

STATES OF JERSEY



SOCIAL HOUSING IN JERSEY: INTRODUCTION OF A REGULATORY FRAMEWORK

**Lodged au Greffe on 7th December 2017
by the Minister for Housing**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree, in principle, to the introduction of regulation in relation to social housing, as set out in the report accompanying this proposition;
- (b) to agree, in principle, that the proposed components of this regulatory framework should include –
 - (i) the establishment of a register of social housing providers;
 - (ii) the introduction of performance standards for social housing providers, and measures to monitor and assess performance against those standards;
 - (iii) the establishment of a social housing regulator;
 - (iv) the introduction of statutory oversight and governance arrangements for the assessment and prioritisation of housing need through the Affordable Housing Gateway;
- (c) to charge the Minister for Housing to develop and bring forward, for approval, the necessary legislation to implement the proposals in paragraph (b) above within 2 years.

MINISTER FOR HOUSING

REPORT

1. Introduction

Social housing has an important role to play in the community, providing affordable, good standard and secure accommodation to people in housing need. Andium Homes and the housing trusts have a strong record in the provision of social housing, and today they provide accommodation to more than 5,500 households in Jersey, including people who are vulnerable and at risk of homelessness.

The Minister for Housing placed social housing at the heart of the ‘Housing Strategy – March 2016’ ([R.29/2016](#), presented to the States on 29th March 2016) in recognition of the key role it plays in meeting Jersey’s future housing needs, setting an ambitious target to deliver 1,000 new affordable homes, for rent and to purchase, by 2020.

The introduction of a proportionate system of regulation is an important step in this regard, supporting an effective and sustainable social housing sector in Jersey. It will help to encourage an environment in which social housing providers can grow, and will enable the continuing provision of good standards for homes and housing services for social housing tenants.

It will, moreover, provide an important level of assurance and confidence for the various stakeholders involved in the sector – current and prospective social housing tenants; the general public; Government and States Members; States Departments involved with different aspects of social housing provision; and private institutions such as lenders, service users and contractors.

A regulatory framework is also important for social housing providers. It provides an integral tool they can use to assess and monitor their performance, and to ensure the provision of good quality services. In a similar way, it enables innovation and best practice to be shared across the entire social housing sector.

This report explains the principles underpinning the proposal to introduce statutory regulation of social housing, and sets out a potential regulatory framework. The proposals include the introduction of performance standards for financial management, governance and service delivery, in addition to the establishment of an independent social housing regulator. The proposals also include the introduction of legislation to regulate the identification of housing need in Jersey.

There will, of course, be some concerns regarding the introduction of regulation, particularly the extent of the proposed regulator’s powers, and ensuring that social housing providers maintain autonomy over their business activities.

In this respect, the principle of ‘proportionality’ has been fully integrated into the proposed regulation. It is recognised that the housing trusts are independent organisations that have operated successfully on a voluntary basis for many years, governed by their own constitutions. In addition, Andium Homes is a States-owned company, with its own relationship with the Minister for Treasury and Resources through a Memorandum of Understanding.

As such, regulation must add value. It must be sufficiently flexible to take into account the diversity of social housing providers that operate in Jersey, and vary according to the size, financial risk and public investment associated with an individual social

housing provider. It must also avoid duplication and streamline existing regulatory requirements into one place where possible.

The proposals for social housing regulation should not be taken lightly. In this report, the Minister for Housing establishes a clear rationale for introducing regulation, and outlines a potential framework for how regulation could work in practice. This proposition now gives the States Assembly the opportunity to discuss the principles of social housing regulation in advance of detailed work on legislation itself.

2. Overview of proposals

This proposition and report is seeking the Assembly's approval for the introduction of social housing regulation, and sets out the structure of a potential regulatory framework. If adopted by the Assembly, it is proposed that social housing regulation will be introduced over the next 18 months to 2 years.

This timescale will enable a period of transition towards the introduction of social housing regulation, providing sufficient time to develop the scope and structure of a regulatory framework in consultation with interested parties.

It is proposed that legislation will provide for the introduction of the following regulatory framework –

- The establishment of a dedicated social housing regulator to oversee regulation.
- The functions and objectives of a regulator; and a requirement to prepare an annual report on the performance of social housing providers for presentation to the States Assembly.
- The establishment of a register of social housing providers, with the automatic registration of existing social housing providers.
- The setting of performance standards in relation to financial management, governance and service delivery.
- Tenant dispute resolution requirements.
- The setting of reporting and monitoring requirements for social housing providers in relation to the performance standards.
- The power of the regulator in respect of the monitoring and assessment of the performance of social housing providers; and the power to carry out inquiries and set performance targets.
- The use of enforcement notices where a social housing provider is or is at risk of not meeting one or more of the performance standards, and has not properly engaged with the regulator.
- The power of the regulator to apply to the Court in order to exercise a series of enforcement powers where other forms of engagement have failed*. These include –

- ❖ the power to remove or suspend a senior officer where his/her conduct is hindering the proper management of a social housing provider;
- ❖ the transfer of some or all social housing assets in circumstances where there is a serious risk to the financial viability of a social housing provider; and
- ❖ the appointment of an interim manager to manage the affairs of a social housing provider in order to mitigate the risk of any serious performance issues.

**Although these provisions may never be exercised in practice, the ability of the regulator to use the step-in power provides assurance for tenants, government and private investors. The regulator will need to demonstrate to the Court that all other reasonable actions have been taken before pursuing enforcement as a course of action.*

- Consent from the regulator for the disposal of social housing assets.
- The right of appeal for social housing providers against a decision made by the regulator.
- Offences under the Law.

