

# **BSHF Submission to the DCLG Consultation on Local Decisions: A Fairer Future for Social Housing**

## **Executive Summary**

BSHF welcomes the opportunity to respond to the government's proposed changes to social housing and refers to each of the thirty questions in turn, responding to those where we have particular experience or evidence.

Further evidence has been provided on three areas addressed in the consultation document that were not specifically covered by the questions. Specifically, Affordable Rent, tenure reform and council housing finance reform are addressed in sections A, B and C with particular reference to some potential problems that may emerge if they are not coordinated with other areas of housing and welfare policy.

Some of the key recommendations from BSHF include:

- Social housing should continue to act as both a “springboard” and a safe haven;
- The government should clarify its rationale and evidence base for proposing two years as the minimum length for a tenancy;
- Lifetime tenancies should be continued for at least some groups within society, including older people and people with long term illnesses or disabilities;
- Those granted a social tenancy for life under the new system should keep this security even if they decide to move;
- The use of social housing waiting lists would benefit from review, although an approach that retains open waiting lists whilst modifying data reporting may be stronger than the proposal in the consultation. An alternative proposal is outlined in our response;
- The length of minimum tenancies offered under homelessness duties should be based on evidence that it will provide sufficient stability for the household, so as to minimise the risk of homelessness recurring at the end of the tenancy;
- Tackling overcrowding should include encouraging people to move from the homes they are under-occupying by offering a compelling alternative.

BSHF has concerns regarding the manner and timing of the consultation process and has submitted comments on this issue separately. The danger is that an inadequate consultation process will mean that proposed changes will not be exposed to the scrutiny that is required to develop effective policy. There is a real risk that this will undermine the overall objectives of the government's proposals.

## About BSHF

*The Building and Social Housing Foundation (BSHF) is an independent housing research charity committed to ensuring that everyone has access to decent and affordable housing, and holds Special Consultative Status with the United Nations Economic and Social Council. Since 1994 BSHF has organised an annual series of Consultations at St George's House, Windsor Castle, on a range of housing issues, bringing together diverse groups of experts for in-depth discussion and consideration of an important housing issue. Notably, the consultation in June 2009 focused on *The Future of Housing: Rethinking the UK housing system for the twenty-first century*.<sup>1</sup> This submission is based on these consultations and on original research undertaken by BSHF.*

## Section A: Affordable Rent

a) The consultation does not include a question on whether the introduction of the new Affordable Rent tenure is a desirable change to housing policy. BSHF suggests that Affordable Rent needs to be carefully considered to ensure that it fits with other aspects of housing and welfare policy. There are a number of potential problems with Affordable Rent which have not been discussed fully in this consultation and require urgent attention. These potential problems are:

- Reduced access to low cost housing;
- Impact on Housing Benefit expenditure;
- Delivering sufficient new homes.

Each of these potential problems is discussed in more detail below.

b) Reduced access to low cost housing

- The government has argued that in a time of budget constraint, there are limited resources available to fund housing, and it is therefore better to fund more homes at a lesser subsidy (Affordable Rent) rather than fewer homes at a greater subsidy (social rent).
- Over time the proposed changes are likely to lead to increasing numbers of tenants moving into Affordable Rent rather than traditional social housing. The housing costs of this group of tenants in Affordable Rent will be greater than they would have been previously. The danger is that more tenants in Affordable Rent will struggle to meet their housing costs leading to higher levels of arrears, problems with indebtedness and long term reliance on Housing Benefit.

