BRIEFING PAPER
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Housing and Planning Bill [Bill 75 of 2015-16]

By Wendy Wilson & Louise Smith

Inside:
1. Housing: background data
2. New Homes in England
3. Rogue landlords and letting agents in England
4. Recovering abandoned premises in England
5. Social housing in England
6. Housing, estate agents and rentcharges
7. Planning in England
8. Compulsory purchase
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Housing: background data</td>
<td>6</td>
</tr>
<tr>
<td>1.1</td>
<td>Home ownership: trends</td>
<td>6</td>
</tr>
<tr>
<td>1.2</td>
<td>First-time buyers</td>
<td>7</td>
</tr>
<tr>
<td>1.3</td>
<td>Earnings to house price ratio</td>
<td>9</td>
</tr>
<tr>
<td>1.4</td>
<td>New house building</td>
<td>11</td>
</tr>
<tr>
<td>1.5</td>
<td>Right to Buy</td>
<td>11</td>
</tr>
<tr>
<td>2</td>
<td>New Homes in England</td>
<td>13</td>
</tr>
<tr>
<td>2.1</td>
<td>Starter Homes (clauses 1-7)</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>The Bill</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Comment</td>
<td>16</td>
</tr>
<tr>
<td>2.2</td>
<td>Self-build and Custom Housebuilding (clauses 8-11)</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>The Bill</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Comment</td>
<td>27</td>
</tr>
<tr>
<td>3</td>
<td>Rogue landlords and letting agents in England</td>
<td>29</td>
</tr>
<tr>
<td>3.1</td>
<td>Banning orders (clauses 12-21)</td>
<td>29</td>
</tr>
<tr>
<td>3.2</td>
<td>Database of rogue landlords and agents (clauses 22-31)</td>
<td>30</td>
</tr>
<tr>
<td>3.3</td>
<td>Rent repayment orders (clauses 32-48)</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>Comment on Part 2 of the Bill</td>
<td>32</td>
</tr>
<tr>
<td>4</td>
<td>Recovering abandoned premises in England</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>The Bill (clauses 49-55)</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>Comment</td>
<td>33</td>
</tr>
<tr>
<td>5</td>
<td>Social housing in England</td>
<td>35</td>
</tr>
<tr>
<td>5.1</td>
<td>The voluntary Right to Buy (RTB) (clauses 56-61)</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>The Bill</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Comment</td>
<td>40</td>
</tr>
<tr>
<td>5.2</td>
<td>Vacant high value local authority housing (clauses 62-72)</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>The Bill</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Comment</td>
<td>47</td>
</tr>
<tr>
<td>5.3</td>
<td>Reducing regulation (clause 73)</td>
<td>52</td>
</tr>
<tr>
<td>5.4</td>
<td>High income social tenants: mandatory rents (clauses 74-83)</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>The Bill</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>Comment</td>
<td>56</td>
</tr>
<tr>
<td>6</td>
<td>Housing, estate agents and rentcharges</td>
<td>59</td>
</tr>
<tr>
<td>6.1</td>
<td>Accommodation needs in England (clause 84)</td>
<td>59</td>
</tr>
<tr>
<td>6.2</td>
<td>Housing regulation in England (clauses 85-86)</td>
<td>59</td>
</tr>
<tr>
<td>6.3</td>
<td>Housing information in England (clauses 87-88)</td>
<td>60</td>
</tr>
<tr>
<td>6.4</td>
<td>Estate agents: lead enforcement authority (clause 89)</td>
<td>61</td>
</tr>
<tr>
<td></td>
<td>The Bill</td>
<td>62</td>
</tr>
<tr>
<td>6.5</td>
<td>Enfranchisement and extension of long leaseholds (clause 90)</td>
<td>63</td>
</tr>
</tbody>
</table>

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6.6 Redemption price for rentcharges

7. **Planning in England**
   7.1 Neighbourhood planning (clauses 92-95)
   The Bill
   Comment
   66
   7.2 Local plans (clauses 96-100)
   The Bill
   Comment
   68
   7.3 Planning in Greater London (clause 101)
   The Bill
   69
   7.4 Planning permission (clauses 104-106)
   Permitted development rights
   Designation for poor performance
   Financial benefits
   Statistics on planning
   The Bill: permission in principle
   Comment
   73
   7.5 The Bill: local registers of land
   Comment
   74
   7.6 Nationally significant infrastructure projects (clause 107)
   75
   7.7 Urban development corporations (clauses 108-110)
   76

8. **Compulsory purchase**
   8.1 Compulsory purchase (clauses 111-139)
   79
   8.2 Compulsory Purchase Order processes
   Notice to Treat
   General Vesting Declarations
   Taking part of a claimant's land – 'Material Detriment'
   83
   8.3 The Bill
   Right to enter and survey land
   Confirmation and time limits
   Vesting declarations: procedure
   Possession following notice to treat etc.
   Compensation
   Disputes
   Power to override easements and other rights
   86
   8.4 Comment
   88
Summary

On publication of the *Housing and Planning Bill* the Government said it would kick-start a “national crusade to get 1 million homes built by 2020” and transform “generation rent into generation buy.” The supply-side measures in the Bill are primarily focused on speeding up the planning system with the aim of delivering more housing. There is also a clear focus on home ownership, with measures to facilitate the building of Starter Homes; self/custom build housing; and the extension of the Right to Buy to housing association tenants following a voluntary agreement with the National Housing Federation (NHF).

**Part 1** of the Bill puts into legislation the Government’s commitment to provide a number of Starter Homes for first-time buyers under the age of 40. Starter Homes would be sold at a discount of at least 20% of the market value. Specifically, the Bill puts a general duty on all planning authorities to promote the supply of Starter Homes, and provides a specific duty, which will be fleshed out in later regulations, to require a certain number or proportion of Starter Homes on site. The general response has been largely positive. Concerns have been expressed however, about the impact on the number of affordable rented homes developed, whether the 20% discount would be deliverable, whether these homes would be genuinely affordable and about how this policy would interact with other planning policies on housing provision.

Chapter 2 of Part 1 adds to and amends the *Self-build and Custom Housebuilding Act 2015*, which requires local authorities to keep a register of people seeking to acquire land to build or commission their own home. The Bill specifically requires local authorities to grant “sufficient suitable development permission” of serviced plots of land to meet the demand based on this register. Cross-party support for initiatives to promote self/custom build was demonstrated during the passage through Parliament of the 2015 Act, although the Local Government Association has questioned the need for legislation in this area.

**Parts 2 and 3** will give local authorities additional powers to tackle rogue landlords in the private rented sector. They will gain the ability to apply for banning orders against private landlords. A database of rogue landlords and agents will assist authorities in England in carrying out their enforcement work. Landlords will benefit from a clear process to secure repossession of properties abandoned by tenants.

The Bill will not, as originally expected, introduce a statutory Right to Buy (RTB) for housing association tenants. Following the Government’s acceptance of the NHF’s offer to implement the RTB on a voluntary basis, **Part 4** of the Bill provides for grants to be paid to associations to compensate them for selling homes at a discount. The Bill provides a mechanism through which local housing authorities will be required to make payments to the Secretary of State. These payments will be calculated with reference to an authority’s high value housing stock with the expectation that this stock will be sold as it becomes vacant. This aspect of the Bill is controversial. There is concern that receipts raised from the sale of high value council stock will not generate sufficient funding to pay off the debt associated with these properties; provide for replacement of the sold stock; cover the cost of discounts for housing association tenants; and finance a Brownfield Regeneration Fund. Commentators have welcomed the Government’s desire to improve access to home ownership, particularly for younger people, but many have called for a range of measures to support a balanced mix of tenures.

**Part 4** also makes provision for ‘high income’ social tenants (expected to be set at £40,000 in London and £30,000 elsewhere) to pay a market rent as opposed to a social
rent – this policy is referred to as ‘pay to stay.’ This measure is the subject of an ongoing consultation process which closes on 20 November 2015.

Part 5 covers a range of measures including:

- changes to the ‘fit and proper person’ test applied to landlords who let out licensable properties; and
- allowing arrangements to be put in place to give authorities in England access to information held by approved Tenancy Deposit Schemes with a view to assisting with their private sector enforcement work.

Part 6 contains a number of different reforms to the planning system, with the aim of speeding it up and allowing it to deliver more housing. Powers are given to the Secretary of State to intervene in the local and neighbourhood plan making process. A new duty to keep a register of brownfield land within a local authority’s area will tie in with a new system of allowing the Secretary of State to grant planning permission in principle for housing on sites identified in these registers. It also allows for major infrastructure projects with an element of housing to apply for development consent through the 2008 Planning Act regime, rather than having to seek separate planning permission. Many legal and planning professionals have welcomed these provisions, but there has been some concern about the extra burdens and costs for local authorities and about Government intervention taking away local say in local developments.

Part 7 relates to compulsory purchase and implements some of the changes set out in the Technical consultation on improvements to compulsory purchase processes published earlier in the year including: giving all acquiring authorities the same powers of entry for survey purposes prior to a compulsory purchase order being made; to introduce a standard warrant provision in relation to the proposed new common power of entry for survey; and to introduce a standard notice period of 14 days for entry for survey purposes (Clauses 111-117); developing targets and clearer timetables for the confirmation stage of the compulsory purchase order process (Clause 118); allowing the Secretary of State to delegate decisions to a planning inspector in certain circumstances (Clause 119); and making changes to the process of taking possession of the land and on the timing of the acquisition process (Clauses 121-128).

Parts 1 to 4 of the Bill extend to England and Wales but will only have practical effect in England. This also applies to Parts 5 and 6 aside from clauses 90; 91; 108; 109; and 110 which will apply in England and Wales. The whole of Part 7 of the Bill extends to, and will have practical effect, in England and Wales. Clause 89 (regulating estate agents) will apply to the whole of the UK.

The Bill was presented on 13 October 2015 and is scheduled to receive its Second Reading on 2 November 2015.

Data underpinning charts in this briefing are available in an accompanying Excel file: http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7331
1. Housing: background data

1.1 Home ownership: trends

The rate of home ownership grew from around 55% in the early 1980s to peak at over 70% in 2003. Since then it has fallen to 62% in 2013-14, which is around the same level as it had been in the late 1980s. At the same time, within the overall total of owner occupiers the proportion who own outright has been falling and the proportion with an outstanding mortgage has been rising.

Figure 1 shows households owned outright or being bought with a mortgage as a proportion of all tenures over time.

![Figure 1: Households owning outright or buying with a mortgage as a proportion of all tenures, 1981 to 2013/14](source: English Housing Survey 2013-14)
By age group

The 2011 Census provides data about the age of the ‘household reference person’ (i.e., a senior member of the household). This can be used as an indicator of how tenure varies by age (see Figure 2). Private rental is more common in younger age groups compared to older ones. Correspondingly, home ownership is more common in older age groups, particularly owning outright rather than with a mortgage.

![Figure 2: Tenure by age group of household reference person, 2011](source: 2011 Census)

1.2 First-time buyers

Number and age of first-time buyers

The number of new mortgages given to first-time buyers per year reached a peak of around 600,000 in 1986 and fell back in the early 1990s to rise again to reach similar levels at the end of the 1990s and early 2000s. The number dropped to around 200,000 per year between 2008 and 2012, but has increased in recent years. In 2014 there were 300,000 first time buyers, around half the number in the peak years. Figure 3 shows the number of new mortgages given to first-time buyers between 1974 and 2014.

The median age of a first-time property buyer has increased in the same time period: in 1974, the median age of those taking out a first-time mortgage was 25, while in 2014 the median age was 301.

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Sources of deposit

The last ten years have seen a change in the sources first-time buyers are using to pay for a deposit on a property (see Figure 4). According to the English Housing Survey, in 2013-14 35% of first-time buyers made use of financial assistance or inheritance; in 2003-04 this figure was estimated at 23%.

Figure 4: Sources of deposit for first-time buyers, 2003-04 and 2013-14

Source: English Housing Survey 2013-14
1.3 Earnings to house price ratio

Over time

DCLG provide data on the ratio of median house prices to median earnings. In England in 2013, the median house price was 6.72 times the median earnings figure. This is part of a relatively stable period following a period of steady increase in the first half of the last decade.

![Figure 5: Ratio of median house price to median earnings in England, 1997 to 2013](image)

Source: DCLG, Live table 577: ratio of median house price to median earnings by district, from 1997

Geographically

The map below shows how the ratio of median house prices to median earnings varies between local authorities across England.²

² The figure for each local authority is available in the data files accompanying this briefing
Affordability of housing, English local authorities, 2013

Source: DCLG, Live table 577: ratio of median house price to median earnings by district, from 1997
1.4 New house building

Over time

Figure 6 shows the number of dwellings started in each year from 1969-70 to 2013-14. Building of local authority dwellings decreased markedly in the 1980s and by 2014-15 made up a very small proportion of dwellings started. There was a substantial drop in overall dwelling starts in 2008-09. Although the number has risen since then it has not yet reached pre-2008 levels.