It is also proposed that a statutory basis for the assessment and prioritisation of housing need in Jersey should be introduced, subject to an independent review of access to social housing.

It is anticipated that the above proposals will be refined as the legislative framework is developed, and the presentation of these options is to provide stakeholders with an understanding of the key principles underpinning regulation at an early stage.

As draft legislation is prepared, the regulatory framework will evolve based on Law Officers' advice, and further through discussion with social housing providers, States Departments that have an interest in social housing provision, and the Environment, Housing and Infrastructure Scrutiny Panel.

The following sections explain the policies and principles behind the proposed regulatory framework in detail.

3. Background

'The Reform of Social Housing' ([P.33/2013](#)) was adopted by the States Assembly on [16th May 2013](#). The proposition proposed the separation of the landlord, policy and regulatory functions that had been performed by the Housing Department up until that time. P.33/2013 included the following proposals –

- (1) The establishment of a wholly States-owned housing company responsible for the ownership and management of social housing stock. Andium Homes was established in July 2014 and provides a landlord function for approximately 4,500 households in Jersey.

- (2) The introduction of a 90% rents policy, which allows rent levels for new social housing tenancies to be set at up to 90% of the open market rent for a comparable property. The scope of the policy enables some social housing providers to maintain rents below the 90% level.
- (3) The establishment of the Strategic Housing Unit (“SHU”) under the oversight of the Minister for Housing. The SHU is responsible for the development and co-ordination of housing policy and strategy.
- (4) The introduction of a regulatory framework for social housing. This includes Andium Homes and the housing trusts, in order to provide appropriate oversight of social housing provision.

The proposal to introduce social housing regulation has not yet been implemented. Draft legislation to establish a social housing regulator was developed as part of the Housing Transformation Programme, but the legislation was not brought forward, owing to concern that the proposal lacked detail regarding how a regulator would work in practice.

The former Health, Social Security and Housing Scrutiny Sub-Panel, in their ‘Housing Transformation Programme Review’ ([S.R.6/2013](#)), recommended that more clarity and agreement on the purpose and operation of a regulator was required before the lodging of draft legislation. The Scrutiny Sub-Panel’s concerns are referred to at various points in this report, but can be summarised as follows –

- Regulatory activity should be based on co-operation between social housing providers rather than focus on top-down compliance.
- Greater focus should be given to how regulation can improve service delivery as opposed to deal with service failure.
- If the housing trusts are to deliver a sizeable proportion of new affordable housing development, growing the sector should be the goal for regulatory activity, rather than compelling providers to achieve uniform standards.
- The principle of encouraging a culture of co-regulation whereby social housing providers should self-regulate does not establish how, or on whose terms, the providers will self-regulate.

The Scrutiny Sub-Panel, therefore, brought [an amendment](#) to P.33/2013, which requested the Minister for Housing to bring forward detailed proposals in relation to social housing regulation before any Law was developed. The amendment, which was approved by the Assembly, anticipated that, after debate on the proposals, the Minister would bring forward draft legislation in order to implement the form of regulation approved by the Assembly.

In accordance with the decision of the Assembly, the Minister for Housing has re-visited the proposal to introduce social housing regulation. A public consultation was carried out between November 2016 and January 2017, which considered potential options for a regulatory framework, including the aim of regulation and the institutional arrangements required to support regulation. The responses to the consultation have

informed the Minister’s preferred approach to social housing regulation as set out in this proposition and report.

The Minister is now seeking an in-principle decision from the Assembly regarding the introduction of social housing regulation, before developing and bringing forward for approval the legislation required to give effect to the proposed regulatory framework.

4. Provision of social housing

‘Social housing’ is a category of tenure for households whose housing needs are not adequately met by the open market. This includes households who are not able to secure accommodation from within their own resources (i.e. those below a specified income threshold), and households who demonstrate specific and acute housing needs, such as homelessness, disabilities and serious medical conditions.

There are 5 social housing providers in Jersey who will be covered by regulation. They are –

Social housing provider	Approximate units of accommodation
Andium Homes Limited	4,500
C.T.J. Housing Trust	143
F.B. Cottages Housing Trust	32
Les Vaux Housing Trust	361
Jersey Homes Trust	768

The other main housing trust in Jersey, Clos de Paradis Housing Trust (60 accommodation units), has not benefited from States funding and does not allocate accommodation to households on the Housing Gateway waiting list. It will not, therefore, be regulated at this point.

As was noted by the former Health, Social Security and Housing Scrutiny Sub-Panel, the parishes also provide a small number of accommodation units for their parishioners, which could be categorised as social housing. It is not anticipated that the parishes will be included within the regulatory framework for social housing, although each parish would be able to register on a voluntary basis, if they wish, as a social housing provider.

Access to social housing is managed by the Affordable Housing Gateway. The Housing Gateway is administered by the Department for Social Security on behalf of the Minister for Housing. Currently, there are more than 800 households registered on the waiting list looking to rent social housing, and a further 1,000 hoping to access affordable home purchase.

Approximately 5,800 households in Jersey are currently living in social housing, which equates to 14% of the Island’s total housing stock. This figure is expected to increase to more than 6,800 by 2020 as new social housing is built in the years ahead.

