



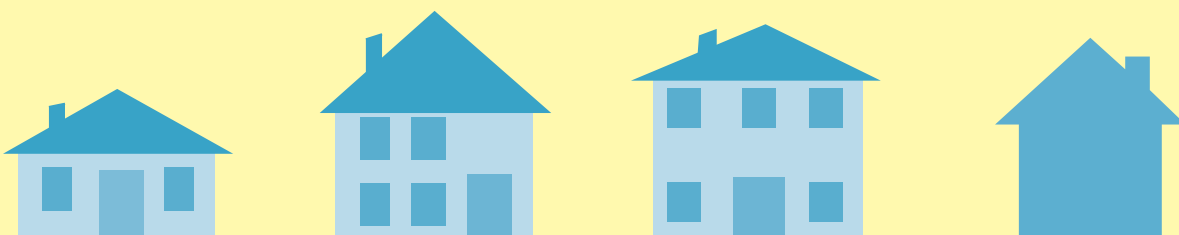
Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

# Developing a modern regulatory framework for Housing Associations in Wales

Principles and key elements  
of the framework

Consultation

April 2009



**Please respond through the consultation questionnaire, available via:**

[housingstrategy&equalitiesbranch@wales.gsi.gov.uk](mailto:housingstrategy&equalitiesbranch@wales.gsi.gov.uk)

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# Developing a modern regulatory framework for Housing Associations<sup>1</sup> in Wales.

## Principles and key elements of the framework

### Introduction

#### *The agenda for change*

**In this consultation paper, the Welsh Assembly Government (“the Assembly”) is seeking views on proposals concerning new arrangements for the regulation of Housing Associations (HAs)**

The 2008 report by the Affordable Housing Task & Finish Group (the Essex report) has provided a strong platform for change to the housing sector in Wales. Establishing a necessary new regulatory framework for HAs, characterised by robust local self assessment and a rigorous, risk-based and proportionate regulatory approach, formed a core part of the report recommendations - reforms strongly advocated by the sector itself.

The Assembly is committed to delivering the Essex report recommendations around regulatory reform by:

- **providing the necessary internal capacity and resources.** The significant restructuring of the Assembly’s Housing Division is underway, creating a considerable increase in both senior and overall capacity within the Regulation Team;
- **co-ordinating development programmes to establish the new framework.** These programmes are underway, overseen through a number of *Essex Workstreams*, including a bespoke Regulation Workstream, designed to be inclusive, with strong involvement of the sector, Community Housing Cymru (CHC), the Council of Mortgage Lenders (CML), the Welsh Local Government Association (WLGA), Tenant Participation Advisory Service (TPAS), the Welsh Tenants Federation (WTF), audit and inspection bodies and other organisations.

#### *The purpose and focus of the consultation*

It is intended that the revised regulatory framework for HAs will be in place with effect from the 2010/11 financial year. This consultation is the first of a number of specific consultations throughout 2009 and early 2010 on that developing framework. It is designed to canvass views on **two** fundamental areas; ie

- the core principles that must underpin the development and delivery of the new framework; and
- each of the key elements of the new framework

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<sup>1</sup> For the purposes of this consultation, the term Housing Association refers to Community Housing Mutuals, and Registered Social Landlords.

It is vital that there is strong consensus and support on these fundamentals across the sector, amongst representative organisations, lenders and other interested parties as early as possible through the development process, in order to build a proper platform for these reforms. This consultation provides a formal mechanism, outside of the Essex Workstreams, to seek the views from a broad range of organisations and build that consensus. This consultation document highlights, for each of the two areas referred to above, the key questions on which we are consulting and looking to seek views.

This consultation is **not** designed to provide expansive detail on the framework, at this stage. These will be developed with the sector and other parties during 2009 (which will include pilot testing at individual HAs) and subject to further consultations as necessary.

**Consultation deadline**

The period for this consultation is 12 weeks. The deadline for responses is therefore **Friday 24<sup>th</sup> July 2009**.

**The core principles of the new framework**

An effective modern regulatory approach needs to be underpinned by a set of core principles that shape the way we regulate. This part of the consultation paper outlines those principles that will shape the development and delivery of the new framework (see Table 1 below).

