HOUSE OF COMMONS
LIBRARY

Localism Bill: Planning and Housing

Bill 126 of 2010-11

RESEARCH PAPER 11/03 11 January 2011

The *Localism Bill 2010-11* was introduced in the House of Commons on 13 December 2010. This Paper summarises the planning, housing and London sections of the Bill. Aspects of the Bill relating to local government and community empowerment are summarised in Research Paper 11/02. The Bill is due to receive its second reading in the House of Commons on 17 January 2011.

Part 5 of the Bill will abolish regional planning, introduce a neighbourhood planning regime and abolish the Infrastructure Planning Commission.

Part 6 of the Bill will make significant changes to the way in which social housing is provided and will also repeal the legislation governing the provision of Home Information Packs (HIPs). This Part includes provisions that will enable the long awaited reform of council housing finance.

Part 7 of the Bill will make changes to housing and regeneration functions in London. It will abolish the London Development Agency and introduce a regime for Mayoral Development Corporations. Changes to Greater London Authority governance will allow the delegation of functions by Ministers to the Mayor.

.

Christopher Barclay
Wendy Wilson

Recent Research Papers

10/76	National Insurance Contributions Bill [Bill 79 of 2010-11]	17.11.10
10/77	Savings Accounts and Health in Pregnancy Grant Bill: Committee Stage Report	18.11.10
10/78	Daylight Saving Bill [Bill 7 of 2010-11]	01.12.10
10/79	European Union Bill [Bill 106 of 2010-11]	02.12.10
10/80	Economic Indicators, December 2010	07.12.10
10/81	Police Reform and Social Responsibility Bill [Bill 116 of 2010-11]	09.12.10
10/82	Loans to Ireland Bill [Bill 125 of 2010-11]	13.12.10
10/83	National Insurance Contributions Bill: Committee Stage Report	14.12.10
10/84	Unemployment by Constituency, December 2010	15.12.10
10/85	Armed Forces Bill [Bill 122 of 2010-11]	17.12.10

Research Paper 11/03

Contributing Authors: Christopher Barclay, Planning, Science and Environment Section
Wendy Wilson, Housing, Social Policy Section
Keith Parry, Local Government, Parliament and Constitution Centre
Adam Mellows- Facer, Economic development in London, Economic Policy and Statistics Section
Matthew Keep, Social Statistics, Social and General Statistics Section

ISSN 1368-8456

Contents

Summary

Part 5 of the Bill will abolish regional planning, introduce a neighbourhood planning regime and abolish the Infrastructure Planning Commission, along with other changes. The planning measures in the Bill apply to England and Wales only, except that **Clause 107**, relating to abolition of the Infrastructure Planning Commission, affects pipelines crossing the Scottish border.

Chapter 1 will abolish regional strategies and introduce a duty to co-operate for local authorities and public bodies. It will increase the freedom of a local planning authority in adoption of development plan documents.

Chapter 2 will amend the Community Infrastructure Levy, introduced by the Labour Government just before the General Election. The Bill will require a significant proportion of the money charged to developers to go to local projects.

Chapter 3 will introduce a neighbourhood planning regime, allowing both neighbourhood plans and neighbourhood development orders to be prepared in draft by a parish council or similar body, which are then submitted to independent examination. The results would have to be adopted if favoured by 50% of those voting in a referendum, provided that certain international obligations are not infringed. Community Right to Build is covered by a similar procedure.

Chapter 4 will introduce new requirements for consultation for large planning applications other than major infrastructure projects of national importance.

Chapter 5 will increase enforcement powers, particularly in relation to development undertaken without planning consent.

Chapter 6 will abolish the Infrastructure Planning Commission, restoring to the Secretary of State the final decision. Other changes are made to the consent procedures for nationally significant infrastructure projects.

Part 6 of the Bill will make significant changes to the way in which social housing is provided and will also repeal the legislation governing the provision of Home Information Packs (HIPs). The requirement to have a HIP was suspended at the end of May 2010.

Chapter 1 will give housing authorities additional discretion to determine who can apply for social housing within their areas and will enable them to discharge their duty to secure suitable accommodation for unintentionally homeless households by using privately rented housing. The additional flexibilities offered have attracted “in principle” support from authorities but commentators have emphasised that, in the face of a severe housing shortage, these flexibilities may be of limited benefit. There are also concerns around the impact of Housing Benefit changes announced in the June 2010 Budget and October 2010 Spending Review on the feasibility of increased use of privately rented housing.

Chapter 2 will give local housing authorities and registered providers of social housing (housing associations) discretion to offer “flexible tenancies” with a minimum term of two years to new tenants. The circumstances of these tenants would be reviewed prior to the end of the fixed-term in order to assess whether the tenancy should be extended or not. Again, there is some “in principle” support for the flexibility this will offer to landlords but questions have been raised around the potential for further residualisation of social housing and the possibility that the threat of losing their home will act as a work disincentive for social housing tenants. Flexible tenancies are central to the development of the Government’s “Affordable Rent model.”

The reform of the council housing finance system has been under consideration since 2006 with much of the preparatory work carried out under the Labour administration. **Chapter 3** of the Bill will provide a framework for the introduction of a new "self-financing" system of council housing finance which will enable councils with a Housing Revenue Account (HRA) to keep the rent received from their tenants. A policy document to be published early in 2011 will provide the detailed information that authorities need in order to assess the impact of self-financing on their businesses. The principle of moving to a self-financing regime has overwhelming support from local authorities but there remain issues around the technical detail of the settlement.

Chapter 4 contains measures aimed at improving the mobility of social housing tenants while **Chapter 5** will abolish the existing regulator of social landlords, the Tenant Services Authority (TSA). The TSA's functions will be transferred to the Homes and Communities Agency (HCA). The HCA's regulatory function will focus on economic and financial matters.

Chapter 6 will extend the powers of the National Assembly for Wales in regard to housing matters and will provide for a single Ombudsman service to deal with all complaints about social housing. **Chapter 6** also provides for the abolition of HIPs.

The provisions in **Part 6** apply only to England, aside from **Clauses 124 and 125** (homelessness) and **Clause 152**, which gives specific legislative competence to Wales in certain areas of housing finance.

Part 7 of the Bill will make changes to London housing and regeneration functions as well as to London governance.

Chapter 1 (**Clauses 157-161**) will provide for the devolution of executive powers over housing investment from the HCA to the Greater London Authority (GLA) "so it can be fully aligned with the Mayor's own funding pot and the London Housing Strategy." **Chapter 1** will also abolish the London Development Agency and provide for an economic development strategy for London.

Chapter 2 will give the Mayor of London the power to designate Mayoral development areas in which a Mayoral Development Corporation will be the local planning authority. The aim is to focus regeneration where it is most needed and to help secure the legacy from the Olympic Games.

Chapter 3 will allow ministers to delegate certain functions to the Mayor. Six environmental strategies will be consolidated into one London Environment Strategy. The London Assembly will be given an enhanced role in the development of the mayoral strategies

1 Part 5: Planning

1.1 Planning and the Labour Government

The Labour Government was concerned about three main issues:

- The failure of house building to satisfy national demand;
- The delay in granting consent for major infrastructure projects;
- The Government wish for developers to pay more for infrastructure.

Housing targets and regional planning

The Labour Government inherited a plan-led system, where the individual planning application had to be determined in accordance with the development plan "unless material considerations indicate otherwise".[1] That had been introduced in 1991, replacing a system where development plans were only one factor to which the planning authority had to have regard.

There were two levels of plan recognised in statute – County Structure Plans and Local Plans (apart from unitary authorities who merged the two types of plan). Regional plans were more informal. They were prepared by Regional Planning Conferences, basically county planning authorities working together. The Government issued Regional Planning Guidance for each region, including housing targets for each county.

Problems arose when counties disagreed with Central Government, especially over housing targets in areas of high demand. This problem increased during the mid 1990s, leading to a High Court ruling in *R v Secretary of State for the Environment ex p. West Sussex County Council,* 1998 that counties could not reject the Secretary of State's housing targets. However, the system resulted in considerable delay.

Secretary of State, John Prescott, hoped to resolve disagreements by working with councils. In February 1998 he launched the White Paper, *Planning for the Communities of the Future,*[2] with a conciliatory message for councils:

> The dilemma is clear cut and affects us all--how to accommodate more households and, at the same time, protect our precious countryside, without causing rents, house prices or homelessness to spiral upwards. It is a matter not just of how many households but of where they will live.
>
> There are four key elements in our new approach. The first is increased flexibility. We shall emphasise that the projections are guidance, not building requirements. The second is more decentralisation. Regional planning conferences will have more responsibility and accountability in deciding the most sustainable way of meeting the needs of their communities. The third is making the best possible use of previously developed land and existing buildings. We must put the heart back into our cities and put cities at the heart of our strategy. The fourth is that what I set out today is part and parcel of our determination to achieve better integration of a range of policies that affect communities.[3]

---

1 *Town and Country Planning Act 1990* s.54A
2 DETR, Planning for the Communities for the Future, (Cm 3885), February 1998
3 HC Deb 23 February 1998 cc21-2

However, there was a change of policy and the Labour Government introduced a different system with the *Planning and Compulsory Purchase Act 2004*. This Act abolished the County Structure Plan and strengthened the regional level, with the introduction of Regional Spatial Strategies (RSS). Local Plans were replaced by Local Development Frameworks (LDFs). The idea was that separate parts could be easily updated when required, rather than having to wait for time to update all of the rest, as happened with Local Plans. LDFs had to conform to the RSS, including housing targets.

Regional Spatial Strategy (RSS)

- *The Planning and Compulsory Purchase Act 2004* s.1 required each region to have an RSS
- The RSS had to set out the Secretary of State's policies (however expressed) in relation to the development and use of land within the region.
- The RSS determined (amongst other things) the scale and distribution of housing and economic development across the Region, investment priorities for transport and set out policies for enhancing the environment.
- It incorporated the Regional Transport Strategy.

When he made the 1998 statement, John Prescott hoped that regional assemblies would be directly-elected. However, by the time of the 2004 Act it was clear that that model would only be adopted in London. This left the regional bodies with members co-opted from other bodies, including many county councillors.

Transition to the new system proved difficult and there were long delays in preparing the new types of plan. The ability to update separate parts of the LDF might have made it easier to maintain them, but it did not help in preparing the first plans under the new regime. Although the Government had intended the LDFs to be in force by 2007, in fact by 2010 only 15% of the country had an adopted core strategy.[4] There were also considerable delays in preparing RSSs, partly because of continuing disagreement over housing targets and whether the Government would provide enough money for the infrastructure needed to accompany the development. Several RSSs had not been approved at the time of the 2010 election.

A successful High Court challenge to the South East Regional Spatial strategy in 2009 brought the process of adoption to a halt and it never really recovered.

The Labour Government legislated again to change the procedure for regional planning, with the Local Democracy, Economic Development and Construction Act 2009. The 2009 Act abolished the regional planning bodies created by the 2004 Act and merged the RSS with the Regional Economic Plan. The new regional plans would be prepared by the Regional Development Agency in conjunction with a Leaders Board of local authorities. Once again, a

[4] Evidence from Barratt Development Plc to the DCLG Committee, abolition of Regional Planning, 2010

whole tier of planning bodies had been judged unable to deliver the necessary housing and had been abolished.

How many houses were built?

As mentioned earlier, one of the main concerns of the Labour Government was the supply of housing. In 2003 the Treasury commissioned a review from economist Kate Barker (see text box) on the supply on housing.

Kate Barker and her Reports

Planning policy from 2004 to 2010 was heavily influenced by a series of reports commissioned by the Treasury from economist Kate Barker. She wrote a report on housing supply (after an interim report), and was commissioned to write a further report covering land use. The reports are

HM Treasury, Barker Review of Housing Supply - Final Report – Recommendations, 17 March 2004
HM Treasury, Barker Review of Land Use Planning, 2006
Final Report – Recommendations, December 2006

In her first report, Barker called for a sharp increase in house building, proposing that planning authorities should earmark 15 years supply of land suitable for housing. 5 years supply should be immediately available but other sites should be made available if the 5 year quota proved insufficient. That idea was adopted in planning guidance - Planning Policy Statement 3: Housing (2006). One of the justifications for this increase was that England might require an additional 70,000 dwellings per annum in order to reduce the trend in real house price increases to 1.8% a year. Excessive real house price increases had created problems of affordability and volatility in the housing market had had an adverse effect on economic growth.

Her report on land use was more radical, calling for major infrastructure consent to be decided by an independent commission rather than by the Secretary of State. In addition, she called for a planning-gain supplement (or development tax) to finance infrastructure. Those ideas were adopted in the *Planning Act 2008*.

Barker's supporters saw her reports as a convincing model for reforming and improving the planning system. Her critics saw her as an outsider who did not pay enough attention to the checks and balances that formed the existing planning system. In a sense, both views were correct, with her ideas accepted by one Government and rejected by the next.

House building: permanent dwellings started, by tenure: 1997/98-2009/10

England — Number of buildings

	Private Enterprise	Registered Social Landlords	Local Authorities	All Dwellings
1997/98	136,280	19,630	260	156,170
1998/99	129,050	18,010	130	147,190
1999/00	132,740	16,840	150	149,730
2000/01	126,290	13,990	210	140,490
2001/02	135,360	13,530	120	149,010
2002/03	138,690	14,220	160	153,070
2003/04	145,800	16,250	280	162,330
2004/05	154,310	19,790	210	174,310
2005/06	160,320	22,800	250	183,360
2006/07	149,350	20,770	200	170,320
2007/08	139,350	23,840	180	163,370
2008/09	60,060	20,210	310	80,580
2009/10	69,060	18,300	320	87,690

Notes: Rounded to nearest 10; totals may not sum to components shown

Source: Communities and Local Government. Live Housing Tables. Table 208.

The above table shows the number of housing starts by sector from 1997/98. There was a modest increase in housing starts from 2003/4 and 2005/6, followed by a collapse in 2008/09.

The legislative environment is, of course, only one factor that influences the volume of housebuilding. The fall off in housing starts will have been predominantly caused by the economic situation. The figures for housing starts are more disappointing, in view of the arguments in the Barker report of 2004 that house building needed to be sharply increased:

> The UK has experienced a long-term upward trend in real house prices, 2.4 per cent per annum over the last 30 years. This has created problems of affordability. In addition, the volatility of the housing market has exacerbated problems of macroeconomic instability and has had an adverse effect on economic growth. To improve macroeconomic stability and deliver greater affordability for individuals a lower trend in house prices is desirable:
>
> - In order to deliver a trend in real house prices of 1.8 per cent an additional 70,000 houses each year in England might be required.
> - To bring the real price trend in line with the EU average of 1.1 per cent an extra 120,000 houses each year might be required.[5]

Major Infrastructure Projects

In 2004, there were three key features of the application process for major Infrastructure Projects:

- Planning applications for most major infrastructure projects were called in by the Secretary of State.

[5] HM Treasury, *Barker Review of Housing Supply - Final Report – Recommendations*, 17 March 2004

- There was a public inquiry, after which the planning inspector sent the Secretary of State a summary of the evidence and a recommendation.

- The Secretary of State was entitled to reject the recommendation, provided that he gave reasons.

Business leaders complained about the time taken to obtain consent for major infrastructure projects and consequently said that they were reluctant to invest in the country. An example often quoted was the inquiry into Terminal 5 at Heathrow which lasted for four years (1995 to 1999). It took a further 20 months before the Secretary of State granted planning consent.

The Planning and Compulsory Purchase Act 2004 allowed the appointment of two or more inspectors for a major infrastructure project, so that two or more hearings could be conducted at the same time. A more radical plan – in which Parliament would decide the main principle of major infrastructure projects – had been dropped at the consultation stage.

However, nobody was sure that the system of two simultaneous hearings would actually succeed in shortening a public inquiry for a major infrastructure project. The method has only once been tried – the application for a second runway at Stansted Airport. After the 2010 General Election, the application was withdrawn because of a change in Government policy. Consequently there is no evidence about the effectiveness of this approach. That is important because the option of simultaneous hearings remains available.

In any case, developments often required additional consents under other legislation. For example, a wind farm might be approved by the Secretary of State but the attached electricity sub-station could be refused by the local planning authority. This would lead to further delays while waiting for an appeal.

The Planning Act 2008 adopted a much more radical solution – proposed by Kate Barker. It introduced a new type of consent – development consent – to remove the need for separate consents under different pieces of legislation. This would be decided by a new body, the Infrastructure Planning Commission (IPC). There would be no final decision for the Secretary of State. The Government's input would be by a National Policy Statement on that topic - for example nuclear power. These statements would be subject to a Parliamentary procedure and the IPC decision would be mainly based upon them.

Paying for infrastructure

When planning consent is granted on a piece of land, its value will often greatly increase. Earlier Labour Governments had tried and failed to introduce some form of development tax or betterment levy to remove some of those gains. The 1997-2010 Labour Government returned to this issue as a way of financing the infrastructure required to accompany the house building it considered necessary.

The Planning and Compulsory Purchase Act 2004 allowed for section 106 agreements to be replaced by a fixed fee. However, developers feared they would have to pay the fixed fee then be told that the development could not go ahead in the absence of a further payment relating to local infrastructure needs. Local authorities feared that the change would not provide them with enough money to pay for infrastructure.

Section 106 agreements or planning gain

- Under section 106 of the *Town and Country Planning Act 1990*, a developer may agree to provide infrastructure that is necessary for a development, or pay money to the local authority to do so.
- In some cases it suited both parties to agree payments that were not really related to the development. The local authority wanted the money and the developer wanted to avoid the delay of going to appeal.
- In the absence of a development tax, the use of section 106 agreements became more extensive.

Kate Barker recommended a development tax called "Planning-gain supplement" and the Labour Government consulted on how to introduce it. This proposal drew criticism from both developers and local authorities: developers feared they would have to pay the tax and still be required to finance infrastructure related to the project while local authorities feared that the money would go to central government.

The Planning Act 2008 provided for a variant called Community Infrastructure Levy (CIL). Local authorities could decide whether to have a levy at all and, if so, what rate to charge. They would retain the revenue. The regulations allowing councils to introduce the levy came into force just before the 2010 election. They also restricted use of section 106 agreements, even for local authorities that have not introduced the levy. The *Community Infrastructure Levy Regulations 2010* (SI 948) state that a planning obligation may only constitute a reason for granting a planning application if the obligation is: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

1.2 Coalition Government proposals

The Conservative Party Vision

The Conservative Party document, Open Source Planning Green Paper, February 2010, contains many of the ideas that have been adopted as part of Coalition Government policy. It also contains a more general idea of the intention:

> Open Source is a concept which originated in the software industry, where it aims to make computer programming open to all in a highly flexible and adaptable way. Its values of transparency and free access have held out the chance of opening up the software industry to better quality software at a lower cost than before. We believe this is just the approach our planning system also requires.
>
> Rather than have one planning structure determined centrally and then applied unvaryingly across the country, we want to create a planning system where there is a basic national framework of planning priorities and policies, within which local people and their accountable local governments can produce their own distinctive local policies to create communities which are sustainable, attractive and good to live in.
>
> **Local decisions over local plans**
>
> The creation of an Open Source planning system means that local people in each neighbourhood – a term we use to include villages, towns, estates, wards or other

> relevant local areas – will be able to specify what kind of development and use of land they want to see in their area. This will lead to a fundamental and long overdue rebalancing of power, away from the centre and back into the hands of local people. Whole layers of bureaucracy, delay and centralised micro-management will disappear as planning shifts away from being an issue principally for "insiders" to one where communities take the lead in shaping their own surroundings.
>
> As with our other policies designed to bring competition to public service provision (for example our plans to empower parents and voluntary groups to provide new schools), Open Source planning will engage local communities and foster a spirit of innovation and entrepreneurship.
>
> **A framework of incentives for development**
>
> We have already set out in a previous green paper our commitment that when your community builds more homes, central government will match pound-for-pound the extra money that your area gets through council tax for six years – and when your community attracts more businesses, we'll let your area keep the increased business rates for six years. (...)
>
> **A new system for national infrastructure**
>
> In addition to promoting sustainable local development, it is crucial that our new planning system allows for timely development of infrastructure projects of national importance, such as major transport and energy projects. To address this challenge, we will establish a democratically accountable version of the major infrastructure planning system introduced by Labour – providing a parallel at national level to the local accountability and civic engagement which will be promoted by our new local planning system.

Of course, the vision of the Coalition Government in late 2010 is not necessarily the same as that of the Conservative Party in early 2010. However, *Open Source Planning* does show how the various proposals fit together to form a model of planning.

Another clue to Conservative thinking came in December 2010 from Nicholas Boles, Tory MP for Grantham and Stamford, during a filmed debate held by pollsters Ipsos MORI:

> Answering a question from the floor, Boles was scathing in his assessment about what planning can achieve for communities.
>
> He said: "I mean, bluntly, there comes a question in life - do you believe planning works, that clever people sitting in a room can plan how people's communities should develop? Or do you believe it can't work?
>
> "I believe it can't work, David Cameron believes it can't, Nick Clegg believes it can't. Chaotic therefore in our vocabulary is a good thing. Chaotic is what our cities are when we see how people live, where restaurants spring up, where they close, where people move to. Would you like to live in a world where you could predict any of that? I certainly wouldn't. So I want there to be chaotic in the sense I want lots of organisations doing different things, in different areas."
>
> He added that plans to abolish regional spatial strategies and replace them with a new homes bonus - which will punish councils which fail to build new homes - would increase house building levels.[6]

---

6 "Cameron and Clegg 'don't believe planning works'", *Planning Resource*, 20 December 2010

However, he does not speak for the Government, while Minister for Communities and Local Government Greg Clark has stressed the importance of planning as a profession and as an activity.

How the Localism Bill relates to Open Source Planning

That vision provides the context for the *Localism Bill* which will:

- abolish regional planning
- scrap the Infrastructure Planning Commission
- introduce a new system of neighbourhood planning

However, some important features of *Open Source Planning* are not in the Bill:

- the presumption in favour of sustainable development
- the restricted grounds for appeal, available equally to applicants and third parties
- abolition of Community Infrastructure Levy, which the Bill would amend

The presumption in favour of sustainable development will be contained in the new overarching Government policy document described below. A planning application will still be determined in accordance with the development plan "unless material considerations indicate otherwise". The guidance will be a material consideration and will contain a presumption in favour of sustainable development.

The main Government incentive for house-building does not require primary legislation. Local planning authorities no longer have to set aside enough housing land to conform to regional plans – and ultimately national housing targets. Instead they will be given a financial incentive, as explained in the 2010 Comprehensive Spending Review:

> The Government will increase housing supply by reforming the planning system so it is more efficient, effective and supportive of economic development. In addition, it will introduce a New Homes Bonus that will directly reward and incentivise local authorities and local communities to be supportive of housing growth, equivalent to matching the additional council tax from every new home for each of the following six years. It will also reduce the total regulatory burden on the house building industry over the Spending Review period.[7]

This is covered in a Library note, *The New Homes Bonus Scheme* (SN/SP/5724).

The replacement of all current planning guidance for England

The National Planning Policy Framework (NPPF) may prove as important as the Bill. Most important issues in planning are covered in guidance rather than legislation. For example, major issues like the green belt, the presumption against isolated house building in the countryside and restrictions on granting consent for out-of-town supermarkets are all in planning guidance rather than in planning legislation. Work on the new NPPF is at an early stage, with a written statement on 20 December 2010 by Greg Clark calling for proposals by interested parties. A draft NPPF will be published for consultation and will be considered by a Select Committee. The draft NPPF could probably count as a material consideration in the determination of planning applications.

---

[7] HM Treasury, Spending Review 2010, October 2010, Cm7942 paragraph 2.31

The written statement gives an idea of the Government's approach. It stresses the Government belief that planning should be a local matter, except for nationally important projects. It criticises existing planning guidance, for being too complex and too centralised, while lacking an over-arching statement of the Government's priorities. It continues:

> Therefore the Government will produce a simple national planning policy framework setting out their priorities for the planning system in England in a single, concise document covering all major forms of development proposals handled by local authorities. All the national planning policies set out in PPSs, MPSs, PPGs and MPGs, will be integrated into a single document.
>
> The national planning policy framework will set out the Government's views on how the planning system in England can contribute to the delivery of a prosperous, competitive and attractive country based on the values of freedom, fairness and responsibility. The framework will set broad economic, environmental and social priorities and how they relate to each other, but will ensure that the majority of planning decisions are made at the local level, with the minimum of interference from Whitehall. The framework will also set out a strong basis for economic growth, a presumption in favour of sustainable development, as well as any further policy needed to establish and implement neighbourhood plans.
>
> The Government will apply the following principles when considering what the framework should contain. The framework will be:
>
> - localist in its approach, handing power back to local communities to decide what is right for them;
> - used as a mechanism for delivering Government objectives only where it is relevant, proportionate and effective to do so; and
> - user-friendly and accessible, providing clear policies on making robust local and neighbourhood plans and development management decisions.
>
> In the past, Governments have issued vast swathes of non-statutory guidance in addition to policy. However, such guidance can unintentionally take on a force which constrains rather than helps practitioners and users on the ground. This Government, therefore, believe that we should keep central Government guidance to a minimum. Accordingly, the Government will radically reduce the amount of guidance they issue and will work to withdraw or shorten existing guidance wherever they can.[8]

What Part 5 of the Bill would do

Chapter 1 would abolish regional planning. **Chapter 2** would amend Community Infrastructure Levy. **Chapter 3** would introduce the new regime for neighbourhood planning. **Chapter 4** would introduce new consultation requirements for medium-sized planning applications. **Chapter 5** would tighten up the enforcement regime. **Chapter 6** would abolish the Infrastructure Planning Commission and provide for a replacement regime for major infrastructure planning applications of national importance.

1.3 Abolition of regional planning

Clause 89 would abolish regional strategies.

The Coalition Government criticised the system of regional planning and housing targets, arguing that the imposition of targets upon LPAs and communities created antagonism and

---

8 HC Deb 20 December 2010 cc143-5WS

pitted people against development. A further criticism was that targets were ineffective in achieving growth and housing numbers.

On 6 July 2010, Secretary of State Eric Pickles revoked Regional Spatial Strategies (RSSs), including housing targets.[9]

Although DCLG published some guidance, several issues remain unclear. Local planning authorities still have to determine planning applications in accordance with their development plans, "unless material considerations indicate otherwise". The abolition of regional housing targets might be a material consideration. Some planning authorities have carried out the formal procedure to amend the housing targets in their development plans, normally reducing them. However, planning authorities still have a legal responsibility to provide enough land for housing the population. The difference is that now the planning authority is the body to decide the appropriate number of houses, not the regional planning body or the Government. In some cases, planning authorities have accepted the housing targets laid down by the regional planning body, because they believe that that is the necessary level of housing.

A further complication is that planning guidance issued by the Labour Government remains in force, apart from the occasional amendment. However, the guidance in Planning Policy Statements makes many references to regional strategies, which were revoked.

The position is further complicated by a legal challenge to the Government revocation of RSSs without primary legislation. The Government lost the initial ruling, leading to further confusion, but the full hearing in the High Court should be completed by the end of January. It is likely that some confusion will persist until the Bill becomes an Act, when regional strategies would be abolished, rather than merely revoked.

Issues raised in evidence to the CLG Select Committee

- Hardly any group submitting evidence wanted a return to the RSS regime
- Widespread concern at the rapid revocation of RSSs without replacing them by other guidance
- Most respondents did not think that RSS abolition would reduce the number of houses built, but a few disagreed
- Concern that RSS abolition would reduce the provision of sites for Gypsies and make it harder to share out sites over a wide area

(Abolition of Regional Spatial Strategies: Written Evidence, November 2010)

9 HC Deb 6 July 2010 cc4-5WS

Clause 90 Duty to Co-operate

The context for this new duty was included in the Conservative Party document, Open Source Planning Green Paper, February 2010:

> We will create a new system of collaborative planning by:
>
> - giving local people the power to engage in genuine local planning through collaborative democracy – designing a local plan from the "bottom up", starting with the aspirations of neighbourhoods;
> - encouraging upper-tier authorities (e.g. county councils and unitary authorities), which are responsible for infrastructure such as waste, roads etc., to compile infrastructure plans; and
> - giving all local planning authorities and other public authorities a Duty to Co-operate so that there is a sensible conversation between all those involved in shaping neighbourhoods and the landscape.

