

Please refer to section 6 of the consultation document when answering this question.

- a) If a regulatory framework is introduced, should it be (a) a statutory framework or (b) a framework based on contractual arrangements between the Minister for Housing and social housing providers? Please give reasons for your response.

Question 7 – Performance assessment and Monitoring

Please refer to section 7 of the consultation document when answering these questions.

- a) Do you agree that social housing providers should be responsible for assessing and monitoring their own performance, and should be required to report this information on an annual basis?

Agree

Neither Agree or Disagree

Disagree

- b) Please give reasons for your response.

- c) What types of information do you think it would be reasonable for social housing providers to generate in order to provide assurance that they are achieving the rules and standards of a regulatory framework?

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d) How best do you think the views of tenants can be captured through a regulatory framework?

Question 8 – The Need for a Regulator

Please refer to section 8 of the consultation document when answering these questions.

a) Do you agree that there should be a regulator for social housing provision?

Agree

Neither Agree or Disagree

Disagree

b) Please give reasons for your response.

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c) If you answered 'yes' to part (a) who do you think would be the most appropriate regulator a) the Minister for Housing or b) an independent regulator?

The Minister for Housing

An independent regulator

d) Please give reasons for your response.

Question 9 – Intervention and Enforcement Powers

Please refer to section 9 of the consultation when answering this question.

a) What types of intervention and enforcement powers do you think would be appropriate for a social housing regulator to be given? Please give reasons for your response.

Question 10 – Appeal and Redress

Please refer to section 10 of the consultation document when answering these questions.

a) Do you agree that a system of external redress for tenants and prospective tenants should be established to investigate complaints about social housing provision where an internal process has been exhausted and a complaint cannot be resolved?

Agree

Neither Agree or Disagree

Disagree

b) Please give reasons for your response.

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Question 11 – Financial Resources

- a) Do you have any views about the financial resources which might need to be devoted to a regulatory framework?

Question 12 – Impact of Regulation

- a) Given the essential role that social housing providers have in the delivery of homes, what impact, if any, will the proposals for a regulatory framework have on the provision of housing by such organisations?

- b) What do you see as the main challenges to the effective regulation of social housing provision?

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Question 13

- a) Please provide any additional comments you would like to make about proposals for a regulatory for social housing provision. Is there anything we have missed in the consultation that you think is important and should be considered as part of the proposals for a regulatory framework?