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<sup>1</sup> Diacon, D., Pattison, B., and Vine, J. (2009) *The Future of Housing: Rethinking the UK housing system for the twenty-first century*, <http://www.bshf.org/published-information/publication.cfm?lang=00&thePubID=4FF3F1F7-15C5-F4C0-99959BAD3ED44A50>

- The government needs to ensure that these difficulties for individual households can be justified in terms of the wider benefit of increased supply of affordable housing. However, modelling by BSHF suggests that this might be a false economy, due to the impact of Affordable Rent on Housing Benefit expenditure (see below).

c) Impact on Housing Benefit expenditure

- Households who will gain access to the Affordable Rent tenure are likely to be those that might previously have been able to access social housing. Therefore it is reasonable to expect that a significant proportion of them will be in receipt of Housing Benefit. For these households, the amount of Housing Benefit needed to cover housing costs is likely to be higher than those in a traditional social tenancy, therefore placing a greater burden on Housing Benefit expenditure.
- In order to analyse the potential impact of Affordable Rent on Housing Benefit expenditure, BSHF made requests to DCLG, DWP and HMT for modelling they had undertaken on the impact of Affordable Rent on Housing Benefit expenditure. The departments declined to provide this information as the policy was still under development.
- In the absence of the government's modelling it is difficult to assess the likely impact of Affordable Rent on Housing Benefit expenditure. BSHF has only been able to perform basic modelling to estimate the impact; this has necessarily made significant assumptions and consequently should only be taken as a very broad guide of the scale of the impact. The modelling suggests that the introduction of Affordable Rent could add cumulatively £390 million to Housing Benefit expenditure each year. By the end of the Spending Review period that would amount to an increase of Housing Benefit expenditure of £1.56 billion per year.<sup>2</sup> If £1.56 billion was spent on building affordable housing it could provide over 25,000 new social rented homes.<sup>3</sup> The government needs to ensure that Affordable Rent does not simply transfer capital spending on housing to welfare budgets.

d) Delivering sufficient new homes

- It is not clear that extra income generated from Affordable Rent will deliver the number of new houses suggested by the government. An alternative estimate of the number of houses likely to be built through revenue raised from Affordable Rent has been produced by Chartered Institute of Housing (CIH). They suggest that only 15,000 homes will be built annually through the scheme.<sup>4</sup> This produces

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<sup>2</sup> Calculations available from BSHF on request.

<sup>3</sup> Assuming a subsidy of £62,000 per unit, which was the average grant rate for social housing funded by the Housing Corporation between 2006 and 2008. See p31 of Housing Corporation (2007) National Affordable Housing Programme 2008-11 Prospectus, <http://www.homesandcommunities.co.uk/public/documents/NAHP-2008-11-Prospectus.pdf>

<sup>4</sup> Inside Housing (2010) 'Affordable rent' to derail development, <http://www.insidehousing.co.uk/news/development/%E2%80%99affordable-rent%E2%80%99-to-derail-development/6512352.article>

a total of 60,000 over the spending review period, as opposed to the government's prediction of 150,000.

- Analysis of the proposals by L&Q suggests that whilst the target of 150,000 homes is possible, it is “daunting” and will require wider changes in the funding of social housing. They suggest that if the target is not achieved it will “run the risk of increased poverty, of immobile communities isolated by income, alienated from the mainstream of society”.<sup>5</sup>
- The government will also need to ensure that these changes do not result in housing associations being less able to borrow and therefore develop. Changes to credit ratings for housing associations would depend on the “aggressiveness of debt strategies after an increase in rental income”.<sup>6</sup> There are issues regarding the appetite and ability of housing associations to adopt this type of more aggressive approach to arrears management. Other finance experts have suggested that the new regime may not allow landlords to maintain current levels of development, as financing plans through more borrowing could weaken ratings and potentially affect associations' ability to access the capital markets.”<sup>7</sup>
- In addition, there are important regional and local variations that require further attention. Spatial variation in rental markets mean that it is estimated that 60 per cent of these new affordable properties will be built in London and the South East, compared with less than 2 per cent in the North East.<sup>8</sup>
- In areas where private rents are low, social housing currently offers close to or greater than 80% of market rents: for these places, there will be little or no decrease in subsidy. Equally, in areas of low private rents, any percentage increase in rent is going to amount to a very small cash increase for social landlords. These factors mean that there will be very little additional money available with which to build new homes in some parts of the country.
- Conversely, in areas such as London with high private rental costs, although increasing rents to a higher percentage of market rates will create a significantly increased income stream, the cost to tenants may be far from affordable. This is likely to mean that more people will need support with housing costs, increasing the burden on the Housing Benefit bill.