5. The need for regulation

The primary motivation for introducing social housing regulation is to provide assurance to current and future tenants of social housing providers that their homes are secure, and they will receive good quality homes and housing services from social housing providers. In this regard, setting performance standards for social housing

providers will ensure that adequate protections are in place for social housing tenants, and that they are afforded stability of tenure. This is important in the context of social housing, where low-income households may have restricted choice over their housing situations, particularly where a household includes a vulnerable person.

The introduction of regulation also provides assurance to stakeholders that social housing providers are well-governed, well-managed and financially viable, which, in turn, will support the continued provision of social housing and a sustainable social housing sector in the long term.

Moreover, regulation helps to protect public investment in social housing, and the assets developed as a result of that investment. Where public investment has been made in social housing provision, or where a social housing provider is eligible for certain benefits as a result of its “not-for-profit” business activities, government requires ongoing assurance that investment is being used properly and provides value for money. In the local context, this includes –

- the £250 million bond made available for social housing development and refurbishment;
- the Income Support system enables rents of up to a maximum of 90% market equivalent, providing a sustainable funding model for social housing development;
- the rezoning of land for the purpose of social housing development;
- support in accessing private borrowing;
- exemption from taxation on not-for-profit activities; and
- exemption from the proposed Jersey Infrastructure Levy for social housing development.

Regulation will, therefore, strengthen accountability and transparency in respect of public money invested in social housing. Once regulation has been introduced, only social housing providers who demonstrate their capacity to comply with the regulatory requirements will be able to access public funding.

This is not to say that social housing providers do not provide good standard homes and housing services already. Jersey’s social housing providers have a strong reputation in delivering secure and good quality homes, and the introduction of regulation will formalise best practice and rationalise existing regulatory requirements under a single body that has full oversight of the social housing sector.

The former Health, Social Security and Housing Scrutiny Sub-Panel raised the point that regulation should not simply deal with the risk of service failure, but should encourage growth and consumer-oriented service delivery. One of the key aspects of the proposed regulatory framework will be an ongoing commitment for engagement between a regulator and social housing providers, in order to provide best practice advice and support the capacity of social housing providers to grow and access new funding models.

Finally, evidence from other jurisdictions has shown that regulation enables social housing providers to access private borrowing at competitive rates in order to take on new projects. For private lenders, the presence of statutory regulation is an important aspect of due diligence, providing assurance that appropriate regulatory oversight exists to mitigate potential risks to their investment – e.g. the credit-worthiness of a social housing provider.

6. The Jersey Independent Care Inquiry

These proposals for social housing regulation must also be looked at in the context of the Independent Jersey Care Inquiry published on 3rd July 2017. The Inquiry did not make specific recommendations in relation to housing, but identified how housing in Jersey has, historically, been inadequate and has resulted in vulnerable children being received into care as a result of their housing circumstances. It noted that –

“The shortage and cost of housing have had a marked impact on family life and well-being for some families, and on fostering in Jersey, with some potential candidates having insufficient space to accommodate foster children. Pressures on accommodation in Jersey have also had a detrimental effect on the ability of the relevant departments to recruit and retain suitably qualified and trained child care staff from outside the island.”¹

In response to this, the Government is taking steps to tackle a legacy of under-investment in social housing and, together with Andium Homes and the housing trusts, is undertaking a significant programme of investment to build more than 1,000 affordable homes by 2020. Andium Homes also plans to achieve the Decent Home Standard on all its properties in the same period.

The introduction of a measured form of regulation for social housing is a central element in expanding the provision of high-quality social housing, and ensuring adequate protections for tenants.

7. Proportionate regulation

The proposals for social housing regulation must reflect the size of Jersey’s social housing sector and the diversity of organisations that operate within it. While it is proposed that social housing regulation will be given effect on a legislative basis – providing a clear and straightforward legal framework for regulation – it must be proportionate to the local context of social housing provision.

Indeed, it is important not to lose sight of the purpose of the housing trusts, namely voluntary organisations that work with the States to provide assistance to people in housing need, but who work on an independent basis. To this end, regulation needs to accommodate the diversity of roles, objectives, and financial arrangements of different social housing providers.

The Minister for Housing recognises that a “one size fits all” approach to social housing regulation is not appropriate for Jersey, taking into account the different sizes of social housing providers locally, and the diversity of their aims and growth trajectories. It is, therefore, important that legislation in this area provides a flexible approach whereby

¹ Jersey Independent Care Inquiry (2017) ‘Report of the Jersey Independent Care Inquiry – Executive Summary,’ p.4.

the level of regulation may vary, depending on the size and level of risk associated with an individual social housing provider.

The types of risks identified by a regulator might include poor outcomes for tenants in relation to the quality of services delivered; poor housing stock quality; and poor financial performance management and governance. In adopting a risk-based approach, a regulator would take into consideration a range of different factors in determining the level of engagement with a social housing provider, including –

- its confidence in the governing body and senior management to deal with the risks;
- the significance of the risks for tenants (in the case of service delivery performance);
- the track record of the organisation in handling risks and challenging issues;
- past regulatory engagement;
- the financial performance of the organisation and its ability to absorb change and instability;
- the level of public money it receives/the level of private funding it is servicing; and
- the stability of funding-streams and its reliance on that funding.

It is important to be clear that higher levels of regulatory engagement should not be assumed to equate to a poorly-performing organisation. For example, a social housing provider that is expanding and has a large development programme may be subject to enhanced regulatory oversight, given the potential risk exposure involved.

Further explanation about how a regulator would approach engagement with social housing providers in order to determine the level of risk associated with its activities is set out in section 12.

