ANNEX D

Draft revised guidance on the operation of the HRA ring-fence

Introduction

1. This guidance is an updated version of Circular 8/95 published by the former Department of the Environment (DoE) and was developed with stakeholders as part of the joint CLG/HMT Review of Council Housing. It gives advice to local housing authorities in England on certain aspects of the Housing Revenue Account ("the HRA").

2. DoE Circular 8/95 provided valuable advice and gave clarification as to whether various items of expenditure and income should be accounted for inside or outside the HRA. However, while that document was a useful expression of council housing management at the time, circumstances have changed. Estates are no longer purely council estates and it can be the case that council tenants are in the minority on some estates. The rising expectations of tenants and residents have also placed increasing demands on housing services, which are frequently being called upon to provide services to meet the needs of communities and neighbourhoods which are beyond the traditional remit of a landlord service.

3. This paper restates Ministers' established policy for the HRA and introduces no new issues of principle. However it does highlight the need to be fair to both tenants and council tax payers and that there should be a fair and transparent apportionment of costs between the HRA and General Fund. Therefore this guidance serves to re-emphasise the already existing requirement for authorities to make contributions from the General Fund to the HRA when services are provided out of the HRA to the benefit of the community as a whole.

4. It is intended to be a helpful reference document for authorities, tenants and auditors alike. *This guidance is not intended as an authoritative statement of the law on the keeping of the HRA. Authorities should take their own legal and accounting advice as necessary and will need to satisfy their auditors about their decisions.*

5. At its most basic, when taking any decision on whether an item of expenditure or income potentially related to the administration of the housing stock should be accounted for in the HRA, the test that should be applied is "Who benefits?" That is to say, who is the major contributor of the item of income, or the major beneficiary of

the expenditure under consideration; should the HRA bear the full cost or only part, or should it benefit from the entirety of the income, or is some of it applicable to the General Fund?

6. In some cases, such as rental income, or expenditure on housing repairs, it is clear that the HRA is the correct accounting vehicle. Transactions concerning rent rebates and Housing Benefit are clearly placed in the general fund, but there is a substantial 'grey area' of items of income and expenditure where differing and perhaps unique local circumstances will suggest different solutions. These are the decisions where local flexibility is best employed using the "who benefits?" approach.

Statutory Background

7. Expenditure and income relating to property listed in section 74 of the Local Government and Housing Act 1989 ("the 1989 Act") must be accounted for in the HRA. This comprises mostly housing and other property provided by authorities under Part II of the Housing Act 1985 ("the 1985 Act"). Schedule 4 to the 1989 Act (as amended by section 127 of the Leasehold Reform, Housing and Urban Development Act 1993) specifies the debit and credit items to be recorded in the HRA. The Housing (Welfare Services) Order 1994 specifies the welfare services which must be accounted for outside the HRA.

General Principles

8. The statutory provisions referred to above reflect the Government's policy that the HRA remains a ring-fenced account within the General Fund and should still primarily be a landlord account, containing the income and expenditure arising from a housing authority's landlord functions.

Property in the HRA

9. The main consideration when deciding whether the costs and income associated with a particular property should be accounted for in the HRA is the powers under which the authority is currently providing that property, Section 74 of the 1989 Act sets out the property which must be accounted for in the HRA, by reference to the powers under which it is held.

10. A property has to be accounted for within the HRA if it is currently provided under Part II of the 1985 Act or any of the other powers specified in section 74 of the 1989 Act ("Part II housing"); the account also extends to any outstanding debts or receipts which arose when a property was so provided and which are still outstanding

following its disposal. If a property is not provided under the powers listed in section 74, or in directions under that section, the authority must not account for it in the HRA. The HRA (Exclusion of Leases) Direction 1997, made under section 74(3)(d) of the 1989 Act, requires that all leases for dwellings for a period of 10 years or less, must not be included in the HRA.

11. If an authority wishes to include in the HRA property which is ancillary to Part II housing but not up to now provided under Part II, it will be necessary to obtain consent from the Secretary of State under section 12 of the 1985 Act (see also section 15 of the 1985 Act for London authorities). Such applications will be considered on their individual merits.

12. Equally, properties which may originally have been provided under one of the powers in section 74 of the 1989 Act (or their predecessor powers) may no longer fulfil their original purpose. In these circumstances, the authority should consider their removal from the HRA. Examples of properties which might fall into this category are estate shops and other commercial premises, such as banks, post offices, workshops, public houses, industrial estates and surgeries, where there is no longer any connection with the local authority's housing. The decision is for the authority to take, though they should be able to explain the basis of the decision to their external auditor and tenants, if called upon to do so.