![Figure 6: Dwellings started by tenure, England 1969-70 to 2014-15](image)

Source: DCLG, Live table 208: permanent dwellings started by tenure and country

1.5 Right to Buy

Figure 7 shows the number of local authority dwellings sold per year through Right to Buy in England since 1980-81. Since then just under 2 million dwellings have been sold under the Right to Buy in England. Sales peaked in 1982-83 and several smaller peaks have occurred since then. The last three years have seen an increase in sales, albeit on a much smaller scale.

A one-for-one replacement policy has been in place since 2012 to maintain the stock of local authority dwellings. In England in the period from 2012-13 (Q1) to 2015-16 (Q1) there have been 3,644 replacement dwelling starts. Over the same period 32,288 dwellings were sold under Right to Buy: 5,944 in 2012-13, 11,261 in 2013-14 and 12,304 in 2014-15.

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3 DCLG, Right to Buy sales in England: April to June 2015
Figure 7: Number of local authority dwellings sold per year through Right to Buy, 1980-81 to 2014-15

Source: DCLG, Live table 671: annual Right to Buy sales for England
2. New Homes in England

2.1 Starter Homes (clauses 1-7)

The Bill puts into legislation the Government’s commitment to provide a number of Starter Homes, sold at a discount, for first-time buyers under the age of 40.

Home ownership rates in England have been falling since 2003 despite the fact that it remains the tenure of choice for a majority of people. The British Social Attitudes survey reports:

> Given a free choice, 86 per cent would buy their own home, rather than rent. One in five (19%) say the main disadvantage of home ownership is the expense.

Younger households are facing particular difficulties in accessing home ownership; 48% of households in the 25-34 age group currently live in the private rented sector compared to 21% in 2003-04. Over the same period owner occupation in this age group fell from 59% to 36%.

The financial crash and the subsequent fall in house prices after the end of 2007 had only a limited impact on affordability for first time buyers. Lenders have tightened their criteria for mortgage approvals and require buyers to have substantial deposits. Mortgage products themselves are more expensive.

In addition to relative mortgage scarcity, there is the issue of incomes failing to keep pace with house price increases. Shelter published an analysis of Housing affordability for first time buyers in March 2015. This compares changes in affordability for first time buyers between 1969 and 2013:

> Over the decades since 1969, house prices for first time buyers have increased by 48 times, far out-pacing incomes which have only grown 29 times. The average first time buyer house price of £4,136 in 1969 has grown to £198,039. By comparison, first time buyers’ incomes have grown from £1,624 in 1969 to £47,574 in 2013. While this trend is played out across England, it is most stark in London. There, house prices are 59 times higher than in 1969, while incomes are only 34 times higher.

Recognising the disproportionate impact of these factors on young first-time buyers, in December 2014 the Prime Minister announced the launch of a new scheme aimed at providing discounted Starter Homes exclusively to under 40s at no cost to the tax payer. Potential applicants have been able to register interest in the scheme since February 2015.

Starter Homes will be exclusively available to first-time buyers aged under 40 who will benefit from a 20% reduction on market value. The properties developed under this scheme are set to cost no more than

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4. British Social Attitudes 31, 2014, NatCen, Chapter 8
6. Housing affordability for first time buyers, Shelter, February 2015, p3
7. Inside Housing, “Government launches £26m Starter Homes fund,” 10 August 2015
8. DCLG, Young first-time buyers can register online for 100,000 cut-price homes, 28 February 2015
£250,000 outside of London and £450,000 within London. The 20% reduction is to be retained for five years following the initial sale, after which the property will be sellable at full market rate. The reduced cost of these homes arises out of changes in planning policy; builders that develop Starter Homes on commercial and industrial land which is either unusable or surplus will save on costs by being freed from the requirement to provide affordable housing:

Currently builders can face an average bill of £15,000 per home in Section 106 affordable housing contributions – but under the planning changes they would be free from these costs so they can develop on commercial and industrial land that is either under-used or unviable in its current or former use.9

The national Starter Home exception site planning policy was initially expected to provide 100,000 Starter Homes to be built over the next five years. The Prime Minister promised 200,000 Starter Homes up to 2020 if the Conservatives won the 2015 General Election.10 This commitment was confirmed in August 2015.11

On 10 August 2015, Communities Secretary, Greg Clark, launched a £26 million fund for the scheme, to be used to ‘identify and purchase sites and prepare them in 2015 to 2016.’ According to the press release announcing the fund, ‘money from the sales of these sites [benefiting from the fund] will go back to the government.’12

A further £10 million is available to local authorities in order to prepare more brownfield land that is currently vacant or underused for development for the scheme. This money is being offered as a non-recoverable one-off grant; bidding opened on 12 October 2015.13

The Housing and Planning Bill provides the statutory framework for the delivery of the Government’s Starter Homes scheme.

The Bill

Clauses 1-7 introduce two main duties for Local Planning Authorities (LPAs) in respect of Starter Homes: a general duty to promote the supply of Starter Homes when undertaking planning functions, and a specific duty in relation to Starter Homes when taking planning decisions.

Clause 2 defines what a starter home is, which is that it must be a new dwelling, available for purchase by qualifying first-time buyers only and which is made available at a price which is at least 20% less than market value.

Clause 2(3) defines further what is meant by a qualifying first-time buyer. Part of this definition refers to the definition of first-time buyer under section 57AA(2) of the Finance Act 2003, which reads as follows:

(2) In this section “first-time buyer” means a person who—

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9 DCLG Press Release, 28 February 2015
10 Cameron promises 200,000 Starter Homes if Tories win election, BBC, 2 March 2015
11 Planning Resource, The implications of allowing Starter Homes on rural exception sites, August 2015
12 DCLG Press Release, 10 August 2015
13 DCLG Press Release, 12 October 2015
(a) has not previously been a purchaser in relation to a relevant acquisition of a major interest in land which consisted of or included residential property,

(b) has not previously acquired an equivalent interest in such land under the law of [Scotland or] a territory outside the United Kingdom,

(c) has not previously been, or been one of the persons who was, “the person” for the purposes of section 71A, 72, 72A or 73[14] in a case where the first transaction within the meaning of the section concerned was a relevant acquisition of a major interest in land which consisted of or included residential property, and

(d) would not have been such a person for those purposes in such a case if the provisions mentioned in paragraph (c) had been in force, and had had effect in the territory concerned, at all material times (subject, where required, to appropriate modifications).

The clause stipulates that a qualifying first-time buyer must be under the age of 40. It also allows regulations to be made which could specify additional characteristics. The Explanatory Notes suggest that this could relate to a minimum or age or nationality that a first-time buyer must have.[15]

Clause 2(6) specifies the maximum price for the sale of a Starter Home to a first-time buyer. The price cap is £250,000 outside Greater London and £450,000 inside Greater London. Regulations made under this clause could amend these price caps and set different price caps for different areas.

**Clause 3** is concerned with an LPA’s general duty to promote the supply of Starter Homes when carrying out relevant planning functions. Relevant planning functions set out in clause 3(4) include preparing local plans, cooperating with neighbourhood areas on strategic planning matters, and determining planning applications.[16]

**Clause 4** covers the specific duty that applies to decisions on planning applications. This clause would allow regulations to grant planning permission for certain residential developments, only if certain requirements relating to Starter Homes were met. According to the Explanatory Notes, regulations could specify “provision of a particular number or proportion of Starter Homes on site or the payment of a commuted sum to the local planning authority for the provision of Starter Homes.”[17] Under clause 4(4) regulations may provide that planning permission could be granted only if a person has entered into a planning obligation to provide a certain number of Starter Homes.

The regulations would allow for different requirements to apply to different types of residential developments and to different areas. They could require that for all residential developments above a certain size a planning obligation must be entered into relating to the provision of a specified proportion of Starter Homes. Certain types of residential

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14 These sections are concerned with where land is sold to a financial institutions and is then leased or resold to an individual.
15 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p14
16 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p15
17 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p15
development could be exempt under the regulations, as could certain locations. LPAs could be given discretion about certain, as yet unspecified, requirements.

**Clause 5** will require LPAs to produce reports about their duties in relation to starter homes. It will allow regulations to be made which cover the form and content of the reports and their timing.

**Clause 6** will deal with what should happen if an LPA’s local plan or other form of development plan document were contradictory to, or incompatible with, the Starter Homes duties provided by the Bill (and therefore the LPA had not fulfilled its duties). It will allow the Secretary of State to make a “compliance direction” directing that the incompatible policy should not be taken into account when certain planning decisions are made.

**Comment**

The Government conducted a [consultation exercise](http://librarybriefingpaper.com) on Starter Homes between December 2014 and January 2015. Detailed information on the questions posed and consultation responses can be found in Library Briefing Paper 07310, [Starter Homes for Young First-Time Buyers](http://librarybriefingpaper.com).

The general response to the proposal was positive, with strong support from prospective first time buyers. 78% of respondents were in favour of the policy, including the majority of individuals, developers, financial organisations, local authorities and representative bodies. A number of points were raised, predominantly falling into three key areas:

- what would constitute suitable land;
- potential conflict with existing planning policy; and
- how the discount would be implemented.

**Is the discount deliverable?**

A common reservation amongst respondents was that under-utilised or unviable commercial and industrial sites should already gain permission for housing in line with the National Planning Policy Framework (with section 106 and Community Infrastructure Levy expectations being adjusted to achieve viable schemes). Further to that, concerns were raised over the viability of the 20% price reduction given that brownfield land not currently considered suitable for housing, even with exemptions from certain section 106 and Community Infrastructure Levy obligations, is likely to have above-average development costs and be in locations with below-average sales value. As a result, a number of developers suggested that the policy should also apply to undeveloped land at the edge of settlements, and/or to existing housing sites where development had stalled. The Government rejected this option.

63% of respondents were in favour of the suggestion that Starter Homes should not be built in isolated locations, or where there would

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18 DCLG, *Stepping onto the property ladder - consultation request*, December 2014
19 Ibid. p11
21 Ibid.
be conflicts with key protections in the National Planning Policy Framework (including the Green Belt). The Government has promised safeguards to ensure sustainability and access to facilities and infrastructure.22

**Impact on affordable rented homes**

The planning policy changes associated with the development of Starter Homes runs the risk, according to the National Housing Federation (NHF), of crowding out the development of affordable rented homes:

The requirement to deliver a particular number or proportion of Starter Homes to be granted planning permission and the ability of developers to use Starter Homes to meet their section 106 affordable housing obligations, risks having a significant impact on the delivery of traditional affordable housing. Starter Homes should give developers a higher return (80% of market value) than traditional forms of affordable housing (closer to 60% to 70%). This difference may be higher following the introduction of the rent reduction.

There is a risk developers will increasingly deliver Starter Homes, at the expense of homes for affordable rent or shared ownership. This is important given the role of section 106 in delivering affordable housing. In 2013/14, some 37% (or 16,193) of affordable homes were delivered through section 106. And in the ten years to 2013/14, a total of 234,279 (or 52%) of all affordable housing was provided through section 106. Of course, section 106 has not only been an important mechanism for securing delivery, but also for stretching housing association capacity to invest in affordable housing on other sites.23

In the context of a crisis in housing supply, commentators have welcomed the commitment to build more homes but some have questioned the Government’s focus on home ownership products:

The government’s focus on getting new homes built is very welcome. In England we are currently building fewer than half the homes we need to keep up with our growing population, and the result is a housing crisis in which millions of people are struggling to access a decent home at a price they can afford.

We know the government is committed to boosting housing supply, and we support ministers’ ambition to give people the opportunity to achieve their aspiration of home ownership, but we must make sure that the new homes we build are a mix of tenures (home ownership, shared ownership, private and social rent) so that people on lower incomes are able to benefit too. The government has made its commitment to home ownership very clear – but what about people who can’t afford to buy, even with government support?24

The Local Government Association’s (LGA) response to the Bill calls for councils to have “powers and flexibility to shape the supply of genuinely

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22 Ibid.
23 NHF Member briefing on the Housing and Planning Bill, October 2015 [accessed on 17 October 2015]
24 Chartered Institute of Housing (CIH) Responds to Housing and Planning Bill, 13 October 2015 [accessed on 16 October 2015]
affordable homes to meet needs of different people in their area, in line with their local plan and the National Planning Policy Framework.”

The age cap
A significant proportion of respondents highlighted concerns over the age limit, suggesting that this would unfairly discriminate against a sizeable proportion of first time buyers who may have found themselves in such circumstances as a result of a life changing event. It was felt that this would be particularly acute in London and the South East where housing is particularly expensive in relation to earnings. Respondents highlighted the fact that removing the cap might lead to a more diverse community.

While recognising concerns relating to older (over 40) first time buyers, the Government has retained the age cap, arguing that the disproportionate impact on younger people (who have suffered the impact of rising house prices to earnings ratio for a greater fraction of their adult lives) justifies limiting the scheme to first time buyers under 40 years old. In order to achieve its stated aim, the Government has committed to limiting the cost of Starter Homes to no more than £250,000 outside London and £450,000 in London after discount – broadly in keeping with average price paid by a first-time buyer.