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<sup>5</sup> L&Q (2011) Hard Times, More Choices: A new framework to deliver 150,000 affordable homes, [http://www.lqgroup.org.uk/\\_assets/files/Hard-times-more-choices.pdf](http://www.lqgroup.org.uk/_assets/files/Hard-times-more-choices.pdf)

<sup>6</sup> Moody's (2010) English Housing Associations: No immediate rating impact from changes, [http://v3.moody.com/viewresearchdoc.aspx?docid=PBC\\_129017](http://v3.moody.com/viewresearchdoc.aspx?docid=PBC_129017) (paywall). Quoted in: Inside Housing (2010) Rent review could lower credit rating, <http://www.insidehousing.co.uk/news/finance/rent-review-could-lower-credit-rating/6512783.article>

<sup>7</sup> Inside Housing (2010) Rent review could lower credit rating, <http://www.insidehousing.co.uk/news/finance/rent-review-could-lower-credit-rating/6512783.article>

<sup>8</sup> Inside Housing (2010) 'Affordable rent' to derail development, <http://www.insidehousing.co.uk/news/development/%E2%80%98affordable-rent%E2%80%99-to-derail-development/6512352.article>

- e) In summary, Affordable Rent could:
- Reduce access to low cost housing;
  - Lead to major increases in Housing Benefit expenditure;
  - Fail to deliver the expected number of new affordable homes.
- f) The worst case scenario is that households on Affordable Rent struggle to meet their housing costs, Housing Benefit expenditure increases significantly, but the projected increase in new affordable homes is not delivered.

## **Section B: Tenure reform**

- a) The introduction of flexible tenancies for local authorities and increased use of fixed-term tenancies for housing associations are major changes to the tenure structure of the UK housing system. These will have a number of wider implications for social and economic policy that need to be fully considered in order to ensure that the changes do not create harmful unintended consequences.
- b) The Ministerial Foreword to the consultation describes social housing as a “springboard”. The implicit assumption is that remaining in social housing for the long term is not a desirable outcome. Whilst the “springboard” role can be an important one for social housing, failure to outline the other roles that social housing can play risks creating a view of it as a transitional tenure. Some tenants, for example older people and those with long term disabilities, require secure long term accommodation. Social housing plays a vital role in providing these people with decent and affordable accommodation.
- c) If social housing acts only as a transitional tenure for the poorest in society, to be exited if a household’s circumstances have improved, there is a real danger that it will compound the “ghettoisation of poverty” that was rightly criticised by the Conservatives in opposition.<sup>9</sup> Concentrations of poverty have been identified by the government as a major issue in housing policy. Changes to social housing should reflect the different roles that it plays in society which include both a “springboard” and a safe haven.
- d) As Grant Shapps correctly observes, social rented stock is a “scarce resource”. It appears that the government has concluded that the best response to this scarcity is to further ration access to social housing. The alternative – of increasing the supply of social housing – is still worthy of consideration despite financial constraints. Government should consider the full range of tools at its disposal to ensure that there is sufficient supply of housing in general, and of social housing in particular, to meet need and demand, and to address affordability problems. Whilst investment in social rented stock is an important element in this range of mechanisms, it is not the only one. Government should ensure that other elements of the housing system, such as planning and taxation, are aligned with the goal of delivering sufficient decent and affordable housing in communities where people want to live.