13. Authorities should have regard to the powers available to them to hold property when they are considering whether to appropriate it out of the HRA. Section 19(2) of the 1985 Act requires authorities to obtain the Secretary of State's consent before a house or part of a house can be appropriated for any other purpose. If a property is transferred between the HRA and any other revenue account within the General Fund, this will involve adjustments to HRA and HRA subsidy capital financing requirements, in accordance with the relevant determinations under Part VI of the 1989 Act.

Amenities

14. These include play and other recreational areas, grassed areas and gardens and community centres. In each case it is for the authority to form their own judgement on whether provision is proper under Part II of the 1985 Act and the extent to which the costs should be charged to the HRA. Much will depend upon local circumstances. Among the issues to be considered are the purpose of provision and the use made of the facilities by tenants and other people. There can only be a charge to the HRA where the amenities are provided and maintained in connection with Part II housing accommodation.

15. Where an amenity is shared by the community as a whole, the authority must have regard to paragraph 3 of Part III of Schedule 4 to the 1989 Act. This requires a contribution to be made from the General Fund to the HRA reflecting the general community's share of the amenity.

Management and Maintenance Services

16. The landlord is often best placed to provide wider services for neighbourhoods and communities that go beyond their traditional remit. Housing Quality Network (HQN) research into HRA management and maintenance costs found that *"A large and growing proportion of management costs, perhaps up to 40%, are being incurred in 'non-core' service areas and whilst a proportion of these costs are recovered through a diverse range of income streams including grants, service charges and other contributions, the net cost of these services is significant and growing."* In the light of this evidence there is a clear need to demonstrate transparency to both tenants and council tax payers that there is a fair apportionment of costs between the HRA and the General Fund.

17. To assist in determining what should and what should not be charged to the HRA management and maintenance services can be expressed as core, core plus or non-core services. This approach was developed by HQN in their above mentioned research.

18. While core-plus and non-core activities may attract funding from a variety of external sources to supplement the funding from the HRA, including non-rent service charges, other funding streams and grants, and the general fund. As a general approach, the net cost of core-plus services to the HRA should be taken into account through locally programmed management and maintenance provision, funded primarily from rental income.

19. Over time, non-core services should be regarded as services provided by the landlord but funded from sources other than rent. The degree to which these non-core activities attract alternative sources of funding, together with the degree they are taken up by the council's own tenants will also influence any decision on where they should be accounted for under the "Who Benefits" principle.

20. Where a council landlord is taking decisions concerning the correct place to account for new services, or is reviewing existing practice in the light of evolving circumstances, Communities and Local Government would expect that tenants should be consulted or otherwise involved in the decision-making process.

Core Services

- Repair and maintenance
  - Responsive
  - Planned and cyclical
  - Rechargeable repairs
- General tenancy management
  - Rent collection and arrears recovery
  - Service charge collection and recovery
  - Void and re-let management
  - Lettings and allocations of HRA properties only, any work carried out in respect of non HRA properties should be charged to the General Fund
  - Management of repairs
  - Anti Social Behaviour: low level
  - General advice on tenancy matters
- General estate management[1]
  - Communal cleaning
  - Communal heating and lighting
  - Grounds maintenance
  - Community centres
  - Play areas
  - Estate officers and caretakers
  - Neighbourhood Wardens
  - Concierge
  - CCTV
- Policy and management
  - HRA share of strategic management costs
  - Setting of rent levels, service charges, and supporting people charges
  - Administration of the Right to Buy

[1] If any of the above services provided from the HRA in connection with Part II housing accomodation are shared by the community as a whole then a General Fund contribution to the HRA must be made to reflect the general communities share.

Core Plus Services

- Contribution to corporate Anti Social Behaviour services. Where the service is entirely charged to the General Fund it may be appropriate for the HRA to contribute to these costs
- Tenancy support
- Supporting people services – HRA housing related support services only e.g.
  - Sheltered accommodation wardens
  - Alarm services

Non-Core Services

It is the view of CLG that it is inappropriate to charge these services to the HRA. Their costs should be met from the General Fund.

- Administration of a common housing register – costs should be split between the HRA and General Fund
- Maintenance of tenant gardens – unless a separate charge is made for the service
- Street lighting
- Dog wardens
- Personal care services
- Homeless administration
- Housing advisory service