Will Starter Homes be affordable?
These price caps have, in turn, proved controversial. According to research by Savills (as reported in Inside Housing), a couple on an average salary would struggle to buy a home at a 20% discount in almost half of all council areas in England:

According to Savills, buyers on median incomes would face a cash shortfall in 48% of areas – and virtually all of London and the South East – when buying a Starter Home.

[...]

Savills’ research shows a couple seeking a mortgage up to a maximum of 3.5 times their income would come up short in every London borough, and in two-thirds of the capital, they would face a shortfall of more than 30%.

In the South East, buyers would come up short in 90% of areas, with shortfalls of more than 20% in half of all areas.

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25  LGA Briefing on the Housing and Planning Bill, October 2015
26  DCLG, Stepping onto the property ladder - consultation request, December 2014, pp18-19
27  DCLG, Government response to starter home consultation, March 2015, para 3.7
28  Ibid.
29  “Couples will struggle to buy Starter Homes”, Inside Housing, 8 October 2015
Savills is forecasting that the product will be affordable to a couple in almost all areas north of the Midlands and that the caps “could mean effective discounts of much more than 20% in London and the South East, which might make the product more affordable than its modelling suggests.” Susan Emmett, research director at Savills, is predicting wide demand for Starter Homes across England but has questioned “to what extent it will displace market sales.”

Shelter’s analysis, Starter Homes– will they be affordable? (August 2015) concludes:

… the Starter Homes programme will not help the majority of people on the new National Living Wage or average wages into home-ownership in England by 2020. It won’t even help many people on higher than average wages in many areas of England. The only group it appears to help on a significant scale will be those already earning high salaries who should be able to afford on the open market without Government assistance.

The Prime Minister has said that the Government wants Starter Homes to be offered at prices lower than £250,000 and £450,000:

The Prime Minister: The hon. Gentleman is absolutely right to raise the issue of housing, particularly the affordability of housing in London. I say to Matthew that we are doing everything we can to get councils to build more houses, particularly affordable houses that he can buy. The hon. Gentleman quotes the figure of £450,000, but what we are saying is that that should be the upper limit for a starter home in London. We want to see Starter Homes in London built at £150,000 and £200,000, so that people like Matthew can stop renting and start buying.

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30 Ibid.
31 Shelter, Starter Homes– will they be affordable?, August 2015
32 HC Deb 14 October 2015 c307
The Local Government Association believes that restrictions on resales and letting at market rents should apply in perpetuity, citing low cost home ownership schemes operated by some local authorities as an example which could be followed.33

Quality and design
The Government has established a Design Advisory Panel, which includes leading architects Sir Terry Farrell and Quinlan Terry CBE, to develop exemplar schemes for builders to draw inspiration from in designing new Starter Homes.34

The Chartered Institute of Building (CIOB) has highlighted the opportunity offered by the Bill to address the skills gap in the construction industry:

…we do not believe that we will achieve the desired quality or quantity without curtailing the skills gap that currently exists across the sector. The Housing Bill presents a huge opportunity for the industry to ensure there is a steady flow of skilled recruits available to meet the housing challenge, from apprenticeship level through to senior management. We recommend that investment in housing developments be tied to training and job creation, and we urge the industry to consider innovative methods of construction where appropriate to improve quality and increase housing supply.35

Interaction with national planning policy
Law firm Norton Rose Fulbright contended that setting centrally a quota for a proportion of Starter Homes appeared to contradict the National Planning Policy Framework (NPPF):

It is very hard to see how a centrally defined target for Starter Homes fits with the NPPF, which says authorities should use evidence to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing.36

Planning consultancy firm Turley cautioned that homes built under the traditional definition of affordability will be “squeezed”:

Ryan Johnson, head of residential at consultancy Turley, said: “Until now, affordable housing need has focused on shared ownership, intermediate and social rented. The introduction of Starter Homes starts to change that balance. Councils will need to look at different avenues for providing affordable housing, taking more seriously the option of building it themselves.” 37

The editor of the specialist publication Planning questioned how viable Starter Homes would be for developers alongside other Government planning policies and provisions in this Bill to register brownfield land

33 LGA Briefing on the Housing and Planning Bill, October 2015
34 DCLG, Starter Homes designed to stand the test of time, March 2015
35 CIOB Welcomes new Housing Bill but warns of skills gap, 13 October 2015 [accessed on 16 October 2015]
36 “What the Housing and Planning Bill means for definition of affordability” Planning, 16 October 2015
37 “What the Housing and Planning Bill means for definition of affordability” Planning, 16 October 2015
and grant planning permission on it, which would ultimately make that land more expensive.\textsuperscript{38}

**Provision of associated infrastructure**

Associated infrastructure connected with new developments, such as the provision of schools, health services, transport, recreation facilities etc. is often provided by local authorities with receipts from developers coming from section 106 planning obligations and/or the community infrastructure levy.

Government planning policy in the planning practice guidance encourages LPAs not to seek section 106 affordable housing and tariff-style contributions that would otherwise apply to starter home exception sites.\textsuperscript{39} Although not in the Bill, the former Government had also announced that it would amend the Community Infrastructure Levy (CIL) regulations to exempt discounted Starter Home developments from the levy.\textsuperscript{40}

Losing receipts from section 106 contributions and from CIL has caused some commentators to express concern about the impact on LPAs and the knock-on impact on the provision of associated infrastructure around Starter Home sites. The LGA briefing on the Bill raised issues around the provision of local infrastructure to support Starter Homes:

> Exempting Starter Homes from Community Infrastructure Levy and other tariff-based contributions to general infrastructure pots will reduce the amount of funding for infrastructure in some areas. Furthermore, delivery through the planning system will create significant new burdens on council planning teams, and so should be fully funded.\textsuperscript{41}

In response to an earlier policy announcement on Starter Homes, the British Property Federation commented that “exempting developers from providing necessary infrastructure could mean that other sites in the area will find themselves under additional pressure to cope with a resulting shortfall in amenities.”\textsuperscript{42}

### 2.2 Self-build and Custom Housebuilding (clauses 8-11)

The Bill requires local authorities to grant “sufficient suitable development permission” of serviced plots of land to meet the demand for self/custom build housing. Legislation is already in place to require local authorities to keep a register of people seeking to acquire land on which to build or commission their own home.

Self-build and custom build both provide routes into home ownership for individuals and groups who want to play a role in developing their

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\textsuperscript{38} “Prospects of meeting government Starter Homes targets may darken,” Planning, 16 October 2015

\textsuperscript{39} Planning Practice Guidance, Starter Homes, Paragraph: 001 Reference ID: 55-001-20150318, Revision date: 18 03 2015

\textsuperscript{40} HCWS324, 2 March 2015

\textsuperscript{41} LGA Briefing on the Housing and Planning Bill, October 2015

\textsuperscript{42} British Property Federation, BPF warns Starter Homes initiative could create infrastructure shortfall, 6 February 2015
own homes. As the sector has grown, distinctions have developed between self-build and custom build approaches. The National Custom and Self Build Association (NaCSBA) explains these differences:

On the Self Build Portal we define self-build as projects where someone directly organises the design and construction of their new home. This covers a wide range of projects. The most obvious example is a traditional ‘DIY self-build’ home, where the self-builder selects the design they want and then does much of the actual construction work themselves. But self-build also includes projects where the self-builder arranges for an architect/contractor to build their home for them; and those projects that are delivered by kit home companies (where the self-builder still has to find the plot, arrange for the slab to be installed and then has to organise the kit home company to build the property for them). Many community-led projects are defined as self builds too – as the members of the community often do all the organising and often quite a bit of the construction work. Some people have summarised self-build homes as those where people roll their sleeves up and get their hands dirty by organising or doing the physical work themselves.

Custom build homes tend to be those where you work with a specialist developer to help deliver your own home. This is usually less stressful as you’ll have an ‘expert’ riding shotgun for you. A new breed of custom build developer has emerged over the last two years, and these organisations take on most of the gritty issues for you – everything from securing or providing a site in the first place, through to managing the construction work and even arranging the finance for you. This is more of a ‘hands off’ approach. It also de-risks the process for the person who is seeking to get a home built. Some people are concerned that by going to a custom build developer you’ll get less of a say in the design and layout of the home you want. But this shouldn’t be the case; a good custom build developer will be able to tailor it to perfectly match your requirements.

One or two custom build developers also provide a menu of custom build options – for example, they may offer to just sell you a serviced building plot (that you then take over and organise everything on); or they might offer to build your home to a watertight stage (so that you can then finish it off and fit it out to your requirements).

There is no conclusive figure for the number of self/custom build properties completed each year but the generally accepted estimate is that self-build accounts for between 7-10% of new housing (around 12,000 homes per year) across the UK. The Self-build Housing Market Report – UK 2014-2018 Analysis estimates that self-build completions in 2013 reached around 10,630 – equivalent to almost 8% of total completions and 10% of private sector completions. AAMA Market

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43 What is custom build? NaCSBA Self-build Portal [online – accessed 17 October 2014]
44 See Wallace A, Ford J and Quilgars D, Build-it-yourself? Understanding the changing landscape of the UK self-build market, Centre for Housing Policy, University of York Spring 2013, p15
Research estimates that the value of the self/custom build market to the UK economy in 2013 was approximately £3.4bn.\textsuperscript{46}

Self-Build and New Housebuilding Completions UK 2010-2015.\textsuperscript{47}

The UK has traditionally had a much lower rate of self-building than other European countries. As noted above, in the UK the sector makes up around 7-10\% of new builds while in Austria 80\% of housing completions are self-build; in France the figure is nearer 60\%.\textsuperscript{48}

There is some evidence to suggest that there may be significant unmet demand for self-build housing in the UK. A YouGov survey, commissioned by the Building Societies Association (BSA) and published in October 2011, suggested that 53\% of people in the UK would consider building their own home given the opportunity.\textsuperscript{49} In its 2011 Housing Strategy (\textit{Laying the Foundations}) the Coalition Government reported that 100,000 people were looking for building plots at that time.\textsuperscript{50}

A 2013 report by the University of York on the self-build market described the motivations behind the self-build sector as:

…improving consumer choice in the UK housebuilding sector, securing environmentally sustainable housing, building strong communities and cost effectively achieving a home that meets the needs and aspirations of individual households.\textsuperscript{51}

The Coalition Government published \textit{Laying the foundations: a housing strategy for England} in November 2011 which included plans to enable more people to build or commission their own home. The strategy

\begin{itemize}
\item \textsuperscript{46} Ibid.
\item \textsuperscript{47} Ibid. Note that 2015 is forecast (f).
\item \textsuperscript{48} See: \textit{A Housing Strategy for England}, DCLG, 2011, Figure 4, p14
\item \textsuperscript{49} Survey commissioned by the Building Societies Association (BSA), October 2011 [Subscription only]
\item \textsuperscript{50} \textit{A Housing Strategy for England}, DCLG, 2011, p14
\item \textsuperscript{51} Wallace A, Ford J and Quilgars D, \textit{Build-it-yourself? Understanding the changing landscape of the UK self-build market}, Centre for Housing Policy, University of York Spring 2013, p15
\end{itemize}
document argued that, as well as delivering as many homes as individual volume house-builders each year, self-build housing brought other benefits including: “providing affordable bespoke-designed market housing, promoting design quality, environmental sustainability, driving innovation in building techniques and entrepreneurialism.” The Coalition Government set out an aspiration to double the size of the self-build market, creating up to 100,000 additional self-build homes over the next decade and allow the industry to directly and indirectly support up to 50,000 jobs per year. Full details of measures introduced by the Coalition Government to support the self/custom build sector can be found in Library Briefing Paper 06784, Self-build and custom build housing (England).

A Right to Build

Following reference to it in the 2014 Budget, further details of a proposed “Right to Build” emerged. The Self Build Portal has information on a talk given by the then Planning Minister, Nick Boles, during which he summarised how the scheme would work:

- The purpose of the initiative would be to get councils to deliver tens of thousands of serviced building plots each year for self-build.

- First, prospective self-builders who had lived in a local authority area for two to three years could register with their local authorities for a building plot. (They might also need to prove they had the resources to buy a plot once the council makes them available). The plots would be available at full local prices and those on the register would not be able to demand plots in specific locations. The duty on the council would be to make ‘reasonable’ plots available.

- Councils would need to monitor demand for plots and facilitate sufficient suitable building plots. Mr Boles said that the Government was planning to impose a legal duty on councils to provide the plots. The £150 million repayable fund announced in the 2014 Budget would help facilitate the process, enabling councils to acquire land for plots if it had no land of its own, and service the plots if needed.

- If councils did little or nothing to facilitate suitable building plots those on the register would be able to sue them. Mr Boles said, “It has got to be a legal right to get a plot of land to build your house. We need lots of people out there saying ‘it’s my land, give it to me and I will sue you if you don’t.”

A number of vanguard councils were appointed to explore how best to implement this register - each council received a share of £550,000. Participating councils are “required to offer suitable serviced plots to [self-builders on the register] that are for sale at market value.