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<sup>9</sup> Duncan Smith, I. (2008) Housing Poverty: From social breakdown to social mobility, <http://www.centreforsocialjustice.org.uk/client/downloads/housingpoverty2.pdf>

- e) The creation of short fixed-term tenancies within social housing may hinder the development of sustainable communities, which seems to be at odds with the government's proposals for a Big Society. It is difficult to develop community when a significant portion of residents are in a locality for relatively short periods of time. Without stability it is very difficult for individuals to become involved with the community in which they live, something that is at the heart of the Big Society.
- f) Removing or restricting security of tenure may also be at odds with the government's efforts to incentivise work. If people know that they are likely to lose their social tenancy if their household income increases sufficiently – not only causing them to lose their home, but also forcing them to pay substantially higher rents in the private rented sector – they are much less likely to take on work.
- g) An alternative model would be to maintain security of tenure, but allow some variation in rent depending on the ability of a tenant to pay. Such a policy occurs in Hong Kong, where social tenants who have lived in the social rented sector for ten years or more are required to report their household income every two years. Those that have an income above a certain threshold then pay an additional proportion on top of social rent.<sup>10</sup>
- h) A system that grants lifetime security of tenure, but allows rents to increase for tenants whose incomes increase, would have many of the benefits of a shorter tenancy whilst avoiding many of the pitfalls. The reduction of the rental subsidy would provide additional income to the landlord, which could potentially be borrowed against, allowing the provider to build more housing for occupation by new tenants.

### **Section C: Coherent finance system for social housing**

- a) The government needs to ensure that Affordable Rent complements other areas of the financial system for social housing, particularly reform of the Housing Revenue Account and the Right to Buy. The Consultation provides limited information in this area and does not provide any questions for further comment on this issue from stakeholders.
- b) We support the government's intention to "devolve power and sufficient resources to councils to enable them to offer a better service to their tenants".<sup>11</sup> The government has stated its intention to provide further details of the reforms to council housing finance in the coming months. These reforms are required to provide a strong foundation for the introduction of the flexibilities associated with Affordable Rent. The government needs to be careful that local authorities are not burdened with excessive debt from the council housing finance settlement that would hinder their ability to take on the type of reforms envisaged in this consultation.

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<sup>10</sup> Gibson and Nicholson (2010) Safe as houses? Security of tenure for social housing tenants in England, <http://www.centreforum.org/files/safe-as-houses.pdf>

<sup>11</sup> Shapps, G. (2010) Council Housing Finance, Written Ministerial Statements: 13 December 2010, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101213/wmstext/101213m0001.htm#10121320000014>

- c) In addition to the reform of the Housing Revenue Account, it is important to consider the distribution of capital receipts from Right to Buy. The current proposal is that 75 per cent of receipts from Right to Buy sales will be returned to the Exchequer. BSHF is concerned that this will not offer local authorities the flexibility that they need to manage their housing stock and finances to meet local needs. Grant Shapps has rightly commented that where Right to Buy “falls down is if we do not build more homes with the cash”.<sup>12</sup> The government should ensure that Right to Buy receipts support the development of new affordable housing.

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<sup>12</sup> Inside Housing (2009) Conservatives seek to extend Right to Buy,  
<http://www.insidehousing.co.uk/conservatives-seek-to-extend-right-to-buy/6506817.article>

**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?**

1.1. BSHF does not have any particular contribution to make on this point

**2. When, as a landlord, might you begin to introduce changes?**

2.1. BSHF does not have any particular contribution to make on this point

**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?**

3.1. BSHF does not have any particular contribution to make on this point

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

4.1. BSHF does not have any particular contribution to make on this point

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

5.1. BSHF agrees that the Tenancy Standard should remain brief and focus on key principles, as this will provide valuable flexibility for landlords to respond effectively to local housing circumstances and meet individual tenant needs.

5.2. However, given the new flexibility offered to landlords, the Tenancy Standard should ensure that tenants are protected accordingly. In particular, emphasis should be placed on landlords providing the most appropriate tenure length and rent level for their tenants. It is important that safeguards are in place to ensure that tenants' needs are protected against other priorities that housing associations, local authorities or central government may have (e.g. maximising income).

5.3. Clear standards and a robust mechanism for dealing with grievances are essential as a counterpoint to increased flexibility for landlords.