Moreover, in order to ensure that the regulatory framework and the proposed legislation in this area is proportionate, the Minister is proposing to introduce a ‘co-regulation’ approach to social housing regulation. This responds to the concerns raised by the Health, Social Security and Housing Scrutiny Panel that regulatory activity should focus on co-operation rather than focus on top-down compliance.

In practice, the co-regulation approach would see government establish the structure of regulation and the institutional arrangements, including the appointment of a social housing regulator. Social housing providers would then be responsible for undertaking the monitoring, assessment and reporting of their performance against the regulatory requirements. Based on the risk-based approach set out above, the regulator would not take a proactive role in monitoring compliance with the regulatory requirements, providing that individual social housing providers gave the right type and level of assurance supported by appropriate evidence.

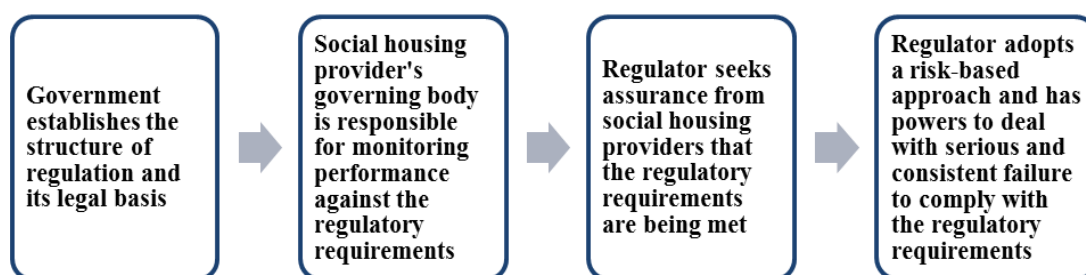


Figure 1: The co-regulation approach to regulation

The co-regulation approach recognises the primary responsibility that the management and governing body of each social housing provider has for the performance of their organisation, and that they are accountable to stakeholders (including tenants) for the standard of services delivered, and for dealing with any problems that might arise.

A social housing provider’s own assessment of its performance is critical in this regard. Providing that a social housing provider has performed a detailed and evidence-based assessment of its performance, and used the information to make improvements when necessary, the regulator would not have a proactive role in monitoring compliance. Only in circumstances where there was evidence of serious failures, or the risk of serious failures, would a regulator use its powers in a proportionate and fair way in order to secure improvements or to protect the interests of tenants.

8. The social housing regulator

The Minister for Housing is proposing the establishment of an independent social housing regulator to oversee the regulatory framework. Various options were considered during the consultation process as to whether an alternative to an independent regulator could be introduced, including the Minister for Housing acting as the regulator. However, it is recommended that a regulator should be established on an arm’s-length basis to provide assurance that it is independent in the performance of its functions.

An independent regulator would provide the necessary separation of policy and regulatory functions as envisaged by P.33/2013. This separation – whereby the Minister for Housing is responsible for the setting of social housing policy – will ensure that a regulator is independent of the policy issues of the Minister, allowing it to take a more long-term and holistic view of the social housing sector. It would also mitigate the risk that regulation could simply become a mechanism for the Minister to implement housing policy without appropriate oversight of its impact on the sector.

A social housing regulator would have a statutory aim to “*protect and advance the interests of tenants and prospective social housing tenants,*” which would be supported by the following objectives –

- To ensure that appropriate quality and levels of service are observed in the provision of social housing.
- To protect the position of tenants and prospective tenants in the provision of social housing through engagement and access to information.

- To safeguard public funding and private investment in social housing by ensuring that social housing providers are well-governed and financially viable.
- To enhance the reputation of the social housing sector and ensure that it contributes towards broader public policy objectives.

Legislation would set out in detail the functions of the regulator. The regulator would have a number of statutory functions, including responsibility for registering social housing providers; the monitoring and assessment of social housing providers' performance in relation to the financial management, governance and service delivery standards; powers to undertake inquiries and investigations; and, if appropriate, powers to exercise enforcement powers.

The establishment of an independent regulator would, essentially, provide a more structured approach to the oversight of social housing providers whereas, previously, oversight has been exercised through a series of separate contractual agreements and legal requirements.

It is important to note that where the term “regulator” has been used in this proposition and report, the Minister has not made a decision with regard to how the regulator itself might be structured. There are examples in other jurisdictions, for instance, of regulators operating through a committee structure or, alternatively, as a social housing commissioner. As such, the Minister will investigate how these types of structure could potentially be used in the Jersey context.

9. Registration

The proposed social housing regulator will be responsible for the registration and de-registration of social housing providers. The regulator will maintain a register of registered social housing providers, which will be made available to the Public online. The online register will include information such as the address of a social housing provider, contact details and legal status, in addition to enabling access to published annual accounts, performance information, and any inquiry reports.

Any organisation that provides social housing will need to register with the regulator, although social housing providers who already operate as such and are prescribed under the [Income Support \(Jersey\) Regulations 2007](#) will be registered automatically.

The regulator would not be a barrier to new organisations becoming social housing providers, but any organisation that wished to register would need to demonstrate how it would add value to the Island's social housing sector, and the benefits it would deliver. Any new organisations would, therefore, need to comply with the criteria set by the regulator, including compliance with the financial management, governance and service delivery standards set out in the next section.

This would ensure that any organisation who wished to become a social housing provider had a viable financial situation, could meet the needs of tenants, and had a long-term commitment to the provision of social housing.