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52 DCLG, Laying the foundations: a housing strategy for England, November 2011, p14
53 Ibid., p14
54 The Self Build Portal, 7 May 2014
55 DCLG, New Right to Build areas at forefront of helping aspiring self-builders, 30 September 2014
56 Ibid.
A Government consultation exercise was conducted between October and December 2014: Right to Build: supporting custom and self build: consultation. The outcome of the exercise was announced in March 2015: Right to Build: supporting custom and self build: government response to consultation. The then Government identified steps it would take in the next Parliament:

We will also look at the experience of the Vanguards, as well as the consultation responses, to inform our final approach in the next Parliament for the second part of the Right to Build requiring local authorities to bring forward plots of land for registered custom builders in a reasonable time. Many of the Vanguards have made tremendous progress bringing forward land, and a significant body of best practice is beginning to emerge.57

The Conservative Party’s 2015 Manifesto contained a commitment to introduce a Right to Build:

We will give you the Right to Build

We aim at least to double the number of custom-built and self-built homes by 2020, and we will take forward a new Right to Build, requiring councils to allocate land to local people to build or commission their own home, as you can do in most of Europe.58

The Briefing Notes on the Queen’s Speech said that a forthcoming Housing Bill would:

To take forward the Right to Build, requiring local planning authorities to support custom and self-builders registered in their area in identifying suitable plots of land to build or commission their own home.59

The Self-build and Custom Housebuilding Act 2015


The Act builds on existing Government initiatives, particularly the proposed ‘Right to Build’, with the aim of increasing the number of self/custom built properties in England and Wales. The Act’s provisions will place a duty on authorities to maintain a register of individuals/associations interested in acquiring a serviced plot of land with a view to building their own home. Authorities will have a duty to have regard to the register when carrying out their functions in relation to housing, planning, land disposal and regeneration. In Right to Build: supporting custom and self build: government response to consultation the Government said:

The new Self-Build and Custom Housebuilding Act, which received Royal Assent on 26 March, provides the legislative framework for the first part of the Right to Build requiring local planning authorities to establish local registers of custom builders who wish to acquire a suitable land to build their own home. This

57 DCLG, Right to Build: supporting custom and self build: government response to consultation, March 2015, p10
58 Conservative Party’s 2015 Manifesto, p52
59 Queen’s Speech Briefing Notes 2015, p27
Act also requires local authorities to have regard to the demand on their local register when exercising their planning and other relevant functions.

The Government intends to prepare regulations and guidance setting out the detailed operation of the local registers early in the next Parliament. These regulations and guidance will be informed by the consultation responses and the practical experience of the 11 Vanguards preparing their registers. Ministers during the passage of the Act through Parliament have committed to further consultation with partners about the initial regulations and guidance. We will also undertake a further new burdens assessment of the additional cost of the local registers for local government.60

Detailed information on the Act can be found in Library Briefing Paper 06998, The Self-build and Custom Housebuilding Act 2015. The Act’s provisions are expected to come into force in Spring 2016.61

The Housing and Planning Bill will amend and supplement provisions in the 2015 Act. The aim is to:

…require local planning authorities to ensure that there are sufficient serviced permissioned plots consistent with the local demand on their custom build registers. This, in turn, intends to make it much easier for people to find land to build or commission their own home, diversifying housing supply and revitalising smaller builders who have not experienced the same level of recovery as the large housebuilders since the financial crisis.62

The Bill

Clauses 8-11 add to the provisions of the Self-build and Custom Housebuilding Act 2015 (the 2015 Act).

Clause 8 will provide a definition of what is meant by self-build and custom housebuilding. It also changes the definition of “serviced plot of land” to require that it should have access to a public highway and have connections for electricity, water and waste water, or that it could be provided with things in specified circumstances or within a specified time period. It would also allow for regulations to amend these definitions in the future.

Clause 9 will provide LPAs with a new duty. It will require them to grant sufficient suitable “development permission“ in respect of enough serviced plots of land to meet the demand for self-build and custom housing in their area. The evidence to show the demand for self-build and custom housing would be the register held under the 2015 Act. “Development permission” would include normal planning permission and “permission in principle”, the new concept introduced by clause 102 of this Bill. Any permission granted before the register is established could not be counted.

60 DCLG, Right to Build: supporting custom and self build: government response to consultation, March 2015, p10
61 Bill 75 – EN 2015-16, p11
62 Ibid.
Clause 10 allows regulations to be made about the circumstances in which LPAs could apply for exemption from the clause 9 duty. According to the Explanatory Notes, exemptions may relate to the level of demand for self-build and custom housebuilding and the availability of land for housing.  

Clause 11 will introduce three new changes into the 2015 Act. The first will allow the register to be kept in two parts. The second part of the register would be for anyone who failed to meet the eligibility criteria. Demand from the second part of this register would not have to be taken into account in considering whether there were suitable development permissions granted as per the duty under clause 9. This part of the register would still need to be a formal consideration in respect of an LPA’s duties in relation to planning, housing, regeneration and land disposal functions.

The second change is in relation to fees. It will allow, through regulations, LPAs to recover fees connected with their duty to provide sufficient suitable development permissions. Regulations could also specify where no fee is payable. It is expected that the fees will be set at a level that broadly reflects the actual costs incurred by the LPA.

The final change concerns the Parliamentary procedure for regulations under section 4 of the 2015 Act. Regulations made in connection with the new duty and any change to the definition of “serviced plot of land” will be subject to the affirmative procedure – i.e. where a statutory instrument must be approved by a resolution in both the House of Commons and the House of Lords to become law.

Comment
Cross-party support for initiatives to promote self/custom build was demonstrated during the passage through Parliament of the 2015 Act.

At Committee Stage, the then Shadow Minister for Housing, Emma Reynolds, supported the creation of a register but said she would like to see local authorities given more power to be proactive in assembling land, in addition to a more efficient planning process for small sites. She also emphasised the need to work with the banking industry to improve mortgage accessibility for self-builders.

The University of York’s 2013 report identified a series of challenges to self-build projects including:

- land supply and procurement;
- access to finance (lenders tend to perceive self-build loans as higher risk);
- the planning process and variations in planning authority approaches; and

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63 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p16
64 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p16
65 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p17
66 PBC 17 December 2014 c7
67 PBC 17 December 2014 c8
general regulation and ‘red tape.’

While the Bill (along with the 2015 Act’s provisions) aims to address issues around land supply and planning, the National Custom and Self Build Association is lobbying for other changes, including a levelling of the VAT and Stamp Duty Land Tax (SDLT) taxation regime between self and custom build models.

The National Federation of Builders has welcomed the Bill’s provisions:

It is positive to see another form of organic development placed so highly in the bill. Self-build and custom housebuilding have been so far undervalued resources in tackling the housing shortage, and will help neighbourhoods to better address their local needs.

“SME house builders are integral to the success of self-build and the HBA expects that their local expertise will be appropriately utilised.”

However, the Local Government Association (LGA) has questioned the need for additional legislation:

The NPPF clearly sets out that councils should plan locally for a mix of housing to reflect local demand, therefore a new legislative duty on councils for self-build and custom-build delivery is unnecessary.

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70 HBA Welcomes the Housing and Planning Bill, 15 October 2015 [accessed on 17 October 2015]
71 LGA Briefing on the Housing and Planning Bill, October 2015
3. Rogue landlords and letting agents in England

The private rented sector (PRS) now represents the largest tenure in England after home ownership. Its growth has led to increased focus on standards of accommodation within the sector, rent levels and the lack of overarching regulation.

The Communities and Local Government Select Committee carried out a wide-ranging inquiry into the PRS over 2012-13. The resulting report, The Private Rented Sector,72 included recommendations on the consolidation and simplification of legislation governing the sector; giving councils more flexibility to enforce the law and raise standards; tackling abuses by letting agents; and encouraging landlords to issue longer tenancies. The Coalition Government’s response was published in October 2013.73 While expressing a general desire not to legislate to increase regulation within the PRS, the Government said it would conduct a review of property conditions. This Review of property conditions in the private rented sector was launched in February 2014; the Government response followed in March 2015: Review of property conditions in the private rented sector: government response. Part 2 of the Bill takes forward some of the issues raised as part of this review and is directed at tackling rogue landlords and letting agents.

3.1 Banning orders (clauses 12-21)

Clause 13 introduces the concept of banning orders. First Tier Tribunals (FTTs) will be able to issue these orders to prevent a person from letting a property in England and/or engaging in letting agency/property management work in relation to properties in England. The Secretary of State will be able to make regulations in order to define a ‘banning order offence’. Local authorities will be able to apply for a banning order against someone convicted of a banning order offence under clause 14. Notice of the intention to apply for an order must be served within six months of the date of conviction. There is provision for the person on whom a notice is served to make representations and for these to be considered. Clause 15 sets out the matters a tribunal must consider in deciding whether to grant an order. Clause 16 covers the effect and duration of a banning order.

Local authorities will be able to impose a financial penalty for breach of a banning order (clause 17). The penalty may not exceed £5,000 and authorities will have to have regard to guidance issued by the Secretary of State. Schedule 1 to the Bill sets out the procedure for imposing a banning order. Clause 18 ensures that breach of a banning order will not invalidate or affect the enforceability of any provision of a tenancy or other contract – this protects the parties to a tenancy agreement.

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72 HC 50, First Report of 2013-14, July 2013
73 Cm 8730, October 2013
Clause 19 and schedule 2 to the Bill amend the Housing Act 2004 to ensure that a banned person may not hold a licence to rent out a house in multiple occupation (HMO). Persons subject to a banning order will not meet the ‘fit and proper person test.’

Clause 20 and schedule 3 to the Bill allow for interim and final management orders to be made where a banning order has been made. If a management order is made due to a property being let in breach of a banning order, the authority will be able to retain any surplus rental income after covering management costs. Regulations made by the Secretary of State may set out how any retained surpluses are to be used.

Clause 21 is aimed at preventing a person subject to a banning order from transferring the property to a ‘prohibited person’ (family member, business partner etc) while the banning order is in force.

3.2 Database of rogue landlords and agents (clauses 22-31)

Clause 22 will place a duty on the Secretary of State to establish and operate a database of rogue landlords and letting agents. Local authorities will be responsible for maintaining the content of the database. Persons subject to a banning order will have to be added to the database while the order is in force (clause 23). It will be possible to enter a person on the database if convicted of a banning order offence without an authority applying for a banning order (clause 24). The Secretary of State will publish guidance on the criteria to be used by authorities in deciding whether to include someone on the database.

Clause 25 provides for the procedure to be followed before adding a name to the database – there will be a right of appeal to a First Tier Tribunal (clause 26). Clause 27 enables the Secretary of State to make regulations about the information to be included in a person’s entry on the database, while clause 28 requires authorities to take reasonable steps to ensure the information on the database is up to date. Authorities would be able to require the provision of information from a person (e.g. the addresses of all the properties they own) – failure to comply without reasonable excuse will be an offence (clause 29).

Clause 30 places a duty on the Secretary of State to give every local housing authority in England access to information held on the database. Clause 31 provides that the Secretary of State may use the information held for statistical or research purposes while local authorities will only be able to use the information for certain specified purposes, such as in connection with their functions under the 2004 Act. Information held on the database will not be available to the public.

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74 See section 6.2 of this paper for more information.
75 More information on these orders can be found in Library Briefing Paper 00708, Houses in multiple occupation.
3.3 Rent repayment orders (clauses 32-48)

Rent Repayment Orders (RROs) were introduced by the Housing Act 2004. Occupiers of a property, or the relevant local authority, can apply to a First Tier Tribunal to recover rent or Housing Benefit (or Universal Credit) paid to an unlicensed landlord of a licensable HMO to cover the period when a licence was not in place, up to a maximum period of 12 months.

The Government consulted on an extension to the use of RROs in the Review of property conditions in the private rented sector (February 2014). The consultation paper asked for views on using RROs where:

- a landlord has been convicted of illegally evicting a tenant;
- a landlord rents out a property with serious hazards.

The Government’s response: Review of property conditions in the private rented sector: government response (March 2015) said that the position would be kept under review, but that RROs would not be extended.

Measures in the Bill will extend RROs so that they can be applied for in a number of additional circumstances.

First Tier Tribunals (FTTs) will be empowered to make RROs where a landlord is in breach of a banning order or an offence listed in clause 32. These offences will include: a breach of an improvement order; unlawful eviction of a tenant; breach of a prohibition notice; and breach of licensing requirements under the 2004 Act. The Bill consolidates and amends existing provisions concerning RROs.

Clause 33 provides that a tenant or local housing authority will be able to apply for an RRO against a landlord who has committed a relevant offence within 12 months of the application being made. Clause 34 sets out notice provisions which must be complied with before applying for an Order. Clauses 35 and 36 govern the application of an RRO for breach of a banning order. Clause 37 provides for an FTT to make an RRO if satisfied a landlord has committed an offence to which the Chapter 4 of Part 2 of the Bill applies. Clauses 38 and 39 set out the rules under which an FTT must determine the amount of rent to be repaid to a tenant or local authority respectively. Clause 40 specifies cases where the FTT must order the maximum payment by a landlord.

An amount payable under an RRO will be recoverable as a debt (clause 41). Clause 42 will place a duty on local authorities to consider applying for an RRO if they become aware that a person has been convicted of an offence to which Chapter 4 applies. Clause 43 provides that an authority may assist a tenant to apply for an RRO.