**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?**

6.1. BSHF does not have any particular contribution to make on this point

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

7.1. That landlords develop and maintain transparent policies for tenancy allocations seems a positive step. The Tenancy Standard and tenancy strategy for the local area should provide adequate constraint of such policies.

7.2. However, for landlord policies to be fair and effective, the Tenancy Standard and local tenancy strategy must provide sufficient support for tenants and future tenants, as outlined in response to question 5.

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

8.1. BSHF does not have any particular contribution to make on this point

**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?**

9.1. The response to this question should be read in conjunction with the information provided in Section B of this document. This highlights the wider implications for social and economic policy that need to be fully considered in order to ensure that Affordable Rent does not create harmful unintended consequences.

9.2. The consultation document does not provide any justification for the choice of two years as a minimum tenancy. Without the rationale and evidence for this proposal it is very difficult to comment on whether is a suitable length for a minimum fixed term.

9.3. Choosing a suitable length of time for a minimum fixed term is necessarily a balance between competing priorities. At present the lifetime tenure prioritises the security of tenants within social housing over the needs of people who are unable to access this support. Competing priorities include:

- Increasing the supply of new social housing;
- Efficient management of stock in social housing;
- Benefit to individual households and communities derived from stable tenancies;
- Potential work disincentives from variable rents or shorter tenancies;
- Efficient use of the economic subsidy that is received by tenants in social housing.

Economic subsidy is the difference between the rent charged by social landlords and a market rent that provides an advantage to tenants of “paying rents that are below those that would give an economic return on the value of the housing stock they occupy”.<sup>13</sup> The Hills review of social housing suggested that this economic subsidy was worth £6.6 billion in England in 2004 and that the majority of the subsidy (approximately 60 per cent) was received by tenants in London, the South East and South West. (It has been noted that much social rented housing has already been paid for by the rents paid, hence the importance of referring to an economic subsidy, not simply a subsidy.)<sup>14</sup> The Right to Buy also represents a major subsidy to an individual household that reduces the availability of social housing stock. This subsidy creates a significant long term benefit for the household in question.

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<sup>13</sup> Hills, J. (2007) Ends and Means: The future roles of social housing in England, p 3, <http://sticerd.lse.ac.uk/dps/case/cr/CASEREport34.pdf>

<sup>14</sup> See reference 71 in Diacon, D., Pattison, B., Strutt, J., and Vine, J. (2010) Support with Housing Costs: Developing a simplified and sustainable system, p 59, <http://www.bshf.org/published-information/publication.cfm?lang=00&thePubID=AB588DD9-15C5-F4C0-993D5892C8E1DCC1>

9.4. This highlights different types of benefits associated with social housing, which are shared between individual households, local communities and wider society. It is not clear from the government's proposals how they wish to balance the competing priorities outlined above. For example:

- What is the rationale for choosing two years as a minimum fixed term?
- Is there a significant financial or social cost/benefit in choosing this length of time over other plausible options (ranging from six months to match Assured Shorthold Tenancies up to the current lifetime tenancy)?
- To what extent will the government prescribe which households will be offered tenancies of different lengths?
- How will the government safeguard the needs of vulnerable households?

There is an urgent need for the government to clarify its rationale and evidence base in this area.

9.5. Given that trade-offs are inevitably made in designing the policy framework for social rented housing, it is plausible that a case could be made for creating a new tenure in the sector that does not necessarily offer lifetime security of tenure. However, the case for this change needs to be made as part of a coherent strategy for social housing, and following full consideration of alternatives such as the Hong Kong model outlined in Section B, whereby security remains but rent flexibility is increased. In the absence of such a strategy and such consideration the case for the proposed changes must be considered unproven.

**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?**

10.1. The response to this question should be read in conjunction with the information provided in Section B of this document.

