

EXPLANATORY MEMORANDUM

REGULATORY REFORM (HOUSING MANAGEMENT AGREEMENTS) ORDER 2003

SUMMARY

1. The proposed Order is aimed at lifting the burden on local authorities concerning the way in which they can delegate housing management services. It proposes to extend the powers of authorities as defined in section 27 of the Housing Act 1985. Assembly functions under that Act stand delegated to the Local Government and Communities portfolio. At present, authorities can only have a management agreement with the person (or contractor) who will actually undertake the work directly. The proposed Order gives authorities more scope to delegate housing management services in circumstances where a contractor may further delegate them in order to meet the authority's requirements and provide more effective services to tenants.

The Order also proposes changing the reference to the word 'agent' which is currently within the Act, in order to reflect better the liabilities between the authority and contractor. This brings Section 27 into line with more recent legislation on contracting out for local authorities.

It is proposed that the Order will apply in England and Wales. However, the applicability of the Order in Wales is subject to the consent of the National Assembly for Wales.

BACKGROUND

2. The changes are urgently required in England where a number of 'pathfinder' local authorities are pioneering the use of PFI as an investment option to improve their housing stock. The pathfinder authorities are well advanced in the procurement process having identified contractors to bid for the work and drafted their contract conditions. During the process it has become apparent that authorities do not have the legal power to enter into PFI type housing management agreements under Section 27 of the Housing Act 1985. The changes to legislation are therefore vital in England if projects are to proceed on a timely basis.
3. 'Better Homes for People in Wales', the national housing strategy identified that the cost of investing in improvements and modernisation of neighbourhoods where council homes are located, could exceed £1 billion. Recent assessments reveal that this figure is likely to be nearer £2 billion.

In Wales, there are currently no housing PFI schemes under procurement. However, if in the future local authorities wished to pursue PFI type schemes independently, they would not be able to do so unless the proposed Order was applicable in Wales.

MAIN PROPOSALS

The proposal is to amend Section 27 in a way that enables a management agreement between an authority and their preferred contracting partner to include an agreement that other persons may exercise some or all of the management functions.

An authority would (as at present) have to apply to the Assembly for approval before entering into a management arrangement. As at present, tenants would be consulted about the proposed arrangements before approval is sought and the Assembly would take the results of the consultation into account when deciding whether or not to give approval.

In reviewing Section 27, it was considered that the use of the word 'agent' was no longer appropriate as it did not adequately reflect the liabilities of an authority and the contractor manager.

The intention is that the authority remains responsible for the management functions where they are carried out by others except where the contract or agreement details otherwise, or in relation to criminal proceedings brought in respect of those other persons. An authority will also be excluded from responsibility for any act or omission of the manager for the purpose of criminal proceedings as a result of any act or omission by the manager or managers employees where they exercise the management functions.

In considering the necessary changes, the Order has been drafted to ensure that tenants rights are not adversely affected.

CONSULTATION

The Office of the Deputy Prime Minister and the Wales Office issued a joint consultation paper 'Proposals to Change the Delegation of Housing Management for Local Housing Authorities' on 31 July. In Wales copies issued to a wide variety of organisations including local authorities and professional housing bodies. Of the 46 organisations targetted, 2 responses were received.

In addition, the Assembly issued a separate letter on 13 September to consult the same organisations on whether the Assembly should give its consent to the applicability of the proposed Order in Wales. Of the 4 responses received, 3 supported the proposal.

FINANCIAL IMPLICATIONS

There are no additional financial implications for the Welsh Assembly Government. The changes will enable local authorities to have greater scope in delegating housing management services and to take full advantage of modern procurement practice