The Coalition Government's Local Growth White Paper explains the purpose of the new duty in a planning system without a regional element:

> 3.20 We propose, through the Localism Bill, to place a new statutory duty to cooperate on local authorities, public bodies involved in plan-making and on private bodies that are critical to plan-making, such as infrastructure providers. There will also be a new requirement for large-scale developers to consult with others in the local community before submitting planning applications. This will benefit local communities by engaging them at an early stage, as well as businesses who should see faster and more positive consideration of their proposals if they address issues early on.

In fact the Bill would only impose a duty on local authorities and public bodies. The White Paper stresses the potential role of Local Enterprise Partnerships (LEPs):

> Local enterprise partnerships will be free to work with partner planning authorities to develop strategic planning frameworks to address economic development and infrastructure issues. If constituent local authorities agree, they may also wish to take on other planning related activities, including enabling the timely processing of applications for strategic development and infrastructure.

Issues raised in written evidence to the Communities and Local Government Committee on the duty to co-operate

- The need for a clear duty to co-operate
- The need for a sanction for those failing to co-operate
- Mixed views on whether county boundaries are appropriate for regional planning
- The need to address cross border movements of minerals and waste
- LEPs should be consulted but lacked the democratic accountability to take policy decisions
- Some groups of councils have already formed associations to facilitate co-operation.

(Abolition of Regional Spatial Strategies: Written Evidence, November 2010)

Clause 91 Local Development Schemes

The Labour Government had introduced or amplified requirements relating to plan preparation and amendment. Their effect was to strengthen central and regional control over local authority plans. **Clause 91** removes the general requirements relating to the approval, by the Secretary of State and Mayor of London, as appropriate, of timetables for plan preparation. Local planning authorities must continue to publish their schemes to the public in the interests of accountability and transparency,

Clause 92 Adoption and Withdrawal of Development Plan Documents

This clause relates to the independent examination of local authority plan documents. Before 2004 this process resulted in a recommendation by the examiner, but the local planning authority was able to override the recommendations, provided they furnished good reasons for doing so. The 2004 Act removed that option so that the examiner had the ability to re-write a local authority plan and local planning authorities had to accept the modifications.

The *Localism Bill* would amend that change, leaving some scope for the local planning authority to modify its development plan documents. The need for approval by the examiner remains, but the local planning authority can add "modifications that (taken together) do not materially affect the policies set out in it" (the plan) as well as having the power to request recommendations from the examiner if it so wishes.

Clause 93 Local Development: monitoring reports

Clause 93 would remove the duty on local planning authorities to make annual reports to the Secretary of State about the implementation of the local development scheme and the extent to which the policies in the local development scheme are being achieved. The requirement to make progress reports is not removed but the local planning authority can choose the appropriate time period for them to cover, subject to regulations, and must also make them available to the public in the interests of accountability and transparency.

Comment on Part 5 Chapter 1 of the Bill

The President of the Royal Town Planning Institute stressed the need for co-ordination:

> Where government is proposing to establish a duty to cooperate on local authorities this needs to involve a much firmer requirement to work together on the delivery of infrastructure and other major projects which provide for more than one local authority area.[10]

The Commission for the Built Environment argued that co-operation would improve design:

> Increasingly, the competitiveness of a place depends on attracting and retaining a skilled workforce, which in turn is dependent on providing a distinctive and high quality living and working environment. In many areas it makes sense for local authorities to work together at a more strategic level, particularly on issues which affect economic development. One of the things that impacts on an area's economic performance is the condition of the built environment, therefore the duty to cooperate should lead to better quality places.[11]

The Town and Country Planning Association Chief executive Kate Henderson said:

---

10 RTPI Press Release, *Localism Bill: RTPI calls on ministers to urgently clarify key planning reforms*, 14 December 2010

11 CABE Press Release, *Good design in the new planning system*, 14 December 2010

> A revised planning system, truly fit for purpose, must offer a strong mechanism for planning for large areas where strategic issues are too big in scale or timeframe to be resolved within a single local authority planning area; for example a new train line, climate change adaptation measures such as a strategic response to flooding, or large scale housing growth. The 'duty to cooperate' set out in the Localism Bill to encourage and enable local authorities and public bodies to come together on issues that cross local government boundaries, offers the potential for a strategic planning framework in large areas where collaborative strategies are needed. However, co-operation once embarked upon will need to be monitored and mechanisms for mediation between partners will also have to be made available if necessary.[12]

The Local Government Association welcomed the main changes:

- We support the principles behind neighbourhood planning. We agree with the Government that local planning should be in the hands of councils, individually and working together; and that planning should be simpler, quicker and provide more certainty and transparency for local people and developers.

- We agree that people should be able to shape the places where they live and that important decisions about the future of places remain in the hands of elected and accountable local politicians.

- To make this a success it is vital that the government does not impose rigid bureaucratic processes on local people and councils, which only serves to increase complexity, delay and opportunities for litigation. (...)

- Greater freedom and flexibility for councils to be able to work together to plan strategically for growth, without top down targets and strategies is welcome. We would question the need for central government to issue guidance to councils and their partners at the local level on how to co-operate.[13]

The PPS Bulletin said that the Bill lacked many of the ideas in Open Source Planning, such as the presumption in favour of sustainable development:

> [T]here is no mention of how national policy will be streamlined, or indeed how Local Development Frameworks will be simplified. Nor is there any indication of how future local housing targets should be determined (where is the requirement for local housing numbers to meet a robust evidence base?).
>
> Instead, all we get is a legal duty for local authorities and statutory public bodies to co-operate in relation to planning sustainable development (Section 90). Many local authorities will be left scratching their head asking "So what do we do now to progress our LDFs?"
>
> Developers will also be operating in the dark. The commitment in Open Source Planning to underpin the proposed de-regulated, localist planning system with a permissive commitment to support sustainable development if national and local conditions were met was an important signal for the development industry. It was the main grounds for hope that they could continue to negotiate the labyrinth that is the planning system and potentially overcome hesitant local planners by demonstrating local support. We shall have to see if this hope for business certainty and forward

---

12 TCPA Press Release, *TCPA first response to Localism Bill*, 13 December 2010

13 Local Government Association, Localism Bill: LG Group On the Day Briefing, 13 December 2010

> planning comes forward in some other form – but how or when isn't any clearer than twelve months ago.[14]

The Home Builders Federation published a report on 7 January 2011 showing a sharp decline in the number of houses granted planning consent in 2010 Q3. Although this was not directly a comment on the Bill, they placed it in the context of planning policy changes;

> Permissions granted for homes typically take up to three years to build. So the implications of this drop will not be felt for some time. However, with household formation projections showing the need for the country to build around 232,000 homes a year until 2033, and 2009's total at just 118,000 - there is obvious potential for the crisis to deepen.
>
> The New Housing Pipeline report shows that through 2010 there has been a steady fall in permissions granted to developers for new homes, with a drop in England from over 40,000 in Q1 to just over 30,000 in Q3. This drop coincides with radical changes to the planning system by the new Government, and a shift from the old top down targets to a new localism based approach that hands more power to Local Authorities.[15]

1.4 Community Infrastructure Levy

Although regulations brought CIL into force just before the 2010 General Election, only one council has progressed to the first stage of consulting on a draft charging schedule (and at least two are imminent), partly because many local authorities expected the whole scheme to be scrapped. However, on 18 November 2010, DCLG announced it will retain CIL but amend it to give more of the benefits of development to the local neighbourhood and more control to local councils:

> 1. All but the very smallest building projects will contribute to the levy ensuring communities reap the rewards of new development in their area. The neighbourhood funds will complement powerful incentives that will be delivered through the New Homes Bonus. Under the new scheme, communities that support the construction of new homes will receive direct and substantial extra funding to spend as they wish.
>
> 2. Other changes include:
>
> - more control for councils over the levy. Independent examiners will ensure councils do not set unreasonably high levies, but councils will control the detail of what type of levy rate is charged, including what rates are set for specific areas and types of development; and
>
> - allowing councils to set their own flexible payment deadlines and offer the developers the option to pay by instalments. The £50,000 minimum threshold for payments in kind will also be scrapped so councils can accept a payment in kind for any level of contribution.
>
> 3. Mr Clark also confirmed no significant changes will be made to the current rules about planning obligations, also known as Section 106 agreements. They will continue to fund affordable housing, and will remain scaled back so they directly relate to the proposed development. In recent years the use of planning obligations to secure cash contributions to general infrastructure needs had grown in scope and complexity, and often resulted in years of protracted negotiations that delayed development and were a

---

14 PPS Bulletin: Localism Bill – Devil in the detail, 14 December 2010. PPS describes itself as the largest independent public affairs company in the country.

15 Home Builders Federation Press Release, *Blocked pipeline threatens housing supply*, 7 January 2011

> drain on council resources. The levy ensures proper transparency and fairness over such contributions.
>
> 4. Councils will monitor the use of the levy and provide regular reports to ensure that local people understand how new development brings benefits to their area. Affordable and social housing projects as well as charity developments will remain exempt from the levy.[16]

The Government explained how the CIL would be amended:

> 5. The new Government believes it is reasonable for developers to make a contribution towards additional infrastructure that is needed as a result of their development. The Government also believes a tariff-based approach provides the most satisfactory framework to fund new infrastructure. Therefore, after careful consideration, the Government has decided to retain the Community Infrastructure Levy. However, in order to retain the levy it will be reformed to ensure it:
>
> - hands more power to councils and communities to decide what they want the levy to fund; and
>
> - is simple and transparent for local communities and provides clarity to the development industry.
>
> 6. The levy will not apply to the vast majority of household extensions as they will be less than the threshold of 100 sq m (the average house size in the UK is 76sq m).
>
> 7. Some changes to the levy will require amendments to legislation and regulations. The Government will include provisions in the Localism Bill to limit the binding nature of examiners' reports, and amend the Community Infrastructure Levy Regulations 2010 to give local communities more control over the levy, and make it more responsive to local needs.
>
> 8. The Government will require charging authorities to allocate a meaningful proportion of their levy revenues raised in each neighbourhood back to that neighbourhood to spend on the infrastructure that local people consider is most needed.
>
> 9. Local authorities will work closely with neighbourhood bodies to ensure that the levy can help provide for their infrastructure needs. This could mean working with neighbourhoods to decide what infrastructure is needed, as well as giving levy money to neighbourhoods affected by a new development in their area.
>
> 10. Local authorities will retain the ability to use the levy where it is needed in their area to address the cumulative impact on infrastructure that may occur further away from the development. They will need to balance neighbourhood funding with wider infrastructure funding needed to support growth.
>
> 11. The report, Valuing Planning Obligations in England: Update Study for 2005-06, published by Sheffield University in 2008 showed that only six per cent of planning permissions made any contribution to the cost of new infrastructure via planning obligations.[17]

There are only two clauses on CIL, providing for regulations to be made in relation to the detail. An added complication in interpreting the *Localism Bill* is the absence of any

---

16 DCLG Press Release, *Clark: Communities to share in the advantages of development*, 18 November 2010
17 DCLG Press Release, *Clark: Communities to share in the advantages of development*, 18 November 2010

experience on how the existing CIL scheme would have worked. The Government policy announcement above gives more idea of the intentions behind the clauses in the Bill.

Clause 94 would mean that modifications recommended by an examiner would no longer be binding upon the charging authority, although the authority would nevertheless be required to correct any non-compliance with the CIL legislation that the examiner specified. If this could not be corrected, the examiner could still reject a charging schedule and this would be binding on the authority.

Clause 95 on the use of CIL makes clear that the levy can be spent on the ongoing costs of infrastructure, as well as the initial costs of new infrastructure.

The clause also contains regulation-making provisions on directing charging authorities to pass funds through CIL to other bodies to spend on infrastructure. That is potentially important because the Government will require the charging authority to allocate a meaningful proportion of the money to the neighbourhood.

We do not know how that might operate. Potentially it might provide a significant amount of money for parish councils or neighbourhood organisations, to spend on infrastructure selected by local people. In some circumstances that might result in a considerable increase in the importance of such organisations. Of course, only a very small proportion of neighbourhoods would have development of a suitable scale to pay a large amount of money, but the possibility is there.

It is possible that that provision might reduce local opposition to development, because local people would directly benefit from the development, rather than seeing the benefits go elsewhere. On the other hand, local opinion is only one of the factors to be taken into account in determining a planning application. The local planning authority might still reject a bad application, even though the local residents wanted it to go ahead so that they could benefit from the infrastructure spending.

Comment on Community Infrastructure Levy

The Local Government Association wanted more local democratic control:

> Community Infrastructure Levy is important as part of a wider package of incentives and measures including the New Homes Bonus and Tax Increment Financing to stimulate and encourage growth locally. We welcome the proposed removal of unnecessary national controls and complexity, but decisions on how CIL is spent locally should be taken by democratically accountable local politicians, subject to the safeguard of independent examination.[18]

Anthony Fyson, a freelance writer on planning issues, believed that local people would not be influenced by the financial incentives in Community Right to Build (see section **1.5** below):

> Then there is the risky but exciting idea that neighbourhoods will have the "right" to a proportion of local authority revenues raised from the once reviled but now reprieved community infrastructure levy to spend how they wish. Even a regime that seems happy to do without effective auditing must be a little anxious at the prospect.
>
> The question is, how are we to ensure that local people will come together and agree to behave fairly towards their fellows? This surely is a residual job for properly regulated democratic government, even at the most local level. The government's only

[18] Local Government Association, Localism Bill: LG Group On the Day Briefing, 13 December 2010

> answer seems to be an unarguably attractive but curiously un-Tory faith in the goodness of human nature.[19]

1.5 Neighbourhood planning and consultation

The policy on neighbourhood plans was summed up on 30 November 2010 by Greg Clark:

> Every community will have the right to introduce a neighbourhood plan, allowing local people to decide where new shops, offices or homes should go and what green spaces should be protected. If local people then vote in favour of new 'Neighbourhood Plans' in local referendums, councils will have to adopt them.
>
> The new powers will allow communities to be able to confer full planning permission where people are most keen to take control and have certainty over development. In other areas, people will be able to grant outline permission with conditions, for example on design details.[20]

There was some background to the idea in the Conservative Party document, Open Source Planning Green Paper, in February 2010:

> We will make a truly local plan, built out of a process of collaborative democracy, the centrepiece of the local planning system. New local plans will, of course, have to conform to national environmental, architectural, economic and social standards and constraints. But within this national framework, the local plan will be truly local. It will define what the people of a given locality – through a process of collaborative democracy – mean by sustainable development for their area.
>
> Recent academic research has found collaborative democracy – the idea that citizens should be actively involved in making the kind of decisions hitherto reserved for bureaucrats and elected representatives – to be a highly successful concept. We believe that the production of new local plans is a process that is ideally suited to the use of collaborative democracy. By building local plans from the bottom up so that they genuinely reflect the will of the people, we will help communities to come together so they can solve their collective problems together.
>
> We will therefore give local people the power to engage in genuine local planning by mandating that all local authorities use collaborative democratic methods in drawing up their local plans. Following the publication of this green paper, we will consult widely on the models of collaborative democracy best suited to local planning. We will draw both upon relevant experience inside the UK (e.g. in the collaborative development of village plans) and on relevant models from other countries.

In a speech in November 2010, Greg Clark explained more about the principles:

> We want to enable neighbourhoods to exert more influence in the planning system than is currently possible. We aim to create a means for people to formulate their own plans about what their area should look like in five, ten, twenty years' time. This is a rethinking of how planning operates - creating new pressures and powers that operate from the bottom up, rather than the top down.
>
> The principle is simple. Local people come together and agree, "this is what we want our area to look like. Here is where we want the new homes to go and how we want

---

19 "Fyson on ...localism bill that relies on a leap of faith over communities' unselfish response for success", *Planning*, 17 December 2010

20 DCLG Press Notice, *Returning respect and pride to town planning - Greg Clark*, 30 November 2010

them designed; here is where we want new shops and offices; here are the green spaces we want to protect." (...)

Of course not everyone will want to draw up a neighbourhood plan. This doesn't mean that they don't care about changes to their area. So where there is no neighbourhood plan, we are backing up the community's right to be heard. When major developments are planned we are setting down in law that developers must consult local people before they make a planning application. Responsible developers do this already - not just because it's the right thing to do - but because they recognise that involving local people may help win local support, and, in turn, give a better chance of securing consent. Setting out the requirement in law will put things right where developers don't.

With neighbourhood plans, we are defining a new basic building block of planning.[21]

Concerns over Neighbourhood Planning in evidence to the CLG Select Committee

- Communities would need skills and capacities to shape plans effectively.
- The need to combine localism with sustainable development, including international obligations.
- Evidence and local sentiment may often pull the decision making process in opposite directions.
- Both the British Property Federation and the Planning Officers Society wanted more notice taken of local concerns, but for experts to prepare the plans.
- The Law Society noted that new supermarkets, housing, commercial development, wind farms, quarries and waste facilities generate huge opposition. It argued that increased localism would lead to an increase in the numbers of refusals and appeals to the Secretary of State.
- The Institution of Civil Engineers was concerned that a gap had been created at the "larger than local" level, which risked investment in water, flood risk management, waste services, energy and transport.
- Several respondents wanted Local Enterprise Partnerships to have a planning function.

(Written Evidence on Localism for the CLG Select Committee, November 2010)

[21] Greg Clark speech, *Better planning: From principle, to practice*, 18 November 2010

The Coalition Government's Local Growth White Paper explained how neighbourhood planning would co-exist with local plans:

> **Passing power to communities**
>
> 3.8 Communities will be centre-stage in the reformed planning system. They know their areas better than anyone and should benefit from development.
>
> 3.9 At its heart, that means giving every neighbourhood the chance to shape its own development through the creation of neighbourhood plans, which will give local communities greater flexibility and the freedom to bring forward more development than set out in the local authority plan. Neighbourhood plans will need to respect the overall national presumption in favour of sustainable development, as well as other local strategic priorities such as the positioning of transport links and meeting housing need.
>
> 3.10 Local communities will also have new Right-to-Build powers, enabling them to deliver small-scale development without the need for a separate planning application. By following a simplified neighbourhood planning process, these powers will enable communities to respond quickly to changing development needs.
>
> 3.11 Under our reforms, local authorities will be expected to produce local development plans. We will simplify and streamline the procedures and timescales for local authorities to prepare these, so that communities are better able to understand and influence them. Where neighbourhoods choose not to develop a neighbourhood plan, as set out above, the local plan will be used to guide development in that area.
>
> 3.12 These locally produced plans will establish the key strategic framework on infrastructure, deal with issues such as economic growth requirements, will be drawn up so they have regard to national policy, and will provide the basis for local planning decisions and planning by local communities. This will ensure that every local authority puts in place the foundations for local economic growth.
>
> 3.13 These changes will provide much needed clarity for business on our priorities, enabling better investment decisions as well as sending a clear message that this country is an excellent place to locate business.[22]

That passage refers to "the presumption in favour of sustainable development" which is not in the Bill, but will be in the new overarching planning framework.

On 6 December 2010, Secretary of State Eric Pickles and Greg Clark provided an overview of the Bill's neighbourhood planning part:

> Neighbourhood planning
>
> 2. As well as streamlining existing processes, the Government will introduce a new right for communities to shape their local areas by creating neighbourhood plans, and introduce powerful new incentives to encourage local communities to approve sustainable development. The new neighbourhood plans will be flexible so communities will be able to determine the issues or areas to cover and what level of detail they want to go into. Importantly it will enable communities (through a new Neighbourhood Development Order) to define specific developments or types of development which will have automatic planning permission without the need for any application to the local authority. For more complex cases they will be able to grant

[22] HMG, Local growth: realising every place's potential, 28 October 2010 Cm7961

outline permission so that the right to develop would be established and only the details would need to be approved. This provides certainty which is vital for investment and giving communities confidence in the system. Neighbourhoods can also establish general policies that will steer decisions on traditional planning applications.

Defining neighbourhoods

3. Communities will be able to propose the boundaries of their neighbourhood. Neighbourhoods will generally be based on existing parishes and towns but the local council will have a role in mediating and consulting where there are conflicts or no established boundaries. This will provide a stable basis for neighbourhood planning, with local authorities approving appropriate boundaries.

Process for developing neighbourhood plans

4. Plans will be taken forward by Parishes or 'Neighbourhood Forums' in places without Parishes. The local council would have a duty to provide support and to ensure compliance with other legal requirements. There will be a light touch examination of the plan by an independent assessor to ensure that it complies with legal requirements and national policy, and is aligned with neighbouring plans and the strategic elements of the council's plan. A referendum (with a simple majority in favour) would ensure that the final plan had public support.

Neighbourhood plans must work inside some limits. It will not be a means for saying no to important growth. If major infrastructure is needed at a national level, such as a high-speed rail line, or if the strategic local plan calls for a certain number of homes to be built. They would still be required to be consistent with national planning policy and to conform to the strategic elements of local authority plans. The Localism Bill will have safeguards to ensure neighbourhood plans do not override these wider ranging plans. The National Planning Policy Framework will be vital in this respect.

Adoption

5. The council will have a duty to adopt a legally compliant neighbourhood plan that had been successfully passed by a referendum, giving real power to communities to determine if the plan is acceptable.[23]

Another Government scheme - *Community right to build* – is contained within the neighbourhood provisions. It was announced on 23 July 2010 by Housing Minister Grant Shapps:

The Community Right to Build will:

- Allow communities to get together and take forward developments for new homes, shops and facilities in their area.
- Allow a community organisation to go ahead with development without the need for an application for planning permission, if there is overwhelming community support for the development and minimum criteria are met.

But the Community Right to Build won't be used to expand the size of communities by more than 10 per cent over a 10 year period.[24]

---

[23] DCLG Press Release, *Planning power from Town Hall and Whitehall to local people*, 6 December 2010
[24] DCLG, The Community Right to Build, July 2010

On 13 December 2010 Grant Shapps announced that Community Right to Build could apply throughout the whole country, not just rural areas.[25] The *Localism Bill* would introduce neighbourhood development orders, one category of which are "Community Right to Build Orders".

Clause 96 would bring **Schedules 9, 10** and **11** into effect.

These schedules need to be read together. **Schedule 9** covers neighbourhood plans and neighbourhood development orders. Basically parish councils can prepare draft plans (or draft orders), which then go to independent examination. If there is no parish council, the local planning authority may designate another body as a qualifying body under the Bill, if it exists to further the well-being of people living there, and meets some other conditions. Greg Clark provided a neat summary of the conditions that the plans and orders will need to satisfy:

> The basic conditions that draft plans and orders must meet will be that they are appropriate having regard to national policy, are in general conformity with the local authority's strategic policies in the development plan (excluding neighbourhood plans), and are compatible with EU obligations and human rights requirements.[26]

A local referendum is also required, as explained below.

A "neighbourhood development plan" is a plan which sets out policies (however expressed) in relation to the development and use of land in a particular neighbourhood area specified in the plan under **Schedule 9 paragraph 7**.

Schedule 9 paragraph 2 states that a neighbourhood development order is an order which grants planning permission in relation to a particular neighbourhood area specified in the order (a) for development specified in the order, or (b) for development of any class specified in the order.

The first category would include Community Right to Build. The second category would allow an increase in permitted development rights. For example, perhaps a neighbourhood might want to allow anybody to have a loft extension or outbuilding in the garden, regardless of whether it conformed to the dimension in the General Permitted Development Order.

Schedule 10 describes the examination procedure for orders, but **Schedule 9 paragraph 7** applies the same procedure to plans (with some amendments). **Schedule 10 paragraph 5** requires neighbourhood plans or orders to be considered by the local planning authority to check that the qualifying body is properly authorised and whether the basic procedural requirements have been complied with.

Schedule 10 paragraph 7 states that the independent examiner cannot be an employee of the Crown or of an authority with local government functions. In other words, it cannot be staff from the local planning authority or from the planning inspectorate.

A local referendum has to take place after an independent examination, if the planning authority is satisfied that the proposals meet the requirements in the Bill. The area for the referendum might not be the same as the neighbourhood area, since **Schedule 10 paragraph 12 (8)** allows the local planning authority to extend the area in which the referendum is to take place to include other areas.

---

[25] DCLG Press Release, *Grant Shapps: New legislation will extend the Right to Build across the country*, 13 December 2010

[26] HC Deb 15 December 2010 c817W

Provided that more than half of those voting have voted in favour of a development order, the local authority must make the order (**Schedule 9 paragraph 2**). A similar provision applies to neighbourhood plans (**Schedule 9 paragraph 7**).

Neighbourhood plans and orders - A very broad outline of the procedure

- Qualifying body prepares a draft plan or order
- Local planning authority checks conformity with the basic procedural requirements
- Independent Examination takes place, including, possibly, a hearing for oral evidence
- Independent Examination checks conformity with national policies and strategic policies in the local development framework. It also checks that the plan or order would not breach EU obligations.
- The local planning authority decides what action to take in the light of the recommendations of the independent examination. If the basic conditions in the previous bullet are satisfied, a referendum must be held.
- Local referendum
- If 50% of those who vote are in favour, the planning authority must make the plan or order unless such action would breach EU obligations or the European Convention on Human Rights.

Not everything is covered by the neighbourhood provisions. **Schedule 9 paragraph 2** contains several clauses which would amend the *Town and Country Planning Act 1990*, including 61-I listing those types of development that are excluded both from neighbourhood development orders and neighbourhood development plans. These include: minerals (county matters); waste; nationally significant infrastructure projects – including any power station or wind farm over 50MW; major projects requiring environmental impact assessments under EU law – very large projects such as steel works, integrated chemical installations, large intensive farms for poultry or pigs.

However, most housing developments and onshore wind farms below 50MW would be included.

Schedule 9 paragraphs 5 - 7 amend the *Planning and Compulsory Purchase Act 2004* s.38. That is important because planning applications[27] have to be determined in accordance with the development plan "unless material considerations indicate otherwise" under s.38(6). The basic provision had existed since 1991, and was the basis of the plan-led system. The 2004 Act brought regional spatial strategies within the definition of development plan. The *Localism Bill* would remove Regional Spatial Strategies, which are being abolished, but insert neighbourhood development plans.

[27] This is an application for normal planning consent, as opposed to consent granted under a neighbourhood development order

The consequence is that the local planning authority (or planning inspectorate) would only be able to override provisions in the neighbourhood development plan if material considerations supported that decision.

Schedule 11 covers the category of neighbourhood development orders that are Community Right to Build Orders. There are some differences in the type of body that may qualify.

For neighbourhood development orders, either a parish council or a neighbourhood forum is authorised to act. The local planning authority may designate an organisation as a neighbourhood forum if: it exists to further the well-being of those living or wanting to live in the area; the membership is open to individuals living or wanting to live there; at least three members actually live there; and there is a written constitution.

For the purposes of Community Right to Build, a community organisation is "a body corporate (a) which is established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area, and (b) which meets such other conditions in relation to its establishment or constitution as may be prescribed.

Clauses 97-9 cover charging for neighbourhood planning.

Each clause provides a power to make regulations, so it is difficult to know in any detail what is intended. However, the Notes on Clauses state that the purpose of the charges is to allow local planning authorities to recover costs which they have incurred in putting neighbourhood development plans or orders in place. The regulation-making powers permit the charge to be imposed on owners or developers and allow for others to assume liability. The text of the Bill does not explain exactly who will have to pay.

Clause 100 allows the Secretary of State to provide financial assistance for the preparation of neighbourhood plans.

