

EXPLANATORY MEMORANDUM TO
THE LOCALISM ACT 2011 (REGULATION OF SOCIAL HOUSING)
(CONSEQUENTIAL PROVISIONS) ORDER 2012

2012 No. 641

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 Section 178 of, and Schedule 16 to, the Localism Act 2011 provide for the abolition of the Office for Tenants and Social Landlords. The Act makes consequential amendments to primary legislation. This Order makes amendments to secondary legislation in consequence of the bringing into force of these provisions. In particular, it makes amendments to secondary legislation to remove references to the Office for Tenants and Social Landlords (as well as certain references to the Regulator of Social Housing or the Homes and Communities Agency, where appropriate). Some of the amendments in this Order are subject to transitional, transitory and saving provisions.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Localism Act 2011 (Regulation of Social Housing) (Consequential Provisions) Order 2012 is made under sections 235, 236 and 240 of the Localism Act 2011. It comes into force on 1 April 2012 which is the date that section 178 of that Act will come into force.

5. **Territorial Extent and Application**

5.1 This Order extends to England and Wales.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

What is being done and why

7.1 The Office for Tenants and Social Landlords, commonly known as the Tenant Services Authority (TSA), is currently the regulator of social housing in England. TSA regulates the social housing provided by registered providers of social housing, most of which are housing associations and local authorities. TSA was established by section 81 of the Housing and Regeneration Act 2008 (“the 2008 Act”) and came into being on 1 December 2008. The 2008 Act confers on TSA statutory functions as “the Regulator of Social Housing.”

7.2 Schedule 16 to the Localism Act 2011 (“the 2011 Act”) abolishes the Office for Tenants and Social Landlords and instead designates the Homes and Communities Agency (HCA) as “the Regulator of Social Housing.” HCA will only be able to exercise its functions as “the Regulator of Social Housing” through a separate statutory Regulation Committee appointed by the Secretary of State. The 2011 Act gives HCA a new statutory objective to facilitate the exercise of these functions by its Regulation Committee. We intend to commence the abolition of TSA and the transfer of its functions to HCA on 1 April 2012.

7.3 This instrument makes amendments to secondary legislation in consequence of the bringing into force of these provisions. In particular, it makes amendments to secondary legislation to remove references to Office for Tenants and Social Landlords, as well as certain references to the Regulator of Social Housing that will be redundant after 1 April 2012 (because there are already references to HCA in the relevant legislation that will also cover its functions as the Regulator of Social Housing).

7.4 The transfer of TSA’s functions to HCA was recommended in the Government’s 2010 Review of Social Housing Regulation¹. The purpose of abolishing TSA and transferring its functions to another body is to reduce the number of quangos (in line with the Government’s clear policy commitment in section 9 of the Coalition Agreement) and to achieve administrative cost savings over the long-term. HCA was preferred over other bodies as the location for TSA’s regulatory functions because it fulfilled all of the following criteria:

- Expertise: A significant part of HCA’s role is focused on social housing provision. Locating regulation in a body that already has significant expertise in the field will help to retain lender confidence.
- Status: HCA is a non departmental public body and is capable of delivering independent regulation (subject to certain protections – see paragraph 7.5 below).
- Capacity: HCA will be better able to absorb a major new function than some of the other location options we examined.

¹ Review of Social Housing Regulation (October 2010), Department for Communities and Local Government <http://www.communities.gov.uk/publications/housing/socialhousingregulation>

- Synergy: There are potential synergies between social housing regulation and investment functions, such as in the area of seeking to ensure value for money from investment while maintaining the stability of the sector.

7.5 As explained in the Review of Social Housing Regulation, the rationale for creating a statutory Regulation Committee within HCA is to ensure that regulatory functions continue to be exercised on an independent basis. It is important that there is sufficient independence from HCA's other functions and from government. The Regulation Committee model will achieve these outcomes.

7.6 Although not directly relevant to this instrument, the 2011 Act also makes significant changes to the statutory functions of "the Regulator of Social Housing." In particular, Schedule 17 to the Act places new limits on the exercise of the Regulator's monitoring and enforcement powers in the 2008 Act in relation to its consumer regulation standards. The rationale for this change is to reduce regulatory burdens on social landlords and to open up more space for local accountability mechanisms. These include more onus on tenant scrutiny (which the Government is seeking to drive with a new direction to the Regulator on tenant involvement and empowerment²) and giving local representatives a formal role in the complaints process³.

Consolidation

7.7 The Department has no plans to consolidate the legislation amended by this instrument.

8. Consultation outcome

8.1 This instrument makes consequential amendments arising from the Localism Act 2011. There has been no consultation on this instrument.

9. Guidance

9.1 We do not propose to issue any guidance for this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector of abolishing the Tenant Services Authority and transferring its functions to the Homes and Communities Agency, which this instrument helps to implement, was set out in the Impact Assessment on the reform of social housing regulation⁴. This is attached

² Implementing Social Housing Reform: Directions to the Social Housing Regulator – Summary of Responses (November 2011), DCLG

<http://www.communities.gov.uk/publications/housing/socialhousingregulatorresponse>

³ See Section 180 of the Localism Act 2011

⁴ Localism Bill: Reform of social housing regulation – Impact Assessment (January 2011), DCLG
<http://www.communities.gov.uk/publications/localgovernment/localismsocialhousingreform>

below. A final Impact Assessment will be published on the DCLG website shortly.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The policy set out in the Government's 2010 Review of Social Housing Regulation will be reviewed in April 2015.

13. Contact

13.1 Alec Taylor at the Department for Communities and Local Government Tel: 0303 444 3779 or email: alec.taylor@communities.gsi.gov.uk can answer any queries regarding the instrument.