A regulator would also have the ability to de-register an organisation as a social housing provider, either as a compulsory de-registration where a social housing no longer met

the registration criteria, or where an organisation was seeking to leave the sector on a voluntary basis. In taking this action, the regulator would need to be satisfied that de-registration of any social housing provider would not put tenants at a disadvantage, and that agreement had been obtained over any outstanding public funding.

As an additional check and balance, a requirement could be included in the proposed legislation for any registration or de-registration to be approved by the Minister for Housing. This will be considered in more detail when future legislation is prepared.

10. Performance standards

The central feature of the proposed regulatory framework for social housing will be a set of performance standards. The standards will establish the rules and principles that social housing providers must comply with in carrying out their activities and providing housing to tenants. The standards will be set by the Minister for Housing, and will form the basis for registration and the ongoing monitoring of performance by the regulator.

The performance standards will cover core aspects of social housing provision, such as governance and the financial management of social housing providers, and the requisite quality and level of service that should be achieved in providing social housing and housing-related services to tenants.

The following examples illustrate the aspects of social housing provision where performance standards will be introduced. The performance standards have not yet been developed, and would be implemented following consultation with stakeholders (including social housing providers) to ensure the standards were achievable and did not create disproportionate costs for social housing providers.

The potential financial management, governance and service delivery standards are as follows –

(a) Financial management

Social housing providers manage their resources effectively in order to ensure that their financial viability is maintained. They have in place –

- Effective financial and treasury controls and procedures to ensure the security of assets; the proper use of public funds and private funds; and access to sufficient liquidity at all times.
- A robust business planning and control framework and effective systems to monitor and report on the delivery of its plans.
- Arrangements to ensure that its financial forecasts are based on appropriate and reasonable assumptions and information.
- Measures to ensure that risks to the delivery of its financial plans are identified and managed effectively.

(b) Governance

Social housing providers must be well-governed at all times.

They shall establish governance arrangements that support the delivery of their aims and objectives in an effective, transparent and accountable manner.

In order to achieve the standard, social housing providers shall adopt the following guidance –

- There are robust strategic, business and financial planning arrangements agreed and overseen by the social housing provider's governing body.
- There are clear roles, responsibilities and accountabilities for the governing body.
- There are effective policies for the recruitment and retention of governing body members and senior officials with the skills and experience required for good governance.
- There are effective arrangements and controls in place for decision-making.
- The governing body ensures compliance with its governing documents and relevant statutory requirements, and engages in an open and co-operative manner with the regulator and funders.

(c) Service delivery

The service delivery standards are customer-oriented and focus on the quality of accommodation and housing-related services provided to tenants. They may include –

- Allocations and lettings – *a standard to ensure that social housing is allocated in a fair and transparent manner in accordance with identified housing needs.*
- Rents and service charges – *a standard to ensure that social housing providers charge rents in accordance with the States' 90% rents policy.*
- Tenancy management – *a standard to ensure that social housing providers comply with legal requirements in relation to the use of tenancy agreements and terms of occupation, and ensure effective policies are in place to minimise prolonged vacancies in housing stock.*
- Housing quality, repair and maintenance – *a standard to ensure that social housing providers meet (and continue to meet) the Decent Homes Standard and, generally, maintain properties in a good state of repair. This includes the provision of timely and cost-effective repairs and maintenance that meet the needs of tenants.*

- Communication, engagement and complaint handling – *a standard to ensure that social housing providers communicate with tenants in a manner that provides relevant, timely and accessible information. Tenants should be engaged with and have opportunities to influence decisions that affect them. Social housing providers should provide access to an appropriate complaints facility to raise concerns about standards of service, and reference to a dispute resolution service where complaints cannot be resolved internally.*
- Neighbourhood, community and supported living – *a standard to ensure that social housing providers contribute towards safe, well-maintained communities and support tenants to live independently.*

In practice, the performance standards will reflect things that social housing providers are doing already, and will be based on current industry best practice. As such, the introduction of performance standards will formalise existing arrangements, and introduce greater consistency across the social housing sector in terms of monitoring and reporting on performance.

The regulator will be able to issue codes of practice in order to give further guidance on best practice on any matters that may need clarification, but which do not require detailed regulation.

The introduction of performance standards reflects one of the recommendations of the former Health, Social Security and Housing Scrutiny Sub-Panel during its review of P.33/2013. The Panel noted the example of Scotland, where a [Social Housing Charter](#) had been introduced along with an independent regulator. In a similar way, the introduction of performance standards would establish equivalent expectations for social housing providers in Jersey.

Importantly, the performance standards will be set in terms of ‘outcomes’. This is an important part of co-regulation. Rather than the Minister for Housing setting specific expectations for service delivery, standards will describe a result that should be achieved. For example, requirements for social housing providers to perform estate inspections each month, or to respond to maintenance requests within a set number of days, are specific requirements.

This sort of specific description should be avoided, since it fails to take into account a social housing provider’s responsibility for managing its businesses and determining how it can best deliver services that meet the needs of tenants within the resources it has.

In contrast, an example of an outcome might be “*tenants live in homes that are well-maintained*”, which steers clear of detailed description of the means by which the standard should be achieved, giving social housing providers flexibility to determine how they can achieve the standards within the context of their business.

States Members will be aware that the ‘Rent Safe Landlord Accreditation Scheme’ was introduced in July 2016, which establishes a series of performance standards for the private rented sector in Jersey. There is potentially an opportunity to incorporate the standards for social housing providers within the *Rent Safe* scheme to provide

consistency with the private rented sector, albeit there would be additional standards specific to social housing providers. The legislative framework for social housing regulation will, therefore, be flexible, and will require the Minister to introduce performance standards, but not the means by which they are introduced, enabling initiatives such as *Rent Safe* to be used.