According to the magazine *Inside Housing*:

> Several housing sources have confirmed that each plan will be funded with £20,000 of Government cash. The total cost to the Treasury if all 10,397 parishes in England commissioned a plan could run to more than £200 million. This figure does not include the neighbourhood plan bill for urban areas which cover 41% of the country.[28]

A pilot scheme is to operate, called Neighbourhood Planning Vanguard Scheme, for which local authorities are invited to apply by 14 February 2011.

Comment on neighbourhood planning and on consultation

The requirement for independent examination of neighbourhood development plans and neighbourhood development orders had not been expected. It is not clear how examiners will decide whether plans for a neighbourhood do conform to the local authority's strategic policies. For example, if the local authority considers that 1000 houses are required in the whole district over 10 years, would an examiner approve a neighbourhood plan rejecting all new housing in that neighbourhood?

It may not be possible to know how neighbourhood planning will operate until the Government publishes regulations and guidance. Amongst other things, the Government plans to publish an overarching planning framework to replace existing planning guidance

[28] "Government faces grilling over cost of Localism bill", *Inside Housing*, 17 December 2010

early in 2012. That will presumably show the policies with which neighbourhood plans have to be in general conformity.

Another important issue will be the scale of the neighbourhoods accepted for plan formation.

The President of the Royal Town Planning Institute called for more clarity:

> While the production of neighbourhood plans is to be offered as a right to local communities, there needs to be greater clarity of their scope and of the process whereby they become established as part of the development plan. It is particularly perplexing the grant funding for Planning Aid is being ended after March 2011 when communities are going to need its services more than ever.[29]

Liz Peace, chief executive of the British Property Federation, supported the broad objectives of the Bill, but had concerns:

> Getting the level of neighbourhood involvement envisaged in the Bill will be very difficult. Questions remain about, who will contribute to and work up the proposed neighbourhood plans, what status they will have, how such plans will relate to wider local authority plans and how neighbourhoods will be defined. For example, will businesses also have their voice heard?
>
> It is essential that neighbourhood plans do not simply add another level of bureaucracy. The neighbourhood plan pilot schemes planned by Government whilst the Bill is going through will be crucial in finding solutions to these issues.[30]

The British Council of Shopping Centres executive director Edward Cooke said:

> The focus on neighbourhood plans and local decision-making should in principle encourage communities to attract investment and development that is fit for purpose. However, we must acknowledge that it could also facilitate an increase in opposition to new development. Devolving greater powers to local authorities may also result in different rules and procedures around the country, creating inconsistency and uncertainly for the development process.[31]

Friends of the Earth expressed concerned that some areas would not afford to draw up neighbourhood plans:

> Under the proposals local communities wanting to shape development in their area will have to fund the writing of neighbourhood plans - which sets out the type of developments that communities want - which could create an unfair planning system. Those that can't afford to draw up a plan will be at risk of unchecked development in their area. Friends of the Earth's planning campaigner Anna Watson said:
>
> "If localism is to thrive more must be done to allow people to participate fairly in the planning process - these Government plans could create a postcode lottery, two-tier planning system, where cash-strapped communities struggle to make their voices heard."[32]

The Town and Country Planning Association Chief Executive Kate Henderson was positive:

---

29 RTPI Press Release, *Localism Bill: RTPI calls on ministers to urgently clarify key planning reforms*, 14 December 2010

30 BPF Press Release, *Property industry welcomes publication of Localism Bill,* 13 December 2010

31 BCSC Press Release, *BSCS: Localism must not hinder property-led regeneration*, 13 December 2010

32 Friends of the Earth Press Release, *Localism Bill fails vital green test*, 13 December 2010

> Collaborative neighbourhood planning, so that more people can be involved in the process of shaping the places in which they live and work, is an opportunity to be grasped. However the TCPA recognises that implementing such an ideal to be a meaningful choice will require communities to have intellectual as well as financial support.[33]

The Local Government Association supported the measure:

> We support the principles behind neighbourhood planning. (...) We will be looking carefully at the very extensive and complex measures in the Bill on neighbourhood planning and proposing amendments to improve them based on the successful front line experience of councils working with their communities.[34]

The Planning Officers Society welcomed the principle, but was concerned about resource implications:

> Stephen Tapper, President of the Planning Officers Society, said "the introduction of neighbourhood plans is a welcome addition to the development planning process. It was the Society that suggested a community right to plan which we still believe is preferable to the Government's right to build. "
>
> John Silvester, Spokesperson for POS, commented "We do have concerns over the increased costs that LPAs will have to bear in administering the neighbourhood planning process; maybe it will turn out that there will not be too many such plans so LPAs will not have too much to bear after all!"
>
> The Society is working with the LGA to assess the likely resource implications for planning authorities; and is considering the preparation of a *how to* advice note to communities.[35]

The Planning Portal[36] reported welcome for the Bill but questions on detail:

> Planners, lawyers, consultants and pressure groups have given a cautious welcome to the Localism Bill but highlighted considerable uncertainty over the detail of key measures.
>
> Shaun Andrews, director of planning, development and regeneration at GL Hearn, said: "Yes local people will be given some power through the new neighbourhood plans, and increased power to Parish Councils, but will local communities grab the opportunity in the numbers envisaged by the coalition government? Or, as we have seen with the local development framework process, will some local authorities have a threadbare, patchwork quilt of half-plans for many years to come?
>
> “In any event, local authorities will undoubtedly struggle with the additional coordination required with fewer resources - it will take some time for the old plans to be phased out and the new phased in.”
>
> Turley Associates chief executive Rob Lucas said: "The bill is high on principle with neighbourhoods creating their own plans and granting development consents. It is unsurprisingly low on the detail of how this is to be achieved practically and fairly.”

---

33 TCPA Press Release, *TCPA first response to Localism Bill*, 13 December 2010
34 Local Government Association, Localism Bill: LG Group On the Day Briefing, 13 December 2010
35 Planning Officers Society News, *POS Welcomes Neighbourhood Planning Aspects of Localism Bill But Cautions LPAs Over Resource Implications*, 12 December 2010
36 The UK Government’s online planning and building regulations resource in England and Wales

> BNP Paribas Real Estate senior planner Justin Cove said: "Sadly, the Bill will continue to raise far more questions than answers until more detailed guidance is issued. Nevertheless, it has now been released and it is up to local communities, local authorities and the development industry to respond to its challenges."[37]

The Centre for Cities, in a report on regeneration, gave an example of how neighbourhood plans might be used:

> Local and national politicians should accept that using regeneration plans to 'go for growth' hasn't worked in every urban neighbourhood and can have negative as well as positive consequences on a city's economy and residents.
>
> A new way forward might mean building a park rather than a science park, or turning tiny terraces into larger homes, rather than knocking them down and building one bed flats. Communities should be given the power to decide on plans, testing out the neighbourhood planning approach expected in the Localism Bill.[38]

The *Observer*'s architecture correspondent anticipated problems:

> It is...good to encourage communities to take the initiative in planning their future, and a few model plans might come forward as a result. But there will also be feuds and bitterness, and eccentric decisions.
>
> If some people in a village stand to make hundreds of thousands of pounds from a planning consent, and others do not, and the conflict can only be arbitrated among its few hundred inhabitants, the tendency for partisanship and strife will be great. Whether anyone resorts to prussic acid in the Earl Grey remains to be seen.
>
> Nor does the bill much recognise that there is a skill to planning, which a typical parish council might not possess. Questions such as the protection of listed buildings, areas of outstanding beauty and conservation areas are skated over. It is particularly unlikely that the planning system will be made more efficient and cheaper, as the government claim, by the introduction of unwieldy new systems of making decisions.
>
> The basic issue of planning housing is that the normal rules of supply and demand are stymied by the mostly reasonable desires of individuals to protect the bit of property that they have.[39]

The editor of *Planning* stressed the shortage of professional skills:

> Just like its predecessors, many of the reforms sound fine in principle. A dose of localism is welcome in one of the most centralised countries in Europe. But many of the reforms face fundamental obstacles to their achievement, not least neighbourhood plans. Is there a nationwide army of residents out there with the skills, perspective and imagination to balance the social, economic and environmental challenges surrounding development?
>
> The answer is obvious. If there were, it would have become apparent by now. We may be about to enter a period in which planning discourse is dominated by sharp-

---

37 Planning Portal, Cautious welcome for Localism Bill but questions on detail, 17 December 2010

38 Centre for Cities Press Release, *Centre for Cities sets out an ambitious new approach to regeneration in cities and neighbourhoods facing decline*, 14 December 2010

39 Rowan Moore, "Localism bill: Letting parishes decide housing proposals will lead to trouble", *Observe*r, 19 December 2010

> elbowed, well-resources, well-heeled busybodies with time on their hands and whose concept of local need is constrained to a few hundred metres from their homes.[40]

Consultation

Clause 102 requires that a prospective applicant for planning consent for certain types of application will have to carry out pre-application consultation.

The type of development will be specified in secondary legislation and the Notes on Clauses do not give any indication of the size of development that would be covered. Similar consultation requirements already exist for nationally significant infrastructure projects, under the *Planning Act 2008*. Presumably **Clause 102** would cover large projects, but not those nationally significant infrastructure projects. For example, a power station or wind farm under 50MW – which would mean most onshore wind farms – would not be covered by the 2008 Act but might, depending on what thresholds are set, be picked up by this new requirement.

The PPS Bulletin noted the consultation requirements:

> What we do get in the Bill is the prospect of a new Section 102 statutory requirement for pre-application consultation (which looks very similar to the system now in place in Scotland). While this doesn't set a very high hurdle the devil may well be in the detail which will appear in one or more secondary development orders to be enacted at a later date.
>
> Localism Bill Section 102 demands that a prospective applicant, confusingly referred to in the Bill as person "P", will have "to bring the proposed application to the attention of a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land." Apart from the introduction of the person "P", this is very similar language to the requirement in the Infrastructure Planning Commission regulations for pre-application consultation. What we don't have yet is any of the detail as to what scale of application will be affected by Section 102. In addition, Section 102 will require the Person to "have regard to any responses to the consultation that the person has received." [41]

1.6 Enforcement

Enforcement is much more controversial than might appear, and this part covers several topics.

It is not an offence to undertake development without planning consent, although it is an offence to fail to comply with the terms of an enforcement notice. Development without consent may result from an honest mistake – for example a householder extending his kitchen too far. It may be a development that the planning authority would have approved, had it been asked in the first place. In those circumstances, it is possible to apply for retrospective planning consent, to regularise the situation.

However, the enforcement provisions can be abused. Some developers have simply gone ahead with projects without consent, reasoning that the council might not try to take enforcement action – which is difficult if a house has already been completed. If it does take action, the developers use the appeal system to cause further delays before they are forced to do anything about it, if they ever are. Planning authorities may not bother to take enforcement action in some cases, because of the cost and staff time involved.[42]

---

40 "Translating localism into action hampered by lost planning skills", *Planning*, 17 December 2010

41 PPS Bulletin: Localism Bill – Devil in the detail, 14 December 2010

42 HC Deb 19 June 2007 cc375-9WH

A particular problem with enforcement relates to a strategy that has reportedly been used by Travellers and Gypsies who wish to settle on land they own in the countryside. Planning guidelines strongly discourage development in the open countryside and so any applications for such settlements are almost always rejected. Consequently they sometimes use the tactic of arriving on land they own late on Friday afternoon. By the time the council offices have opened on Monday morning, they have already laid down a hard surface and undertaken further development.[43] Existing procedures have not always been effective in returning the land to its state before the unauthorised development. The previous Government introduced temporary stop notices, which can be immediately brought into force. They can give the local planning authority more time to decide what course of action to take, but they do not solve the problem.

The Conservative Party Document, Open Source Planning: Green Paper called for further enforcement powers to tackle this situation, specifically in areas that had made appropriate provision for authorised sites. However, the Bill does not contain any increase in enforcement powers specifically linked to the provision of Gypsy sites.

Clause 103 Retrospective Planning Permission

This clause seeks to tackle some tactics that are seen as abuses. This clause would strengthen the hand of the planning authority and weaken the hand of the person who has undertaken development without planning consent. It would remove from an applicant, in certain circumstances, the right to use two separate defences in a single case:

- appeal to the Secretary of State against an enforcement notice; and
- application for retrospective planning consent

Sub-section (2) grants planning authorities the power to decline to determine retrospective applications after an enforcement notice has been issued. Sub-section (4) limits the right of appeal against an enforcement notice after a retrospective planning application has been submitted, but before the time for making a decision has expired.

There are several possible grounds for appeal against an enforcement notice, only one of which is that planning consent ought to be granted. Sub-section (5) would mean that a successful appeal on other grounds – for example that the enforcement notice was not served in the proper manner – would not result in the granting of planning consent.

Clause 104 Time limits for enforcing concealed breaches of planning control

There are time limits for enforcing planning control, after which a householder can request a certificate of lawfulness of existing use or development. A particularly important one is the four year time limit for taking enforcement action on "the change of use of any building for use as a single dwellinghouse".[44] Sometimes people use a barn as a house in the countryside for four years and then claim a certificate for use as a dwellinghouse. Sometimes they go further, however, and actually conceal the use as a dwellinghouse.

Here is an example of a case in which the time limits were important to someone trying to build a house in the countryside without planning consent, who plainly used concealment:

> An illegally-built house which was hidden inside a barn to avoid planning rules has been demolished. Officials found an occupied two-storey stone house with a lounge, kitchen, bedroom and bathroom behind a façade of corrugated iron and wood. (…)

---

[43] HC Deb 9 July 2003 c251WH

[44] *Town and Country Planning Act 1990* s.171B (2)

> The council's head of planning services Paul Wilson added: "We suspect the owner of this property intended to occupy his house inside the barn for four years and then remove the shield thinking he had successfully side-stepped the need for planning permission. Unfortunately for him, this would not have been the case, as the High Court has recently ruled that the four-year period for planning exemption only starts when any shielding construction has been removed."[45]

Another case was widely reported in which a house had been concealed behind bales of straw for four years. In that case the court ruled that removal of the bales was part of the building operations and ordered that the house be demolished.[46]

Clause 104 will allow a planning authority that discovers an apparent breach of planning control to apply to a magistrate's court for a planning enforcement order, within six months of discovery. That order would allow the authority a year in which to take enforcement action, even after the time limits in s.171B of the *Town and County Planning Act 1990* have expired.

The passage relating to concealment comes in the proposed new section 171BC of the 1990 Act. The magistrate's court may make a planning enforcement order only if it is satisfied, on the balance of probabilities, that the "actions of a person or persons have resulted in, or contributed to, full or partial concealment of the apparent breach or any of the matters constituting the apparent breach". The court must also consider it just to make the order.

At first sight, the clause appears to go further than acts of physical concealment like hiding the house behind straw bales. It seems likely to catch many of those who use a barn as a dwellinghouse for four years.

Clause 105 Planning Offences: Time Limits and Penalties

This clause would increase one penalty, for failure to comply with a breach of condition notice. In relation to damage to a protected tree or contravening advertisement control, the prosecution could be brought within six months of the prosecutor obtaining sufficient evidence rather than within six months of the offence being committed.

Clause 106 Powers in relation to: unauthorised advertisements; defacement of premises

The clause would give the local planning authority increased powers in relation to fly posting and graffiti.

Comment on enforcement provisions

The Local Government Association welcomed the enforcement measures:

> The stronger planning enforcement powers detailed in the bill will allow local authorities to discharge their duties more effectively.[47]

1.7 Nationally significant infrastructure projects

On 29 June 2010, the Government published its policy on the Infrastructure Planning Commission and on National Policy Statements:

---

45 "Map clue leads to concealed house", *BBC News Online*, 7 November 2008

46 "Castle concealed by bales turns out to be a house of straw as judge orders: pull it down", *Times*, 4 February 2010

47 Local Government Association, Localism Bill: LG Group On the Day Briefing, 13 December 2010

> The Government want a planning system for major infrastructure which is rapid, predictable and accountable. But we do not believe it is right that decisions on major infrastructure applications be taken by an unelected quango. They should be made by Ministers. We will therefore be abolishing the unelected Infrastructure Planning Commission and reintroducing democratic accountability in line with the coalition agreement:
>
> "We will abolish the unelected Infrastructure Planning Commission and replace it with an efficient and democratically accountable system that provides a fast-track process for major infrastructure projects."
>
> Our intention is therefore to establish a Major Infrastructure Planning Unit as part of the Planning Inspectorate-an existing agency of Communities and Local Government-which will retain the strengths of the streamlined processes and the experience of the Planning Inspectorate.[48]

Greg Clark announced publication of the Department's work plan on major infrastructure planning reform on 20 December 2010. He repeated the argument for replacing the Infrastructure Planning Commission (IPC) by a major infrastructure planning unit within the planning inspectorate (MIPU); he explained which Secretary of State would take the final decision. He continued:

> The Government are determined to ensure that a return to ministerial decision-making does not mean a return to slow and protracted consideration of applications. It supports the fast-track approach established through the 2008 Planning Act, that is to say that decisions will be taken within 12 months of commencement of an application's examination. We will set up a ministerial group to oversee the effectiveness of the regime and explore whether additional efficiencies can be made to speed up the process further.[49]

The statement pointed out that the *Localism Bill* would require National Policy Statements (NPSs) to have approval by the House of Commons following Parliamentary scrutiny by either House or a Joint Committee of both Houses. The IPC would continue to decide applications until its abolition, provided that the relevant National Policy Statement had been designated. If it had not been designated, then the Secretary of State would take the final decision.

The *Planning Act 2008* completely changed the procedure for deciding major infrastructure applications of national importance, as noted in section **1.1** of this paper. The following table gives a rough overview of how the *Localism Bill* would change the position:

---

[48] HC Deb 29 June 2010 cc34-36WS
[49] HC Deb 20 December 2010 cc142-3WS

	Before 2008 Act	Under the 2008 Act	Localism Bill
Who considers evidence	Public inquiry	IPC Commissioner or Panel	MIPU appointee or Panel
Written evidence	Yes	Yes	Yes
National Policy sources	Various	NPS (if designated)	NPS (if designated)
Cross Examination	Yes	Not automatic May be permitted	Not automatic may be permitted
Strict timetable	Yes	Yes	Yes
Final Decision	S of S	IPC Panel	S of S
Need for more consent	Sometimes	Hardly ever	Hardly ever

Comment

The President of the Royal Town Planning Institute stressed the need for co-ordination:

> There is the need to ensure the coordination of planning at a national level. The Coalition has proposed introducing a National Planning Policy Framework. There is no reference to this in the Bill but it is essential that this document is properly coordinated with the National Policy Statements (including the Marine Policy Statement) and the National Infrastructure Plan and established as part of the statutory development plan for England.[50]

The Local Government Association stressed the importance of evidence:

> Greater freedom and flexibility for councils to be able to work together · The decisions taken by the Secretary of State with regard to nationally significant infrastructure should be informed by evidence and understanding of the impact on local communities and this should be resourced appropriately.[51]

The *Observer* noted that many energy applications were delayed in the planning system. Their examples relate to consents from local planning authorities rather than from the Secretary of State:

> The coalition government, which inherited many of the delays from the previous administration, has promised to speed up planning consents through the use of a newly created Major Infrastructure Unit. But John Cridland, the CBI's director-general

---

50 RTPI Press Release, *Localism Bill: RTPI calls on ministers to urgently clarify key planning reforms*, 14 December 2010

51 Local Government Association, Localism Bill: LG Group On the Day Briefing, 13 December 2010

designate, said that changes to the planning system had themselves created a mood of uncertainty among investors.[52]

2 Part 6: Housing

Many of the provisions in **Part 6** of the Bill are the subject of an ongoing consultation process. The consultation paper, *Local decisions: a fairer future for social housing*, was published on 30 November 2010 with an 8 week consultation period closing on 17 January 2011, the date of the Bill's Second Reading. Thus at the time of writing very few organisations have finalised their responses. The reduction in the consultation period from the usual 12 weeks has met with criticism – Department of Communities and Local Government (CLG) officials have said that the consultation period was shortened to enable a proper analysis of responses to have taken place by the time the Bill enters its committee stages.[53] Also at the time of writing, the Impact Assessments on the contents of the Bill have not been published.

The key drivers for reform of the social rented sector, as set out in the consultation paper, include a desire to promote independence and self-sufficiency amongst tenants in this sector and a perceived need to move away from "inflexible, centrally-determined rules." The Bill contains provisions to implement many of the proposals set out in *Local decisions: a fairer future for social housing.*

The provisions in this Part apply only to England, aside from **Clauses 124** and **125** (homelessness)[54] and **Clause 152**, which gives specific legislative competence to Wales in certain areas of housing finance.

2.1 Housing allocations

Background

Prior to 2002 most local authorities traditionally developed their housing allocation schemes based on a "points system" which involved giving applicants points for different aspects of housing need; those with the highest number of points were then given priority for housing. The length of time that someone applying for housing might have to wait before receiving an offer of accommodation would depend on several factors, including: the pressure of demand for accommodation within the area; the size and type of dwelling that they desire/require; and the degree to which they are willing to be flexible over their 'areas of choice'.

Prior to the *2002 Homelessness Act* a common feature of social housing allocation policies was that applicants were given relatively little, if any, choice over the property offered to them. In some cases, particularly homeless households, applicants were penalised for refusing offers of accommodation deemed suitable for their needs by receiving no further offers, or by being suspended from the housing register.[55] This practice was blamed for producing a high number of "failed" offers resulting in a loss of rental income and staff time. The Department of Environment, Transport and the Regions (DETR) research found evidence over the previous decade of allocations systems becoming "more coercive", i.e. imposing penalties against applicants who refused offers.[56]

---

52 "Britain's new generation of green power plants 'are caught in planning delays', *Observer*,19 December 2010

53 CIH London Seminar on Social Housing Reform, 4 January 2011

54 Subject to the approval of a Legislative Competence Motion by the National Assembly.

55 The DETR research, *Local Authority Policy and Practice on Allocations, Transfers and Homelessness*, January 2001 found between a fifth and a quarter of authorities did not guarantee to take applicants' area choices into account when preparing a tenancy offer; in the case of homeless people only 40 per cent of authorities 'always' kept expressed area preferences in mind.

56 *ibid*

The Social Exclusion Unit's April 2000 consultative report, *National Strategy for Neighbourhood Renewal*, concluded that the way local authorities allocated social housing reinforced, and even *caused,* problems by concentrating the most vulnerable people in one place. It identified "imaginative use of lettings policies" as a way in which authorities could create more "mixed communities where problems reduce and a wide range of people want to live". Three of the Social Exclusion Unit's Policy Action Teams, PAT 5 (Housing Management), PAT 7 (Unpopular Housing) and PAT 8 (Anti-social Behaviour) made recommendations calling for the then forthcoming Housing Green Paper to incorporate more open access and more tenure and income diversification into the social housing stock.

The April 2000 Housing Green Paper, *Quality and Choice: a Decent Home for All,* expressed the Labour Government's desire to see social landlords considering themselves as "providers of a letting service, responsive to the needs and wishes of individuals, rather than as housing allocators."[57] While the Green Paper proposed that "priority for social housing should generally continue to be given to people in the greatest housing need and for whom suitable private sector housing is not an affordable option."[58] It also stated that social housing should not be allocated only to the poorest and most vulnerable members of the community.[59]

Quality and Choice: a Decent Home for All described the aims of the reforms that were subsequently introduced by the Labour Government in the *2002 Homelessness Act:*

> The aims of the reforms we propose for lettings and transfer policies are to ensure that they:
>
> - meet the long term housing requirements of those who need social housing most, in a way which is sustainable both for individuals and the community;
> - adopt a simple and customer-centred approach, empowering first time applicants and existing tenants to make decisions in choosing housing which meets their requirements;
> - make better use of the national housing stock, by widening the scope for lettings and transfers across local authority boundaries, and between local authorities and registered social landlords;
> - give local authorities more flexibility to build sustainable communities within the national context of extreme variations in local housing markets.[60]

In 2004 the Labour Government set a target that by 2005 25% of local authorities would have adopted some form of choice-based lettings (CBL) scheme[61] and that a nationwide system of CBL schemes would be in place by 2010.[62] One aim of the 2002 Act was to facilitate the

---

57 DETR, *Quality and Choice: a Decent Home for All,* April 2000, para 9.3
58 *ibid,* para 9.12
59 *ibid*
60 *Ibid,* para 9.4
61 This target was met.
62 These schemes allow people to bid for vacancies which are openly advertised – the successful bidder is the one with the highest priority under the allocation scheme. Additional information on choice-based letting schemes can be found in Library Note SN/SP/3858

development of these schemes. At 1 April 2010 80% of local authorities in England were participating in a CBL scheme.[63]

The legal framework

Part 6 of the *1996 Housing Act* governs the allocation of local authority housing stock. Housing associations are not required to allocate their housing in accordance with Part 6 but nominations by local authorities to stock owned by these landlords are covered by the same legal framework. Part 6 was substantially amended by the *2002 Homelessness Act.* Local authorities are not under a duty to maintain a housing register (often referred to as a housing waiting list) but must have an allocation scheme in place for determining priorities between applicants for housing, and which sets out the procedure to be followed when allocating housing accommodation.

Although authorities have a good deal of discretion over the nature and operation of these schemes, they must ensure that when allocating their stock they only allocate to "eligible persons." Section 160A of the 1996 Act sets out those categories of people who are ineligible, including certain "persons from abroad" and those who are deemed to be ineligible as a result of "unacceptable behaviour."

Section 167 of the 1996 Act prohibits the allocation of local authority housing other than in accordance with an authority's scheme. Each authority's scheme must determine priorities between eligible applicants and set out the procedure to be followed for allocating accommodation. Every local authority allocation scheme must ensure that "reasonable preference" is given to certain categories of applicant as set out in sub-section 167(2) of the 1996 Act:

(a) people who are homeless (within the meaning of Part 7 of the 1996 Act); this includes people who are intentionally homeless, and those who are not in priority need;
(b) people who are owed a duty by any housing authority under sections 190(2) (in priority need but intentionally homeless), 193(2) (eligible, in priority need and not intentionally homeless) or 195(2) (threatened with homelessness unintentionally) of the 1996 Act, (or under section 65(2) or 68(2) of the *1985 Housing Act,* these sections cover the equivalent duties under the 1985 Act to the unintentionally homeless), or who are occupying accommodation secured by any housing authority under section 192(3) (unintentionally homeless who are not in priority need and offered accommodation under a discretionary power);
(c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
(d) people who need to move on medical or welfare grounds, or on grounds relating to a disability; and
(e) people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or to others).

Allocation schemes may also be framed so as to give additional preference to particular descriptions of people within these categories (being descriptions of people with urgent housing needs).

---

[63] CLG, *Local Authority Housing Statistics, England, 2009-10: Housing Strategy Statistical Appendix (HSSA) & Business Plan Statistical Appendix (BPSA),* November 2010

The 2002 Act removed authorities' ability to impose "blanket exclusions" in relation to certain categories of applicant. Housing authorities are currently obliged to consider all applications and cannot exclude applicants who, for example, are not currently resident in the borough. However, in determining relative priorities for an allocation, authorities *are* able to have regard to whether or not applicants have a local connection with the district. The Labour Government explained the rationale for removing the ability of local authorities to impose "blanket exclusions" in its Housing Green Paper of April 2000, *Quality and Choice: a Decent Home for All:*

> ...some people are denied social housing altogether through blanket exclusion policies. In particular, many social landlords restrict the availability of housing to those who are already living in the area. Moving may be difficult unless people can find someone to swap with them.[64]
>
> [...]
>
> We do not believe that anyone should be permanently excluded from social housing. We therefore propose to remove the power to impose 'blanket' exclusions from the housing register.[65]

A further change introduced by the 2002 Act was to bring transfer applications[66] by existing local authority tenants within the ambit of Part 6. DETR research published in 2001 found a "significant proportion" of authorities (up to a quarter in the South) were operating "transfer led" allocation policies which sought to boost overall mobility and relieve housing need amongst tenants. The DETR concluded that this could "involve giving systematic preference to existing tenants seeking a move and/or restricting eligibility for houses (as opposed to flats) to transfer cases."[67] The 2002 Act ensured that the housing needs of existing tenants and new applicants were assessed on the same basis.[68]

As noted above, one aim of the *2002 Homelessness Act* was to facilitate the development of CBL schemes by local authorities. However, the framework developed by the Act is not prescriptive. Local authorities retained a substantial degree of discretion over how their schemes are devised and operated. Section 167(1A) of the 1996 Act (as amended) requires allocation schemes to include a statement of the authority's policy on offering people who are to be allocated housing accommodation a choice of accommodation, or the opportunity to express preferences about accommodation to be allocated to them. In fact this is the only reference to "choice" in the 2002 Act; the duty is to *inform* applicants about the authority's policy on "choice" *not* that any choice must be allowed.