10.2. If the proposal to create new tenancies with less than lifetime security is pursued, BSHF would note that the needs of those taking up a social tenancy vary greatly. Whilst two years may be an acceptable length for some tenants it will be far too short for many vulnerable households. Inappropriately short tenancies could lead to increased costs in other areas of public expenditure (e.g. social care and healthcare) if it fails to provide a stable base for vulnerable households. Safeguards are needed to ensure that households for whom a short tenancy would be inappropriate are not placed on one.

10.3. There are a number of groups for whom the stability of a longer tenancy is important. These might include:

- Those formerly homeless;
- Care leavers;
- Families with young children;
- People who are retired;
- People with serious physical or mental illness.

10.4. These diverse groups highlight the variety of people who would benefit from the security of longer tenures in social housing. More importantly, however, individual circumstances of tenants must be considered. A robust system will be needed to ensure that decisions are based on what is best for individuals and communities.

**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?**

11.1. The response to this question should be read in conjunction with the information provided in Section B of this document.

11.2. BSHF strongly supports the continuation of lifetime tenancies for some groups. Some groups within society, including older people and some people with long term illnesses or disabilities, are unlikely to increase their income enough to be able to afford a market rent. They would benefit significantly from receiving a social tenancy for the rest of their life and should be given one. This will give these vulnerable households security and stability. In addition to providing this security, it is likely to save costs associated with having to review the tenancy periodically and avoid costly changes in any healthcare or social care that they receive.

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

12.1. The response to this question should be read in conjunction with the information provided in Section B of this document.

12.2. It is critical that individual circumstances are taken into consideration and the most appropriate tenancy for the individual is offered. It is not desirable for a situation to develop where short term tenancies become the norm, as this will foster unstable communities and potentially cause significant stress and instability for households, leading to other social problems. The costs, both to society and the economy of these problems are likely to far outweigh the savings of not subsidising some households' rent. Therefore if shorter fixed term tenancies are to be offered, longer term and secure tenancies should still be widely available. A clear and transparent rationale for offering tenancies of different lengths will also be vital to ensure that this system functions effectively.

**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?**

13.1. The response to this question should be read in conjunction with the information provided in Section B of this document.

13.2. BSHF welcomes the decision to maintain existing security of tenure for households that decide to move property. This is not only fair for tenants, but also enables mobility to be maintained within the social rented sector. In particular this will allow people to downsize if they wish to, freeing up larger properties for new families. With 430,000 households under-occupying and 258,000 households overcrowded in the social rented sector,<sup>15</sup> such mobility is to be encouraged. The government seems keen to

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<sup>15</sup> DCLG (2010) Local decisions: a fairer future for social housing, <http://www.communities.gov.uk/publications/housing/socialhousingreform>

foster greater mobility within the social rented sector, with plans to make home-swapping within the sector easier. Maintaining security of tenure for those who move seems likely to encourage this.

**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?**

14.1. The response to this question should be read in conjunction with the information provided in Section B of this document.

14.2. Those granted a social tenancy for life under the new system should keep this security even if they decide to move. It seems that the new proposals will give lifetime tenancies for only those most in need. Such households should not be penalised for wanting or needing to move, as this will remove the security and stability that they are deemed to need. For example, if security of tenure were not guaranteed upon moving, a young couple who need to move because they now have children and are overcrowded may be unwilling to do so because they fear losing their security of tenure.

14.3. In addition to reducing security and stability for vulnerable households, such a measure is likely to decrease mobility, as people will be unwilling to move for fear of losing their security of tenure. Given the reasons outlined in paragraph 13.2 (above) this seems inadvisable.

**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 the tenancy?**

15.1. Advice and assistance for tenants at the end of a tenancy is crucial, to ensure the most appropriate next step, be it a new social tenancy or a move to a market tenure.

15.2. However, where that advice and assistance comes from should be based on who is best able to provide a high quality service. This may well be social landlords, but may be another provider. For example, whilst social landlords may know much about their own social rented stock, local authorities may be able to offer more information about other social landlords or private rental opportunities. The government should carefully consider whether independent advisors would be better placed to deliver this important service.