**Table 1: The core principles of a new regulatory framework**

The core principles	What that means for the new framework
<b><i>drives strong accountability</i></b>	The new framework will promote and place strong accountabilities... <ul style="list-style-type: none"> <li>• on the HA to its tenants etc, to lenders and to the Regulator; and</li> <li>• on the Regulator in terms of performance, the conduct of our work and our decisions</li> </ul>
<b><i>provides a citizen focused approach</i></b>	Regulation will challenge HAs and assess robustly the range and effectiveness of tenant engagement in the planning of services and the evaluation of service delivery locally. Regulation will also promote better access to comparative performance information for all citizens.
<b><i>maintains transparency</i></b>	Ensuring there is clarity between local risk and performance and any resulting regulatory responses, and being open about how we regulate and the decisions we make.

<b><i>retains independence</i></b>	Ensuring we maintain our operational independence and exercise judgements impartially.
<b><i>ensures proportionality</i></b>	The extent of regulation will be strongly linked to risk, and we will target and match our regulatory responses <u>appropriately</u> to local risks and the nature of the issues and the HA concerned.
<b><i>delivers consistency of approach</i></b>	How we apply our regulatory approach and our judgements, will be consistent across the sector, whilst taking into account its diversity, and local complexity and context.
<b><i>informs policy review and development</i></b>	<p>The focus of regulation must in part evaluate the implementation of national policy and strategy at a local level, and the outcomes from the regulation process can therefore help and inform ongoing policy review and development.</p> <p>Regulation must also allow evaluation of broader community based integrated initiatives/policies and the role the HA plays in supporting their delivery.</p>
<b><i>promotes effective governance and planning, improvement and shared learning</i></b>	<p>Regulation should not drive local business planning processes but provide timely insight and challenge to support that process of continuous improvement.</p> <p>The results of regulation must also be analysed, collated and shared promptly and regularly with the sector, in order to more effectively share emerging good practice and learning and promote local improvement.</p>
<b><i>drives a <u>strategic, rather than a resource intensive approach to regulation</u></i></b>	For both the HA and the Regulator, information demands, approval processes, and data flows etc must be relevant and appropriate to ensure they allow a strategic focus and minimise resource demands.

### ***Consultation questions.....***

***Do these core principles provide the necessary focus to support a robust regulatory framework?***

***How could these principles be adapted or amended?***

***Are there other core principles that are not reflected here but need to be considered?***

## ***The key elements of the new framework***

This section of the consultation document describes in more detail each of the key elements of the new framework. They are designed to provide a clear, interdependent set of arrangements for the future that align to the principles outlined already in this consultation document.

### **Annual Self-Assessment.**

Key characteristics of any effective self assessment should include, for example:

- a strong service user focus;
- embracing of all governance elements of the organisation;
- challenging of financial management, performance and organisational cultures;
- linking financial viability and financial planning to both strategic and operation planning
- timed to be the most supportive of, and aligned to, business and corporate planning cycles; and
- evidence based.

Driven and owned by the HA Board, this updated self assessment for each HA will form a core element of the new framework. It will ensure robust, demonstrable evaluation of the financial management and financial viability of the HA, service delivery performance outcomes, and corporate governance arrangements ...and will need to demonstrate strong tenant engagement and validation.

The self assessment will form a fundamental part of ongoing business planning and be timed to support those processes. A local Improvement Plan, based on the self assessment and published locally, is being considered as a part of improving local accountability within the new arrangements.



### **Annual Whole Association Assessment (WAA)**

Undertaken by Assembly Regulation Coordinators, and supported by financial analysis specialists, this new WAA will be linked strongly to the self- assessment themes and will challenge robustly the evidence gathered by the HA itself as part of that self assessment. The WAA will also draw on the range on defined information sources agreed with and provided by the HA, and other relevant external information sources available. This will include for example internal and external audit reports, management letters and opinions, Ombudsman reports, complaints, and inspection reports.