Local authorities must "have regard" to the *Code of Guidance for Local Authorities on the Allocation of Accommodation*[69] in reaching decisions on housing applications. Detailed guidance on the content of CBL schemes can be found in the statutory Code of Guidance published in August 2008, *Allocation of Accommodation: Choice Based Lettings.* The Labour Government issued further Guidance in December 2009, *Fair and Flexible: Statutory Guidance on Social Housing Allocations for Local Authorities in England*, which amended parts of the 2008 Code. Briefly, the 2009 Code:

---

64 Department of Environment, Transport and the Regions (DETR), *Quality and Choice – A Decent Home for All, April 2000,* para 9.8

65 *Ibid* para 9.13

66 Requests by existing tenants to move to alternative accommodation within the landlord's stock.

67 DETR, *Local Authority Policy and Practice on Allocations, Transfers and Homelessness*, January 2001

68 Transfers instigated by local authorities, e.g. to facilitate refurbishment work, are exempt from this provision.

69 Office of the Deputy Prime Minister, November 2002

- retained the reasonable preference categories but emphasises that the relative weight given to each category is for the local authority to decide;
- emphasised the promotion of equality and meeting statutory equality duties;
- emphasised the then Government's policy of encouraging greater choice;
- directed authorities to work actively to dispel any myths or misconceptions around the implementation of allocation schemes;
- set out the need for wide consultation when adopting or amending allocation schemes;
- removed the need for CBL schemes to recognise "cumulative preference";[70]
- preferred banding schemes to points based schemes;
- recognised the benefits of waiting time for determining priority between applicants "transparent and easy to understand";
- identified factors such as behaviour (good and bad) and/or local connection to be taken into account in determining priorities; and
- allowed for the inclusion of local priorities by local authorities, such as promoting job related mobility, alongside the reasonable preference categories, provided that "they do not dominate the scheme and overall the scheme operates to give reasonable preference to those in the statutory reasonable preference categories over those who are not."

In the introduction to the 2009 Code of Guidance the Labour Government emphasised the need for the housing allocation framework to balance both national and local interests and went on to underline the role of local authorities in using their powers to meet local needs and priorities:

> It is important that local authorities continue to play a strong role in housing. They are best placed to assess housing need across the district, in light of demographic and economic change...Local authorities also have responsibility for framing local allocation policies within the context set by legislation and taking into account the reality of their local circumstances. It is only at local level that many of the key decisions can be taken, and balances can be struck between competing priorities.
>
> [...]
>
> The Government's view is that this is an opportune time, as well as an important one, for local authorities to re-examine their allocation policies and to make changes which take full advantage of the scope for local decision-making.[71]

These key themes are also reflected in the Coalition Government's November 2010 consultation paper, which is discussed in the next section of this paper.

---

70 This issue has been subject to legal challenge, most notably in *R (Ahmad) v Newham LBC* [2009]. The matter is considered in detail in section 4.1 of Library Note SN/SP/3858

71 CLG, *Fair and Flexible: Statutory Guidance on Social Housing Allocations for Local Authorities in England*, December 2009

The Coalition Government's approach

In November 2010 the Coalition Government published a consultation paper, *Local decisions: a fairer future for social housing,* in which it announced an intention to legislate to amend certain aspects of the statutory framework for social housing allocations.[72] The stated policy aim behind the housing allocation provisions in the Bill is to "give back to local authorities the freedom to determine who should qualify to go on their housing waiting list."[73]

The lifting of "blanket exclusions" by the 2002 Act under the Labour Government is described as having "encouraged households to put their names on housing waiting lists even where they have no real need of social housing."[74] The paper refers to an increase in numbers of households registered on housing waiting lists after April 2003 (from 1,093,342 at 1 April 2002 to 1,263,550 at 1 April 2003)[75] which it attributes, in part, to the changes introduced by the 2002 Act.

Statistics released by CLG on 30 November 2010 show that, at 1 April 2010, there were 1.75 million households registered on housing waiting lists in England. The commentary notes that "waiting list numbers have been relatively stable for the last two years, following a general increase from 1.04 million on 1 April 2000."[76] On the same date local authorities in England were recorded as owning 1.8 million dwellings.[77]

Alongside the removal of "blanket exclusions" the consultation paper suggests that the introduction of CBL schemes "may have encouraged a commonly held – but mistaken – perception that anyone will be able to get into social housing if they wait long enough."[78]

The paper announced the intention to legislate to reverse the changes made by the 2002 Act in respect of "blanket exclusions":

> We take the view that it should be for local authorities to put in place arrangements which suit the particular needs of their local area. Some local authorities might restrict social housing to those in housing need (e.g. homeless households and overcrowded families). Other local authorities might impose residency criteria or exclude applicants with a poor tenancy record or those with sufficient financial resources to rent or buy privately. Others may decide to continue with open waiting lists. If, having taken into account the views of their local community, local authorities decide that there are benefits in maintaining open waiting lists (for example, to stimulate demand for social housing), we believe they should be able to do so.[79]

Local authorities will still have to frame their allocation policies around the reasonable preference categories (set out in sub-section 167(2) of the *1996 Housing Act*) which will be set centrally. The Government intends to reserve a power to prescribe, by way of regulations, that certain classes of people are (or are not) qualifying persons. This power will be used "if

---

72 The consultation period closes on 17 January 2011.
73 CLG, *Localism Bill: Media Background Note*, December 2010
74 CLG, *Local decisions: a fairer future for social housing,* November 2010, para 4.5
75 CLG, *Local Authority Housing Statistics, England, 2009-10: Housing Strategy Statistical Appendix (HSSA) & Business Plan Statistical Appendix (BPSA),* November 2010
76 CLG, *Table 600 Rents, lettings and tenancies: numbers of households on local authorities' housing waiting lists, by district: England 1997-2010,* November 2010
77 CLG, *Local Authority Housing Statistics, England, 2009-10: Housing Strategy Statistical Appendix (HSSA) & Business Plan Statistical Appendix (BPSA),* November 2010
78 CLG, *Local decisions: a fairer future for social housing,* November 2010, para 4.6
79 *Ibid,* para 4.9

there is evidence that people in housing need are being excluded from social housing without good cause."[80]

Local decisions: a fairer future for social housing also announced an intention to remove from the allocation framework most existing social tenants seeking a move:

> We believe that taking transferring tenants out of the allocation framework will give local authorities more flexibility to manage their stock, and make it easier for them to strike an appropriate balance between the needs of existing tenants and those on the waiting list.[81]

In support of this, the paper cites figures indicating that lettings to existing local authority tenants had only amounted to 23% of all lets by local authorities in 2008/09.[82]

The Bill: Clauses 121-123

Clause 121 of the Bill provides for Part 6 of the *1996 Housing Act* (which governs housing allocations by local authorities) not to apply to existing tenants of local authorities in England. Thus transfer applicants will no longer have their applications assessed on the same basis as households applying on the housing waiting list unless the authority is satisfied that the household should be given reasonable preference. This concession is to ensure "that existing social tenants who are assessed as having reasonable preference will continue to have priority for social housing as they do now."[83]

Clause 122 will insert a new section (160ZA) into the 1996 Act to govern the eligibility of applicants for local authority housing in England. This clause largely repeats the contents of existing section 160A (Allocation only to eligible persons) which defines the eligibility of "persons from abroad" but it omits provisions concerning the ability of local authorities to treat someone as ineligible for an allocation on the basis of past behaviour. Sub-sections 160A(8) – (11) currently define the type of behaviour that an authority can take into account when deeming an applicant to be ineligible for an allocation of housing and provide for the applicants to be notified (in writing) of such a decision and to make a fresh application in certain circumstances. Authorities will still be able to refuse to consider applications on the basis of past behaviour, but it is to be left up to authorities how to define this behaviour.

Section 160A of the 1996 Act would not be repealed but would be amended to apply solely in Wales.

Clause 123 will insert a new section (166A) into the 1996 Act to govern the allocation of housing in accordance with an allocation scheme in England. This clause largely reproduces the contents of the existing section 167 (Allocation in accordance with allocation scheme) but it omits the reference to authorities being able to frame schemes so as not to give any "preference" to people guilty of anti-social behaviour.[84] The new section will still allow for authorities to take account of an applicant's behaviour when determining priorities for the allocation of accommodation. It also contains a new provision to require a local authority in England to have regard to its homelessness strategy, tenancy strategy[85] and the London housing strategy, when preparing or modifying its allocation scheme. Subject to general statutory provisions and regulations made under them, authorities will be able to decide on the principles on which their allocation schemes are to be based.

---

80 *Ibid,* para 4.11
81 *Ibid,* para 4.22
82 *Ibid,* para 4.19
83 *Ibid,* para 4.22
84 Currently contained in sub-sections 167(2B – 2D) of the 1996 Act.
85 A new requirement contained in the Bill.

Section 167 of the 1996 Act will be amended to apply solely in Wales.

Taken together, **Clauses 122** and **123** will give local housing authorities in England the power to determine what classes of persons are, or are not, qualifying persons to be allocated social housing, although centrally determined rules will still define qualifying "persons from abroad" and the reasonable preference categories.

Comment

Initial responses to these clauses indicate that there is "in principle" support amongst local authorities and their representative bodies for additional flexibilities in the allocations process. The Local Government Association (LGA) has said:

> In principle, greater flexibility for councils and landlords on allocation and management should bring about better outcomes for existing tenants and people in need of social housing.[86]

There is also support for the retention of the reasonable preference categories.

The Chartered Institute of Housing (CIH) has emphasised that local authorities must be accountable to their communities "and that the communities must be representative – otherwise authorities that don't want to accept certain people will be able to exclude them."[87] In fact it will be possible for the Secretary of State to issue regulations specifying factors that an authority must not take into account in allocating social housing.[88] It might be expected that this regulation making power could be used if an authority was seeking to exclude certain applicants on inappropriate grounds.

As noted above, currently an authority can deem an applicant to be ineligible for an allocation on the grounds of previous anti-social behaviour but the circumstances in which applicants can be excluded on these grounds is quite tightly defined. The removal of this statutory definition will give local authorities the power to apply a much wider definition of anti-social behaviour if they so choose. This could lead to more applicants being excluded from social housing and, potentially, to an increased number of legal challenges to local authority housing allocation policies.

A recurring theme in responses to the housing allocation provisions is that, in the face of a severe shortage of affordable housing, these additional flexibilities for local authorities may be of limited benefit, for example:

> ...these changes are taking place against the background of very significant changes to Housing Benefit rules and a very big reduction in funding for new social homes. No one should be under any illusion, therefore, that councils and social landlords will be in a position to meet the legitimate housing aspirations of all local people.[89]

and

> Local authorities and their housing association partners will look to take advantage of this new flexibility, but will ultimately be limited by a lack of housing.
>
> Flexibility will always remain difficult when there isn't enough affordable or market housing for people to access. We have to be clear that a lack of supply is at fault here.

---

86 LGA, *Localism Bill: LG Group on the day briefing*, 13 December 2010
87 CIH Briefing on *Social Housing Reform – Local Decisions: a fairer future for social housing,* November 2010
88 Clause123(4)(8)
89 LGA, *Localism Bill: LG Group on the day briefing*, 13 December 2010

> We want housing providers to be able to provide homes to a wide spectrum of people and it's important that providers continue to provide access not only to those in most acute need – the approach to lettings matters as much as the lists themselves.[90]

In February 2007, at the invitation of the Department for Communities and Local Government, Professor John Hills published a major report, *Ends and means: the future roles of social housing in England*. One of his conclusions, in terms of social housing fulfilling its potential, concerned the need to move away from rationing social housing and trying to establish who is *not* eligible for it, to "one where the key question is 'How can we help you afford decent housing?'" and "Here are your options."[91] Of course Professor Hills acknowledged that how far one could move in this direction would depend upon policy priorities and available resources.

2.2 Homelessness

Background

The *Housing (Homeless Persons) Act 1977* placed a duty on local housing authorities to secure permanent accommodation for unintentionally homeless people in priority need. Authorities' duties towards homeless people are now contained in Part 7 of the *1996 Housing Act,* as amended by the *2002 Homelessness Act*.[92] The "priority need" categories are set out in section 189 of the 1996 Act and include

(a) people with dependent children who are residing with, or might reasonably be expected to reside with them, for example, because the family is separated solely because of the need for accommodation; or
(b) people who are homeless or threatened with homelessness as a result of any emergency such as flood, fire or any other disaster; or
(c) where any person who resides or who might reasonably be expected to reside with them, is vulnerable because of old age, mental illness, handicap or physical disability or other special reason; or
(d) pregnant women, or a person who resides or might reasonably be expected to reside with a pregnant woman;
(e) all 16 and 17 year olds;
(f) 18-20 year old care leavers;
(g) vulnerable care leavers;
(h) vulnerable former members of the armed forces;
(i) vulnerable former prisoners; and
(j) people who are vulnerable because they are fleeing violence.

Categories (e)-(j) above were added by *The Homelessness (Priority Need for Accommodation) (England) Order 2002* which came into force on 31 July 2002.

The type of help that an authority might have to offer a homeless household under the 1996 Act ranges from "the main duty" to secure that accommodation is available for occupation to providing advice and assistance, for example through housing advice or referrals to other housing providers. Where a local authority owes "the main homelessness duty" to an applicant (under section 193(2) of the 1996 Act) there are various ways in which this duty can be discharged:

---

90 CIH Briefing on *Social Housing Reform – Local Decisions: a fairer future for social housing,* November 2010
91 John Hills, *Ends and means: the future roles of social housing in England,* 2007, p204
92 More information on this Act is contained in Library Research Paper 01/58, *The Homelessness Bill 2001/02*

1. the applicant accepts an offer of accommodation under Part 6 (an allocation of long term social housing) (s.193(6)(c)): this would include an offer of an assured tenancy of a registered social landlord property via the housing authority's allocation scheme;

2. the applicant accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord (s.193(6)(cc): this could include an offer of an assured tenancy made by a registered social landlord;

3. the applicant accepts a qualifying offer of an assured shorthold tenancy from a private landlord (s.193(7B)). The local authority must not approve an offer of an assured shorthold tenancy for the purposes of s.193(7B), unless they are satisfied that the accommodation is suitable and that it would be reasonable for the applicant to accept it (s.193(7F));

4. the applicant refuses a final offer of accommodation under Part 6 (an allocation of long term social housing): the duty does not end unless the applicant is informed of the possible consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation (s.193(7)), the offer is made in writing and states that it is a final offer (s.193(7A)), and the housing authority is satisfied that the accommodation is suitable and that it would be reasonable for the applicant to accept it (s.193(7F));

5. the applicant refuses an offer of accommodation to discharge the duty which the housing authority is satisfied is suitable for the applicant (s.193(5)): the duty does not end unless the applicant is informed of the possible consequences of refusal and of his or her right to ask for a review of the suitability of the accommodation. The housing authority must also notify the applicant that it regards itself as having discharged its duty, before it can end.[93]

Under 3 (above) an offer of an assured shorthold tenancy is a qualifying offer if:

1. it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under s.193 to an end;

2. it is for a fixed term within the meaning of Part 1 of the *Housing Act 1988* (i.e. not a periodic tenancy); and

3. it is accompanied by a written statement that states the term of the tenancy being offered and explains in ordinary language that there is no obligation on the applicant to accept the offer, but if the offer is accepted the housing authority will cease to be subject to the s.193 duty.

The duty on the local authority does not end with acceptance of an offer of a qualifying tenancy unless the applicant signs a statement acknowledging that he or she has understood the written statement accompanying the offer. Thus it is possible for authorities to use private rented accommodation in order to discharge their duty to secure accommodation for homeless households, but there is no obligation on the homeless household to accept such an offer.

---

93 *The Homelessness Code of Guidance for Local Authorities*, 2006

In order to monitor the number of homeless people the Government collates local authority figures on the number of 'homeless acceptances' by local authorities, i.e. the number of households that are deemed to be unintentionally homeless and in priority need. Between 1997 to 2003 homeless acceptances by local authorities rose year on year. The third and fourth quarters of 2004 showed decreases in the number of households accepted as homeless; the yearly figures then fell each year from 2003 to the second quarter of 2010. Statistics released on 9 December 2010 show that "following a long term downward trend, seasonally adjusted acceptances have now increased in two consecutive quarters for the first time since 2003."[94]

The Coalition Government's approach

Local decisions: a fairer future for social housing contains a commitment to "tackle homelessness and protect the most vulnerable in society, with a particular focus on preventing single homelessness and rough sleeping."[95] The Government intends to invest over £400 million in homelessness grant over the Spending Review period (2011-15) and has established a cross-departmental group of ministers from eight different Government departments (chaired by Grant Shapps) which is working together to see how the policies for which they have responsibility can help address the problems that cause people to lose their home.[96]

The November 2010 consultation paper described Part 7 of the *1996 Housing Act* as "an important safety net for people who lose their home, or are at risk of losing their home".[97] However, it identifies the ability of homeless households to refuse an offer of an assured shorthold tenancy in the private rented sector without good reason (as explained in the previous section) as an encouragement to some households to apply as homeless "in order to secure reasonable preference and an effective guarantee of being offered social housing."[98] The paper notes that re-housing in the private rented sector accounts for authorities discharging their homelessness duties in only a small minority of cases (around 7 per cent).[99] The consultation paper raises the question of whether homeless households "necessarily need social housing":

> In many cases, homelessness (or threat of homelessness) may be the result of a temporary crisis caused by, for example, relationship breakdown or being asked to leave accommodation by family or friends. The concept of a 'priority need for accommodation' recognises that families with children and other vulnerable groups would be at risk of harm if left to fend for themselves without somewhere to live. However, while they have a priority need for accommodation, they may not necessarily need social housing. And if their need for accommodation can be met adequately without the provision of social housing, this will free up scarce social lets for others on the waiting list in housing need.[100]

The paper goes on to set out the Government's intention to legislate:

> ...to give local authorities greater flexibility in bringing the homelessness duty to an end with offers of accommodation in the private rented sector, without requiring the applicant's agreement. We think local authorities are best placed to weigh the needs of

---

94 CLG Statistical Release, 9 December 2010, *Statutory Homelessness*, 3rd Quarter 2010 – England – additional information (including statistics) can be found in Library Note SN/SP/1164.
95 CLG, *Local decisions: a fairer future for social housing,* November 2010, para 6.1
96 CLG Press Release, *Rough sleeping hit eleven year low*, 15 July 2010
97 CLG, *Local decisions: a fairer future for social housing,* November 2010, para 6.5
98 *Ibid,* para 6.9
99 *Ibid,* para 6.7
100 *Ibid,* para 6.9

> individuals owed the homelessness duty against the overall demand for social housing in their district.[101]

There will be no *requirement* on authorities to use private rented accommodation for the discharge of their duties – authorities will have discretion to decide whether a particular household's needs could be met in the private rented sector or not.

The Bill: Clauses 124-125

Clause 124 amends section 193 of the 1996 Act to enable local authorities in England and Wales[102] to discharge their duty to homeless households by offering suitable private sector accommodation. Homeless households will no longer be required to give their specific consent to such an arrangement. Certain "protections" will apply:

- the tenancy offered would have to be for a minimum of 12 months – the Secretary of State will have the power to lengthen this period "in the light of experience and market conditions;" and

- the accommodation would have to be suitable for the applicant's household.[103]

Clause 125 provides that where a local authority has discharged the main homelessness duty with an offer of an assured shorthold tenancy in the private rented sector, the main duty will recur if the household becomes homeless again within two years through no fault of their own and applies for assistance. This duty will arise regardless of whether the applicant is in a priority need category.

This provision builds in some further protection for homeless households who are offered accommodation in the private rented sector. Private landlords tend to offer assured shorthold tenancies which offer no long-term security of tenure. Landlords have an automatic right of repossession providing they follow the correct notice procedure at the end of the fixed term or at any point if the tenancy becomes periodic, under section 21 of the *1988 Housing Act*.[104] The relaxation of the priority need provision recognises that within two years the applicant's circumstances may have changed, e.g. children may no longer be "dependant", but this will not be treated as a basis for an authority to refuse assistance.

Comment

There is certainly some support for the flexibility offered to local authorities by this proposal. The CIH has described the change as "potentially a positive step in that it could create more flexibility for local authorities to be able to realistically support a household to move into good quality, settled accommodation in the private rented sector."[105] A survey of members conducted by the CIH indicates that around 67% of those responding intend to make use of the facility to discharge their duty to homeless households by increased use of the private rented sector.[106] The potential benefits are seen as the promotion of more realistic housing expectations amongst homeless households and reduced expenditure on temporary accommodation. It is acknowledged that there are challenges associated with this policy – these are discussed below.

---

[101] *Ibid,* para 6.11

[102] In order for these provisions to apply in Wales the Assembly will have to approve a Legislative Consent Motion.

[103] Case law has established that matters such as location, affordability, size and condition are relevant factors in determining suitability.

[104] For more information on the rights of assured shorthold tenants see the CLG leaflet, *Assured and assured shorthold tenancies: A guide for tenants*

[105] CIH Briefing on *Social Housing Reform – Local Decisions: a fairer future for social housing,* November 2010

[106] The survey covered aspects of *Local Decisions: a fairer future for social housing* and received around 275 responses – these responses are feeding into the CIH's formal response to the consultation document.

The response of local authorities and professional bodies, such as the CIH, can be contrasted with that of organisations working more closely with homeless households. The housing and homelessness charity, Shelter, has reportedly expressed "alarm" at the proposals:

> Chief executive Campbell Robb said: "It is unbelievable that at a time when every two minutes someone faces the nightmare of losing their home, the government is proposing to reduce the rights of homeless people who approach their local authorities for help."[107]

An area of concern shared by most organisations is the impact of measures announced in the June 2010 Budget and October 2010 Spending Review on Housing Benefit (HB) expenditure, and in turn, on the availability of good quality private rented accommodation for HB recipients. The vast majority of homeless households are reliant on HB to meet their rent commitments. Briefly, the measures will restrict the rent levels which HB will meet for claimants living in the deregulated private rented sector from April 2011.[108]

Responses to the HB measures have raised the possibility of private landlords being reluctant to let to claimants if the rent levels that this benefit will meet do not yield a sufficiently attractive return. The Government has said that the purpose of the HB reforms is "to influence rent levels and housing choices," thus there is a clear expectation that private sector rent levels will be reduced. A survey of private landlords in London, conducted by London Councils and the London Landlord Accreditation Scheme in August 2010, explored how landlords might react to the changes announced in the June Budget. Out of the 270 respondents 60% said that they would not reduce their rent *by even a small amount* if the tenant could no longer pay the full rent due to changes in HB.[109] In these circumstances tenants will face eviction and homelessness or will have to find alternative, cheaper, accommodation. There is an expectation in the housing industry that the changes to HB will increase the number of homeless applications from people currently living in the private rented sector – respondents have highlighted the policy tension between the moves to cut HB expenditure and the desire that local authorities should make more use of the private rented sector to ease the demand for social housing.

Local authorities already make substantial use of the private rented sector as temporary accommodation for homeless households – this is both cheaper than B&B accommodation and provides an improved standard of temporary housing. A homelessness manager with a London council has reportedly questioned whether there is a sufficient supply of good quality private rented housing to use as temporary and permanent housing:

> "Because there are so few landlords and boroughs fighting for them, you just take it [the accommodation]," he explained. "But we don't have as much information about the landlords as we would like and they can be as unprofessional as they like."
>
> "It will probably be the same type of landlords we use for temporary accommodation and I see problems being replicated."[110]

Respondents have also raised the spectre of "revolving door" homelessness, particularly in London. The assured shorthold tenancies on offer in the private rented sector provide very limited security of tenure, thus there is concern that homeless households placed in the

---

[107] *Inside Housing,* "Localism Bill pushes homeless into private sector", 15 December 2010
[108] For detailed information on the Housing Benefit measures see Library Note SN/SP/5638
[109] London Councils & London Landlord Accreditation Scheme, *The impact of Housing Benefit changes in London*, September 2010
[110] *Inside Housing,* "Localism Bill pushes homeless into private sector", 15 December 2010

sector will simply find themselves homeless again within a relatively short time period with all the associated upheaval and instability. The London Tenants Federation has said:

> It is difficult to see how this will operate as anything other than a "revolving door" policy in London. Homeless families currently housed in private sector leased accommodation find that housing benefit will now no longer meet the cost of rent. It seems unlikely that local authorities will be able to find homes that homeless households are able to afford in the private sector within inner London. If they do, the sector is unregulated. Will boroughs be in a position to offer suitable, reasonable and local offers of housing? After a 12-month fixed term period it is likely that tenants will end up back on the local authority door step as homeless.[111]

The most recent homeless statistics produced by the CLG show that in the third quarter of 2010 (July to September) 15 per cent of homeless acceptances by local authorities cited the reason for homelessness as the ending of an assured shorthold tenancy. There has been a rise in the number of acceptances for this reason, from 11 per cent in the same quarter in 2009.[112] The Bill does provide a two year "safety net" for households who are evicted from a private sector tenancy having being placed there by an authority in discharge of its homelessness duty and this has been welcomed; however, organisations have said that two years may not be sufficient for some households and have pointed to the social costs for affected households in terms of housing insecurity, interrupted schooling and access to work/training opportunities.

2.3 Tenancy strategies

Background

Aside from a small number of households living in local authority owned housing temporarily, and those who are initially offered introductory tenancies,[113] the vast majority of households living in local authority owned housing have a "secure" tenancy as defined in section 79 of the *1985 Housing Act.* Secure tenants enjoy substantial security of tenure and other rights, such as the Right to Buy.

Private registered providers of social housing (typically housing associations, and referred to as such below) *can* offer assured shorthold tenancies with limited security of tenure, but in practice they are required to conform with their Regulator's Tenancy Standard[114] under which they must provide the "most secure form of tenancy compatible with the purpose of the housing and the sustainability of the community." As a result, the vast majority of housing association tenants have an "assured" tenancy which is governed by the *1988 Housing Act*. These tenants also enjoy substantial security of tenure.

Essentially, secure and assured tenants can be described as having a "tenancy for life" as long as they do not breach their tenancy agreement. Spouses/partners and close relatives of these tenants may succeed to the tenancy on their death if certain conditions are fulfilled.[115]

The Coalition Government's approach

In *Local decisions: a fairer future for social housing* the Government described the secure tenancy regime under which local authorities operate as offering "very limited discretion to determine for themselves what sort of tenancy is best suited to the needs of individual

---

[111] London Tenants Federation, *Briefing on Local decisions: a fairer future for social housing*, 10 December 2010

[112] CLG Statistical Release, 9 December 2010, *Statutory Homelessness*, 3rd Quarter 2010 - England

[113] These tenancies automatically become secure if the tenant does not exhibit anti-social behaviour within the first 12 months.

[114] The regulator is currently the Tenant Services Authority (TSA).