**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?**

16.1. BSHF does not have any particular contribution to make on this point

**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?**

17.1. There is a clear need to review the use of waiting lists for social housing, and new flexibilities may be beneficial. There are several issues with the current system of waiting lists:

- It provides a false impression of availability by allowing people with little chance of getting housing onto the waiting list;
- The quality of data on waiting lists is variable and they may include people who have died, moved away or no longer wish to access social housing

- The current system tends to confuse measures of stock and flow. A waiting list of 1.8 million households would not be an issue if there were 2 million lettings per month. The real issues relate to how long people are waiting for social housing and their housing situation during that wait. The problem arises if people in real housing need (such as overcrowded families) are living in unsuitable accommodation for extended periods whilst waiting for social housing.

17.2. An alternative to the current system could retain the benefits of open waiting lists, which encourage broad access to social housing, but change the reporting of data. Local authorities could report the average waiting times for people in different preference categories. A local authority might have a relatively short waiting time for those in high need but very long waiting lists for those in low need.

17.3. Such a reporting system would give more useful information to all stakeholders. It would provide a more meaningful indication of how long people will have to wait for social housing. It could also act as a discouragement to join the list to those who are not likely to get housed, as they would see that people in their category have to wait indefinitely. It would also provide both central and local government with a clearer indication of housing need in different locations.

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

18.1. BSHF does not have any particular contribution to make on this point

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

19.1. BSHF does not have any particular contribution to make on this point

**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?**

20.1. BSHF does not have any particular contribution to make on this point

**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?**

21.1. BSHF does not have any particular contribution to make on this point

**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?**

22.1. BSHF does not have any particular contribution to make on this point

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

23.1. BSHF does not have any particular contribution to make on this point

**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?**

24.1. BSHF does not have any particular contribution to make on this point

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

25.1. The option of discharging the duty being extended to allow housing in the private rented sector could be treated as an opportunity to extend those groups to whom the duty is owed. We would welcome the Scottish approach of owing a duty to all households found unintentionally homeless. The “priority need” categories could become the basis of a subset within that homeless duty that might receive, for example, priority on a discharge of duty into social rented accommodation (rather than private rented sector) if it is available.

**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?**

26.1. BSHF does not have any particular contribution to make on this point

**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?**

27.1. It does not seem unreasonable to discharge a homelessness duty within the private rented sector, as long as any such discharge is to a tenancy that offers decent, affordable, and sufficiently stable accommodation for the household. Whatever the length of the tenancy, it should be based on evidence that it will provide sufficient stability for the household, so as to minimise the risk of homelessness recurring at the end of the tenancy.

27.2. The choice of 12 months as a proposed minimum fixed term is another area of the consultation where more evidence is required. This makes it difficult to assess the effectiveness of any potential policies, or whether there will be unintended consequences. In determining whether a 12 month assured shorthold tenancy in the private rented sector is an appropriate option for discharging a homelessness duty, it is important to consider evidence pertaining to how long it can take a household to stabilise following the difficulties of being made homeless. In this instance, homelessness charity Shelter suggests that it normally takes at least two years for a formerly homeless household to become self-sufficient again.<sup>16</sup>

27.3. Particular note of affordability should be taken in relation to private sector tenancies. In higher priced areas private renting could lead to welfare dependency whereas in a social tenancy, previously homeless households may be more able to gain financial independence.

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<sup>16</sup> The Guardian (2010) Charities condemn plans to reform council home tenancies, <http://www.guardian.co.uk/society/2010/nov/22/charities-condemn-plans-to-reform-council-tenancies>

27.4. As noted in the consultation document, “[c]ase law has established that, among others, the factors that must be taken into account include the size and condition of the accommodation, its location and affordability.”<sup>17</sup> The government should consider using this legislation to codify into statute those factors listed above that have been identified as relevant in case law. This should be expressed as a non-exhaustive list, to leave open the potential for further factors to be identified by future courts.