The WAA will also need to be flexible and responsive to change to ensure we regulate against the context of market conditions, and reflect local circumstances, not least to be able to encompass and assess:

- The effectiveness of Consortia arrangements and their local management;
- The potentially more complex governance arrangement associated with parent HAs and their subsidiaries; and
- The challenges and specific risks associated with new stock transfer HAs

The Regulation Coordinators will also work closely with other parts of the Housing Division and the Assembly more broadly to assimilate information and perspective from as broad a knowledge base as possible in order to support the WAA.



### **Regulation Coordinators.**

New Regulation Coordinators will have a portfolio of HAs and will manage the WAA at individual HAs. This will involve stronger, more consistent and regular relationships between the regulator and the HAs. They will include more regular dialogue and attendance at Board meetings, meetings with the Chief Executive and Chair etc in order to help inform perspectives on governance arrangements particularly. The Regulation Coordinators will also build dialogue/relations with tenants groups and with other key relevant organisations, such as lenders, and appointed auditors etc



### **Regulatory responses.**

The outcome of a WAA at individual HAs will necessitate consideration of any required regulatory responses by the Regulator. These responses will be understood by all parties, linked clearly to the outcomes from the WAA, based on risk, and proportionate to local circumstances.

These responses will cover a potential broad range from improvement support to the more formal regulatory intervention where there is evidence of financial viability or performance failure etc, and which may include specific commissioned inspections at an individual HA or broader themed inspections of the elements of service delivery across the sector. The previous cyclical programme of HA inspections, based around tenant services, has now finished and will not form part of the new framework.

It is intended that any regulatory responses put in place by the Assembly will be described in a Regulatory Plan that will be published. Clear protocols in place for each and every response governing communications channels, information flows, timeframes etc will be an important feature of this process.

The suite of potential regulatory responses that may be available to the regulator as part of the new framework is currently under discussion as part of the development processes through the inclusive Regulation Workstream outlined earlier in this document.



### **Performance Measurement Framework**

The introduction of a specific Performance Measurement Framework (PMF) for the sector is being considered, including the introduction of a set of strategic Key Performance Indicators (KPIs). This will replace the existing small number of PIs collected by the sector, and is intended to provide a more systematic, structured and verifiable means of helping inform progress locally both on delivering national and local priorities-both as part of the self assessment and the WAA.



## **Annual and specific reports/overviews**

It is intended that the new framework will facilitate the more effective use of the collective results of self assessment and WAA, and other information sources, to support the publication of annual and specific reports/overviews. This suite of products and information will help analyse sectoral risks and characteristics (including geographic and thematic perspectives) and stimulate sector improvement, and share good practice and learning.



## **Strategic regulation**

To help introduce a more strategic approach to regulation and impact on the current resource intensive nature of elements of existing regulation (for both the sector and the regulator), it is also intended that there will be a streamlining of existing arrangements to make them more consistent with an empowered, mature sector eg

- the introduction of a general consent order for s.9 consents; and
- broader exemptions and de minimus levels around Schedule 1 payments/determinations and conflict of interest flexibilities

Current circulars will be updated, new circulars issued, and training provided as necessary to support that process.



## **Regulatory Board**

An independent advisory Regulatory Board is to be established during 2009 to oversee the process and provide accountability lines for the Regulator. This Board will be made up of representatives from key organisations in Wales and some public appointments, and will also create a robust platform for the capture of tenant views.

The Board will receive an annual report from the Regulator on the delivery of the regulatory framework and the performance of the sector, alongside other reports and information, and will be able to advise the Minister independently.



## **Revised Regulatory Code**

These changes to the regulatory framework will be embodied in a new Regulatory Code.

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This section of the consultation document also highlights two other important aspects of the framework where we are seeking views ie:

- **The appropriate timings of self assessment/WAA?** To link most effectively into local corporate, business and financial planning, when would be the most appropriate timing for the new self assessment and the WAA?
- **Deminimus limits?** The Assembly has discretion over the requirements for submission of data by HAs and the extent of regulatory engagement, and currently HAs with stock below 250 units, and are not developing, are required to submit basic data only. Under the new arrangements, should that deminimus limit remain appropriate, below which the full regulatory framework will not normally apply (unless problems are identified), and what arrangements should apply for those HAs below that threshold?

