

Tenant Empowerment Consultation – NHC Summary

Summary

Communities and Local Government (CLG) are proposing to simplify and improve the Right to Manage (RTM) regulations. This would preserve the statutory RTM for local authority (LA) tenants and address existing barriers that can prevent or unduly delay tenants from setting up Tenant Management Organisations (TMOs).

Tenants of registered social landlords (RSLs) do not have the statutory RTM and CLG are not proposing to give them this right but they do want to encourage all tenants and social housing landlords (LAs and RSLs) to work together to develop tenant management where tenants wish this to happen. CLG are therefore proposing a voluntary route to tenant management to extend opportunity to all social housing tenants.

CLG also wish to provide an easier process for tenants to take on limited responsibilities for housing related services and will enable LAs and RSLs to delegate limited responsibilities using a Local Management Agreement as an option using the voluntary process.

The Cave Review recommended that “a national tenant voice” be established and CLG are seeking views in this consultation on the aims of this national tenant voice, what it should do and how.

Background

The Local Government White Paper “Strong and Prosperous Communities” proposed to build on the success of tenant management in several ways:

- by simplifying the RTM process, reducing the time it takes to set up a TMO;
- by encouraging an easier route into tenant management, beginning with limited responsibilities rather than full management;
- by providing more opportunities for residents to manage other housing related services in their own areas;
- by making it easier for existing TMOs to take on additional service responsibilities within their neighbourhood; and
- by exploring new opportunities for tenants of RSLs to become more engaged in management decisions.

Tenant Management Organisations

Tenant management is a means by which LA or HA tenants and leaseholders can collectively take on responsibility for the management of the buildings or estates in which their houses are situated.

CLG are proposing to maintain the statutory RTM, with a process that can be triggered by tenants who have a property constituted organisation and can show they are accountable to the tenants they represent.

The key differences to the current regulations are as follows:

- only one ballot of tenants will be required;
- the ballot will take place once it is known (a) the responsibilities the TMO proposes to take on, (b) the proposed membership and governance arrangements of the TMO, and (c) what the budgets are for each of the TMO responsibilities;
- the requirements of the ballot will be that a TMO can develop if the majority of tenants voting, a majority of secure tenants voting, are in favour, which will bring the ballot into line with ballot arrangements for most stock transfer proposals;
- the support for tenants going through the process of developing tenant management can be provided by anyone, not necessarily an Approved Persons, and they will be required to test the competency of the tenants group before the ballot takes place.

Voluntary Process for Tenant Management for LA Tenants

CLG will encourage, through guidance, a voluntary tenant management process to be agreed by the tenants group and the LA. Tenants and LAs following this route will not be penalised within the Tenant Empowerment Programme funding regime. The process will be similar to the RTM process, but without the need for a formal notice.

Tenant management through this route will still require the LA to comply with Sections 27 and 27AB of the Housing Act 1985 meaning they will have to consult with tenants and give them an opportunity to make their views on the delegation known.

Local Management Agreements

Tenants may wish to take control of very limited services but under the current regulations they have to go through the RTM process. Where tenants and a LA both agree to tenants taking on limited responsibilities, CLG propose to make this easier under the voluntary process described above.

Tenants and the LA will need to negotiate a management agreement, will need to consult all tenants affected by the proposal, and tenants will need to have a suitable organisation for the purpose. CLG propose to give general Section 27 approval for a management agreement and to define what counts as a Local Management Agreement, as opposed to an agreement with a TMO, by the size of the contract for delivering the service. They also propose that each Local Management Agreement can be for contracts up to the European Union Procurement threshold for contracts.

Tenant Management and ALMOs

Currently TMO management agreements are with the LA not the ALMO. CLG propose to include in the regulations a requirement on the LA to inform an ALMO (or any other organisation that may be managing on its behalf

properties covered by RTM) that such a notice has been served. In guidance, they will state that they expect the LA to discuss with the ALMO or other managing organisation what role it might be expected to play in the development of tenant management.

Voluntary Process for Tenant Management for RSL Tenants

CLG considered the advantages and disadvantages of extending RTM to RSL tenants, however they came to the conclusion that extending the right would not be practical. Instead, they propose to promote a voluntary process for tenant management in the RSL sector similar to the process described above for LA tenants. This approach is supported by the recent Cave Review recommendations.

The process for RSL tenants will differ from the process for LA tenants because of the different legal status of the landlords.