[115] The succession rights that apply to these tenancies are explained in section **2.4** of this paper.

tenants or for the effective management of their stock."[116] The paper explained the Government's intention to "increase radically the freedom available to all social landlords to determine the sort of tenancy they want to grant to new tenants."[117] The new "flexible tenancies" that social landlords will be able to offer are discussed in the next section of this paper. This Part of the Bill (**Chapter 2, Part 6**) paves the way for the introduction of these new types of tenancy by placing new duties on local authority landlords to prepare "tenancy strategies." It is envisaged that these strategies will set out the broad objectives taken into consideration by local authorities in developing policies on the grant and reissue of tenancies.

The Bill: Clauses 126-129

The Explanatory Notes to the Bill explain the purpose of **Causes 126-129**:

> **Clause 126** places a new duty on every local housing authority to publish a tenancy strategy setting out, in high-level terms, the matters to which all registered providers of social housing should have regard in framing their own tenancy policies.
>
> **Clause 127** sets out the procedure an authority must follow when preparing its strategy or making a modification to it that involves a major change of policy, and in particular its obligation to consult private registered providers on a draft of the strategy.
>
> **Clause 128** provides that the Secretary of State may direct the social housing regulator to set a standard on tenure.
>
> **Clause 129** requires that a local housing authority, when formulating its homelessness strategy, must have regard to its current allocations scheme, tenancy strategy and, where the authority is a London borough council, the London Housing strategy.[118]

Comment

There is general support for the development of tenancy strategies by local authorities but there are concerns around how they will work in practice. It is possible that a local authority may make a political decision not to implement flexible tenancies (discussed in the next section of the paper) and may wish to influence housing associations within its district to do the same. However, the future development of new social housing based on the Affordable Rent model (also discussed in the next section) will rely on housing associations letting some new and re-let properties on the basis of a fixed term tenancy at rents of up to 80% of market levels. Resolving political positions over lifetime tenancies with the need and desire to boost the supply of social housing may prove to be a complex process.

Reference has also been made to the need for wider public consultation over the development of tenancy strategies. The flexible tenancies measures will not affect existing social tenants but will, where implemented, affect those currently on housing waiting lists and future social housing applicants. There is no provision in **Clause 127** for local authorities to consult with all local residents although the Secretary of State may specify in regulations "such other persons" for authorities to consult. Neither the Conservative Party nor the Liberal Democrats included an intention to introduce fixed-term tenancies for future occupants of social housing in their 2010 Election Manifestos – there is a view that a truly local approach to developing a tenancy strategy should involve an opportunity for those who may be most affected by such a move to be able to make representations and have these fully taken into account.

---

[116] CLG, *Local decisions: a fairer future for social housing,* November 2010, para 2.2
[117] *Ibid,* para 2.10
[118] Explanatory Notes to Bill 126 of Session 2010-11

Between 2001 and 2005 the Law Commission conducted a detailed review of the law on housing tenure. The review was deemed necessary on the grounds that, while around six million households rent their homes in England and Wales (both social and private sectors), the law governing their relationship with their landlords was described as "an irrationally complicated mess."[119] In the final report of this review the Law Commission recommended the introduction of "a simple system of secure and standard contracts, in place of the existing multiplicity of tenancy and licence types."[120] The introduction of flexible tenancies in the social sector operating under different rent setting regimes and necessitating the development of tenancy strategies, would appear to be a move towards greater multiplicity of tenancy types, and thus a step further away from the Commission's simplified ideal.

2.4 Flexible tenancies

Background

In *Local decisions: a fairer future for social housing* the Government said it would legislate to

> …create a new type of tenancy for [local authorities] to offer to some or all new tenants rather than a secure tenancy. That tenancy (referred to hereafter as a 'flexible tenancy') will be flexible, allowing landlords to provide tenancies with a range of fixed periods.
>
> And in the case of housing association landlords we want them to have the option to offer a fixed term tenancy at either an affordable rent or at a social rent, depending on local needs and circumstances.[121]

The rationale for giving social landlords flexibility over the length of tenancy offered is the idea that a "one size fits all" model is no longer appropriate:

> Inflexible, lifetime tenancies also contribute to significant imbalances between the size of households and the properties they live in. While there are around a quarter of a million overcrowded households in social housing (measured against the bedroom standard) there are also over 400,000 households under-occupying their social homes by two bedrooms or more (measured against the bedroom standard). In every region apart from London the number of overcrowded social rented households is exceeded by the number of under-occupiers.
>
> A one-size-fits-all model on rents and tenancies is not the best answer to the wide range of needs and circumstances of those accessing the social rented sector. The current system limits the extent to which subsidy is able to help all of those in real need – many of these people are currently unable to access social housing.[122]

The consultation paper contained several proposals around the terms on which these fixed term flexible tenancies might operate, including:

- a minimum fixed term of two years (the consultation paper asked whether a longer minimum term should be offered to certain households);
- no statutory maximum term – there is recognition that, for some, "a longer period of stability in social housing will be important";
- the Right to Buy will apply to local authority "flexible" tenants;

---

[119] Law Commission, Renting Homes Review webpage [on 11 January 2011]
[120] Law Commission, *Renting Homes – the final report*, (Law Com No 297), 2006
[121] CLG, *Local decisions: a fairer future for social housing,* November 2010, para 2.11-12
[122] *Ibid,* para 1.11-12

- a right of succession for the spouse or partner of the deceased tenant[123] – local authorities will have discretion to grant additional rights of succession; and

- notice requirements (six months) where a local authority is minded not to reissue a flexible tenancy in line with its published policy. Tenants will have a right to request an internal review and if not upheld the authority will be able to seek repossession of the property. Tenants will only be able to challenge this on the very limited grounds of an error of law by the landlord or a material error of fact.

As noted previously, housing associations already have the power to offer short-term assured shorthold tenancies. It is envisaged that they will use this power more extensively to offer assured shorthold tenancies for a fixed term of at least two years. The consultation paper set out an intention to legislate to ensure these landlords have the same flexibilities as local authorities to offer additional succession rights. Housing associations will also have to serve a "minded to" notice on tenants (six months prior to the expiry of the fixed term) where the landlord does not propose to reissue an assured shorthold tenancy. It is also proposed that these tenants will have the Right to Acquire their home (subject to existing conditions and exceptions).[124]

Other provisions in relation to flexible tenancies are to be set out in a new Tenancy Standard which will be subject to consultation "when the necessary legislation is in place." This Standard will include a requirement on all social landlords to provide advice and assistance to households whose tenancies are not being reissued in order to help them find alternative accommodation.

The consultation paper did not propose any changes to the rights of existing tenants of social landlords. In order not to deter these tenants from moving, a commitment was given to ensure that they would always be granted a new secure or assured tenancy.[125]

Affordable rent

The proposals on flexible tenancies are central to the Government's intention to introduce a new type of "intermediate rent" tenure – this policy development was announced as part of the October 2010 Spending Review:

> The Government believes social housing is an important element in fostering community cohesion and supporting households in housing need. The number of social rented properties fell between 1997 and 2009. The result has been rising housing waiting lists combined with growing numbers of workless households trapped in dependency on subsidised housing. In the 1970s, 11 per cent of households in social housing had no earner; by 2003-04, this had risen to 69 per cent.
>
> The Government wants to make social housing more responsive, flexible and fair so that more people can access social housing in ways that better reflect their needs. In future, social housing will more effectively reflect individual needs and changing circumstances. Social landlords will be able to offer a growing proportion of new social tenants new intermediate rental contracts that are more flexible, at rent levels between current market and social rents.

---

123 Currently, in the absence of a spouse or partner, the close relatives of a secure tenant who have resided in the dwelling as their only or principal home for 12 months prior to the tenant's death also have a right to succeed to the tenancy.

124 As a general rule assured tenants of housing associations do not have the Right to Buy but they may have the Right to Acquire.

125 CLG, *Local decisions: a fairer future for social housing,* November 2010, para 2.16

> The terms of existing social tenancies and their rent levels remain unchanged. This is fair to households and reduces costs for taxpayers. Taken together with continuing, but more modest, capital investment in social housing, this will allow the Government to deliver up to 150,000 new affordable homes over the Spending Review period.[126]

The Affordable Rent model is being worked up alongside the *Localism Bill*. The provisions on flexible tenancies aid the development of the model but the detail will be contained in a framework document to be published by the Homes and Communities Agency (HCA) early in 2011. The aim is for housing associations to implement this Affordable Rent model from April 2011. The Housing Minister provided some additional information in a written statement on 9 December 2010 – this statement explains the relationship between the Bill's provisions on flexible tenancies and the Affordable Rent model:

> **Tenure**
>
> The Government has already published radical proposals to give greater flexibility to both local authority and housing association landlords over the types of tenure they can offer to social housing tenants. In particular, the Government believes that it is no longer right to require that every social tenancy should be for life - regardless of the household's particular circumstances. The aim is to create a more flexible system so that scarce public resource can be focused on those who need it most.
>
> The Affordable Rent model is the first step towards delivering these wider reforms. Housing associations will be able to offer Affordable Rent on fixed term tenancies, but they will also retain the option to offer lifetime tenancies should they wish to do so. We would expect associations to use this additional flexibility to ensure that help and support are focused on those who need it most when they need it most, and to build strong and cohesive communities. They will need to meet the existing regulatory requirement to publish clear and accessible policies which outline their approach to tenancy management.
>
> The Government is currently consulting on its wider tenure reform proposals for social housing, including on the rights and protections that should be available to tenants as part of these changes. These proposals include a minimum fixed term of two years for all general needs social tenancies, the Right to Acquire for tenants with a fixed term tenancy of two years or more (subject to the existing conditions and exceptions) and changes to succession rights. Some of the proposals will require primary legislation and we intend to deliver these through the Localism Bill. The final proposals, once implemented (either by legislation or regulation), will apply to fixed term tenancies that are subsequently issued for both Affordable Rent and traditional social rent.
>
> However we envisage that the first Affordable Rent properties will be let during 2011-12, before the wider tenure reform proposals are due to come on stream. We have therefore considered which of the proposed conditions should be attached to the Affordable Rent model from the start. It should be noted that the proposals that require primary legislation (e.g. on the Right to Acquire) cannot be brought forward in this way.
>
> We wish to apply the following (non-statutory) conditions to the Affordable Rent model:
>
> (a) a minimum fixed term of two years for Affordable Rent tenancies; and
>
> (b) where a landlord decides, in line with its published policy, not to reissue an Affordable Rent tenancy at the end of the fixed term, the landlord should provide advice and assistance to help the tenant find suitable alternative

[126] Treasury, Spending Review 2010, October 2010, p49

> accommodation. Landlords and tenants may wish to consider a range of 'end of tenancy' options depending on the needs of the household concerned. This could include selling the property to the tenant via conversion to shared ownership (subject to consent).[127]

The Tenant Services Authority issued a consultation paper in December 2010, *Affordable Rent – revisions to the tenancy standard,* which addresses proposed modifications to the current standards relating to rent and terms of tenancy to enable private registered providers to develop and offer Affordable Rent homes. The consultation period ends on 2 March 2011.

The Bill: Clauses 130-139

Clause 130 will give local authorities the power to offer flexible tenancies to new social tenants. A flexible tenancy will be a secure tenancy with a fixed term of not less than two years. The clause provides for the circumstances in which a new tenancy will be a flexible tenancy. It also provides for the process by which a landlord may offer and terminate a flexible tenancy, as well as a tenant's right to terminate a tenancy or request a review of a landlord's decision with regard to the offer or termination process.

Clause 131 provides that the right to improve and to be compensated for improvements (currently enjoyed by secure tenants of local authorities) will not apply to a flexible tenancy. The clause also prescribes the circumstances in which an introductory tenancy[128] will, on coming to an end, become a flexible tenancy. These provisions will apply where prior written notice has been served on the tenant advising them that the tenancy will become a flexible tenancy. The clause also prescribes that when a flexible tenancy is demoted,[129] the tenancy will revert to being a flexible tenancy on successful completion of the period of demotion.

Clauses 132 and **133** provide that, subject to certain conditions, existing secure and assured tenants will be able to retain a similar level of security on exchanging their property with a social tenant with a less secure tenancy (know as a mutual exchange). The grounds on which a landlord may refuse to comply with a request for a mutual exchange are set out in **Schedule 14** to the Bill.

Clause 134 removes the statutory right of those other than spouses and partners to succeed to a secure tenancy (this provision is not retrospective). There can only be one statutory succession to a secure tenancy. Currently, in the absence of a spouse or partner, the close relatives of a secure tenant who have resided in the dwelling as their only or principal home for 12 months prior to the tenant's death also have a right to succeed to the tenancy. The statutory right of these people to succeed is to be replaced with a discretionary power for local authorities to include additional succession rights as express terms in their tenancy agreements.

Section 87 of the 1985 Housing Act, which currently governs the succession rights of secure tenants, will be amended to apply only in Wales.

Clause 135 will enable landlords to grant additional succession rights for assured tenancies should they choose to do so. The current arrangements for a statutory succession to an assured tenancy only apply to the spouse/partner of the deceased tenant.[130]

---

127 HC Deb 9 December 2010 c31-4WS

128 Local authorities have discretion to offer introductory tenancies to all new tenants – if anti-social behaviour is exhibited during the period of the introductory tenancy it is easier for landlords to evict the tenants.

129 Local authorities may seek to "demote" a tenancy for a period of time where the tenant is exhibiting anti-social behaviour.

130 Additional information on existing succession rights for tenants in social housing can be found in Library Note SN/SP/1998.

Clause 136 provides that if an assured shorthold tenancy becomes a Family Intervention Tenancy (FIT),[131] and a new tenancy is granted after the FIT, then that tenancy will become an assured shorthold tenancy.

Clause 137 amends the notice requirements where a housing association has let a property under an assured shorthold tenancy for a minimum of two years. When these landlords do not intend to grant another tenancy they will be required to give tenants at least six months' notice in writing advising them of that fact and informing the tenant how they can obtain help and advice.

Clause 138 provides that tenants of housing associations with assured shorthold tenancies will have the Right to Acquire their property subject to the same conditions applicable to assured tenants and further exclusions made by way of regulation.

Clause 139 extends repairing obligations on the landlord to include flexible tenancies and assured shorthold tenancies granted by registered providers with a fixed term of seven years or more.

Comment

There is wide agreement amongst providers of social housing that lifetime tenancies which offer security and stability for residents are a core underpinning principle. The point has been made that social housing is "the only secure form of tenure outside of owner occupation available to the poor."[132]

Early responses to the flexible tenancy provisions emphasise that the real issue is a lack of supply of affordable rented housing, rather than concentrations of people living in social housing who do not really need it. The London Tenants Federation has taken issue with the Government's rationale for introducing flexible tenancies:

> The consultation paper chooses within its analysis, to ignore successive Governments' failures to build sufficient secure low-cost rented housing, particularly where there is greatest need – in high land and property value areas such as London.
>
> Instead, assumptions are made that those attempting to / actually accessing social housing don't necessarily need it – resulting in high numbers of people on housing waiting lists, also that many live in overcrowded homes, while others are (seemingly selfishly) occupying larger sized homes than they actually 'need'.
>
> The consultation paper implies that living in (subsidised) low-cost rented housing encourages 'worklessness' – rather than acknowledging that because of inadequate supplies of social rented housing, the sector has been 'residualised' and in most instances can only be accessed by the most needy – particularly those who are - elderly, suffer long-term mental or physical health problems, are disabled or are single parents.
>
> [...]
>
> References in the consultation paper to localism, fairness and flexibility are a smoke screen for damaging proposals that will result in low-income households (those unable to afford to own or part own their homes) being confined to a life of transience and insecurity. Alongside this, will come a detrimental impact on education, health and well-being, family, friend and community networks. Combined with changes to housing

---

[131] Family Intervention Tenancies can be used as a tool to improve the behaviour of a household that has exhibited anti-social behaviour.

[132] *Guardian*, "Social housing: anger over two-year tenancies and applicant curbs", 22 November 2010

> benefit, this could mean wholesale exclusion of ordinary working class people from some parts of London and transit-camp ghettos in others. Quite how this fits with notions of a 'Big Society' is unclear.[133]

A key question that has arisen in relation to flexible tenancies in the social rented sector is, given that each landlord will have discretion over whether or not to let properties on this basis, how many landlords are likely to go down this route? A snapshot survey carried out by, and reported in, *Inside Housing*, concluded:

> Town halls across England will resist the government's controversial social housing reforms by refusing to scrap tenancy for life.
>
> Four of the 12 Lib Dem housing portfolio holders or council leaders polled by Inside Housing said they were against the introduction of short-term tenancies, seven said they were undecided and just one supported the reforms.[134]

Research by the Chartered Institute of Housing's UK housing panel revealed mixed views on the desirability of introducing fixed term tenancies:

> UK Housing Panel members were asked whether it was desirable to reform the length of social tenancies, over half (52 per cent) disagreed but a substantial number (39 per cent) agreed it was desirable.[135]

Only 22 per cent of the panel's 300 members would support requiring tenants to move into alternative sectors as their circumstances improve.[136] There are concerns that encouraging "better off" tenants to move out of the sector will result in further residualisation, a process which many feel began with the Right to Buy. Questions have been raised around the impact that removing long term security of tenure might have on the willingness of households to invest in their homes and communities:

> The proposals for the removal of security of tenure will in my view have a negative impact on communities particularly those which are already struggling. The consequences of removing security of tenure for new tenants will not manifest itself in the short term but some way into the future when those families who are relatively "better off" and therefore do have a positive impact on the local economy within their community will have to leave.[137]
>
> Why would people…invest in their home and make it safe and comfortable if they are only going to live there for a fixed period.[138]

Panel members also referred to a potential work disincentive effect:

> I think that to expect tenants to move into the private sector when their circumstances change will run the risk of a number of issues: tenants will be less likely to be honest about their income when asked…tenants could feel anxious and unsettled and less inclined to invest in their homes…initiatives aimed at encouraging tenants to enter the world of training and work might be undermined, if tenants think, potentially, if I improve my circumstances, I could lose my home. Overall, I think that this policy needs

---

133 London Tenants Federation, *Briefing on Local decisions: a fairer future for social housing*, 10 December 2010
134 *Inside Housing*, "Councils split over fixed-term tenancies," 10 December 2010
135 CIH, UK Housing Panel, December 2010 Report
136 *ibid*
137 Stephen Cook (housing consultant) quoted in CIH, UK Housing Panel, December 2010 Report
138 CEO of Stafford and Rural Homes quoted in CIH, UK Housing Panel, December 2010 Report

> to be considered within the wider context of economic and social regeneration and cohesive communities.[139]

In addition to the possibility of a work disincentive effect, respondents have questioned the likelihood of social housing tenants (the vast majority of whom are in receipt of full or partial Housing Benefit) being able to improve their circumstances to such a degree as to enable them to move into an alternative tenure. This is a particular issue in London where there is a marked gap between the affordability of social housing rents and house prices/private sector rent levels. As discussed in section **2.2** of this paper, the reductions in Housing Benefit payable in the private rented sector from April 2011 are widely predicted to reduce the amount of good standard private rented sector housing available to benefit recipients. If this prediction becomes a reality, there may be less accommodation available for social tenants to move to.

The London Tenants Federation believes that flexible tenancies will only be used by authorities with the highest levels of housing need and is concerned about "greater transience and destabilisation" on estates:

> There are already concerns about the existing levels of transience on council estates as a result of Buy to Let (we estimate that around two-thirds of Right to Buy London flats are now let out on short-term six-month tenancies). This results in increased levels of anti-social behaviour from people who have no commitment to the estate or area since they know they are only going to be there for a very short period of time. It results in problems that are difficult for council tenants and residents and local authorities to resolve and increases management and maintenance costs.[140]

A submission to a *Guardian* Q&A session on some of the housing elements of the Bill organised on 20 December 2010 raised issues of detail around the administration of fixed-term tenancies in the social sector:

> ... this has been one of my big criticisms of the fixed term tenancy proposal. How will the 'changes in circumstances' be monitored and what will the criteria be? Will there be scope for flexibility/discretion - either way, housing providers will be open to challenge from legal and other routes. I agree that front line housing officers will sometimes struggle to play their more supportive roles in this situation. But it will also be organisations as a whole that may need to counter a shift away from support/empowerment towards a more blatant enforcement culture. Issues at board/CE level perhaps?[141]

The Minister has also faced PQs on this issue:

> **Mr Crausby:** To ask the Secretary of State for Communities and Local Government (1) what steps he plans to take to inform *(a)* local authorities and *(b)* housing associations on the level of income above which tenants may be required to vacate social housing; (2) what provision he plans to make for *(a)* local authorities and *(b)* housing associations to collect information on the incomes of social housing tenants under his proposed reforms and what estimate he has made of the likely cost to the public purse of such activity.
>
> **Grant Shapps:** The Government proposes to provide local authorities and housing associations with freedom to offer fixed-term or lifetime tenancies to new tenants.

---

139 *ibid*

140 London Tenants Federation, *Briefing on Local decisions: a fairer future for social housing*, 10 December 2010

141 Comment submitted by an independent trainer and consultant in the social housing field during the *Guardian* Q&A 20 December 2010

> Social housing providers will be expected to set their own policies for the award and renewal of tenancies of different types.
>
> There will be no changes to the security and rights of existing social tenants.[142]

Local authorities have concerns around the costs of administering a scheme which will involve a detailed review of tenants' personal circumstances (and provides potential for increased litigation in relation to these decisions) and the potential for increased void costs[143] arising from tenant "churn."

In *Ends and means: the future roles of social housing in England* (2007) John Hills noted that some respondents to his review had suggested a move away from permanent security of tenure for social tenants "towards tenancies that are reviewed periodically, with such reviews possibly leading to a higher rent and lower effective subsidy and/or to people being required to move if they were found to be 'under-occupying a property."[144] He considered some of the potential "side-effects" of such a move: in addition to a loss of a secure tenancy acting as an "unhelpful disincentive" to moves towards economic independence, and potential for the system to "institutionalise polarisation," he highlighted the relatively advantageous position of owner-occupiers:

> Unless parallel pressures were put on owner-occupiers who "under-occupy" property (such as through more steeply graduated council tax between bands or other charges that made occupying larger property more expensive), it would seem strange in equity terms to be concentrating on the relatively small number of social tenants with larger amounts of space, particularly as it is the owners who have benefited from the increases in value that housing market pressures have created.[145]

Professor Hills concluded that there were strong arguments against a system of review based on "coercion or removing advantages" but supported the use of "incentives and options" (such as grants to move to smaller properties) to promote more effective use of the social housing stock.[146]

Despite the potential challenges highlighted above, there is some support amongst providers and professional bodies for discretion to implement flexible tenancies. The CIH's initial briefing on the consultation paper accepts that some shorter term tenancies "may be appropriate for some people" as long as flexible tenancies "continue to provide a stable platform for people to put down roots in a community, find work and get on with their lives."[147] The CIH would prefer tenants to have a choice of tenancies on offer and would like to see a choice of "rolling" tenancies.[148] The potential advantages offered by flexible tenancies include an improved ability to tackle under-occupation of the social housing stock; tackling rent arrears and anti-social behaviour; and the promotion of more realistic housing expectations leading, in turn, to an incentive for tenants to improve their financial circumstances.

The housing profession's response to the use of flexible tenancies to tackle under-occupation can be contrasted with that of tenants' bodies, such as the London Tenants Federation:

---

142 HC Deb 13 December 2010 c486W

143 Void costs include lost rental income when a property is vacant and additional repair/maintenance costs prior to re-letting properties.

144 Professor John Hills, *Ends and means: the future roles of social housing in England*, 2007, p157

145 *ibid*

146 *ibid*

147 CIH Briefing on *Social Housing Reform – Local Decisions: a fairer future for social housing,* November 2010

148 *ibid*

> Under-occupancy, which is suggested will be addressed through having flexible tenancies generally occurs where children have left family homes leaving older couples or single adults in a family sized home. However, this may only occur after a family has lived in their home for 20-30 years or more – the period of time it takes to raise a family and for them to leave and find their own homes. It is questionable as to whether older people should be forced to leave homes and communities, where they have raised families and perhaps also contributed widely within their community.[149]

Responses to the CIH's survey of members (on the consultation paper) indicate majority consensus around a minimum two-year term being too short for social tenancies; a five-year minimum term is favoured. There is support for the retention of lifetime tenancies for certain specified groups, such as the elderly and disabled. A majority of respondents agreed that the following four criteria should be applied when deciding whether a fixed-term tenancy should be renewed or not:

- whether the home is the right size for the household;[150]
- whether the tenant has demonstrated appropriate conduct;
- whether the household is still in priority need;[151] and
- the tenant's level of income.[152]

The *discretion* to implement flexible tenancies, as opposed to the *imposition* of a new tenancy regime has been welcomed. However, it appears that housing associations wishing to develop new affordable housing may be obliged to operate the new Affordable Rent model:

> **Grant Shapps:** There will be no changes to the security and rights of existing social tenants. The Government proposes to provide social landlords with freedom to offer fixed-term or lifetime tenancies and additional succession rights to new tenants.
>
> We propose that landlords will continue to let properties at social rents except where development agreements reached with the Homes and Communities Agency provide for an Affordable Rent to apply.[153]

As stated previously, the Affordable Rent model is not part of the Bill although it is closely related to proposals for flexible tenancies. It is worth noting that there is some support in the housing industry for some flexibility around rents/tenure to assist people who currently have very limited housing options, and for money raised by higher rents to be invested to increase the stock of affordable housing (as acknowledged in the John Hills report). Discussion is focusing on how an offer of up to 80% of market rents will work in practice – there are likely to be differential regional impacts – and how the proposal to increase rents in the social sector "fits" with cuts in Housing Benefit. A separate Library paper on the new delivery model will be published in due course.

In regard to the changes to succession rights, it is worth noting that the review of housing tenure carried out by the Law Commission between 2001-2005 (referred to in section **2.3** of

---

149 London Tenants Federation, *Briefing on Local decisions: a fairer future for social housing*, November 2010

150 Note that from April 2010 Housing Benefit will be restricted for working age social tenants who occupy a larger property than their family size warrants to a standard rate for a property of the appropriate size.

151 The priority need categories are listed on page 42 of this paper.

152 The survey covered aspects of *Local Decisions: a fairer future for social housing* and received around 275 responses – these responses are feeding into the CIH's formal response to the consultation document.

153 HC Deb 13 December 2010 c486W

this paper) concluded that allowing only one statutory succession to a tenancy was "too restricted." The Commission recommended, alongside the creation of a single social housing tenancy, a further succession to a "reserve successor" on the death of a "priority successor". A priority successor would be the spouse or partner of the original contract holder while a reserve successor would be either a carer or someone who fulfils "the family member condition".[154] The measures in the Bill represent a reduction in the statutory succession rights of residents living with secure tenants, rather than the extension envisaged by the Law Commission.

2.5 Housing finance

The reform of the council housing finance system has been under consideration since 2006 with much of the preparatory work carried out under the Labour administration. In June 2010 the new Housing Minister, Grant Shapps, confirmed that the Coalition Government would continue with the consultation exercise started by the previous administration, and in October 2010 he confirmed that the current system would be scrapped and replaced "with something more transparent that will serve the needs of local communities without interference from Whitehall."[155]

Detailed information on developments since the implementation of changes made by the *2003 Local Government Act* can be found in Library Note, *The reform of Housing Revenue Account subsidy*, SN/SP/4341.

Background: Housing Revenue Account

Local authorities with housing stock are required to record all income and expenditure in relation to these dwellings in their Housing Revenue Account (HRA).[156] Councils that transfer their entire housing stock[157] are not required to maintain an HRA.

The Housing Revenue Account Subsidy system is governed by the *1989 Local Government and Housing Act* (as amended by the *2003 Local Government Act*). The HRA is often referred to as a 'landlord account'. The HRA is a "ring-fenced" account within the General Fund; this ensures that rent levels cannot be subsidised by increases in Council Tax and that rents cannot be increased in order to keep Council Tax levels down. The main items of HRA income and expenditure are:

Income

- Rents and service charges paid by council tenants;
- HRA subsidy – if eligible;
- The Major Repairs Allowance (MRA);
- Any special subsidies (such as the Arm's Length Management allowance in England);
- Other income such as rents from council-owned shops on estates; and
- Interest received on council mortgages.