Clause 44 amends the 2004 Housing Act to take account of the fact that housing is now a devolved matter in Wales. The new Chapter will only apply in England. Clause 45 provides that references to Universal Credit include Housing Benefit, pending its eventual abolition.
Comment on Part 2 of the Bill
Shelter and Citizens Advice, while emphasising that there is more to do, have welcomed the measures as a ‘rebalancing’ of power between landlords, tenants and local authorities:

- The Bill will allow renters living in poor conditions to try and get some of the rent they have paid back, and local authorities to claw rent back on behalf of housing benefit tenants and keep it. This might give local authorities a much needed cash injection to carry out enforcement.

- And, the very worst landlords and lettings agents will be banned from renting out their property altogether, which is a no brainer. Those who persistently break the law shouldn’t be responsible for housing families.76

The Local Government Association has said that councils will need easily accessible information on banning orders in order to make them effective and that this, in turn, will require the database to be properly resourced.77 On RROs the LGA has said:

> Extending the use of rent repayment orders could help councils tackle a wider range of offences. We would be happy to work with Government to streamline the process for issuing rent repayment orders and encourage their use by reducing the financial risk to councils.78

There is no specific comment on these measures from landlords’ associations at the time of writing. Reports have indicated some concern around authorities’ competence in maintaining a database and the risk of landlords being unfairly listed.79 It seems likely that there will be calls for public access to the database, e.g. from prospective tenants who might want to know whether the landlord in question has been deemed to be a ‘rogue landlord.’

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76  Shelter Policy Blog: The Housing Bill: towards better conditions for renters, 14 October 2015 (accessed on 20 October 2015)
77  LGA Briefing on the Housing and Planning Bill, October 2015
78  Ibid.
79  Landlord Law Blog, The impending Housing Bill, 6 August 2015
4. Recovering abandoned premises in England

When tenants move out of their homes without serving notice on the landlord (sometimes leaving belongings behind), it can be difficult for a landlord to distinguish whether the tenant intends to return, or whether they have abandoned the property. Landlords are generally advised to react to these circumstances with caution and to terminate the tenancy by obtaining a court order for possession. The Bill provides for a specific procedure to be followed in order to give landlords security when dealing with abandoned properties.

The Bill (clauses 49-55)

The Explanatory Notes to the Bill provide a clear explanation of the purpose and impact of these clauses:

This Part of the Bill sets out a procedure that a landlord may follow to recover possession of a property where it has been abandoned, without the need for a court order. Clause 49 sets out that a private landlord may give a tenant notice which brings the tenancy to an end on that day, if the tenancy relates to premises in England and certain conditions are met. These conditions are that a certain amount of rent is unpaid (i.e. the ‘unpaid rent condition’ set out in clause 50 has been met); that the landlord has given a series of warning notices as required by clause 51 and that neither the tenant or a named occupier has responded in writing to those warning notices before the date specified in the notices.\(^8^0\)

Clause 52 will allow a tenant to apply to the county court for an order reinstating the tenancy if they have good reason for not responding to the warning notices. Clause 53 specifies methods for serving a notice under clauses 49 and 51.

Comment

Landlords’ representative bodies have long lobbied for a procedure to provide a speedy and certain route for tackling abandoned properties. However, Shelter and Citizens Advice have raised concerns around a potential weakening of tenants’ rights:

…we have been also calling on Government to ensure that tenants have reasonable notice before having to move out of their home. The Housing Bill brings less good news on this front. Government is proposing that, where a landlord thinks their tenant has abandoned their home, they need not follow the proper eviction process. This will make the already weak right to stay in their home that Assured Shorthold tenants have, even weaker and make it even easier for amateur evictors to throw people out of their homes.\(^8^1\)

There are questions around basing a decision on abandonment on non-payment of rent and a tenant’s failure to respond to warning notices.

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\(^8^0\) Bill 75-EN, para 127
\(^8^1\) Citizens Advice, The Housing and Planning Bill has landed! 15 October 2015
The LGA is keen to ensure that the new provisions “do not create unintended consequences or create additional pressure on council housing and homelessness services.”  

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82 LGA Briefing on the Housing and Planning Bill, October 2015
5. Social housing in England

5.1 The voluntary Right to Buy (RTB) (clauses 56-61)

The Bill does not, as originally intended, provide for the extension of a statutory Right to Buy to housing association tenants. A voluntary deal agreed between the National Housing Federation and the Government means that the RTB will be extended to these tenants on a non-statutory basis. However, the Bill does make provision for grants to be paid to housing associations to cover the cost of selling their housing assets at a discount.

Detailed background on extending the RTB can be found in Library Briefing Paper 07224, Extending the Right to Buy (England).

The statutory Right to Buy (RTB) was introduced in October 1980. To date, just under 2 million council properties in England have been sold. DCLG published an updated guide to the RTB, setting out eligibility requirements and discount rules, in May 2015.\(^83\)

Housing association tenants who entered into their tenancy agreements after 15 January 1989 are assured tenants whose rights are governed by the 1988 Housing Act. As a general rule, these tenants do not have the Right to Buy the home in which they live.\(^84\)

The 1988 Housing Act, which introduced the assured tenancy regime for housing associations, also introduced a ‘mixed funding regime.’ A key aim of the Conservative Government of the day was to attract more private finance into social housing development. Under the mixed funding regime associations bid for public funding for new housing development in the form of grant (from the Homes and Communities Agency, HCA). The remaining scheme costs are usually met from private finance in the form of loans secured on an association’s asset base (i.e. their housing stock) and rental stream. The rationale for exempting assured tenants from the Right to Buy has been based on the need for associations to provide security for private lenders. If these tenants were able to buy their homes, there is a risk of that the value of an association’s asset base would gradually be eroded and their rental stream reduced; it was recognised that, in turn, this would make lenders cautious about backing them.

The Conservative Party’s 2015 Manifesto contained the following commitment:

We will extend the Right to Buy to tenants in Housing Associations to enable more people to buy a home of their own. It is unfair that they should miss out on a right enjoyed by tenants in local authority homes. We will fund the replacement of properties

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\(^83\) DCLG, Your right to buy your home, May 2015

\(^84\) The key exception to this is where the tenant was previously a secure council tenant at the point at which ownership of the property was transferred to a housing association – these tenants have a ‘preserved’ Right to Buy.
sold under the extended Right to Buy by requiring local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant. We will also create a Brownfield Fund to unlock homes on brownfield land for additional housing.  

The Queen’s Speech 2015 confirmed the Government’s intention to take forward the extension of the RTB to housing association tenants.  

In the wake of this announcement significant concerns were raised within the housing association sector about the implications of extending the RTB to assured tenants. A number questioned the legitimacy of legislating to allow the sale of assets owned by charities/not-for-profit companies and the implications this might have for associations’ status as independent private bodies. As private providers, housing associations carry their debts as private organisations. If reclassified as public bodies by the Office for National Statistics (ONS) this would result in their total borrowing (some £60bn in 2013/14) being added to the Treasury’s measure of public sector debt. In a response to a letter from Clive Betts, chair of the Communities and Local Government select committee, ONS confirmed:  

At such a time that HM Government submits a policy proposal, or the policy has been enacted, we will certainly consider implications for the economic ownership of housing associations’ housing assets, associated liabilities, and indeed for housing associations themselves.  

The ONS’s Classification update (September 2015) shows that the position of housing associations is under review with an expected completion date of October 2015. It appears that the current review is not taking into account the proposed extension of the RTB.  

On 24 September the National Housing Federation (NHF) announced details of an offer to Government to establish a voluntary RTB. A letter from David Orr (CEO of the Federation) sent to housing associations described the offer in the following terms:  

…following intensive negotiations with the government and discussion with members, we have made a formal offer to the government that sets out an alternative way for the housing association sector to deliver the extended Right to Buy.  

[...]  

These three factors – independence, a new relationship with the government, and the best deal on compensation and flexibilities – will help to ensure that you and your board retain the freedom to make your own future and choices. We believe that this offer is the very best possible compromise achievable for the sector.  

The key points of the offer for associations, as set out in David Orr’s letter, include:

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85 Conservative Party’s 2015 Manifesto, p54
86 Queen’s Speech 2015: background briefing notes, 27 May 2015, p27
87 ONS letter, 15 July 2015
88 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
89 “Sector to vote on ‘voluntary’ deal on Right to Buy,” Inside Housing, 24 September 2015
• You will get the full market value of the properties sold, including repayment for the discount the tenant receives.

• You will maintain your independence with control over which individual homes you sell, establishing an important principle and reducing the risk of reclassification of housing associations as public sector, with the implications for your future as an independent business that this would entail.

• In most circumstances, you will be expected to sell the tenant their current home. However, if you have a good reason not to, you can work with the tenant to find an alternative home. The final decision about whether to sell an individual home to a tenant will rest with your board.

• There are some circumstances, such as in rural areas or with certain types of homes, where it will be made clear to the tenant that they shouldn’t expect to be able to buy their current home, and you will work with them to find them somewhere else to buy with their discount should they choose to do so.

• There will be a national commitment to replace each home sold on a one for one basis, but the type and location of replacement is flexible – you can build a new one for social or affordable rent or shared ownership, or, in certain limited circumstances, you can buy one on the open market or bring an empty home back into use. The replacement home does not need to be in the same area as the home you sold.90

Housing associations were asked to vote on the offer with a deadline of 2 October 2015. David Orr’s letter made it clear that legislation to introduce a statutory RTB for housing association tenants could only be avoided if a majority of associations voted in favour of the voluntary alternative. The Secretary of State, Greg Clark, set out his position on the offer during his speech to the NHF conference on 24 September:

> Taken together, this is a proposal which offers the chance of a new partnership between housing associations and the government. It’s one that would respect the independence and the voluntary ethos of the sector. And it provides for both for the extension of the Right and for other ownership opportunities, and critically for the expansion of home building.

> It is a proposal that if it were put to the government by the whole sector and agreed it would make it unnecessary to take legal measures to extend the Right to Buy.

> But of course, that is for you collectively to decide.91

*Inside Housing* reported the outcome of the vote:

> In total, 323 National Housing Federation (NHF) members voted to back the proposal, with 37 voting against. Eleven housing associations responded to the poll with an abstention while 213 did not reply at all.

> The 37 housing associations which voted no control a combined 111,500 homes. It remains unclear whether, or how, these

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90 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
91 “Greg Clark speech to NHF conference,” Inside Housing, 24 September 2015
organisations will be compelled to sell their homes if the ‘voluntary’ proposal is accepted by government.

The 323 members who voted in favour of the proposal own a total of 2.26m homes, which the NHF says represents 93% of total housing association stock.92

During his speech to the Conservative Party Conference on 7 October 2015 the Prime Minister announced that agreement had been reached on the NHF’s offer and that the first housing association tenants would be able to buy their homes in 2016.93

David Orr fleshed out his reasons for developing and negotiating the voluntary implementation of an extended RTB in Inside Housing magazine:

**Reason 1: More homes**

We have a housing crisis. We have been campaigning for years to get our politicians to engage with the seriousness of our housing shortage. And if we are to deliver one million new homes in the life of this parliament we need to get moving now. This offer would help.

Under the terms of the offer, housing associations will be fully compensated for the market value of the homes they sell. I can’t overstate how important this is. Proper compensation means they will be able to build at least one new home for every one sold – and the holy grail of 1:1 replacement finally has a realistic chance of being delivered. This would be much harder with a statutory Right to Buy of the 1980s model, where the receipts are split between the vendor and the government and, in the case of stock transfers, local authorities too.

I know that a number of commentators have argued that our offer depends on the sale of vacant high-value council-owned homes. We do not, and will not, endorse this proposed mechanism. Our offer depends on the government providing full funding for the discount, so that housing associations can replace the homes sold, but we have made it clear that it is the responsibility of the government to identify these funds.

**Reason 2: Helping people onto the housing ladder**

This government was elected under a central manifesto pledge to extend the Right to Buy. Why? Because people understand the dream of buying your own home. Our offer recognises that 86% of the population of our country aspire to homeownership. At present, more than half the country is priced out of the chance of buying a home. The Right to Buy gives thousands of people the chance to achieve that dream. As they move, social lettings will be made to the homes they leave behind.

But our proposal does even more. It gives housing associations the opportunity to contribute to a huge increase in homes for shared ownership, helping an increasing number of people to meet the aspiration to own a home.

**Reason 3: More homes to rent (and buy)**

I have argued in the past that Right to Buy does nothing for the millions of people in the private rented sector. That remains

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92 “Number that voted no to RTB deal revealed,” *Inside Housing*, 6 October 2015
93 DCLG Press Release, *Historic agreement will extend RTB to 1.3 million more tenants*, 7 October 2015
frustrating and true. However, our offer to the government will see an increase in the number of new homes built, which has the potential to ease pressure in all parts of the market, including the rental market.

Part of the broader housing association offer is a wide range of tenures in new build homes, including high quality homes for market rent. Our 2014 publication An Ambition to Deliver reported that housing associations have a collective ambition over time to deliver up to 120,000 new homes per year – half for rent, half for sale, half at market rates, half subsidised. This is a compelling offer to every part of the market and every part of the country. This remains our ambition.