## **28. What powers do local authorities and landlords need to address overcrowding?**

28.1. The commitment made at point 7.4 of the consultation document is welcome (“we are committed to ensuring that the existing tenancies of secure and assured tenants of social landlords are protected and respected. No tenant who currently has spare bedrooms in their property will be required to move as a result of our proposals”). However, it should be noted that this commitment is not reflected in all aspects of government policy. In the Emergency Budget of June 2010, plans were announced to reduce the Housing Benefit of those households in the social rented sector who are under-occupying their accommodation.

28.2. In general, measures that aim to facilitate moves within the social rented sector, and particularly measures that allow people to downsize as their household shrinks without losing any accrued benefits such as security of tenure, are to be encouraged.

28.3. However, as BSHF has previously identified,<sup>18</sup> what is really needed to encourage people to move from the homes they are under-occupying is a compelling alternative offer. Many older households in particular will have lived in their homes for many years and have strong emotional attachments to them. If they are to be persuaded to move without punitive measures the alternative will have to be carefully designed to meet their needs and desires (for example including accommodation that is available within a development to house guests) and should typically be developed within existing neighbourhoods, such that households do not face the additional upheaval of leaving their community as well as their family home.

28.4. Consequently, one of the most important powers that will need to be available to local authorities and landlords to address overcrowding is the power to deliver additional housing, whether of the larger type to directly house overcrowded households or high-quality, desirable, smaller purpose-built units to free up larger units indirectly. Whilst providers have the general powers to undertake this type of activity, what needs to be provided is a policy framework that supports this activity. Most obviously this would be funding streams that can support substantially higher levels of development, but other potential areas for support include ensuring that other tools at the state’s disposal, such as the planning and taxation systems, are aligned to facilitate this delivery.

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<sup>17</sup> DCLG (2010) Local decisions: a fairer future for social housing, <http://www.communities.gov.uk/publications/housing/socialhousingreform>

<sup>18</sup> Diacon, D., Pattison, B., and Vine, J. (2009) The Future of Housing: Rethinking the UK housing system for the twenty-first century, p 44, <http://www.bshf.org/published-information/publication.cfm?lang=00&thePubID=4FF3F1F7-15C5-F4C0-99959BAD3ED44A50>

**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?**

29.1. As the consultation document rightly suggests, the framework set out in the 1985 Housing Act with regard to overcrowding is not fit for purpose. Both the space and room standard components allow for living rooms to be considered appropriate sleeping space. This is unreasonable, as it does not allow for privacy, or for people to sleep when others are using living spaces. The standards also fail to adequately consider the needs of children, as the room standard makes no provision for children under the age of ten and the space standard makes no provision for children under the age of one.

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

30.1. The risk assessment approach to housing standards adopted in the Housing Health and Safety Rating System (HHSRS) is generally a reasonable approach for considering whether an individual household is overcrowded. It is also welcome that the standard comments on the way that living space is allocated and divided, rather than providing just an overall area or a number of bedrooms. The recognition of the importance of individual privacy from other members of the household and the need for adequate space for children to play is a welcome acknowledgement of the impact that these factors have on education outcomes, mental health and child development.

30.2. However, the HHSRS standard regarding bedroom sharing would benefit from being more explicit about appropriate sharing arrangements. The HHSRS states that “[as] a guide, and depending on the sex of household members and their relationship, and the size of rooms, a dwelling containing one bedroom is suitable for up to two persons, irrespective of age. A dwelling containing two bedrooms is suitable for up to four persons. One containing three bedrooms is suitable for up to six persons, and one containing four bedrooms is suitable for up to seven persons”.<sup>19</sup> Clarification of what is deemed appropriate within this guidance would be a worthwhile addition.

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<sup>19</sup> ODPM (2006) Housing Health and Safety Rating System: Operating guidance, p. 93  
<http://www.communities.gov.uk/documents/housing/pdf/142631.pdf>