Expenditure

- Loan service charges;
- Management costs;
- Spending on repairs and maintenance;
- Bought in services;

---

154 Law Commission, *Renting Homes: the final report,* (Law Com No 297), 2006
155 CLG Press Release, 5 October 2010
156 The requirement to keep a HRA dates back to the *1935 Housing Act*
157 Transfers usually take place to a housing association (also now referred to as registered providers of social housing).

- Other outgoings, such as revenue contributions to capital outlay;
- Provision for bad debts;
- Any 'negative subsidy' payment to the Exchequer; and
- A contingency sum to cover any unforeseen expenses or shortfalls in income.

The HRA subsidy system is the system through which the Government determines the amounts local authorities need to spend on their council housing and whether subsidy is required to support this expenditure. HRA subsidy is the sum paid by Government to local housing authorities to make up any shortfall between income and expenditure on their HRAs. HRA subsidy may be a negative amount.

The notional subsidy calculation

Assessments of authorities' deficits or surpluses are *notional* – this means that they are based upon assumptions made by the Government. In order to calculate how much subsidy an authority needs to run its housing stock, or how large a surplus it should transfer to the Exchequer, the Government makes assumptions about authorities' costs and revenues. The reasoning behind this approach is:

> If subsidy were paid on the basis of the actual costs and revenues, authorities would have no incentive to control costs or set rents prudently as the extra costs or lost revenue would merely be met by increased Government subsidy.[158]

The subsidy calculation is based on the following assumptions:

- The rents charged.
- The proportion of vacant properties.
- Management and maintenance (M&M) costs.[159]
- The cost of servicing any housing-related debt.
- The cost of repairs needed to maintain the condition of the housing stock, i.e. the Major Repairs Allowance (MRA).

Where assumed costs exceed assumed income, the authority is deemed to be 'in deficit' and will receive a Housing Element subsidy equal to the assumed shortfall. Where assumed revenues exceed assumed costs the authority is deemed to be 'in surplus'. Housing Element surpluses are transferred to the Exchequer where they are pooled and paid to deficit authorities:

> This keeps resources within the housing budget where previously they would have been lost to the individual authorities' general funds.[160]

The purpose of the pooling mechanism was also described in the Explanatory Notes to the *Local Government Bill 2002/03:*

> To ensure that authorities which are able to generate surplus rental income, even though incurring management and maintenance etc expenditure comparable with

---

158 Letter from Meg Munn, then Parliamentary Under Secretary of State at CLG to all Members of Parliament, March 2007, MGP 07/758

159 The Government takes a view on how much M&M costs should rise by, having regard to the scope for improved efficiency and what can be afforded. Having determined the size of the national pot, formulae share out the available resources in a way that takes account of relative need and regional cost variations. The formulae are reviewed periodically.

160 Letter from Meg Munn, then Parliamentary Under Secretary of State at DCLG to all Members of Parliament, March 2007, MGP 07/758

> other authorities, make a contribution towards meeting the costs incurred by authorities which cannot generate sufficient rent income to meet such costs.[161]

A draft HRA determination prepared by the CLG announces the proposed national figures for guideline rents and the various allowances, together with the subsidy calculations for each authority, at the end of each calendar year. Authorities can submit comments to the CLG on the draft determination and this can result in changes to the final determination.

When the current subsidy system started, no local authority was "in surplus", i.e. obliged to pay money to the Exchequer. In 2004-05 182 councils paid a total of £615.3 million into the HRA subsidy system. This left 52 councils in receipt of subsidy payments of £694.2 million. Only five councils accounted for 40 per cent of the money taken out of the system; Southwark and Islington received around £130 million between them. The figures indicated that the subsidy regime was heading for surplus: in 2001-02 the Government contributed £351 million; this figure fell to £252 million in 2002-3 and £191 million in 2003-4. There was "mounting speculation" in the housing industry that in 2008-9 the system would finally "tip over into surplus", i.e. the Treasury would pay out less in HRA subsidy than it received from those authorities contributing to the pooling regime. Then Minister, Iain Wright, confirmed that the overall HRA did, in fact, move into surplus in 2008-09:

> In recent years the system of council housing subsidy has been in deficit throughout the country, with the Treasury making up the shortfall. It is only from 2008-09 that the position has reversed with the overall system moving into surplus. In this financial year the Treasury plans to allocate around £5.9 billion in total for housing expenditure, considerably more than the resources flowing back to Treasury.[162]

The overall HRA continued to be in surplus in 2009-10. In the last financial year the Treasury paid out £113.2 million less in HRA subsidy than it received from those authorities contributing to the scheme. 142 councils paid a total of £687.3 million into the HRA subsidy system while 44 councils received subsidy payments of £574.1 million.[163]

The need for reform

The operation of the HRA subsidy system has been a source of discontent almost since its inception in 1990. Despite changes introduced by the *2003 Local Government Act,* local authorities and their representative bodies have long called for a new system of local authority housing finance to overcome the problems inherent in the existing system. These problems are summarised, briefly, below:

- The system is complex and lacks transparency.
- The resource allocation within the system can change at very short notice, making it difficult for authorities to plan effectively.
- The allocation formula contains some perverse incentives, e.g. if an authority pays off its housing debt and reduces crime on its housing estates, it is liable to lose subsidy.
- Because the subsidy system treats the HRA as a national account it is criticised on the basis that it inhibits effective local management of assets. The national formula does not "fit" with the concept of local control and accountability to tenants – it is difficult for tenants to see a clear relationship between the rents they are charged and the services they receive.

---

[161] Bill 9-EN, paragraph 230
[162] HC Deb 15 January 2009 c940W
[163] Source: Deposited Paper 2010-2319

- Government commissioned research has determined that the system is underfunded. In the *Reform of council housing finance* (2009) management and maintenance allowances were acknowledged to be underfunded nationally by 5%[164] while research carried out by the Building Research Establishment indicated that Major Repairs Allowances need to rise significantly to maintain the stock in a decent condition beyond 2010.[165]

Consultation over reform

In 2006 CLG began working with a group of local authorities to investigate the implications of allowing some councils to leave the HRA subsidy system.

The premise was that, once out of the system, councils would keep all their rental income. Councils which were expected to make operating surpluses under the current system would not pay these into the national pot, and councils which were expected to have a revenue shortfall would not receive any subsidies. The exercise examined whether the settlement price for leaving the system could meet two objectives: a) putting the councils in a position to finance their investment programme and service their debt over the 30 years of the business plan; and b) achieve this with resources set at a level which broadly matched the resources which would have been provided had the council remained within the HRA subsidy system. CLG published the outcomes of the modelling exercise in March 2008, *Self financing of council housing services: summary of findings of a modelling exercise.*

The *2008 Housing and Regeneration Act* introduced measures to enable the pilot authorities to extend their HRA work. The Impact Assessment on the Bill stated that the then Government's intention was: "to take powers to allow us to run live pilots with a number of councils before deciding whether to offer others this option."[166]

In December 2007 Yvette Cooper, then Minister for Housing, announced a full review of the HRA subsidy system, the purpose of which was to ensure a sustainable, long term system for financing council housing. She set out the requirements that any new system would have to achieve:

> This system should be fair to both tenants and taxpayers. It should be transparent, giving a clear and accurate picture of the balance of support from local and central government. It should enable delivery of agreed standards of service and accommodation. It should recognise that social rents should help tenants gain and retain work, whilst acknowledging the need for landlords to improve the quality and efficiency of services. And it should be affordable and not expose government to unacceptable fiscal risks. [167]

The review was jointly launched by the Treasury and CLG on 10 March 2008.[168] On 24 June 2009 the then Government advised that a report of the review would not be published, instead "a public consultation" on the Government's proposals would be held later in the year.[169] The consultation paper, *Reform of council housing finance,* was published on 21 July 2009; consultation closed on 27 October 2009.

---

164 CLG, *Reform of council housing finance,* 2009 para 3.6
165 Building Research Establishment, *Review of the Major Repairs Allowance*, 2009
166 CLG, *Housing and Regeneration Bill – Impact Assessment*, November 2007
167 HC Deb 12 December 2007 cc34-5WS
168 *Yvette Cooper and Caroline Flint launch the review of Housing Revenue Account subsidy system*, 10 March 2008
169 HC Deb 24 June 2009 c957W

In addition to the consultation document, CLG published a series of associated papers on HRA subsidy on 21 July 2009. These are all accessible on the CLG website:

Review of council housing finance: Summary of commissioned research

Review of council housing finance: Impact assessment

Review of the major repairs allowance

Tenants' attitudes towards council housing finance and rents policy: to inform the review of council housing finance

Review of council housing finance: Analysis of rents

Evaluation of management and maintenance costs in local authority housing: Report of findings

Evaluation of management and maintenance costs in local authority housing: Summary report

Options for dealing with housing loan debt in the local authority sector

The *Reform of council housing finance* set out an option for a devolved self-financing system under which there would be no redistribution of revenues in return for a one-off allocation of debt to local authorities. This allocation would be based on each authority's ability to service the debt and maintain their housing stock. In turn, this would be calculated using the projected rental stream from the stock and an assessment of the costs of management and maintenance and major repairs. The ring-fencing of the HRA would remain. The benefits of the self-financing model for local authorities are seen as:

- councils will have enough money from the rental income from their stock to be able to service debt over time and to pay for ongoing maintenance at the Decent Homes Standard as well as works needed to maintain lifts and common parts
- because of this certainty of funding councils will be able to plan ahead for works and procure them efficiently; and
- councils will be better able to plan longer term for the management of their assets and manage them on a portfolio basis because they will be able to keep more of the capital receipts from Right to Buy sales and to reinvest this in replacement stock. There should be tangible improvements in service delivery and tenant engagement.[170]

A self-financing system would also deliver benefits for Government; the risks for national finances would be reduced by eliminating uncertainty around the national surplus/deficit emerging from annual subsidy calculations, and a complex, inefficient and unpopular subsidy system would be removed.[171] The move to self-financing has been described as a "deal" between national and local government as a whole, and with individual authorities in terms of their settlement. Under this "deal," in return for allocating "excess debt" to local authorities, resulting in an up-front cash receipt for central Government, local authorities will receive greater spending power over the long-term through the retention of future rent increases. Taking on excess debt is recognised as challenging, especially in the short term, but should

[170] CLG, *Reform of council housing finance,* July 2009
[171] LGA, *Local housing – local solutions: the case for self determination,* June 2009

allow all authorities to retain more resources locally in the medium to long term.[172] The "deal" also represents a substantial transfer of risk from the Government to local authorities.

John Perry, policy advisor to the CIH, set out the various options and issues facing the Government in an article published in *Public Finance Magazine* on 16 July 2009:

> All those who fed in to the review were aware that the outcome must address the issue of council housing's £17bn historic debt, but there have been different views on how to do it. Both the Local Government Association and the lobby group Defend Council Housing (DCH) argued that debt should be 'cancelled' – which would effectively mean the Treasury paying for it. This solution might have been workable if the Treasury could retain the income needed to pay for the debt.
>
> Yet these and the other major contributors to the review also argued that councils should keep all their rent income locally. This would create a double bind for the Treasury – it would have to service the debt from general taxation, while councils would simultaneously be free to finance more prudential borrowing, adding to total public sector debt. The prize, according to some of the councils that would benefit, is that as many as 139,000 extra homes could be built in a decade.
>
> The government correctly realised that councils having command over the income they get from rents was the more important of the competing demands. Nothing annoys councillors or tenants more than paying perhaps a third of this income to Whitehall in negative subsidy, which many councils do. To achieve this and still pay for the debt, the only solution is to redistribute the debt so that councils who get more income also take on a share of the £17bn.
>
> In one of the last submissions to the review, five housing advisers – including myself – gave a highly controversial verdict. We argued that debt redistribution is perfectly feasible and is a price worth paying for an end to the complex national system. We also called for a national debt 'settlement' based on a limited round of negotiations with councils. This would be similar to the way that regulators in other sectors hold periodic negotiations over costs and charges, but then make a final determination that is binding on all parties. The process would decide local shares of housing debt and prevent a few authorities from holding up a national settlement.
>
> This approach could pave the way for councils to become 'self-financing' and for the national subsidy system to be wound up. There was near unanimity among the lobbying organisations that self-financing is the desired outcome. Only the DCH dissented, fearing the risks that 'opting out' might pose for tenants and the danger of further 'privatisation'.
>
> As an apparent indication of the seriousness of Healey's intention to 'dismantle' the system, the minister has also said he wants to allow councils to keep all their capital receipts from right to buy sales. While the details of how this will work also await the consultation paper, he announced immediate changes for newly built council houses. From now on, councils will be able to depend on getting all the receipts should new houses have to be sold. They will also keep all the rental income from any new homes.
>
> Of course, there are many difficult issues still to be resolved. For example, a policy is needed that keeps rents in both parts of the sector at affordable levels, but with a margin to raise extra finance to invest in the stock. Councils will be looking to ensure

[172] CIH Response to the prospectus, *Council housing: a real future,* July 2010

> that the levels of finance being assumed in the new system, allowing for future rent increases, will be sufficient both to maintain the stock at the decent homes standard and to provide for much needed work to improve estates.
>
> Finally, the government should recognise that having local control of income and expenditure is only part of a desirable solution. Unless councils can undertake reasonable levels of prudential borrowing, the government's ambition that they start building significant numbers of new homes will remain a pipe dream. As a minimum, they should be able to develop business plans based on using at least part of their surpluses for new building.
>
> Ideally, council housing would be regarded as a trading activity outside the main measure of public sector debt, bringing councils in line with housing associations. This could finally end a false and totally unproductive distinction between the two main players in the social housing sector.[173]

On 25 March 2010 then Housing Minister, John Healey, issued a statement on the future of council housing finance. He said that the system of self-financing set out in the *Reform of council housing finance* had received "strong support" and announced the publication of detailed plans for local self-financing and management. He confirmed the detailed principles and terms on which the Labour Government intended to base self-financing, briefly:

- all councils to have 10% more each year to spend on managing and maintaining their homes;
- a one-off distribution and allocation of debt between local authorities to put them in the position of being able to support their stock from future income without subsidy;
- valuation of the stock using a 7% discount rate;
- all rents and receipts from the sales of housing and land in the HRA to be retained in full by the local authority;
- no local authority to have a proposed allocation of housing debt which was not sustainable in the long-term;
- rental income assumed in the calculation of debt to be based on current rental policy; and
- the 7% discount rate would give local authorities the capacity to fund 10,000 new council homes each year from 2014-15 after having met their management and maintenance costs in respect of their existing stock.[174]

Full details of the proposals were set out in the CLG prospectus, *Council housing: a real future.* The summary of consultation responses to the July 2009 review was published alongside this prospectus with other information for local authorities on modelling business plans and an impact assessment on the proposals.[175]

---

173 "Bringing it home", 16 July 2009

174 HC Deb 25 March 2010 c49-50WS

175 *Reform of council housing finance: consultation - A summary of the housing sector response;*
Modelling business plans for council landlords: local authority financial model user guide;
Council housing: A real future (Impact Assessment);
Modelling business plans for council landlords: Report on model inputs assumptions and outputs - final report.

The Coalition Government's approach

As noted previously, after taking office the new Housing Minister confirmed that the Coalition Government would continue with the consultation exercise started by the previous administration and, in October 2010, he confirmed that the current system would be scrapped and replaced.[176] On 13 December 2010 he set out, in a written statement, further details of the basis on which Government intends to implement reforms to council housing finance – this statement is reproduced in full below:

> We are satisfied that self financing is the right approach and represents a good deal for all authorities over the longer term. However, the success of self-financing depends on a fair valuation of their housing business that guarantees all councils receive a sustainable level of debt that they can afford. As such we will continue to finalise the precise details of the settlement over the next year to ensure they take account of any relevant changes in economic circumstances. The Government will then confirm that the settlement is fair and sustainable and should be implemented next year.
>
> We propose to adopt the basic method for calculating the debt reallocation consulted upon in March, based on a 30 year notional business plan of income and expenditure for each landlord. A payment to or from each council will then be made to reflect the difference between the value of the business and the housing debt currently supported under the HRA. The income assumptions built into the valuation will be based on the existing social rent policy for councils that their rents should "converge" with standard housing association rents in 2015/16.
>
> We will publish a policy document in the new year setting out how these proposed reforms are envisaged to work in practice, together with the underpinning model which will include updated indicative numbers per council. This much more detailed information will provide Parliament and local authorities with the opportunity to assess these proposals and their likely impact at the same time as they scrutinise the powers proposed to support them during passage of the Bill.
>
> This policy document will set out the updated methodology in more detail and will incorporate the following parameters:
>
> - a discount rate of 6.5 per cent for calculating the net present value of each council's housing business;
> - providing for realistic expenditure for management, maintenance and major repairs as identified in independent research published last year, increasing the costs used in the valuation by an average of 11.7%;
> - £116 million of extra funding each year for councils to pay for disabled adaptations to their stock;
> - funding for Treasury Management costs and to reflect planned demolitions;
> - Government continuing to pay subsidy to local authorities for the PFI schemes currently funded through the HRA;
> - 75% of net receipts from any Right-to-Buy sales continuing to be returned to the Exchequer. Estimates of the loss of income from RTB sales will be built into the valuation of each council's housing business. Receipts from other disposals will continue to be held locally to spend on affordable housing or regeneration; and

[176] CLG Press Release, 5 October 2010

- Council landlords being subject to a cap on overall housing borrowing for each local authority. This cap will be linked to the opening debt level under self-financing.

Using today's figures, economic assumptions and these parameters, the net receipt to the Exchequer from these transactions is projected at approximately £6.5 billion. These will be updated in the model issued alongside the policy document and before the implementation of self-financing using the latest data and economic assumptions.

This projected receipt includes £1.2 billion attributable to the decision to continue funding PFI[177] separately. Local authorities with PFI schemes will share this extra amount but will continue to receive subsidy. This was the option preferred by all local authorities with PFI schemes.

This is a reform intended to endure for the long term. In order to ensure it continues to be viable the Government is committed to assessing over the long term the impact of policy changes that may affect landlord income and the case to make good any losses or address any gains. The Localism Bill contains a power for the Secretary of State to make a further adjustment to the debt allocated to local authorities if a future policy change has a significant material effect on their costs or income. This is designed to protect both councils and the Exchequer.

Some councils may be considering taking forward housing transfer proposals with their tenants in advance of or post self financing. In order to agree a transfer in future, the financial terms of any proposals will need to be clearly comparable with what self-financing would provide. The Government will consider transfer proposals against the costs under self financing. This will include dealing with backlogs, the costs of future management, maintenance and major repairs and the costs of essential regeneration works due to be undertaken through the proposed transfer. There will be an expectation that councils must provide significant financial support for the transfer, and no assumptions of financial benefit should be made where some measure of Government support may be required. Proposals will be subject to a rigorous value for money assessment.[178]

A summary of responses to the prospectus, *Council housing: a real future*, issued in March 2010 by the Labour Government, was published in November 2010.

The Bill: Clauses 140-147

The Explanatory Notes to the Bill describe these clauses as providing for a new system of council housing finance: "The Housing Revenue Account Subsidy system will end and councils that operate a Housing Revenue Account will keep all of their rental income and use it to support their own housing stock."[179]

Clause 140 brings **Schedule 15** to the Bill (abolition of Housing Revenue Account subsidy in England) into effect.

Clause 141 sets out the framework for calculating the value of each local housing authority's (LHA) housing service. Some authorities will be required to make a payment to the Government and others will receive a payment. The framework will be used for calculating

---

177 Private Finance Initiative schemes
178 HC Deb 13 December 2010 WS
179 Explanatory Notes to Bill 126 of Session 2010-11 paragraph 395

the value of these "settlement payments" – the detail of which will be published by the Secretary of State in a determination.

Clause 143 provides for the Secretary of State to require that payments made to central government under **Clauses 141** and **142** are made in a certain way.

Clause 144 gives the Secretary of State the power to set a maximum amount of housing debt that can be held by each LHA. This power to issue a determination may be exercised "from time to time."

Clause 145 requires LHAs to provide information necessary to exercise powers in this Chapter.

Clause 146 allows determinations issued according to powers in this Chapter to apply to all LHAs, groups of LHAs or individual LHAs and requires the Secretary of State to consult before making a determination.

Clause 147 provides for the term "local housing authority" to have the same meaning as in the *1985 Housing Act*.

Comment

As noted above, the summary of responses to the prospectus published by the Labour administration in March 2010, *Council housing: a real future*, was published in November 2010. There are some key differences in the parameters for reaching a settlement proposed by the previous Government and those announced by Grant Shapps on 13 December 2010; however, many of the responses to the prospectus are still relevant.

The principle of moving to a self-financing regime has overwhelming support from local authorities. 87% of local authorities that responded to the prospectus were in agreement with its proposals with varying degrees of conditionality around confirmation of the final figures and resolution of some local and technical issues. Of the 41 non-local authority responses submitted, 85% expressed "support in principle", while four were opposed and two did not give a clear indication of their views.

During the earlier stages of discussion around the move to a self-financing system following a one-off redistribution of housing debt, there was substantial resistance from "debt free" authorities – these authorities tended to prefer the option of debt cancellation. The argument has sometimes been made that debt free authorities have achieved this status through efficiencies and that they should not be "penalised" for this. The then Minister, John Healey, addressed this issue when giving oral evidence to the CLG Select Committee:

> John Healey: As I said to Sir Paul, in practice those councils, for whatever reason they may be debt-free now, are essentially carrying part of the burden of servicing the notional debt that is in the system. If we were at one and the same time to write off or somehow the Treasury take - the central taxpayer were to pick up the cost of all the debt that is in the system, and then simply said to councils "there will be no balancing as we set you free", then you would have a situation where, whatever the historical circumstances and in some cases the historical accident that may be responsible for the current debt situation, you would have what I regard as an unfair situation where that council and their cost then of maintaining their stock without any borrowing or debt to service would be incomparably cheaper than in some other authorities that may have some debt to carry down. My concern is not so much for the councils and their financial situations; but my concern is for the tenants because, clearly, in the former case they would be able to get a standard of housing service and standard of

> home that was much better for much less than any comparable tenant in a council that carried that debt and had to service it entirely.[180]

While the level of debt to be taken on by local authorities remains a key issue, the responses submitted on the prospectus indicate "a broader acceptance that a level of housing debt redistribution was an acceptable or necessary price to pay for the freedoms and benefits the reforms would bring." The summary of responses notes that "this view was shared by many of the respondents who faced the prospect of new or increased debt."[181]

The policy document which is expected in early 2011 will provide the detailed information that authorities need in order to assess the impact of self-financing on their businesses. Some of the key priorities for authorities include:

- getting the settlement calculations right - the level of debt allocated must be affordable;
- ensuring that the levels of finance assumed in the new system are sufficient to both maintain the stock at the decent homes standard and to fund work to improve estates, i.e. tackling the acknowledged under-funding of management and maintenance allowances and the Major Repairs Allowance;
- ensuring that rent levels remain affordable while giving authorities flexibility to raise extra finance to respond to future challenges;
- allowing all surplus revenue to be retained locally to develop services in response to local requirements;
- allowing authorities to undertake reasonable levels of prudential borrowing;
- the retention of capital receipts raised by authorities to be applied locally; and
- a transparent and simple system that allows tenants to see the connection between rent and service charge levels and the services provided.

Respondents to earlier consultation exercises on HRA reform made the point that, given the scale of the reform and its implications, the starting point should be a clear vision of where social housing should be in 10 years' time and the role of self-financing in achieving that vision. There is a view that there has been a disproportionate focus on the technicalities of self-financing.

The Minister's announcement on 13 December 2010 made it clear that the basic method for calculating debt reallocation would be as set out in the March 2010 prospectus. With that in mind, the sections below consider some of the more detailed responses to the main proposals in the prospectus (based on the published summary of responses) and highlight early reactions where the statement of 13 December indicates a departure from the contents of the prospectus.

Allocated and ongoing debt

The general acceptance of a move to self-financing requiring the reallocation of debt has been referred to above. However, "widespread concern" is reported over the proposal to cap debt at the opening level:

---

[180] Uncorrected transcript of oral evidence taken before the Communities and Local Government Select Committee, 13 July 2009, Q5

[181] CLG, summary of responses to the prospectus, *Council housing: a real future,* November 2010, p6

> It was commonly felt that this would reduce and in some cases remove the headroom needed within business plans to manage risks and would undermine the flexibility and opportunity that was seen as a major attraction to self financing.[182]

Respondents made the point that the Prudential Code and the track record of responsible borrowing by local authorities should be viewed as a sufficient safeguard against imprudent borrowing.[183] The CIH and others argued that capping debt at opening levels will artificially restrict "spend to save" type investment which has the capacity to provide better value for money in the longer term.

Responding to concerns around this issue at CIPFA's November 2010 Housing Finance Conference, the head of local authority housing finance at CLG, Peter Ruback, acknowledged that the cap was not a popular aspect of the settlement but said it "reflects the fairly tight fiscal position and the way housing borrowing is accounted for in the national accounts."[184] Housing bodies have long made the case for a reclassification of borrowing to invest in council housing by local authorities:

> We also believe that implementation of the reforms as planned would represent the government missing another opportunity to review the rules for council housing borrowing, reclassifying it as outside of general government expenditure and recognising that such borrowing represents an investment which is repaid with future income generated by housing assets.[185]

Clause 144 gives the Secretary of State the power to issue determinations "from time to time" to set a maximum amount of housing debt that can be held by each local housing authority. There is significant concern around whether, or in what circumstances, the cap on borrowing might be adjusted, lifted or otherwise refined.

The announcement in the October 2010 Spending Review that Public Works Loan Board (PWLB) rates were to increase by 1% with immediate effect attracted comment from housing bodies concerned about the impact this might have on the self-financing proposals:

> The increase in PWLB rates will inevitably present plans with significant extra costs in the long term, especially with large amounts of debt being taken on by many local authorities, and limit the benefits that the move to a local system could otherwise bring.[186]

Financial regulatory and accounting framework

The prospectus included, amongst other things, a proposal that council landlords should maintain a council housing balance sheet setting out the assets and liabilities that support the HRA. Most respondents supported the regulatory and accounting framework set out in the prospectus but concerns were raised around the additional cost of maintaining a separate housing balance sheet, the effect on risk management, and the need for new treasury management functions. The Minister's 13 December statement included a commitment for the settlement to take account of funding for treasury management costs.

---

182 *Ibid* p7
183 *ibid*
184 Reported in *Social Housing*, "Sales concern over HRA reform, November 2010
185 CIH Response to the prospectus, *Council housing: a real future,* July 2010
186 *ibid*

Rents

The prospectus proposed that under self-financing local authority landlords would still be required to follow national social rent policy.[187] This was also confirmed in the Minister's 13 December statement where he set out a target convergence date for housing association and council rents of 2015/16.

Respondents to the prospectus raised issues around the balance between central and local control and uncertainly around future rent policy. There were calls for long-term assurances about rent policy, which many view as central to the success or otherwise of the reforms, and concerns around the impact of any changes to Housing Benefit on rental income. There is certainly a tension between the Government's desire for the continuance of a national social rent policy and authorities' desire for more local control, possibly involving tenants in decision making over rent levels.

Subsequent to the publication of the prospectus the Coalition Government *has* announced significant reforms to Housing Benefit.[188] From 2013, household benefit payments will be capped on the basis of median earnings after tax for working households, which is estimated to be around £500 per week (£350 for a single person household). Where total benefits exceed this level Housing Benefit entitlement will be reduced. Other Housing Benefit measures that will affect council tenants include the uprating of non-dependent deductions from April 2011 and a 10% reduction in Housing Benefit entitlement for claimants in receipt of Jobseeker's Allowance for over 12 months (from April 2013). Over 70% of social housing tenants are reliant on Housing Benefit and a significant proportion of these have been in receipt of JSA for over 12 months. Finally, from April 2013 Housing Benefit for working-age social tenants who occupy a larger property than their family size warrants will have their Housing Benefit entitlement limited to a standard regional rate for a property of the appropriate size. Social landlords are concerned about the potential impact that these measures will have on their rental streams.