11. Performance monitoring, assessment and reporting

It is important to ensure that social housing providers achieve the performance standards set under the regulatory framework. As part of regulation, monitoring and assessment arrangements will, therefore, be introduced. Traditional regulation favours giving a regulator intensive and wide-ranging inspection and monitoring powers to ensure compliance. However, this approach would be expensive to monitor and would be disproportionate to the size and level of risk involved in Jersey's social housing sector.

In contrast, the co-regulation approach recognises that the governing body and senior management of each social housing provider have primary responsibility for the performance of their organisation. In terms of performance monitoring and assessment, a co-regulation approach would enable each social housing provider to monitor, assess and report on their performance against the regulatory standards. This would require social housing providers to undertake an objective and evidence-based assessment of their performance, based on a series of indicators and information requirements set by regulation.

Under this scenario, the role of a regulator would be to obtain assurance that social housing providers are carrying out a robust self-assessment of their performance, and to use the evidence provided to test the potential risks that social housing providers, either individually or collectively, might present. This risk-based assessment would determine the extent of the regulator's engagement with a social housing provider, with those indicating greater risk of failure to meet the regulatory requirements requiring an increased level of engagement (see section 7).

Where there was no indication to suggest that a social housing provider had failed (or there was a risk it might fail) the regulatory requirements, and it demonstrated a robust self-assessment process, the regulator would be able to exercise minimal levels of regulatory oversight. This reflects a need to focus on how regulation can improve service delivery, as opposed to dealing with service failure. The assessment process will enable social housing providers to identify aspects of good performance and where they may need to make changes. Provided this information was being used to monitor and improve service delivery, there would be a limited requirement for regulatory engagement.

A series of key performance indicators and information requirements will be developed to help social housing providers with measuring and assessing their performance against the financial management, governance and service delivery standards. This will also ensure consistency is provided by all social housing providers. Examples of potential key performance indicators are provided below –

- tenant satisfaction surveys;
- allocations – the number of social housing applicants allocated accommodation each year;
- social housing stock details – the number, size and type of accommodation;

- rents – the rental values for various types of properties; percentage rent arrears and losses;
- housing stock – percentage of accommodation meeting the Decent Homes Standard;
- repairs – time taken to respond to repair requests; customer satisfaction with repairs service;
- housing management – voids; property turnover period; number of evictions each year; and communication – examples of newsletters, tenant meetings; number of complaints each year.

The key performance indicators would be developed in discussion with social housing providers, so as to ensure that they would be able to collect this data. In practice, the majority of key performance indicators will be information that social housing providers collect already as part of their performance management arrangements and, as such, should not create disproportionate additional administration.

Moreover, social housing providers will be required to provide information in respect of the financial management and governance requirements. This information will help to inform the regulator’s view about standards of governance and financial management within individual social housing providers and across the sector. The information requirements would, again, reflect information that each social housing provider will prepare and have available as part of proper oversight of its business activities – e.g. annual accounts, financial forecasts, risk surveys, business plans, loan portfolio information, and auditor’s reports.

Social housing providers will also be required to notify the regulator of any notifiable events – i.e. any event that might have the potential to put the interests of tenants or potential tenants at risk, impact on the financial viability of an organisation, or affect its governance arrangements. Such an event would not, necessarily, be a reason for the regulator to make an intervention. Instead, the regulator would seek assurance that the area of non-compliance would be dealt with effectively by the social housing provider concerned.

Each social housing provider will be required to prepare and publish an annual report setting out their performance in terms of achieving, or progressing towards, the performance standards. This could be included within their annual report in order not to create additional administration. The report would need to include information about the social housing provider’s achievements over the year, areas that have been identified for improvements, and comparisons with previous years.

Taken together, the information provided by social housing providers will be used by the regulator to publish a report each year setting out its assessment of each social housing provider’s performance, as well as the social housing sector as a whole. The information will be made available publicly, so that tenants and other stakeholders can compare the performance of different social housing providers.

12. Powers of the regulator

A regulatory framework must be able to deal with situations where a social housing provider does not meet the required performance standards. Although it is anticipated that social housing providers will work positively and constructively with the social

housing regulator to resolve issues, regulation must provide a mechanism to address serious or continuous problems, failures or risks.

One of the functions of the proposed social housing regulator will be to make statutory interventions – where necessary and appropriate – relating to the performance of a social housing provider’s activities in terms of its financial management, governance and service delivery.

Intervention will be exercised in a proportionate manner in order to secure the statutory aim to protect and advance the interests of tenants. The aim of intervention is to ensure that social housing providers make the changes required to improve performance, and will only be exercised where a social housing provider is unsuccessful in implementing the changes by itself, or is unable or unwilling to address the problem, failure or risk that is affecting performance.

In contrast, the regulator will not intervene if it is confident that a social housing provider is able and willing to deal with the problem in an effective and timely manner.

The legislation will provide for the introduction of a flexible and graduated set of intervention powers, which can be applied by the regulator where it is needed. In order to ensure that the proposed powers of intervention powers are proportionate and applied appropriately, the regulator will have a statutory requirement to ‘test’ the need for intervention. The criteria against which the need for intervention is assessed might include –

- the seriousness of the problem, failure or risk in relation to the performance standards;
- its impact on tenants and other stakeholders;
- its impact on the financial viability and good governance of a social housing provider;
- the risk a social housing provider is exposed to as a result;
- the urgency with which it needs to be dealt with; and
- the social housing provider’s willingness and ability to resolve the matter by itself.