Reason 4: Protecting the power of independence

I have also argued with the government’s proposals on matter of principle. I made the case that it is wrong for a government to impose an obligation on private social enterprises to sell assets when the board considers it to be wrong to do so. The decision of the board must take precedence over the wishes of government. To do otherwise would lead to housing associations losing their independence – the very thing that has enabled them to borrow billions on the private market to invest in housebuilding.

Our voluntary offer makes a clear offer to tenants without ceding independence and without allowing government to sit where boards should be, making the long-term decisions which are in the best interests of the organisation and its customers. This has become a particularly acute concern as it has become clearer that a statutory Right to Buy would lead to a very high probability that housing associations would be classed as public bodies, an outcome I will fight tooth and nail to avoid.

Housing associations are a huge force for good. They are the most effective public/private partnerships in the history of the nation and for every £1 of government investment, they contribute £6 of their own funding. All this was put at risk by the original Right to Buy proposals. Our offer to government and to the nation is designed to remove that risk and ensure that housing associations can continue to make a compelling contribution to the defining challenge of our times – ending the housing crisis.94

The Housing and Planning Bill’s provisions will establish a statutory framework to facilitate the implementation of the voluntary RTB scheme. It is expected that the RTB will operate (e.g. in terms of tenants’ eligibility and the level of discounts) on much the same basis as the existing statutory scheme.95

The Bill

The voluntary deal agreed between the National Housing Federation and the Government states that “housing associations would be fully compensated by the Government for the cost of the discount.”96

Clause 56 of the Bill will enable the Secretary of State to pay grant to private registered providers (housing associations) to cover the cost of the discounts paid when a tenant applies to buy their home under the

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94 “Reasons to vote yes,” Inside Housing, 29 September 2015
95 For detail see: DCLG, Your right to buy your home, May 2015
96 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
terms of the voluntary RTB deal. The Homes and Communities Agency may be directed to pay these grants under section 47 of the *Housing and Regeneration Act 2008*. **Clause 57** will enable the Greater London Authority (GLA) to make grants on the same basis where the voluntary RTB is exercised in London. Both clauses specify that these grants may be made “on any terms and conditions” the Secretary of State or GLA “considers appropriate.”

**Clause 58** provides for housing associations’ compliance with the voluntary RTB to be monitored. The Secretary of State will publish ‘home ownership criteria’ against which associations will be monitored by the Regulator (the Homes and Communities Agency, HCA). The Explanatory Notes to the Bill state that compliance with the voluntary deal “is expected to be sufficient to meet the expected level of compliance with the home ownership criteria.”

**Clause 59** makes amendments to allow for disposals to be subject to a general consent of the Regulator. **Clause 60** amends the 2008 Act to prevent an overlap of the HCA’s grant making powers.

**Comment**

**Replacing the sold properties**

When the Government announced its intention to extend the statutory RTB to housing association tenants the overwhelming concern amongst social housing providers was that the measure would result in further depletion of the social housing stock due to uncertainties around whether plans for ‘one to one’ replacement would bear fruit:

> Given this uncertainty, and the coalition’s less-than-impressive record in delivering replacement social housing under the existing Right to Buy, there is a risk that these policies will lead to a further depletion of the social housing stock – something the proposal explicitly seeks to avoid.

The single most contentious aspect of the statutory RTB has been the failure to replace the sold stock since the scheme’s inception.

Under the voluntary deal housing associations have committed to deliver “replacement of at least one new home for each home sold.” The ultimate aim is that replacement will be achieved within two years of sale, but the default position is that associations will achieve replacement within three years. Replacement will be at a national level (i.e. as with the current replacement scheme, properties will not necessarily be replaced in the areas in which they have been sold). Replacement will not be ‘like for like’ – i.e. properties let at social rents (generally set at 50% of market rents) could be replaced with Starter Homes, affordable rented homes (let at rents of up to 80% of market rents), homes for shared ownership, and/or other part buy part rent models. In some circumstances it will be acceptable to fulfil the

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97 Bill 75 – EN 2015-16, p27  
replacement requirement by bringing an empty home into use or buying a pre-existing home.\textsuperscript{99}

In order to achieve one for one replacement the deal sets out the following terms:

- Government would pay full compensation for Right to Buy discounts direct to housing associations. 70\% would be paid on completion of the sale and the remaining 30\% would be paid when there is evidence of a start on site or acquisition.

- The sales receipt would go back to the housing association and be available on their balance sheet to enable one for one replacement. The grant portion of any sale would be recycled through the Recycled Capital Grant Fund – or a similar fund.\textsuperscript{100}

Housing commentators regard the achievement of one-for-one replacement of the sold properties as of paramount importance given the difficulties households currently face in accessing affordable housing. The Chartered Institute of Public Finance and Accountancy (CIPFA) has said:

There were 1.37 million households on local authority waiting lists on 1 April 2014.

There is a concern that Right to Buy, unless it guarantees at least one for one replacement in the areas of highest need, will increase this shortfall. As a result a reduction in housing stock may lead to increased waiting lists and an increase in the length of time individual tenants have to wait before being housed. Even where one for one replacement is achieved, replacement of housing stock will take time to become available.\textsuperscript{101}

Other measures in the Bill to reduce certain regulatory requirements on housing associations (clause 73) and to speed up the planning system (Part 7), are aimed at facilitating an increase in housing supply.

On publication of the Bill, housing associations questioned whether clause 56 (funding of discounts offered to tenants) delivers on the deal’s requirement for full market compensation for selling homes at a discount to tenants. The clause provides for grants (payable by the HCA and GLA) to be made in respect of RTB discounts, but includes a power to pay grants ‘on any terms and conditions’ considered appropriate.

\textit{Inside Housing} reported on some initial reactions within the sector:

Tony Stacey, chief executive of South Yorkshire Housing Association, said: “I think this is an absolutely fundamental point. If it is going to be grant with all kinds of strings attached, that isn’t what we voted for.

“We are selling our assets at a significant reduction, and we should get that back in the balance sheet as compensation.”

\textsuperscript{99} An offer to extend RTB discounts to housing association tenants, NHF, September 2015

\textsuperscript{100} Ibid.

\textsuperscript{101} CIPFA, Housing associations right to buy, October 2015
Comparisons have been drawn with the ending by the Government of the ten-year rent settlement, announced in 2014 and operative from April 2015, which will end in April 2016 after one year. There are calls for the commitment to full compensation to be included in the Bill in order to reduce the risk of it not being fulfilled in future. The NHF has acknowledged members’ concerns:

We know some members will be concerned by the use of the term ‘grant’ but the agreement is clear that housing associations will be able to use any sales receipt and the discount compensation from the from the Government to deliver replacement homes in the way that best suits them.103

**Paying for the discounts**

The discounts offered under the extended RTB will be paid for by receipts raised from the sale of vacant ‘high value’ local authority owned housing. At this point, there is no official estimate of the cost of extending the RTB and paying off council debt associated with the ‘expensive’ vacant properties. In May 2015 DCLG confirmed that financial modelling had been carried out but declined to release documentation in response to an FOI request by *Inside Housing* magazine on grounds that it ‘relates to the development of Government policy.’104

Detailed comment on the sale of high value council housing is included under section 5.2 (below).

**Housing associations’ independence & charitable status**

By signing up to the voluntary deal, the NFH argues that associations have significantly reduced the risk of reclassification as a public body:

> We are pleased the Bill does not include a legislative obligation on housing associations to sell their homes through Right to Buy or any other mechanism. We are clear that this obligation would have significantly increased the risk of housing associations being reclassified as public bodies. More fundamentally, a legislative obligation to sell would have meant that boards would have no choice over whether to sell a home to a tenant, meaning they would no longer have full control over their assets.

We are now working to get the policy detail and implementation plan in place that will underpin the agreement. This will work will ensure the principles we have established translate into practice that does not compromise the independence of boards or associations’ charitable status. Indeed, we are already talking with the Charity Commissioner with regard to the latter point.105

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102 “Landlords concerned over right to buy ‘grant’”, *Inside Housing*, 15 October 2015
103 NHF Member briefing on the Housing and Planning Bill, October 2015 [accessed on 17 October 2015]
104 RTB FOIA response, 7 May 2015
105 NHF Member briefing on the Housing and Planning Bill, October 2015 [accessed on 17 October 2015]
Exemptions from the RTB & non-compliant associations

Although there will be a presumption that tenants can buy the home in which they live, the voluntary deal envisages that housing associations will have discretion to refuse to sell certain properties. The protection of properties in rural areas had been a frequently raised concern when the extension of the RTB was first mooted. The NHF offer includes examples of circumstances in which this discretion might be exercised:

- properties in certain rural areas;
- supported housing designed for people with specific needs;
- specialist properties of historic interest (almshouses);
- properties provided through charitable or public-benefit resources or bequeathed for charitable or public-benefit purposes;
- tied accommodation;
- where the landlord is a co-operative;
- where the landlord does not have sufficient interest to grant a lease of over 21 years;
- properties held in a Community Land Trust; and
- where there are clear restrictive covenants in existing resident contracts around the protection of rural homes.\(^{106}\)

Questions have been raised about compliance with the voluntary RTB by housing associations who voted against the NHF’s offer to the Government. Inside Housing, reported lawyers’ views that the Bill does not contain enforcement provisions under which the HCA would be able to sanction non-compliant associations. Clause 58 is described a ‘name and shame’ provision, rather than one which could prompt a regulatory downgrade.\(^{107}\)

Number of eligible tenants/sales

The NHF has estimated that an additional 850,000 tenants could become eligible under an extended RTB. This number takes account of housing association tenants who already have a ‘preserved’ RTB and those tenants who have not held a tenancy for the requisite three year qualifying period. Of the 850,000 it is estimated that 221,000 tenants will be eligible and able to afford to buy their homes:

- Based on the average length of occupancy (between nine to 12 years depending on the region), the household income required to afford a 95% mortgage after the discount varies between £14,000 and £31,000 (source: DCLG using average local authority Right to Buy sale price).

- Even with this discount, not every household could afford such a mortgage – the proportion of tenants varies by region from 15% to 35%. This means that across the country there are 221,000 households that are eligible for the new proposal and able to afford the mortgage.\(^{108}\)

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\(^{106}\) An offer to extend RTB discounts to housing association tenants, NHF, September 2015

\(^{107}\) “Housing Bill ‘gives HCA no power to enforce RTB’”, Inside Housing, 20 October 2015

\(^{108}\) NHF, Joe Sarling, “Right to Buy extension estimated to cost £12bn”, 14 April 2015
Number 07331, 21 October 2015 44

The Chartered Institute of Housing commissioned John Perry, Steve Wilcox and Peter Williams, together with four housing trusts\(^{109}\) to carry out an interim analysis of the sale of high value council stock to finance the extended RTB. The resulting paper includes an analysis of likely sales under the extended scheme:

Right to buy (RTB2) sales and replacements

- HA tenants entitled to RTB2 will number about 1,450,000. About 1,070,000 will initially be eligible by length of tenancy with a further 125,000 or so becoming eligible annually.

- We estimate that 10% of those eligible will buy over the first five years. Taking those currently eligible plus those becoming eligible each year, this would suggest some 145,000 sales over that period, with most sales occurring in years 2 and 3.

- The average value of dwellings under the current right to buy (RTB1) in 2013/14 was just under £126,000, with average discounts close to 50%. Making a modest allowance for house price increases and assuming an average 50% discount, 145,000 sales would have a value of some £20 billion, split evenly between achieved receipts of £10 billion and discounts of £10 billion, i.e. £2 billion per annum.\(^{110}\)

Post-sale restrictions

The statutory RTB requires the repayment of the discount if the property is disposed of (with some exemptions) within five years of the purchase. There are no restrictions on tenants who exercise the RTB and subsequently let the property to private tenants. This aspect of the RTB was raised previously by the ODPM: Housing, Planning, Local Government and the Regions Committee, reporting on its consideration of The Draft Housing Bill 2002-03:

We are disappointed that the Bill does not go further on Right to Buy. We think it is particularly important that measures restricting the practice of sub-letting Right to Buy properties (except in cases where the purchaser has died) be included in the Bill. We recommend that sub-letting should be outlawed within the discount repayment period, i.e. five years.\(^{111}\)

The then Government rejected the Committee’s recommendation on the grounds that sub-letting is often a legitimate way of exercising life choices and policing an outright ban on sub-letting ‘would not be straightforward and could be intrusive.’\(^{112}\) In the intervening period, the private rented sector has undergone significant growth and attention has been drawn to the degree to which ex-council flats are now being let to private tenants at market rents. Freedom of Information requests submitted by Inside Housing elicited 91 responses from councils in

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\(^{109}\) Affinity Sutton, Guinness, Peabody and Southern.