Assumptions on costs in the valuation

The prospectus set out an intention to uplift allowances in the valuation. The combined increase to management and maintenance and Major Repairs Allowances would represent an average uplift to local authorities of 11%. The Minister confirmed the intention to "provide for realistic expenditure for management, maintenance and major repairs" with an average increase of 11.7% in his statement on 13 December. Respondents have noted that this falls short of the need for additional funding identified in published research or local surveys:

> Some respondents questioned the methodology for translating the national figures into local adjustments, arguing that this required stock condition surveys or, at a minimum, the application of local knowledge about specific local circumstances.[189]

New Build

The prospectus set out an intention to include in the self-financing settlement some "headroom" to enable councils, after meeting the spending needs associated with their existing stock, to deliver "a substantial new build programme." This headroom was to be achieved by the use of a 7% discount rate[190] to value council businesses:

> Government would use a 7% discount rate in valuing the business, rather than the 6.5% discount rate typically used in housing transfer. This would reduce the receipt for

---

187 For additional information see Library Note SN/SP/1090

188 For additional information on these Housing Benefit measures see Library Note SN/SP/5638

189 CLG, summary of responses to the prospectus, *Council housing: a real future,* November 2010, p10

190 The discount rate is the percentage rate required to calculate the present value of a future cash flow.

> Government from self-financing by around £1.2 billion. This should enable councils to deliver 10,000 new homes each year from the end of the next Parliament. [191]

The possibility of creating financial "headroom" to enable authorities to build new council housing had been seen as one of the key attractions of the self-financing model. Ambitions in this area were modified somewhat by respondents' uncertainty around the cap on borrowing and the availability of social housing grant.

Following the October 2010 Spending Review it became clear that there would be very limited grant funding for new social housing development up to 2015 and the focus for raising additional finance for new build has moved towards the development of the Affordable Rent model.[192] It seems likely that any additional expenditure released through self-financing will be focused on maintaining and improving the existing stock.

Furthermore, in his 13 December statement the Minister said that the Coalition would use a discount rate of 6.5% to calculate the net present value of each council's housing business. This will increase the net receipt payable to the Exchequer by an estimated £1.2bn but this sum will be used to continue separate funding for housing Private Finance Initiative (PFI) schemes. The Minister said that "Local authorities with PFI schemes will share this extra amount but will continue to receive subsidy. This was the option preferred by all local authorities with PFI schemes."[193] Respondents to the prospectus had urged the then Government not to change the discount factor proposed when making the final debt allocations.

Capital receipts

The prospectus proposed that local authorities would retain all capital receipts locally – this was "widely welcomed" by respondents. This is an area where the Coalition has announced a different approach. On 13 December Grant Shapps advised that 75% of net receipts from any Right-to-Buy (RTB) sales would continue to be returned to the Exchequer. He went on to explain that estimates of the loss of income from these sales would be built into the valuation of each council's housing business, while receipts from other disposals would continue to be held locally to spend on affordable housing or regeneration.

The proposal to suspend the Labour administration's policy for 100% of RTB receipts to be retained locally was trailed in the October 2010 Spending Review. The Chartered Institute of Housing issued the following response:

> The proposal to retain Right to Buy receipts could cause genuine pressures for authorities which will have debt in the new system but where government will still retain 75% of the receipts if properties are sold. The retention of any amount of RTB receipts by government is unsustainable to self-financing plans and could cause unforeseen additional pressures on wider council capital programmes.[194]

Steve Partridge, director of ConsultCIH (a company owned by the CIH), has likened the proposal to "having a mortgage but not being allowed to sell the house" [...] "you cannot have the responsibility for debt and not have the ability to recoup money through receipts."[195] Peter Ruback of CLG told delegates at the November 2010 CIPFA Housing Finance Conference that given the low scale of RTB receipts, the proposal "should not have a

---

191 CLG, *Council housing: a real future*, March 2010
192 Discussed in section **2.4** of this paper.
193 HC Deb 13 December 2010 WS
194 CIH, Comprehensive Spending Review Briefing, 21 October 2010
195 CLG, summary of responses to the prospectus, *Council housing: a real future,* November 2010, p11

considerable effect on local authorities in the short-term."[196] It is unclear at this point whether authorities will be required to repay 75% of receipts from RTB sales to the Exchequer beyond 2015.

Reopening the settlement

Many respondents to the prospectus were opposed to the inclusion of any provisions to allow the Government to revisit the settlement at a future date. It was felt that this could undermine the principles of self-financing and the ability to plan long-term. The alternative view is that a limited re-opening provision could act as a useful safety measure which could benefit councils seeking compensation for any additional costs arising from future changes in Government policy, e.g. changes in rent policy.

Clause 142 gives the Secretary of State power to make a further payment to a local authority or require a payment from a local authority where a settlement payment, as defined in **Clause 141**, has been made previously. It will be possible to revisit the settlement payment where there has been a change in any matter that was taken into account in making:

a. the determination relating to the settlement payment or a calculation under that determination; or

b. a previous determination made under **Clause 142** relating to the local housing authority or a calculation under that determination.

Those who supported the inclusion of a re-opening provision specified that it should be very carefully defined "leaving no doubt about the circumstances under which it could be used."[197] The Government has said that the provision will allow "a further adjustment to the debt allocated to local authorities if a future policy change has a significant material effect on their costs or income" and that the measure "is designed to protect both councils and the Exchequer."[198]

The Local Government Association's "on the day briefing" on the *Localism Bill* said it was "vital" for Government powers to re-open the buy-out figure and limit the amount of borrowing by local authorities to be dropped:

> Only by embracing genuine devolution will the Government enable this important reform to unlock efficient management of housing operations and assets locally.[199]

Decent homes, the backlog and other grant funded needs

Respondents expressed "widespread concern" that outstanding decent homes work would not be funded from within the settlement. There was also a call to fund disability adaptations through the self-financing settlement rather than through grant funding. In the Minister's statement on 13 December he announced that the settlement would include £116 million of extra funding each year for councils to pay for disabled adaptations to their stock.

Capital funding to deal with the decent homes backlog will be allocated by the Homes and Communities Agency (HCA). £1.6 million will be available over the period of the Spending Review for councils with a decent homes backlog of at least 10% of their stock (around 48 authorities are in this position[200]). Authorities with a backlog of less than 10% will be expected to use the freedoms and additional resources offered by HRA reform to achieve the

---

196 Reported in *Social Housing*, "Sales concern over HRA reform, November 2010

197 CLG, summary of responses to the prospectus, *Council housing: a real future,* November 2010, p11

198 HC Deb 13 December 2010 WS

199 LGA, *Localism Bill – LG Group on the day briefing*, 13 December 2010

200 CLG, 2010 Business Plan Statistical Appendix

necessary improvements to their stock. In exceptional circumstances these landlords may make a case for additional funding.[201]

The funding for disabled adaptations has been welcomed but respondents to the prospectus identified a need for substantial additional funding to cover backlogs in investment in the environment, in communal areas and for tackling conditions in non-traditional dwellings (estimated at £6bn), and to address health and safety issues (estimated at £5bn), such as fire safety.[202] Although debt reallocation will allow authorities to build up resources to meet these needs over time, respondents made the point that many of the investment needs are real in the short-term.

2.6 Housing mobility

Background

Lack of housing mobility has been identified as a particular issue for tenants of social housing. These tenants often find it more difficult than those renting in the private sector to relocate for work, family or other reasons, because of the difficulty of securing suitable alternative housing in the social sector.[203] Consequently, out-of-area mobility rates for tenants in social housing have traditionally been much lower than for tenants in other property sectors.[204]

The 2007 review of social housing carried out by Professor John Hills, *Ends and means: the future roles of social housing in England* (2007), considered mobility in the social rented sector in some detail. Whilst stopping short of suggesting a causal relationship, the report explicitly connected low housing mobility for tenants of social housing with restricted employment prospects:

> There may be factors connected with the way that we run social housing that have adverse effects on employment changes. The difficulties in moving within the sector may be one of these […] The rationing system within social housing makes it very hard to move home, but particularly between regions […] and job-seeking or getting a job is rarely given high priority in local authority criteria for social housing allocations.
>
> This can be seen in the limited distances that social tenants do travel if they move house […] of those that had moved in the previous year in 2005-06, 70 per cent of the social tenants had moved less than 5 miles, compared to only 55 per cent of owners and private tenants. Only 7 per cent of social tenants who moved had moved more than 50 miles, compared to 15 per cent of private tenants.[205]

National housing mobility schemes have also sometimes been conceived of as a method of tackling inter-regional imbalances in the demand and supply of social housing. Consequently, some have operated from the premise of encouraging movement from areas of high housing demand to those with proportionately more spare capacity.

Mobility schemes: an overview

In the early 1990s, the then Conservative Government oversaw the launch of Housing Organisations Mobility and Exchange Services (HOMES). This agency was to administer

---

[201] For information on the future of decent homes funding see: *Decent homes backlog funding for council landlords 2011-15,* HCA

[202] CIH Response to the prospectus, *Council housing: a real future,* July 2010

[203] Organisation for Economic Co-operation and Development (OECD) (2005) *Economic Outlook*, chapter 2

[204] Sefton, T (February 2007) *Using the British Household Panel Survey to explore changes in housing tenure in England,* CASE paper 117, p21

[205] Hills, John (February 2007) *Ends and Means: the future role of social housing in England,* CASEreport 34, pp106-7

several housing mobility schemes – two key ones being the National Mobility Scheme and the Tenant Exchange Scheme (later renamed Homeswap). In order to participate in the National Mobility Scheme, tenants were required to meet certain criteria - for example being on a housing waiting list and having caring responsibilities in a different area of the country. If accepted, tenants would be put forward or nominated for transfer to another region by their own local authority. The Tenants' Exchange Scheme was described as a 'self-help' scheme[206] and, as the name suggests, was based on the principle of exchange. Participants were required to consult lists maintained by housing departments, find other tenants interested in mutual exchange, and to secure the agreement of the relevant landlords before completing any move.

The Seaside and Country Homes scheme, introduced in the 1990s, is aimed at local authority and social housing tenants aged 60 or over currently living in Greater London. Participants can apply to move to bungalows and flats throughout the south of England and the Midlands.

LAWN – also sometimes known as the *Out of London* Scheme – was similarly established to offer local authority and some housing association tenants[207] in London opportunities to relocate to other parts of the country with lower housing demand. It was officially launched in July 2002 by the then Housing Minister, Lord Rooker. Unlike the Seaside and Country Homes scheme, there is no age limit. The scheme requires the referral of a landlord and is voluntary – therefore, not all London boroughs have participated.

In February 2004, and following a Government review, the contract for running the HOMES/ Homeswap, LAWN and Seaside and Country Homes schemes was let to a private company, Scout Solutions UK Ltd. At the same time, the company was contracted to develop new software and an internet site to provide a link with Jobcentre Plus's Internet Job Bank, the intention being to create a 'one stop shop' for information about housing and employment. An Office of the Deputy Prime Minister press notice announcing the contract stated that the new service was expected to launch in February 2005.[208] The then Office of the Deputy Prime Minister's five year plan of 2005, *Sustainable Communities: Homes for All*,[209] confirmed that the schemes would operate under a new brand name – MoveUK.[210]

On 18 September 2006, the then Minister for Housing and Planning, Yvette Cooper, announced that the Government would be terminating Scout Solutions' contract due to concerns about the performance of the software developed by the company and delays in delivery.[211] Scout Solutions continued to deliver the services for a transitional period; in January 2007, four months after the then Government announced the end of the contract, the MoveUK 'brand' was closed down. An interim telephone advice service for customers of the Seaside and Country Homes and LAWN schemes was established until their re-launch in July 2007 on the "housingmoves" website.[212]

After the withdrawal of the MoveUK service, the Labour Government emphasised the role of choice-based lettings schemes in promoting housing mobility for social housing tenants:

---

206 HOMES, Tenant information leaflet, *Do you want to move to another area?*

207 Housing associations are required to have 'nomination rights' to the scheme; these are agreed between the association and the local authority.

208 ODPM press notice 10 February 2004 *Helping social tenants get on the move*. ODPM was responsible for housing matters before the Department for Communities and Local Government took over in 2006.

209 ODPM (January 2005) *Sustainable Communities: Homes for All,* p 41

210 Previously the service had been known as the Housing and Employment Mobility Service (HEMS).

211 HC Debate 18 September 2006 c133ws

212 housingmoves website

> **Sir George Young (North-West Hampshire) (Con):** […] following the collapse of Move UK earlier this year, when will social housing tenants in my constituency be able to move to another part of the country using something like the national mobility scheme, which the Government inherited in 1997?
>
> **Ruth Kelly:** The right hon. Gentleman makes an important point. I know that he used the opportunity of an Adjournment debate to raise this issue recently. Indeed, national mobility schemes are probably an important part of our response, although I point out to him that there have traditionally been far more mutually arranged exchanges than have ever taken place through a national mobility scheme. One way in which we can make this happen more quickly and easily than by resurrecting any of the old schemes—it was right that we took action when we did to correct a contract failure—is to ensure that choice-based lettings work thoroughly and appropriately to enable choice within the local authority area and, as I said to my hon. Friend the Member for Edmonton (Mr. Love), to enable people to move on a sub-regional basis across local authority areas or more widely.[213]

During the committee stage of the *Housing and Regeneration Bill 2007-08* Grant Shapps, then Shadow Housing Minister, moved a new clause to place a duty on the Secretary of State to introduce a scheme to facilitate moves to and from the homes of social housing tenants in England and Wales. Margaret Moran, although saying that she did not support the amendment, noted:

> The Government intend to rectify the absence of a mobility scheme. I simply want to put some fire in their belly and to urge some speed on the matter […] The former Minister for Housing, now the Chief Secretary to the Treasury, indicated that she was in favour of a regional choice-based lettings scheme. I accept that there is a role for such a scheme, but I simply point out that in many areas we have not even got to a local choice-based lettings scheme […]
>
> I stress the urgency of the issue. This Bill and the Hills report, which has been mentioned, stress the need for mobility within the social housing sector, a point with which we all agree because we see it in our casework on a day-to-day basis. […]
>
> The fact that we have had a rather painful time with the replacement of HOMES should not undermine the fact that we need a replacement, and we need it as speedily as possible, if we are to achieve the aims set out in this Bill.[214]

In response, the then Parliamentary Under Secretary of State for Communities and Local Government, Iain Wright, directed Members to a Government statement of 12 December 2007 which had announced the expansion of sub-regional choice-based letting schemes. He also referred to research carried out by Ipsos MORI on barriers to mobility. This research, he suggested, had found that most tenants wishing to move "want to do so locally, staying within five miles of their existing home, and enabling them to retain social and cultural ties."[215] On national schemes, the then Minister said:

> Our challenge is to make sure that we can meet the needs of those who wish to move nationally, from one sub-region to another, and that is a big challenge. We are working with the Housing Corporation and key social landlords and authorities to develop proposals for increasing mobility across the country. For example, we are looking at

---

[213] HC Deb 12 June 2007 c645
[214] HC Deb 31 January 2008 c693-4
[215] HC Deb 31 January 2008 c695W

> whether a percentage of lets should be reserved and pooled for those looking to move further afield.[216]

In July 2008 the Housing Corporation published the third paper in its "Planning for the Future" series entitled *Mobility and Social Housing.* This paper considers who moves within and out of the social sector in addition to tenants' motives for moving. November 2009 saw the publication of work by Campbell Tickell who had been asked by the Housing Corporation, in conjunction with eight housing associations, the London boroughs and ten participating city councils, to conduct a feasibility study into a national mobility scheme. The report *Mobility Matters – exploring mobility aspirations and options for social housing residents* identified a level of demand for mobility in the social housing which was not being met and recommended the establishment of a pilot national mobility scheme.

The Coalition Government's approach

The Conservative Party's 2010 Manifesto included a commitment to:

> ...pilot a new 'right to move' scheme and introduce a nationwide social home swap programme, so social tenants can transfer their tenancy to another home or part of the country.

In the consultation paper, *Local decisions: a fairer future for social housing,* the Government set out its approach to improving mobility amongst tenants of social housing:

> 5.3 In paragraphs 4.18 to 4.22 we set out how we will make it easier for tenants to move within social housing, by taking most transferring tenants out of the allocation system, so that they no longer have to compete with new applicants on the waiting list. We also intend to ensure there is a social home swap programme which will mean that social tenants wishing to move by exchanging their tenancy with that of another household can maximise their chances of securing a suitable match. Efficient home swap arrangements should enable tenants seeking a move to have access to the complete list of other tenants similarly interested in an exchange.
>
> 5.4 We have therefore been working with existing providers of home swap services to develop a data sharing or data pooling approach. This would allow tenants seeking a mutual exchange to enter their details into the website of one provider and see details of all potential swap properties registered with all other providers operating in the market.
>
> 5.5 We will take steps to put this data sharing/data pooling approach on a statutory basis and will legislate to grant the Secretary of State a power to direct the social housing regulator to issue a standard on mutual exchange. The standard would then require landlords (both local authority and housing associations) to subscribe to web-based home swap services which enable tenants to see the full range of properties available which match their search criteria across providers.[217]

The Bill: Clauses 148-149

Clause 148 will amend the *Housing and Regeneration Act 2008* to give the social housing regulator the power to set a standard for registered providers in respect of assisting tenants with regard to mutual exchanges. The Secretary of State will be able to give directions to the regulator in regard to facilitating mutual exchanges.

---

[216] HC Deb 31 January 2008 c698

[217] CLG, *Local decisions: a fairer future for social housing,* November 2010, paras 5.3-5

Clause 149 will create a new class of "permitted payments" in section 122 of the *Housing and Regeneration Act 2008* to enable tenants who are shareholders of their landlord organisation to benefit from payments which assist tenants to move out of their social rented property into owner occupation of another dwelling. A number of housing association residents are also members (shareholders) of their landlord organisation and thus cannot, currently, benefit from incentive schemes to move into owner occupation as the making of "gifts" (including incentive payments) to tenant members or former members are precluded.

Comment

The measures aimed at improving the mobility of social housing tenants have been welcomed. The CIH has said "a national mobility scheme can be helpful and should look to build on the success of existing schemes."[218] The London Tenants Federation supports the facility for tenants to be able to move to smaller or larger homes in their locality or to move nearer to work or family – the Federation regards a national home-swap scheme as "a sensible idea." However the Federation emphasises the general desire for additional local housing to enable tenants to remain in their locality as circumstances change, as opposed to the promotion of schemes to move them away from their communities. [219]

2.7 The regulation of social housing

Background

Professor Martin Cave's 2007 report, *Every Tenant Matters – a review of social housing regulation* identified drawbacks with the system of regulating social housing. At that time housing associations were regulated by the Housing Corporation. The Review proposed a new system of social housing regulation based on the following objectives: a) to ensure continued provision of high quality social housing; b) to empower and protect tenants; and c) to expand the availability of choice at all levels in the provision of social housing. Professor Cave concluded that these objectives should be achieved with a minimum of intervention and with the same regulatory approach applied, where possible, to all social housing providers. Part 2 of the *2008 Housing and Regeneration Act* created the Office for Tenants and Social Landlords (also known as the Tenant Services Authority, TSA).[220]

The new Office took over the Housing Corporation's role of regulating social landlords on 1 December 2008 and was extended to cover all social landlords with effect from 1 April 2010. Briefly, the TSA's role is to ensure that social landlords are financially viable, well run and provide good services to tenants. It sets standards for social landlords, commissions the Audit Commission to inspect them, publishes reports on landlords' performance and can impose sanctions against poor performers. It also monitors landlords' financial performance and governance and publishes research about the sector, including quarterly financial data. The annual cost of running the TSA is £33.4 million.

The TSA adopted a more 'risk-based' approach to regulation and was tasked with improving the level of service that social tenants receive, ensuring that they have more choice and influence in matters central to their everyday lives.

There was general recognition amongst providers of social and affordable housing of the need to change the foundation and spirit of regulation. The effective economic regulation of housing associations has been key in maintaining the confidence of lenders in the social sector; more than £40bn of private sector lending to housing associations has been made on the basis that they are regulated.

---

[218] CIH, Briefing on Social Housing Reform – Local decisions: a fairer future for social housing, November 2010
[219] London Tenants Federation, *Briefing on Local decisions: a fairer future for social housing*, November 2010
[220] Additional information on the establishment of the TSA can be found in Library Research Paper 07/79 pp24-43

Additional information on the role and structure of the TSA can be found on its website.[221]

The Coalition Government's approach

The Housing Minister Grant Shapps, announced the abolition of the TSA in June 2010 at the Institute of Housing's annual conference. However, later that month a review of the role and purpose of the TSA and the framework for social housing regulation was announced. The *Review of social housing regulation* was published on 18 October – it confirmed, in the context of the Government's objective to reduce the number of quangos, cut costs and ensure value for money, that the TSA should be abolished:

> In line with the Government's commitment to reduce the number of quangos, the Tenant Services Authority (TSA) should be abolished and its economic regulation and backstop consumer regulation functions transferred to the Homes and Communities Agency (HCA), generating efficiency savings in back-office functions and exploiting synergies across investment and regulation.

It is intended that the continued independence of the regulatory function will be ensured by vesting it in a statutory committee within the HCA. This committee will be legally separated from that body's investment role with its membership appointed by the Secretary of State. Proactive economic regulation of housing associations will "continue as now but with more focus on value for money for the taxpayer."

The role of consumer regulation is to be refocused:

> The role of consumer regulation should be refocused on setting clear service standards for social landlords and addressing *serious* failures against those standards.
>
> This is a localist solution to resolution of tenants' problems. Local mechanisms should be used to address routine problems, with an enhanced role for elected councillors, MPs and tenant panels in the complaints process. This will enable tenants to hold their landlord to account and press for better services.

The review supported the principle of funding the regulatory regime via fees payable by landlords subject to regulation.

In *Local decisions: a fairer future for social housing* the Government repeated its intention to implement the main findings of the *Review of social housing regulation.* It also announced an intention to give the Secretary of State power to direct the Regulator to issue a new standard on tenant involvement.[222]

The Bill: Clauses 150-151

Clause 150 provides for **Schedule 16** to the Bill to have effect. This Schedule will abolish the TSA and provide for its functions to transfer to a newly created Regulation Committee of the HCA.

Clause 151 provides for **Schedule 17** to the Bill to have effect. This Schedule amends the 2008 Act to bring about a change in the role of the regulator in respect of consumer matters. The regulator will only be able to use its monitoring and enforcement powers if it has reasonable grounds to believe there has been a serious failure (or a risk of such a failure exists) affecting tenants.

---

[221] TSA website

[222] CLG, *Local decisions: a fairer future for social housing,* 2010, para 8.9

Comment

Bringing together the regulatory and investment functions of the TSA and HCA represents something of a return to the pre-*2008 Housing and Regeneration Act* days when these functions were carried out by the Housing Corporation.

The need to retain lender confidence in the sector has been a key consideration in discussions around the future of the TSA; there is certainly support in the housing industry for the retention of the independent status of economic regulation. Some commentators have questioned the timing of the changes given the challenging funding climate in which social landlords are continuing to operate – it has been pointed out that a lack of certainty in the short-term could have unwanted repercussions.[223] The National Housing Federation has welcomed the emphasis on financial regulation:

> Overall, however, the Federation welcomes the Government's recognition of the importance of effective financial regulation, and we endorse the report's conclusion that this should be a priority for the new regulator.[224]

The Federation expects that there will be "continuing dialogue" with CLG over the new regulator's role in ensuring value for money in the sector.[225]

The changes envisaged to consumer protection have been described as "sweeping." The National Housing Federation has welcomed some of the proposed changes (see below) but it is acknowledged by some that tenants may regret the loss of the TSA's consumer regulation work:

> It puts the emphasis on local scrutiny of performance, with a much greater reliance on responding effectively to complaints. The national regulator will still have a role, but it will be much more on a reactive basis, intervening only in cases of serious performance failure. Under the TSA, and formerly the Housing Corporation, the sector was accustomed to a routine, ongoing engagement with the regulator on matters of operational performance: the report envisages that most of this will simply fall away.
>
> However, the report acknowledges that the TSA's regulatory standards have received wide support both from providers and from tenant organisations. The standards will therefore remain, although they will be subject to changes in detail (for instance, the report includes a suggested revised ministerial direction on the tenant empowerment standard). However, the status of the standards will be changed because the breach of a standard will no longer, in itself, be sufficient to allow regulatory enforcement action; instead, the test for intervention will be one of serious performance failure.[226]

2.8 Wales

Clause 152 will amend Part 1 of Schedule 5 to the *Government of Wales Act 2006* to confer on the National Assembly for Wales legislative competence to pass laws in relation to certain local authority housing finance matters, including local authority accounts in respect of land and housing, borrowing and subsidies. The competence will allow the Assembly to reform the HRA subsidy system in Wales.

The measure has been welcomed by the Welsh Secretary, Cheryl Gillan:

---

[223] *Inside Housing, "*Mopping up regulation," 9 July 2010
[224] NHF, Abolition of the TSA – what next?, 20 October 2010
[225] *ibid*
[226] *ibid*

> The Localism Bill overturns decades of control by central government and gives power back to local communities themselves. We are devolving power to citizens, community groups and neighbourhoods, to help local people shape and influence the places in which they live.
>
> […]
>
> This will put Wales in the same position as England if the Welsh assembly Government so wish, so that the people of Wales are not disadvantaged. The Bill will also give the Assembly more control over housing issues, allowing ministers in the Welsh Assembly Government to take decisions closer to the communities affected.[227]

2.9 Housing ombudsman

Background

Currently, tenants of local authorities can refer a complaint about the service provided by their landlord to the Local Government Ombudsman (LGO) if the complaint concerns:

- the way a service has been delivered;
- if a service has not been delivered at all; or
- the way a decision has been made.

As a general rule, the complainant would be expected to have first exhausted the landlord's own complaints procedure. In 1988 the requirement that a complaint to the LGO be referred by a local Councillor was removed – since that time tenants (and others) have been able to complain directly to the LGO. Additional information can be found on the LGO's website.[228]

A separate Independent Housing Ombudsman was created by the *1996 Housing Act* to consider complaints from residents of housing associations or other bodies registered with the Housing Corporation (later the TSA). As with the LGO, residents are usually required to have exhausted the landlord's internal complaints procedure before referring a complaint to the Housing Ombudsman. The Ombudsman's scheme determines whether a particular complaint comes within his jurisdiction or not.[229]

The Coalition Government's approach

The Government's approach to the area of tenants' complaints is related to the issue of regulating the social housing sector. The *Review of social housing regulation,* discussed in section **2.7** of this paper, proposed an "enhanced role for the ombudsmen" in the light of their "trusted role in dealing with individual service failings." The Review also considered whether there was scope for increased involvement by Councillors and MPs in resolving complaints locally:

> We concluded that there was scope to increase democratic involvement in complaints and that this would have a benefit, over time, of councillors and MPs becoming more expert at using their influence to stop complaints arising and resolve those that do at an earlier stage. Tenant panels could carry out a similar function. We therefore propose that **tenants should contact MPs, Councillors, or a tenant panel** once the landlord's complaint procedure has been exhausted, and that **MPs/Councillors/tenant panels should intervene in order to attempt to resolve the problem and only then**

---

[227] Wales Office Press Release, 13 December 2010
[228] LGO website
[229] For additional information see Independent Housing Ombudsman website

> **refer the complaint on to the Ombudsmen if the matter cannot be resolved.** We anticipate that the majority of tenant complaints will be resolved at the local level.[230]

Local decisions: a fairer future for social housing confirmed the Government's intention to give MPs, elected councillors and tenant panels an enhanced role in the complaints process.[231]

The Bill: Clauses 153-155

Clause 153 will amend Schedule 2 to the *1996 Housing Act* to provide that only a "designated person" may refer a complaint to the Ombudsman. A designated person will be either an elected councillor, MP or designated tenant panel. A "designated tenant panel" will be a group of tenants recognised by a social landlord "for the purpose of referring complaints against the social landlord." Thus the Bill will create a "filter" process for complaints to the Ombudsman service.