The legislation will require the regulator to publish guidance on its approach to making interventions.

The types of intervention powers a regulator might have include –

- the requirement for a social housing provider to submit a performance improvement plan;
- the service of an enforcement notice;
- the suspension or removal of a member of the governing body of a social housing provider;
- the appointment of a housing manager in order to ensure a social housing provider manages its affairs to an appropriate standard; and
- the issuance of a direction for a social housing provider to transfer some or all of its assets to another social housing provider.

Ultimately, the legislation will allow a social housing provider to appeal to the Court where it believes that the actions of a regulator are unreasonable or inappropriate.

13. Consent to constitutional and organisational changes, and disposal of assets

It is proposed that the social housing regulator will have powers to approve constitutional changes and organisational changes, and to give consent to the disposal of land and social housing stock. Under the proposed legislation, a social housing provider will need to apply to the regulator to seek approval for such matters.

These measures need to be proportionate and as straightforward as possible. Social housing providers are responsible for the conduct of their business activities, and the powers of a regulator in this area must not impede upon their ability to do so. At the same time, the regulator requires assurance that the risks associated with these measures have been properly considered, and allow a social housing provider to continue to meet the regulatory requirements.

The legislation will, therefore, specify that the regulator must publish guidance regarding its approach to constitutional and organisational changes, and the disposal of land and social housing assets. Some matters might not require the consent of the regulator; for example, the sale of a social housing unit of accommodation through an affordable home purchase scheme, or a minor change to a housing trust's constitution.

14. Interaction with tenants

The management and governing body of each social housing provider has principal responsibility for the standard of the organisation's service delivery. Where a tenant or other service user wishes to raise a concern or make a complaint about a social housing provider's performance, a tenant should always raise such matters with his/her landlord in the first instance. This will enable a social housing provider to investigate the issue and take remedial action.

Indeed, one of the performance standards will expect social housing providers to establish an effective mechanism for responding to complaints and enabling tenants and other services users to seek redress, including reference to dispute resolution where complaints cannot be handled internally. The standard may, for example, specify that a social housing provider must provide "*a clear, simple and accessible procedure to ensure complaints are resolved promptly and fairly*". In order to monitor complaints, social housing providers will be required to publish annual information about the number, nature and outcome of the complaints they receive each year.

Whilst a regulator would accept complaints from tenants and people acting on their behalf, a regulator would not mediate in individual disputes between landlords and tenants. Only if a complaint remained unresolved or indicated a significant performance failure – i.e. the issue had a significant impact upon tenants and could suggest more far-reaching problems – would a regulator investigate and, potentially, take regulatory action if this course of action was necessary and appropriate.

15. Assessment of housing need

The proposed regulatory framework for social housing will include the responsibility of the States for the assessment and prioritisation of housing need – i.e. the determination of whether a household can satisfy its housing needs in the open market, or whether it requires assistance in order to access social rented accommodation or affordable home ownership.

The point of access for social housing in Jersey is the Affordable Housing Gateway, which is operated by the Social Security Department on behalf of the Minister for Housing. The Housing Gateway is responsible for the assessment and prioritisation of applications for social housing in accordance with a series of eligibility policies, including matters such as age, residential status, and household income, assets and savings. As the demand for social housing exceeds supply, it is also restricted presently to low-income households with children, or households who are over the age of 50, and households who are experiencing disability or serious medical conditions.

If a household is deemed eligible for social housing, their application will be placed onto a waiting list in a priority band that reflects the urgency of their housing situation. Priority is determined taking into account matters such as – whether a household is homeless; is living in insanitary or overcrowded housing conditions; or needs to move on medical, disability or welfare grounds. Social housing providers then allocate available properties to applicants on the waiting list, according to the priority assigned to their application and the length they have been in that priority band.

The way social housing is accessed and allocated is a matter of great importance, and has a profound impact on people with pressing housing needs. High levels of demand mean that decisions about who is eligible for social housing and how applications are assessed, prioritised and allocated need to be taken carefully, especially when these decisions will have a significant impact on households involved.

The Housing Gateway has responded positively to the high levels of demand for social housing which have been experienced since 2012. However, social and demographic changes, concerns about hidden homelessness in Jersey, and the changing nature of demand make it important to ensure the process of accessing social housing remains fit for purpose and responds effectively to changing housing needs.

The Minister for Housing has, therefore, commissioned an independent review of how social housing is accessed in Jersey. The review will examine the application, assessment and allocation process, and consider where improvements can be made in order to inform policies around the targeting of social housing. The review will consider, among other matters –

- the introduction of a “Housing Options” service to provide advice and information in relation to housing across all categories of tenure;
- the factors that comprise housing need and the prioritisation that is afforded to different types of housing need;
- the effectiveness of the method by which tenants apply for social housing and how properties are allocated; and

- how support for vulnerable clients applying for and living in social housing can be improved, including the elderly, people with serious medical conditions and disabilities, care-leavers and ex-prisoners.

As a proposed outcome of the review, the Minister intends to develop legislation making provision for the assessment and prioritisation of housing need, as well as introducing statutory rights for people in acute housing need. The review will help to inform the scope and provisions of the law.