\(^{110}\) CIH, Selling off the stock, October 2015

\(^{111}\) HC 75 I-1, July 2003, para 175

\(^{112}\) Cm 6000, November 2003, para 55
45 Housing and Planning Bill [Bill 75 of 2015-16]

England – the responses led to the claim that “37.6% of ex-council flats are likely being rented privately at market rents”:

The councils revealed they have sold a total of 127,763 leasehold properties, with 47,994 leaseholders living at another address, a strong indication that the home is being sub-let.113

CIPFA has highlighted the impact on Housing Benefit expenditure of social rented properties moving into the private rented sector:

In particular London Boroughs are able to provide evidence that illustrates this trend. In Barking and Dagenham 41% of properties purchased under Right to Buy are now privately let. As the number of social houses has fallen more tenants have been forced to rent within the private sector often at greater cost.

Any decline in the availability of social housing and increase in private renting has implications for the welfare budget. Independent figures from the Department of Work and Pensions (DWP) show that the cost of housing benefit rose from £23bn in 2010 to £24.6bn in 2013-2014. DWP’s analysis in 2013 revealed the impact of rent growth on housing benefit expenditure:

“the average eligible private sector rent for Housing Benefit (HB) increased by 45% in real terms between 2000-01 and 2010-11. An estimated £2.9bn (33%) of private sector HB expenditure in 2010/11 can be attributed to real terms rent growth over the previous ten years.”114

5.2 Vacant high value local authority housing (clauses 62-72)

The Conservative Party’s 2015 Manifesto advised that the extension of the RTB to housing association tenants would be funded by “requiring local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant.”115 The Press Release accompanying the launch of the Manifesto said:

No one will have to move house, but local authority properties that rank among the most expensive third of all properties of that type in their area - including private housing - will be sold off and replaced in the same area with normal affordable housing as they fall vacant. This will lead to the sale and replacement of around 15,000 homes a year, or around four in every thousand social properties. After funding replacement affordable housing on a one for one basis, the surplus proceeds will be used to fund the extension of right to buy and the Brownfield Regeneration Fund.116

Part 4 of the Bill sets out the payments which local authorities will be required to make to the Secretary of State, based on the value of high-value social housing which is expected to become vacant that year

In England in 2013-14, local authorities made 142,900 lets, representing 9% of the total local authority stock. 5% of local authority

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113  “Revealed: 40% of ex council flats now rented privately,” Inside Housing, 14 August 2015
114  CIPFA, Housing associations right to buy, October 2015
115  Conservative Party’s 2015 Manifesto, p54
116  Conservative Party Press Release, 14 April 2015
stock was let to tenants new to the relevant local authority, 2% was let to tenants moving within their local authority, and 1% was let through ‘mutual exchanges’ (where tenants agree to trade properties with the local authority’s permission).

The Bill

Part 4 of the Bill provides a mechanism through which local housing authorities will be required to make payments to the Secretary of State. It is expected that these payments will be used to make grants to housing associations under clauses 56 and 57 of the Bill, i.e. to compensate them for selling their housing assets to tenants at a discount.

Clause 62 will enable the Secretary of State to require local authorities to make a payment at the start of the financial year. The level of payment will be calculated with reference to the assessed market value of high value housing in the authority’s area ‘which is expected to become vacant during the financial year’ less any prescribed costs and deductions. Only stock retaining authorities with a Housing Revenue Account will be affected. A determination issued by the Secretary of State (requiring payment) will set out the method of calculation and any assumptions employed. ‘High value’ will be defined in regulations – it may be defined differently in different areas.

Clause 63 specifies the housing that will be taken into account when calculating the payment due to the Secretary of State. Regulations made by the Secretary of State may exclude some housing from the calculation. If a local authority disposes of its stock to a housing association (stock transfer) the Secretary of State will be still be able to continue to take account of the transferred housing when making a determination under clause 62. The National Housing Federation has commented on this clause:

This clause is not intended to be retrospective. There is a legal presumption against retrospectivity, so the clause is forward looking and it will only apply to stock transfers following the Bill’s enactment. We have been clear with DCLG that this will act as a disincentive to stock transfers in future. DCLG indicate that this is not a shift in policy on stock transfers but rather an anti-avoidance measure on local authorities.117

Clause 64 places a duty on the Secretary of State to consult before making a determination under clause 62 – authorities should be sent a copy of the determination as soon as possible after it is made.

Clause 65 provides that the determination must be made before the start of the relevant financial year. A determination may make provision about when payments are due. The Explanatory Notes to the Bill state that this is intended “to enable the Government and local authorities to plan ahead financially.”118 Determinations may relate to more than one financial year and interest may be applied for a late payment. They may also be varied or revoked if required.

117 NHF Member Briefing on the Housing and Planning Bill, October 2015
118 Bill 75 – EN 2015-16, p29
Clause 66 makes provision for a determination to be made part-way through a financial year – this allows for a determination to be issued in the first year even if clause 62 comes into force after the start of the financial year.

Clause 67 provides for the Secretary of State to reach an agreement with a local authority to reduce the amount payable under a clause 62 determination. Any agreement reached will set out what the authority must do with the retained money, e.g. provide or facilitate housing.

Clause 68 makes provision for overpayments made by local authorities under clause 62 to be off-set (by the Secretary of State) against other payments due under this Chapter or section 11 of the Local Government and Finance Act 2003 (capital receipts payable for the disposal of housing land). Clause 71 provides for associated amendments to the 2003 Act.

Clause 69 will impose a free-standing duty on local housing authorities to consider selling any high value housing which they own. This will apply even where no determination is made under clause 62. Regulations will define high value housing and may exclude certain types of housing from the duty. Authorities will be required to have regard to any guidance issued by the Secretary of State.

Clause 70 will allow the Secretary of State to take account of the implications of any reduced payments under clause 62 when deciding whether to give consent to disposal by a local authority of its housing stock.

Comment

In April 2015 the Conservative Party published a table showing the values over which council homes would be sold which was subsequently published in Inside Housing magazine (see below). There is no confirmation that these are the values which will be applied when the policy is implemented.

<table>
<thead>
<tr>
<th></th>
<th>1 bedroom</th>
<th>2 bedroom</th>
<th>3 bedroom</th>
<th>4 bedrooms</th>
<th>5 or more bedrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>North East</td>
<td>80,000</td>
<td>125,000</td>
<td>155,000</td>
<td>250,000</td>
<td>310,000</td>
</tr>
<tr>
<td>North West</td>
<td>90,000</td>
<td>130,000</td>
<td>160,000</td>
<td>270,000</td>
<td>430,000</td>
</tr>
<tr>
<td>Yorkshire and the Humber</td>
<td>85,000</td>
<td>130,000</td>
<td>165,000</td>
<td>265,000</td>
<td>375,000</td>
</tr>
<tr>
<td>East Midlands</td>
<td>105,000</td>
<td>145,000</td>
<td>175,000</td>
<td>320,000</td>
<td>430,000</td>
</tr>
<tr>
<td>West Midlands</td>
<td>100,000</td>
<td>145,000</td>
<td>180,000</td>
<td>305,000</td>
<td>415,000</td>
</tr>
<tr>
<td>East</td>
<td>155,000</td>
<td>220,000</td>
<td>265,000</td>
<td>440,000</td>
<td>635,000</td>
</tr>
<tr>
<td>London</td>
<td>340,000</td>
<td>400,000</td>
<td>490,000</td>
<td>790,000</td>
<td>1,205,000</td>
</tr>
<tr>
<td>South East</td>
<td>165,000</td>
<td>250,000</td>
<td>320,000</td>
<td>455,000</td>
<td>765,000</td>
</tr>
<tr>
<td>South West</td>
<td>135,000</td>
<td>200,000</td>
<td>260,000</td>
<td>375,000</td>
<td>535,000</td>
</tr>
</tbody>
</table>

119 Councils forced to sell expensive homes under Tory right to buy plans, Inside Housing, 14 April 2015
In the wake of the policy announcement, a number of local authorities began to assess the impact of having to sell off vacant stock above these thresholds. Liverpool Economics carried out research on behalf of Camden, Enfield, Haringey and Islington councils\textsuperscript{120} while Shelter published \textit{The forced council home sell-off} (September 2015). An analysis commissioned by the Chartered Institute of Housing (CIH) and carried out by John Perry, Steve Wilcox and Peter Williams, together with four housing trusts,\textsuperscript{121} has drawn on “several national studies” which have examined aspects of the sale of high value council homes and the extension of the RTB. Their interim analysis “is intended as an assessment of the overall impact of the policies” – certain assumptions have been made in the absence of published policy (e.g. the definition of a high value home is based on the April 2015 table above). The authors conclude that both RTB sales and sales of high value council stock “are likely to produce levels of sales some way below the original expectations. At the same time, funds raised by high-value area sales will not fully cover the cost of local authority (LA) replacements \textit{and} the cost of discounts under an extended right to buy.”\textsuperscript{122}

On high value area sales (HVAS), the analysis identifies significant differences in terms of turnover and receipts raised compared with estimates published in the Conservative Party’s 2015 Manifesto:

- HVAS property turnover will be around half what is expected - 3.5% per annum (Conservative Party manifesto figure = 7%).
- Total sales of between 2,100 up to 6,800 homes per annum will be generated (manifesto figure = 15,000).
- We estimate HVAS receipts will be between £1.2 and £2.2 billion per annum depending on assumptions made, whereas the Conservative Party assumed £4.5 billion.
- The lower figure will only amount to half the amount needed to pay for HA discounts, while on our higher estimate virtually all the receipts would be required, leaving very little for LA stock replacement or for the ‘Brownfield Regeneration Fund’.
- If the powers in the Housing Bill are used to require LAs to make payments on assumed levels of sales that are not in practice achievable and are therefore not backed by actual receipts, then the required payments will inevitably further affect authorities’ ability to invest in their stock and in new build.\textsuperscript{123}

The authors identify a tension between the commitment to replace high value stock as it is sold \textit{and} fund RTB discounts for housing association tenants:

- On LA stock replacements, we assume that they will be much cheaper than the properties sold, that ‘the same area’ will be defined loosely and that there will be virtually

\textsuperscript{120} Potential effects of the sale of high value council homes – interim report, Liverpool Economics, 2015
\textsuperscript{121} Affinity Sutton, Guinness, Peabody and Southern.
\textsuperscript{122} CIH, Selling off the stock, October 2015
\textsuperscript{123} Ibid.
no replacements in central London; all replacements will be at Affordable Rents. (While this is not our preferred or recommended option it is a generous assumption that creates the maximum potential for building new homes.)

• If LA stock replacement is to be fully funded it will require adjustments to the caps on LA borrowing, as some councils will otherwise not have sufficient capacity.

• Under the 2012 plans to ‘reinvigorate’ right to buy, LA replacement costs were assumed to be £42,000 from each receipt. Taking account of increases in land and property prices we assume a slightly higher contribution of £48,000 is required.

• Therefore prioritising LA stock replacement would leave insufficient funds (from £1.1 to £1.7 million) to meet the costs of compensating HAs for right to buy sales.124

The analysis estimates that £10bn in receipts will be generated from RTB purchases in the first 5 years of the scheme and that £10bn will be required to fund the discounts (£2bn per year).125 The authors go on to summarise their provisional findings on the linked impact of selling off high value council stock and extending the RTB to housing association tenants:

• If there was a fully effective replacement programme this would result (after a time lag) in an annual average of some 31,100-35,800 new LA and HA dwellings over five years.

• However in practice we anticipate that the levels of HVAS and RTB2 sales and receipts are only likely to support a programme of some 24,600-33,700 new LA and HA dwellings a year (with no funding then available for the brownfield site programme).

• Both policies further reduce the pool of homes available at social rents.

• Together with other changes such as the reductions in social rent levels over four years, there will be an impact on business plans and capacity in both parts of the social sector.

• If, as appears likely, receipts from HVAS are not sufficient to fully compensate HAs for RTB2 discounts, or if there is a time lag, there will be a cost to the government.

• On the other hand, if the cost is extracted from local authority Housing Revenue Accounts regardless of whether sales targets are achieved, there will be a further and potentially very damaging effect on councils’ capacity to invest.

The authors have called for detailed consultation on the two schemes and how they interact:

This analysis shows that there could be very different consequences depending on the decisions taken. As well as considering the overall impact, the consultation needs to take into

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124 Ibid.
125 Ibid.
account the consequences for individual landlords and local areas.\footnote{Ibid.}

Based on the results of the interim analysis, the CIH is pressing for the ‘funding gap’ to be addressed as part of the forthcoming Spending Review. Other suggested mitigations include reducing tenants’ discount entitlement or lengthening the RTB qualifying period. Terri Alafat, CEO of the CIH, has said:

\begin{quote}
We support the government’s ambition to give people the opportunity to achieve their aspiration of home ownership, but if affordable housing is being sold, it is absolutely crucial that it is replaced on the same terms. However, our research appears to confirm our fears that the figures simply will not stack up.