### ***Consultation questions.....***

#### **General**

***Do these key elements of the framework provide a robust platform for effective self assessment and regulation of the sector?***

***Do these proposed elements allow the core principles of a new framework to be satisfied?***

***Are there elements to the framework that need amendment or fundamental change in your view?***

***What additional aspects need to be included to help improve the proposed framework?***

#### **Specific**

***To link most effectively into local corporate, business and financial planning, when would be the most appropriate timing for the new self assessment and the WAA?***

***What deminimus limits could apply to the new framework and what arrangements should be in place for those HAs below any threshold?***

## ***The next steps***

This formal consultation is one of the important steps in establishing the new framework. Developmental work will continue alongside this throughout 2009, including particularly:

- **Framework piloting.** “Trialing” emerging methodology and approach to ensure it is fit for purpose (and adapting it as necessary) is an important part of building a robust, credible framework for the future. The Assembly will work closely with HAs to pilot test new arrangements, notably the self assessment and WAA models.
- **Guidance, advice and training.** The Assembly is committed to providing timely guidance and advice as part of the developmental process. This will include guidance on any interim arrangements for 2009/10 (eg for self assessment), and on aspects of the new framework. Alongside this will be a programme of training for HAs and for new Regulation staff.
- **Programme of formal consultations.** This consultation forms part of a broader programme of consultation by the Assembly, not only regarding a new regulatory framework, but also around other Essex and housing policy developments. For Regulation, in addition to this consultation, it is intended that we will also consult formally on any new performance measurement framework, the new Regulatory Code that emerges, and on the issue of payments to Board members. There will also be regular communications to the sector on developments as part of the overall process.

To help evaluate current practices, support current regulatory arrangements and help shape the new framework, a short assessment of current performance and arrangements is being undertaken. This review will encompass all major HAs in Wales that are part of the current framework and will use existing information sources to review finance, service delivery, and governance issues. It is intended that a summary report on this work will be published, highlighting common themes and lessons for the sector.

## ***How to respond to this consultation***

The Assembly welcomes your views on the proposals set out in this consultation document and the questions posed in it. To confirm, could you please let us have your comments by **Friday 24<sup>th</sup> July 2009** at the latest, sending them to:

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Further copies of this paper can be obtained from the above contact also.

**Will my comments be made public?**

The Assembly intends to publish a summary of the responses to this document. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us."

**Whom are we consulting?**

The Assembly is consulting a broad range of organisation, including those listed in Annex 1

### List of those consulted

A broad range of organisations are included as part of this consultation exercise, including :

- Housing Associations in Wales
- Community Housing Cymru
- Chartered Institute of Housing Cymru
- Council of Mortgage Lenders and individual lenders
- Tenants Participation Advisory Service
- Welsh Tenants Federation
- Welsh Local Government Association
- Local Authorities in Wales
- Cymorth Cymru
- Housemark
- Wales Audit Office
- Care & Social Services Inspectorate
- Welsh Language Board
- Equality and Human Rights Commission
- Citizens Advice Bureau
- CBI Wales
- Shelter Cymru
- Assembly Members
- WCVS
- Wales TUC

## **Summary of consultation questions**

### **The core principles of the new framework**

- *Do these core principles provide the necessary focus to support a robust regulatory framework?*
- *How could these principles be adapted or amended?*
- *Are there other core principles that are not reflected here but need to be considered?*

### **The key elements of the new framework**

#### **General**

- *Do these key elements of the framework provide a robust platform for effective self assessment and regulation of the sector?*
- *Do these proposed elements allow the core principles of a new framework to be satisfied?*
- *Are there elements to the framework that need amendment or fundamental change in your view?*
- *What additional aspects need to be included to help improve the proposed framework?*

#### **Specific**

- *To link most effectively into local corporate, business and financial planning, when would be the most appropriate timing for the new self assessment and the WAA?*
- *What de minimus limits could apply to the new framework and what arrangements should be in place for those HAs below any threshold?*