A statutory framework will provide a clear, transparent and consistent basis for the rules determining access to social housing, and will ensure the decision-making process is fair and equitable – and seen to be so. This is essential in the context of a large waiting-list and a system that is complex and often poorly understood. An independent appeals mechanism will also be introduced in legislation, which will provide prospective tenants with a way to challenge decisions made regarding their application.

16. Social housing regulation in other jurisdictions

Other jurisdictions have adopted different approaches to social housing regulation, which have helped to inform the approach to regulation proposed in Jersey. Examples of regulatory frameworks from the UK, Northern Ireland the Republic of Ireland are set out below.

England

Responsibility for regulation is exercised by the [Homes and Communities Agency \(HCA\)](#), an executive body of the Department for Communities and Local Government. Oversight is performed by the HCA Regulation Committee, appointed by the Secretary of State. The legislative basis for regulation is the Housing and Regeneration Act 2008.

The HCA regulates economic standards – governance, financial viability, value-for-money, and rents. There are also consumer standards relating to housing and housing-related services such as tenancy management, housing repairs and maintenance, and communication and engagement.

The level of engagement between the regulator and social housing providers depends on –

- the size of the organisation – housing providers owning fewer than 1,000 dwellings face less engagement and, then, normally only in response to specific problems; and
- the risk-profile of the organisation – an increased level of regulatory engagement applies in circumstances where a social housing provider is at risk of failing the economic standards.

The regulator has a statutory duty to minimise interference and, in accordance with the principles of co-regulation, social housing providers are primarily responsible for the assessment and monitoring of performance. When regulating the consumer standards, the regulator will only intervene where it believes there is a risk of “serious detriment” to tenants as a result of a social housing failing to meet one or more of the standards. The regulator has access to a range of penalties in these instances.

Scotland

The [Scottish Housing Regulator](#) was established in 2011 through the Housing (Scotland) Act 2010.

The regulator has a statutory objective to –

“Safeguard and promote the interests of current and future tenants of social landlords, people who are or may become homeless, and people who use housing services provided by registered social landlords and local authorities”.

The regulator is responsible for assessing and reporting on the performance of social landlords in the provision of social housing, their financial well-being and standards of governance. It has powers to intervene in order to secure improvements where needed. The regulator must perform its functions in a proportionate, accountable and transparent manner, and only target action where it is needed.

The Scottish Social Housing Charter was adopted by the Scottish Parliament in March 2012, and sets out standards for social landlords. The regulatory system in Scotland is risk-based, and the extent to which the regulator engages with social landlords depends on the risk-profile of the organisation, and the level of assurance the regulator requires in this regard.

Wales

The regulatory function in Wales sits within the Welsh Government’s Housing Division. Regulation is based on 10 delivery outcomes, which ensure that housing associations provide good quality homes and services that meet tenants’ needs, deliver value-for-money, are financially viable, and maintain the confidence of funders.

The Regulatory Framework puts tenants at its heart by –

- ensuring that housing associations work with tenants and people who use their services in planning, and assessing the quality of, services;
- providing information that allows tenants and others to compare the performance of their housing association to that of others;
- ensuring that the Welsh Ministers take account of the views of tenants and service users.

The Regulatory Board for Wales is an independent advisory body that oversees the operation of the regulatory framework. The Board comprises representation from housing associations, tenants, the financial sector, the Welsh Government and independent members.

The regulatory system includes a requirement for housing associations to carry out self-assessments, which are then published and used as evidence in the regulatory assessment process.

Northern Ireland

In Northern Ireland, regulatory oversight of social housing is performed by the Department for Social Development, through the Department’s Governance and

Inspection team. The legislative basis for regulation is the Housing (Northern Ireland) Order 1992.

The [Housing Association Guide](#) is one of the tools used by the department in order to perform its regulatory responsibility. It sets out requirements for robust policy and procedural standards across housing associations, and the quality of service provision for social housing tenants. It also contains a series of rules and procedures that housing associations must comply with if they are to receive a capital grant from the Northern Ireland Housing Executive.

The Governance and Inspection team conducts a risk-assessment of individual housing associations, and utilises graduated powers aimed at reducing the inspection impact on housing associations that have a proven track record.

Republic of Ireland

A voluntary form of regulation was introduced in 2013: [Building for the future: a voluntary regulation for approved housing bodies](#). The code establishes financial accountability and governance standards for approved housing bodies, and has been introduced on a voluntary basis, prior to the introduction of statutory regulation of the sector (draft legislation was brought forward in 2016).

The code establishes the governance, financial management, and performance measurements which apply to all housing bodies; although varying degrees of oversight apply, depending on the size and risk level of the housing body. Oversight is exercised by the Department of the Environment, Community and Local Government through a regulatory committee.

17. Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for the Environment, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

18. Financial and manpower implications

It is estimated that a social housing regulator will cost approximately £100,000 per annum. This cost will cover the cost of engaging a part-time regulator and associated administrative costs. The cost will be met from a fee levied directly on social housing providers, and a fee structure will be introduced in legislation. It is anticipated that the fee will be proportionate to the number of places for accommodation that each social housing provider owns and manages.

[P.33/2013](#) – ‘The Reform of Social Housing’ suggested that regulation would cost £150,000 per annum. This forecast cost has been reduced as a result of adopting a co-regulation approach, where there is a much greater focus on self-assessment of performance by social housing providers. The form of regulation will, therefore, be less intensive, reducing the work and time commitment for the proposed regulator.

In order to minimise the level of the fee levied, opportunities to share administrative services and avoid duplication would be considered as part of the implementation of statutory regulation.