The Secretary of State will have an order making power to provide for the Ombudsman to apply to a court or tribunal for an order to enforce a determination made by the Ombudsman under an approved scheme. The Secretary of State will be required to consult before issuing such an order.

Clause 154 provides for the creation of a "unified service for investigating complaints about the provision of social housing." Schedule 5 to the *1974 Local Government Act* is to be amended to remove the investigation of housing complaints from tenants of local authorities from the jurisdiction of the Local Government Ombudsman. The Independent Housing Ombudsman's remit will be extended to cover local authorities in their capacity as registered providers or managers of housing services.

Clause 155 contains supplementary provisions related to the transfer of functions to the Independent Housing Ombudsman – particularly concerning collaborative working where it is warranted.

Comment

There is certainly some support in the housing sector for the creation of a single Ombudsman specialising in complaints about social housing on the grounds that this will promote consistency and provide a common route of redress for all social housing residents. There is somewhat less enthusiasm for the "democratic filter" process. The National Housing Federation has requested further dialogue on the practicalities of this approach:

> The report argues that this approach will democratise the complaints process and will encourage councillors and MPs to engage better with their local housing associations (and vice versa). The Federation expects to have substantial further dialogue with Government about the practicalities of how this arrangement will work so as to secure the speedy and effective resolution of complaints.[232]

HouseMark's CoalitionWatch website has attracted the following (anonymous) comment on this subject:

> The concept of a 'democratic filter' goes against all best practice for both Ombudsmen and regulated complaint handling. The only other Ombudsman scheme in the world to have a similar filter is the UK's Parliamentary Ombudsman and the need for that to be

---

[230] CLG, *Review of social housing regulation,* October 2010, para 4.5
[231] CLG, *Local decisions: a fairer future for social housing,* November 2010, para 8.9
[232] NHF, Abolition of the TSA – what next?, 20 October 2010

> removed has been accepted for many years (but has never received appropriate priority from central government...). Local government and, of course, council housing tenants used to be restricted by a councillor filter - the complaint to the LGO could only be made if a councillor signed the complaint.
>
> Currently, both the FSA and OFCOM are introducing changes to regulations to improve access to the relevant Ombudsman / External Adjudication schemes and yet the government has decided to restrict the rights of social housing tenants.
>
> Council housing tenants also potentially lose some rights because the Local Government Ombudsman requires a complaint procedure to take no longer than 12 weeks from the date of the first complaint - after that they will accept the complaint even if the council has not responded at all internal stages (and councils are encouraged to have only two stages). But the Housing Ombudsman currently has no sanctions like this - procedures can take many months and often involve at least 3 stages.[233]

2.10 Home information packs

A separate Library paper, *Home Information Packs: a short history*,[234] provides detailed background information on the introduction of HIPs and a chronology of key developments during their long implementation period up to their suspension in May 2010. The section below provides only a very brief summary of the development and subsequent suspension of HIPs.

Background

Prior to forming a Government in 1997 the Labour Party expressed an interest in reforming the home buying process. A pre-election consultation paper had argued for the abolition of gazumping. Once in power, the focus shifted when it was recognised that gazumping affected less than 1% of transactions. The then Government set in motion a root and branch review of the whole buying and selling process to identify problem areas and develop solutions. Research was commissioned covering more than 2,000 consumers and professionals.

The main problem identified by the research was that important information needed to inform buyers' decisions only became available after terms had been negotiated and agreed. The ultimate outcome was a decision to introduce Home Information Packs (HIPs, originally referred to as Seller's Packs). The rationale behind HIPs was that the provision of more information at the start of the house buying/selling process would speed things up and reduce the window of opportunity for gazumping (where a seller accepts a higher offer very close to exchange of contracts) or gazundering (where a buyer demands a reduction in price very close to exchange of contracts).

HIPs, as originally conceived, were to be made up of a pack of documents including standard searches, evidence of title, a Home Condition Report (HCR), an Energy Performance Certificate (EPC) and, for leasehold properties, a copy of the lease. Sellers had to have a HIP prepared before marketing a property which would be made available to prospective buyers. Most of the documents in the HIP would have been produced at some point during the conveyancing process – the new system brought forward the point at which they were produced and placed the responsibility for commissioning (and paying for) certain documents on the seller.

---

[233] CoalitionWatch, One Ombudsman for social housing complaints webpage
[234] Library Research Paper 10/69

Measures to provide for HIPs were originally contained in Part 1 of the *Homes Bill 2000-01.* The Bill made progress but fell for lack of time before the 2001 General Election. Information on issues raised during consideration of the *Homes Bill* can be found in a Library note, *Seller's packs: issues raised during debates on The Homes Bill 2000-01.*

In the 2002 Queen's Speech the then Government announced that a draft Housing Bill would be published to "introduce sellers' packs to the home buying and selling process, so that the information needed by a potential purchaser is available when the property is marketed." The draft Bill was published in March 2003 and was subject to pre-legislative scrutiny by the Office of the Deputy Prime Minister (ODPM): Housing, Planning, Local Government and the Regions Select Committee. Measures to introduce HIPs were then included in Part 5 of the *Housing Bill 2003-04.*

The *Housing Act 2004* received Royal Assent on 18 November 2004. HIPs were due to become mandatory from 1 June 2007 but in the event they were phased in for different property sizes from 1 August 2007. They were extended to apply to all properties from 14 December 2007. The phased introduction was a response to the lack of trained energy assessors in post on 1 August 2007.

Aside from the phased introduction, some significant changes to the nature and implementation of HIPs were made in the period between November 2004 and April 2009. Significantly, the requirement to include a Home Condition Report (HCR) in the HIP was dropped in July 2006. It was decided that HCRs would be phased in on a market-led basis "in order to ensure a smooth implementation with clear benefits for consumers". Dropping HCRs as a mandatory part of the packs resulted in some consumer organisations withdrawing their support for HIPs.

Between August 2007 and 6 April 2009 a "first day marketing" concession meant that prospective sellers could market their homes as long as they had commissioned a HIP; they did not have to have a HIP in their possession at the time of marketing. The removal of this concession on 6 April 2009 marked the completion of the phased introduction. Ten years had elapsed since the Government's initial publication of proposals to legislate in this area.

Throughout the implementation period HIPs came under attack from a variety of bodies and attracted some extremely negative press coverage. The research on which they were based, particularly the Bristol Pilot Scheme, was criticised for being incomplete and misleading. They were viewed as representing poor value for money and were also blamed for exacerbating the housing market downturn. Questions were raised around whether buyers were using HIPs for the purpose intended. The Conservatives in opposition called for HIPs to be made voluntary and made various attempts to amend the legislation. The Party's 2010 Election Manifesto contained a clear commitment to abolish HIPs. The Liberal Democrat's 2010 Manifesto also included a commitment to "scrap burdensome Home Information Packs, retaining the requirement for homes to have an energy performance certificate."

The Labour Government defended HIPs throughout their difficult implementation period, consistently arguing that the provision of more up-front information for prospective buyers would speed up the process and help buyers make more informed decisions in regard to what is, for most people, the most significant financial commitment they will ever make. By early 2010 the Government was referring to survey evidence showing an average reduction of 6 days in transaction time where a HIP was used.

After the 2010 General Election the Coalition Government moved swiftly to suspend the requirement to commission a HIP from 21 May 2010. The requirement on sellers to obtain an Energy Performance Certificate remains in place.

In the Queen's Speech of 25 May 2010 it was announced that provisions to achieve the "outright abolition of Home Information Packs" would be included in a forthcoming *Decentralisation and Localism Bill*.

Although the suspension of HIPs was met with majority support from professionals within the industry, those who had paid for training and set up businesses based on the provision of HIPs were less enthusiastic. Questions were raised around the lack of consultation prior to suspension; the Merits of Statutory Instruments Committee expressed concern over the "precipitate" way the Government had acted to suspend HIPs.

The suspension and forthcoming abolition of HIPs means that problems identified with the house buying and selling process in England in the 1998 research remain largely unresolved. Developments such as electronic conveyancing have certainly helped to speed up the process but it would appear that many buyers are still failing to obtain important information about their homes before agreeing to buy them.

The Bill: Clause 156

Clause 156 will repeal Part 5 of the *Housing Act 2004* which is concerned with the duty to provide a home information pack.

3 Part 7: London

3.1 Background

The Greater London Authority (GLA), which comprises the Mayor and the 25-member London Assembly, was established by the *Greater London Authority Act 1999*. Executive powers are held by the Mayor although the GLA's role was designed to be a strategic and co-ordinating one rather than one concerned with direct service provision. The GLA operates mainly through the four 'functional bodies' – the Metropolitan Police Authority (MPA), the London Fire and Emergency Planning Authority (LFEPA), the London Development Agency (LDA) and Transport for London (TfL). Further information can be found in a Library standard note – *The Greater London Authority* (SN/PC/5817).

In June 2010, following the General Election, the Mayor wrote to the Secretary of State for Communities and Local Government requesting further devolution of a number of powers.[235] Boris Johnson's letter, *The Mayor of London's Proposals for Devolution*, reopened the debate over the appropriate powers to be exercised at London level. He asserted that "London's devolution settlement remains weak and there is much room for improvement, particularly in ensuring that we see decisions taken by the local communities that they will affect."

The Coalition had already indicated in its *Programme for government* that it would abolish the Government Office for London. The white paper on economic growth, published in October 2010, promised abolition of the LDA so that the Mayor, along with the boroughs and the private sector, might provide "clear leadership for the continued regeneration and growth of London".[236]

---

[235] GLA, *Mayor's proposals for devolution*, June 2010. A further letter, written jointly with London Councils and the London Assembly on 23 July 2010, indicated those areas where there was agreement and where viewpoints differed. See: *Joint letter to Secretary of State for Communities and Local Government*.

[236] *Local growth: realising every place's potential*, Cm 7961, October 2010, para 2.20

On 1 December 2010, Eric Pickles announced "a new settlement for London" with reforms that would "drive decision making back into the hands of the Mayor and locally elected London leaders." The measures included:

> The devolution of executive powers over housing investment from the Homes and Communities Agency to the GLA so that there is more decentralised control over housing investment decisions in the capital.
>
> The abolition of the London Development Agency, with its city-wide roles on regeneration and management of European funding to be transferred to the GLA so that the mayor is directly accountable.
>
> New powers for the Mayor of London to create Mayoral Development Corporations to focus regeneration where it is needed most, such as to help secure East London's Olympic legacy, in partnership with London boroughs.
>
> London boroughs will be given greater control over key local planning decisions that affect their local communities. The mayor will only consider the largest planning applications in future.
>
> A more streamlined approach to mayoral strategies and increased powers of scrutiny for the London Assembly over these strategies, including the power to reject final strategies by a two thirds majority.
>
> A new requirement for the GLA Group to publish details of all expenditure over £500 and openness rules will be extended to Transport for London.[237]

3.2 Economic development in London

London's economy

By most measures, London is a particularly successful part of the UK economy. Gross Value Added (output) per head in London was £34,000 per head in 2009, compared with a UK average of £20,000. London accounts for more than one-fifth of UK economic output.[238]

London has also grown faster than the UK economy as a whole since the mid-1990s. Output per head in London went from 53% above the UK average in 1995 to 71% greater in 2009.

---

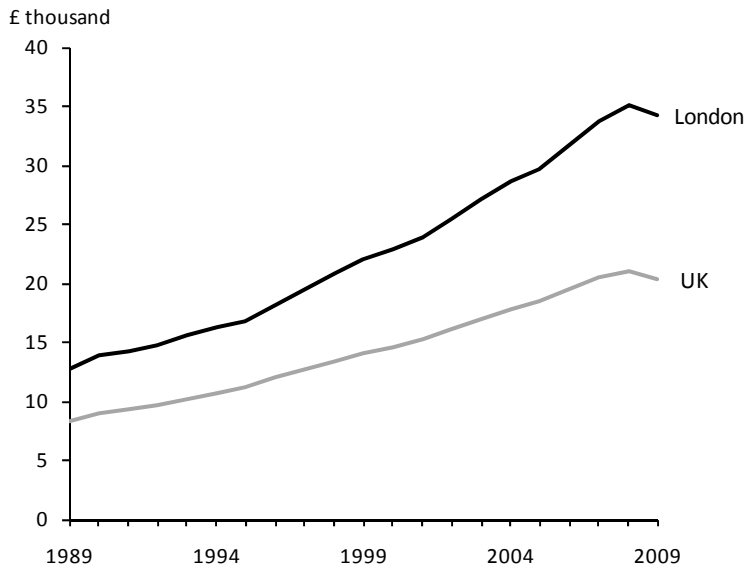
[237] HC Deb 1 December 2010 c76WS

[238] Office for National Statistics Statistical Bulletin, *Regional, sub-regional and local gross value added 2009*, 8 December 2010. Workplace-based data.

Chart 1

Output per head is higher in London - and has grown faster

GVA per head (workplace based) at current prices



ONS, *Regional, sub-regional and local gross value added 2009*

London is also a global economic centre and ranked top in the latest Z/Yen Global Financial Centres Index.[239]

However, the picture is not entirely rosy. London has a relatively high unemployment rate: 9.1% in the latest Labour Force Survey estimates. That is the third highest of UK regions (after the North East and Yorkshire & the Humber) and compares with 7.9% across the UK.[240]

There are also considerable economic disparities *within* the capital. While much of London is prosperous, there is also widespread deprivation. The latest Index of Multiple Deprivation put four London boroughs (Hackney, Tower Hamlets, Newham and Islington) within the ten most deprived local authority areas in England.[241]

3.3 Housing and regeneration functions

Clauses 157-161 are concerned with devolving power to the Greater London Authority (GLA) and the London Boroughs in line with the Secretary of State's written statement of 1 December 2010.[242]

In August 2010 London Councils, in partnership with the Mayor of London, unveiled a *Framework for Devolved Delivery* which is described as giving London boroughs "greater autonomy over their housing budgets, placing them at the forefront of negotiations with private developers and housing associations, and giving them more responsibility to ensure the housing needs of their resident communities are addressed." London Councils

---

239 Z/Yen Group, *The Global Financial Centres Index 8*, September 2010

240 Office for National Statistics *Labour Market Statistical Bulletin Historical Supplement*, August-October 2010, ILO unemployment as % of economically active population aged 16-64, seasonally adjusted

241 Communities and Local Government, *The English Indices of Deprivation 2007*, 28 March 2008. Those boroughs rank within the ten most deprived on both the average score and average rank measures.

242 HC Deb 1 December 2010 c76-7WS

has long campaigned for housing spending decisions to be placed in the hands of the boroughs and has referred to voluntary "devolved delivery agreements" to ensure the delivery of outcomes that are in line with the London Housing Strategy:

> Devolved Delivery Agreements could confirm an agreed housing budget for these boroughs for the duration of the next spending round, due to start in April 2011. In turn, these boroughs will agree a broad set of outcomes with the Mayor to ensure local and London-wide housing needs are met, and have in place housing policies that meet the objectives of the **London Housing Strategy.** [243]

London Councils has welcomed the measures contained in the Bill to devolve powers from the Homes and Communities Agency (HCA) to the GLA and London boroughs.

The Media Background Note on the Bill describes the purpose of these clauses as "the devolution of executive powers over housing investment from the HCA to the GLA so it can be fully aligned with the Mayor's own funding pot and the London Housing Strategy."[244]

Clause 157 will remove the prohibition on the GLA, contained in section 31 of the *1999 Greater London Act,* to enable expenditure by the GLA on housing and on education where the expenditure is to sponsor or facilitate the sponsorship of academies.

Clause 158 will amend Part 7A of the 1999 Act to give the GLA additional powers to compulsorily acquire land and rights over land for housing and regeneration purposes. Provisions contained in the *2008 Housing and Regeneration Act* concerning the acquisition of land by the HCA will be amended to apply to the GLA. This measure is in keeping with the Government's intention that the HCA, which was created by the previous Government as a "one-stop shop" for housing investment and regeneration,[245] should carry on with a slimmed down role and that social housing spending should be devolved to the elected authority in London.

The HCA issued a letter to all local authorities in December 2010 setting out its "slimmed down" priorities for 2011.

Clause 159 will amend the 1999 Act to make the GLA responsible for exercising housing functions in London rather than the HCA.

Clause 160 will amend the definition of the HCA's jurisdiction in the 2008 Act to remove Greater London from the definition of England.

Clause 161 will empower the Secretary of State to make schemes to provide for the transfer of property, rights and liabilities from the HCA or the Secretary of State to the GLA or other bodies.

Abolition of the London Development Agency

Clause 162 abolishes the London Development Agency (LDA). It also enables the Secretary of State, having consulted the Mayor of London, to transfer its property, rights and liabilities to various bodies including the Greater London Authority (GLA) and London borough councils.

England's nine Regional Development Agencies (RDAs) were established under the Regional Development Agencies Act 1998. The LDA was launched in 2000 on the

---

[243] London Councils, Devolution of housing powers webpage [on 11 January 2011]
[244] CLG, *Localism Bill: Media Background Note*, December 2010
[245] Additional information on the establishment of the HCA can be found in Library Research Paper 07/79

establishment of the GLA. It has some distinct arrangements and responsibilities (such as the Mayor rather than the Secretary of State making board appointments) as set out in Part V of the Greater London Authority Act 1999. The Government intends to abolish England's eight other RDAs through the *Public Bodies Bill 2010-11*, which is currently at the committee stage in the House of Lords.

Under Section 4 of the Regional Development Agencies Act 1998, the roles of a RDA are:

a) to further the economic development and the regeneration of its area,

b) to promote business efficiency, investment and competitiveness in its area,

c) to promote employment in its area,

d) to enhance the development and application of skills relevant to employment in its area, and

e) to contribute to the achievement of sustainable development in the United Kingdom where it is relevant to its area to do so.

The Government intends to transfer the LDA's city-wide roles on regeneration and management of European funding to the GLA so that "the mayor is directly accountable".[246] This measure is supported by the current Mayor.[247] The LDA is currently a functional body of the GLA (akin to the relationship between a non-departmental public body and a central government department).

The LDA's budget in the 2010-11 financial year is £275 million, of which £37 million is administration costs.[248] Its budget in 2011-12 will be £56 million, excluding funding for Olympic projects. This will cover "only legally committed spending".[249]

It has been reported that LDA staff numbers will be cut to 108 by March 2011.[250] In 2008-09 it employed 580 staff.[251]

The Government has to date approved 27 new Local Enterprise Partnerships (LEPs) of councils and business across England outside London. These bodies will take on many of the responsibilities of RDAs.[252] A separate application process is operating in London. It has been reported that the Mayor of London favours a London-wide LEP.[253]

Economic Development Strategy

Clause 163 requires the Mayor of London to publish an "Economic Strategy for London" containing:

a) an assessment of the city's economic conditions; and

b) the Mayor's policies and proposals for economic development and regeneration

---

246 HC Deb 1 Dec 2010 c142WS
247 LDA *Annual Report 2009-10*, Mayor's Foreword, p3
248 HC Deb 15 Sep 2010 c1099-100W
249 LDA, *Proposals for future governance arrangements*, 17 November 2010
250 For example, BBC Online, *London Development Agency to cut 200 jobs by April*, 29 October 2010
251 LDA *Annual Report 2008-09*, appendices, p10
252 For further information see House of Commons Library Standard Note SN/EP/5651, *Local Enterprise Partnerships*
253 *Regeneration and Renewal*, 29 October 2010, *Exclusive: Boris Johnson plots London-wide LEP*, by Stuart Watson

The Secretary of State may direct the Mayor to revise this strategy should it be inconsistent with national policy or if its implementation would have a detrimental impact on any area outside London. This provision exists under the current arrangements, whereby the LDA is required to submit a "London Development Agency Strategy" to the Mayor.[254]

The LDA and the Mayor published *The Mayor's Economic Development Strategy for London* in May 2010. It includes an assessment of the state of London's economy, together with the Mayor's economic objectives and strategy for achieving them. The emphasis is on intervention in the economy only when it addresses a cause of market failure.[255]

3.4 Mayoral Development Corporations

Proposals by the Mayor of London

The Government proposals above are closely related to proposals by the Mayor of London.

In June 2010, the Mayor of London published proposals on devolution in response to the Government announcement of the abolition of the Government Office for London:

> The Mayor's proposals, which would be subject to government approval and changes in legislation, would see the London region of the Homes and Communities Agency (HCA) devolved to the GLA and the functions of the London Development Agency (LDA) folded into the GLA. A resulting London housing and regeneration body would be an executive arm of the GLA and the LDA would cease to exist as a separate body, although its functions would continue.
>
> In addition, the Olympic Park Legacy Company (OPLC) should be reformed as a Mayoral Development Corporation, reporting directly to the Mayor and democratically accountable to Londoners. There are currently seven bodies contributing to the regeneration of the Lower Lea Valley which causes duplication and confusion.
>
> The Mayor also proposes that responsibility for the Royal Parks Agency and the Port of London Authority should be devolved from Whitehall to the Mayor. Other proposals include giving the Mayoralty greater powers over traffic control and the awarding of rail franchises on routes into London.[256]

The Bill would provide for the Mayor to designate any area of land in Greater London as a mayoral development area provided he has consulted, where necessary, the individuals and bodies specified in the Bill. A Mayoral Development Corporation (MDC) can be established for the area. The purpose of an MDC is to secure the regeneration of the area. **Clause 173** makes provision for the MDC to become the local planning authority.

Comment on London Development Agency and Mayoral Development Corporations

The *Guardian* thought that the proposals might make it easier to achieve a legacy from the Olympic Games:

> To have real clout, the proposals for the Olympic site need political backup - and this could come in the form of the London mayor. Last month Mr Johnson announced his intention to turn the OPLC into a Mayoral Development Corporation. This would mean the legacy company would report directly to him and, he argues, enable him to cut red tape and drive forward regeneration in east London. It is understood these powers are

---

254 The LDA submits a London Development Agency Strategy to the Mayor under Section 7A of the Regional Development Agencies Act 1998 as amended by section 306 of the Greater London Authority Act 1999. The Secretary of State's functions are set out in Section 7B.

255 LDA and Mayor of London, *The Mayor's Economic Development Strategy for London*, May 2010, pp12-13

256 Mayor of London Press Release, *Mayor's Proposals for devolution*, 15 June 2010

> likely to be included in the coalition government's Decentralisation and Localism Bill which goes before parliament next year.
>
> Reactions to this proposal seem mostly positive. Geoff Pearce, executive director at athletes' village developer Triathlon, for instance, says: 'if the development corporation is given planning powers it will have real teeth - which would be a good thing.'[257]

The *Evening Standard* commented:

> Boris Johnson was today handed new powers to tighten his grip over London's future — as well as a tougher watchdog to keep an eye on him. In a radical change to the way the capital is governed, ministers announced that a swathe of controls currently hoarded by Whitehall and unelected quangos will go to the Mayor's office.
>
> Mr Johnson will have more say over housing and economic regeneration and will take on full responsibility for the post-2012 Olympic legacy under the planned Localism Bill. But the Mayor will also face greater scrutiny in future from the London Assembly, which will have new powers to vote down mayoral strategy plans by a two-thirds majority.
>
> However, Mr Johnson will have to give up some of his ability to boss around London's 32 boroughs. In future they will decide purely local housing and planning issues, reflecting the Government's view that power should be exercised as close to the local community as possible. It is not yet clear how planning for controversial tower blocks will be affected.
>
> Local Government minister Eric Pickles said the shake-up would mean London's elected politicians will have more say over the way the capital is developed, with less influence going to unelected bureaucrats. "London is a global powerhouse with global reach — and yet it can't make local decisions on local issues," said Mr Pickles. "We will streamline the way London is run so Londoners have a stronger voice."
>
> He said Mr Johnson would rightly be the most powerful figure over decisions affecting the capital. "London is a democracy not a quangocracy and the Mayor has a clear electoral mandate from London voters. So he should be at the head of the table."
>
> The changes include switching executive powers over housing investment from the £1.2 billion a year quango, the Homes and Communities Agency, to the GLA. The London Development Agency will be abolished. Boroughs will control major local planning decisions that affect local communities.[258]

An architecture journalist regretted the ending of the LDA:

> But in order for the Government to save the LDA's £156 million annual budget, it has also sacrificed a body that has helped to fund much of what has been good in London architecture and public space in the past decade or so. With it will go some of the only public-sector expertise that London has in making decent places and transforming parts of the city that really need attention. The implications of this decision will be clearer more in terms of what does not happen than what does. The LDA has been responsible for the messy work of planning and building for London's growing population. (...)
>
> So besides being a regeneration body taking on the parts of London that would never have been attractive to the private sector, what has the LDA ever done for you? First, there are the huge projects that a world city needs to be able to deliver quickly and

---

[257] "Playing the end game", *Guardian*, 23 July 2010

[258] "Boris gets more power – and new watchdog to rein him in", *Evening Standard*, 1 December 2010

> efficiently. The most impressive thing about the Olympics, for instance, is that the site was able to be built on at all — a piece of unusable land on low-value real estate in the Lea Valley. The LDA had the scale and expertise to buy the land, decontaminate it, relocate the businesses on the site, and do all this in a lightning-fast time frame.
>
> The list goes on: Wembley would never have been built without the LDA and the Laban Centre in Deptford would not have happened, Ravensbourne college's building at North Greenwich would have been impossible. And these are just the high-profile examples.[259]

3.5 GLA governance

Part 7 Chapter 3 of the Bill relates to GLA governance. Among the provisions are the following:

Delegation to Mayor of minister's functions

Clause 194 of the Bill amends the *Greater London Authority Act 1999* and provides a power for ministers to delegate eligible functions to the Mayor. These may not include the power to make regulations or set fees and charges. The DCLG's delegated powers memorandum[260] states that the clause is modelled on sections 6 and 6A of the *Regional Development Agencies Act 1998* which allowed ministers to delegate RDA functions to either the Mayor or the LDA. They were used to delegate the administration of England-wide grant programmes including the single regeneration budget. The memorandum notes that it is anticipated that the power will be used in a similar way, for example, delegating functions under the *Derelict Land Act 1982* involving payment of grant to local authorities for bringing land back into use (reflecting the GLA's new housing and regeneration responsibilities).

Strategies

The Mayor is required to produce 12 statutory strategies: spatial development, transport, economic development, housing, culture, health inequalities as well as environment (the remaining six). In doing so, he was required to go through a two-stage consultation process, first with the Assembly and the functional bodies and then with other consultees. [261] He considered the process to be "unnecessarily burdensome", using up vital resources and delaying action.

Clauses 195 to **198** address these issues as follows:

- The six environmental strategies are consolidated into one "London Environment Strategy". The Secretary of State may give guidance on the content and preparation or revision of the strategy and (subject to conditions) may give a direction on content;
- The Mayor's duty to provide four-yearly reports on the state of the environment in Greater London is abolished;
- The requirement to carry out a two-stage process in preparing or revising a strategy is removed.

---

[259] "Say goodbye to all this", *Evening Standard*, 3 November 2010
[260] DCLG, *Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010, p95
[261] Mayor of London, *The Mayor of London's proposals for devolution*, June 2010, section 11

London Assembly powers

The Assembly is given an enhanced role in the development of the mayoral strategies with a power to reject a strategy if a two thirds majority of Assembly members vote against (**Clause 199)**. This does not apply if revisions have been carried out in accordance with a ministerial direction.