Wider Neighbourhood Services

The Local Government White Paper explained that CLG would look at ways to make it easier for existing successful TMOs to take on additional service responsibilities within their neighbourhood.

CLG are currently supporting five pilot studies, through the Tenant Empowerment Programme, to examine the issues of TMOs being involved in wider neighbourhood and community projects etc. These studies are exploring the opportunities and barriers for tenant-led organisations having wider involvement. The pilots are:

- Beechwood & Ballantyne Community Housing Association, Wirral
- Bemerton Villages Management Organisation, Islington
- Bloomsbury Estate Management Board, Birmingham
- Burrowes Street Tenant Management Co-operative
- Central Estate Tenant Management Organisation, Hartlepool

A National Voice for Tenants

The Cave Review recommended that “a national tenant voice should be established to give tenants both a voice and expertise at national level” and proposed that such a body would have a remit over the whole social housing domain. CLG are keen for proposals on a national tenant voice to complement and not duplicate existing national and regional organisations representing tenants e.g. TAROE and the National Federation of Tenant Management Organisations.

CLG suggest that a national tenant voice might therefore have an advocacy role rather than being a representative body, with its aims being to:

- research tenant related issues and evaluate the impact of policies and practice on consumers of housing services;
- represent tenants interests to housing providers, government, Communities England, lenders, relevant regulatory bodies and others; and
- promote good practice on relevant matters and support national tenant representative organisations.

CLG envisage the organisation will have a governing Board or Council, to include tenants and individuals who can effectively advocate for tenants from a range of viewpoints.

There are a number of possibilities for the set up of such a body. The Cave Review recommended that it be attached to an existing organisation, such as the National Consumer Council but it could also be an independent agency set up directly by government and accountable to the Secretary of State.

Tenant-Led Stock Transfers

Currently a group of LA tenants can undertake a stock option study to explore alternative management/ownership arrangements for the homes in which they live. The proposals on which CLG are consulting are aimed at giving tenants greater opportunities to put these options into practice. CLG are suggesting 3 options for tenant led stock options moving ahead:

- Option A: In essence this is no change from the present position and would not introduce any measures that required a LA to cooperate.
- Option B: This would place obligations on both the tenants and the Council at the different stages in the process. The initial stage of the stock options process would become mandatory. At the feasibility study stage it is proposed that the LA is placed under a duty to provide the information needed for an options study. At the development stage a duty would be placed on the LA to take forward proposals from the options study; tenants would have to demonstrate wide support for the option recommended by the study; the LA could set out a case for not going ahead with the outcome of the options study.
- Option C: This would be the same as Option B except the LA would not have the option of making a case over the adverse impact of a stock transfer on its overall housing finances.

Options B and C would require primary legislation.

Stock Transfer Ballots and Consultation

Currently, LAs commission an independently run formal ballot of tenants as a test of opinion to gather whether or not they are supportive of the transfer proposal and the offer made to them. LAs use the result of those ballots to certify to the Secretary of State when application for consent is made that there is not a majority of tenants opposed to transfer. Tenants are able to make representations to the Secretary of State both during the formal consultation period, which is generally run concurrently with the ballot, and also at any time up to the point that the Secretary of State makes a decision to consent the transfer.

CLG feel that this is unclear and introduces uncertainty in tenants' minds as to when they are able to make representations. CLG propose to change the current provisions to confine the period in which representations can be made

to that of the formal consultation but then to place a duty on LAs that they must inform tenants of material changes into a statutory provision. CLG would also review their guidance to explain what they would expect from LAs.

Tenant-Led ALMOs

Tenant led ALMOs would build on the Government's commitment to empower local communities. In a tenant led ALMO tenants would be responsible for the ALMO as a whole.

ALMOs are set up as limited companies, but they are wholly owned by their LA. They are governed by a board consisting of one third tenants, one third independent members and one third from the council. This effectively makes ALMOs a tenant controlled but not tenant owned company.

There are essentially two tenant-led ownership options:

- transferring the ownership of the housing assets to the ALMO; the same as a stock transfer but the new company could be tenant owned
- retaining its status as a management company but becoming a company owned, not just managed, by the tenants; there would be no need for any change in the ownership of the housing, which could remain with the LA.

However, a tenant owned ALMO gives rise to a number of issues; whether tenants would be prepared to take on the responsibility of ownership and that an ALMO wholly owned by tenants would be independent of the LA meaning that under EU procurement rules the ALMO would have to compete in the future for council service contracts.