Selling high-value council homes to fund the extension of right to buy to housing associations could result in the loss of almost 7,000 council homes a year, at a time when more and more people are in need of an affordable home. Such a significant loss of desperately-needed affordable homes would mean more people on lower incomes stuck on council waiting lists all over England – and for generations to come.\footnote{“7,000 council homes a year could be lost if funding gap isn’t closed,” CIH, 8 October 2015} 
\end{quote}

The NHF’s offer\footnote{An offer to extend RTB discounts to housing association tenants, NHF, September 2015} refers to the possibility of “an annual cap on the costs of Right to Buy discounts.”\footnote{“Boris admits ‘legitimate concerns’ over right to buy extension,” Inside Housing, 21 May 2015}

Particular concerns have been raised in relation to the sale of high value council stock in London. The Housing Committee of the Greater London Authority considered the extended Right to Buy at its meeting on 16 July. Richard Blakeway, the Deputy Mayor for housing, reported that a ‘broad assessment’ by City Hall suggested that between 3,000 and 4,500 London council homes would be sold off each year.\footnote{“GLA: London will see 4,500 homes sold off, Inside Housing, 16 July 2015} A report prepared for the Committee identified substantial implications for the London boroughs.\footnote{See GLA Housing Committee – Agenda and Reports for 16 July 2015, item 5} There have been some calls, including, reportedly, from City Hall, for receipts raised from the sale of vacant social housing in London to be retained for use in the capital.\footnote{“Boris admits ‘legitimate concerns’ over right to buy extension,” Inside Housing, 21 May 2015}

Shelter’s report, The forced council home sell-off (September 2015) considers the impact of funding RTB discounts for housing association tenants through the sale of expensive council homes (when vacant) in some detail. Shelter identified risks around the loss of low rent homes in areas with acute need, and to existing council housebuilding plans:

While the government’s initial estimate of 15,000 homes being forcibly sold per year is probably too high, Shelter estimates that almost 113,000 council homes are likely to be above the value threshold, and hence liable to be forcibly sold. Due to the uneven distribution of council stock and house prices, Shelter estimates that 78,778 of these will be lost from the twenty most effected local authorities. Half of these twenty areas are in inner London –
but they also include more suburban places like Dacorum and Epping Forest, and northern cities like York, Leeds and Newcastle. Unless specific exemptions are introduced there are likely to be particularly damaging losses to the stock of specialist, adapted and rural housing. These types of housing have been built to meet the needs of specific groups like elderly or disabled people, and would be excessively expensive to replace.¹³²

The top 20 councils that will be most impacted by the forced sales policy currently have plans to build at least 20,390 homes between them which this policy will put under threat. For example, Islington Council has said that the policy “could end our new-build programme” and Southwark Council that it would “drive a coach and horses” through its house building plans.

The policy threatens building plans because:

- Councils’ ability to borrow will be seriously eroded, as lenders will have no confidence in the security of future revenue streams or capital receipts from any homes built;

- Ironically, existing council building programmes are often partly financed from the revenue projected from selling a small number of the most expensive council homes. Most of that revenue will now be seized by central government to fund discounts under the new Right to Buy instead;

- If any new council homes risk being forcibly sold as soon as they were built, councils will have little or no incentive to build.

Some of the negative effects of the proposed forced sale scheme could be reduced through modifications to the policy. This could be done by ensuring that there are sensible exclusions in place, including on new build homes and those that are earmarked for regeneration, and by replacing homes sold off with a like-for like replacement.¹³³

CIPFA has raised issues around the impact of sales on local authority business plans developed in preparation for the self-financing regime which has been in operation since April 2012:

Self financing for local authority housing is based upon 30 year business plans established in 2012 with the HRA self-financing regime.

Through it each council is reliant on its own rental income to provide council housing. Business plans were produced for councils’ long term investment requirements as well as the day to day running of their properties. These business plans did not factor in the recent changes being proposed for high value properties or the rent policies within the budget.

Any legislation that leads to a negative impact on the housing business plan models of local authorities could seriously undermine the very basis of self-financing which promised autonomy for local authorities in the delivery of housing in their areas.¹³⁴

¹³² Shelter, *The forced council home sell-off*, September 2015, p3
¹³³ Ibid., p4
¹³⁴ CIPFA, *Housing associations right to buy*, October 2015
The Local Government Association is opposed to funding housing association tenants’ discounts from the sale of vacant council properties:

The LGA has argued that the extension of the Right to Buy should not be funded by forcing councils to sell off their homes. It is important that receipts from the sale of high value homes are reinvested into local replacement homes.

We want to work with the Government to find an alternative method for funding the extension of the Right to Buy. Any funding of Right to Buy must support better management of local authority and RSL housing assets and building local replacements, rather than focusing on a process of taking a nationally determined payment from councils.

It is important that the Government works with councils to understand the unintended consequences of forcing the sale of vacant council homes, in particular on council waiting lists, homelessness and housing benefit.\(^{135}\)

CIPFA’s briefing on the extension of the RTB calls on the Government to give councils flexibility in relation to the sale of high value homes in order for them to maintain a balance of stock:

High value housing needs to be seen in the context of the balance of the overall housing stock and local factors such as need and the availability of land for development and alternative housing provision. Social housing is not just about the direct provision of homes for individual families and tenants but also contributes significantly to a balanced socio-demographic make-up in an area.

This is particularly important in areas of high cost housing, shortages of alternative provision and where there is a lack of building land available for new social housing. Social housing is vital in many city centres to the maintenance of a vibrant balanced population that supports the provision of local services and economic activity.\(^{136}\)

On publication of the Bill, it became clear that councils will be required to pay a sum to the Secretary of State at the start of each financial year, following an assessment of the expected receipts to be raised from selling vacant high value homes over the forthcoming year. Much will therefore depend on the detail of how this calculation is carried out. Councils have questioned what will happen if sales fall short of the expected level – there is provision in the Bill for adjustments to the determination but it is unclear that a shortfall in sales will automatically prompt an adjustment. This has led councils to question how they might meet any resulting shortfall. There have also been calls for flexibility to protect certain properties (e.g. in rural areas) from forced sales.

5.3 Reducing regulation (clause 73)

The NHF’s offer on the RTB refers to the Government implementing deregulatory measures “which would support housing associations in their objectives to support tenants into home ownership and deliver additional supply of new homes.” The NHF’s offer document lists

\(^{135}\) LGA Briefing on the Housing and Planning Bill, October 2015

\(^{136}\) CIPFA, Housing associations right to buy, October 2015
several areas on which these deregulatory measures are expected to focus:

The disposals consent regime: giving associations greater freedoms over asset disposals would support more efficient stock management and generate additional receipts for reinvestment in delivery of new supply. The Government would consider how best to amend the existing requirement for the regulator to give consent prior to the disposal of stock in order to reduce bureaucracy and give associations back control.

Asset management: enabling associations to convert vacant properties from social or affordable rent into other forms of tenure would enable them to better respond to the needs of their tenants and the housing market, while generating additional receipts for reinvestment. The Government would also examine whether Section 106 and LSVT agreements currently restrict and delay active asset management strategies and consider mitigations where required.

Allocations policies: giving housing associations greater control over who they house would allow them to better meet housing need and drive greater efficiencies. The Government would work with the local authority sector to examine how we can ensure that nominations to housing association stock are appropriate to the properties concerned.137

Clause 73 of the Bill provides for the Secretary of State to make regulations to amend regulatory provisions in the Housing and Regeneration Act 2008. There is no detail at this point, other than that set out in the NHF offer, on the nature of these deregulatory provisions. In terms of allocation policies, local authorities often have nomination rights to vacant housing association properties and use these to secure housing for people in need on their housing registers or homeless households to whom they owe a statutory housing duty. If authorities are no longer able to utilise nomination rights this could have implications for their ability to fulfil their statutory housing obligations.

5.4 High income social tenants: mandatory rents (clauses 74-83)

The Bill will place a mandatory requirement on social landlords to charge certain ‘high income’ tenants a higher rent level. Full background information on the Government’s ‘pay to stay’ policy can be found in Library Briefing Paper 06840, Social housing: ‘pay to stay’ at market rents. Following a consultation exercise in 2012 the Coalition Government gave social landlords in England the discretion to charge market or near market rents to tenants with an income of £60,000 or more a year. It was argued that high income families should not be paying social rents (typically half the market rent) when they could afford to pay more. The

137 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
scheme is known as ‘pay to stay.’ It is unclear how many social landlords have implemented this approach.

As part of the Summer Budget 2015 the Chancellor announced that the discretionary ‘pay to stay’ scheme would be made compulsory (in England) and that new, lower, income thresholds would be introduced. These thresholds are expected to be £40,000 in London and £30,000 elsewhere. Local authorities will be expected to repay the additional rental income to the Exchequer ‘contributing to deficit reduction’ while housing associations will be able to use the additional income to reinvest in new housing. The rationale for the policy is set out below:

1.154 The government believes that those on higher incomes should not be subsidised through social rents. Therefore, social housing tenants with household incomes of £40,000 and above in London, and £30,000 and above in the rest of England, will be required to “Pay to Stay”, by paying a market or near market rent for their accommodation. This will ensure they pay a fair level of rent, or make way for those whose need is greater. Local Authorities will repay the rent subsidy that they recover from high income tenants to the Exchequer, contributing to deficit reduction. Housing Associations will be able to use the rent subsidy that they recover to reinvest in new housing. This could raise up to hundreds of millions of pounds in additional rental income for Housing Associations. The government will consult and set out the detail of this reform in due course.  

The Policy Costings document published alongside the Budget said that the measure would be introduced in 2017/18 and is expected to result in savings of £365m in that year. This represents the payments councils will make to the Treasury.

Consultation on the mandatory ‘pay to stay’ scheme opened on 9 October 2015 and runs to 20 November 2015. The outcome of this consultation exercise will influence the regulations which will ultimately set out the detail of the scheme. The consultation paper’s starting assumption is that the policy will operate in broadly the same way as the current discretionary ‘pay to stay’, i.e:

- household means the tenant or joint tenants named on the tenancy agreement, and any tenant’s spouse, civil partner or partner where they reside in the rental accommodation. Where several people live in the property the highest two incomes should be taken into account for household income.

- income means taxable income in the tax year ending in the financial year prior to the financial (i.e. rent) year in question.

- where a HIST tenancy comes to an end, and the property is vacated, we would expect properties to typically be re-let in line with their previous lower rent – be it at social rent or Affordable Rent – to a household in housing need.
The consultation paper acknowledges that “a gradual increase in rent for social tenants as their incomes rise may be a fairer system” and is seeking views on how a taper system might be implemented once a tenant’s income reaches the applicable threshold.142

According to analysis of the DWP’s Households Below Average Income dataset (2013-14), there were around 600,000 households in social housing in England with gross incomes over the relevant limits. There were around 100,000 social-housing households in London (14% of all social housing in the region) and 500,000 in the rest of England (16% of all social housing in the region). These figures should be taken as an approximation of the numbers of households likely to be affected as the definition of ‘income’ used by the survey and by the legislation may differ.

The Bill
Part 4 of the Bill gives the Secretary of State various regulation-making powers, the detail of which will be informed by the outcome of the ongoing consultation exercise (closes on 20 November 2015).143 The regulations will:

- specify the level of rent payable by a high income tenant;144
- provide that the level of rent may be different in different areas and for tenants with different incomes;145
- require the landlord to have regard to guidance issued by the Secretary of State;146
- define what is meant by a ‘high income’ and how income will be calculated;147
- give registered providers of social housing power to require tenants to provide information/evidence of their income – a failure to provide this information may result in the landlord charging the tenant a market rent;148
- give registered providers of social housing power to increase rents in order to comply with the ‘rent regulations’ and specify a procedure for this;149
- require local housing authorities to pay any estimated increase in income as a result of the rent regulations to the Secretary of State;150
- provide for the calculation of sums payable by local authorities to the Secretary of State;151 and

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141 Ibid.
142 Ibid.
143 DCLG, Pay to Stay: Fairer rents in social housing, 9 October 2015
144 Clause 74
145 Ibid.
146 Ibid.
147 Clause 75
148 Clause 76
149 Clause 78
150 Clause 79
151 Ibid.
require local housing authorities to provide information to the Secretary of State in connection with the rent regulations.  

Clause 77 will enable HMRC to disclose information to registered providers of social housing enabling them to verify the income details provided by tenants.

Clause 81 will amend the 2008 Housing and Regeneration Act to add new grounds on which the Regulator of Social Housing (the Homes and Communities Agency) can serve an enforcement notice on a registered providers of social housing. These will cover a failure to comply with the requirement to charge high income tenants higher rents.

Clause 82 provides for the interaction of these provisions with other legislation and makes consequential amendments. The rent reductions of 1% in each year for four years from April 2016, which social landlords are being required to implement under measures included in the Welfare Reform and Work Bill 153 (currently progressing through Parliament), will not apply to the higher rents charged to high income tenants.

Comment

Early responses from landlords echoed many of the concerns raised in response to the 2012 consultation paper. Gathering and keeping track of tenants’ incomes has been described as an “administrative headache” as has the need to amend existing tenancy agreements.  

Affordability has been raised as an issue as there is potential for affected tenants to face substantial rent increases. It is unclear how many tenants are likely to be affected - the English Housing Survey 2012-13 recorded 484,000 households in social housing with gross incomes of over £31,200 representing about one in eight of social homes.  

Nigel Keohane of the Social Market Foundation (SMF) has emphasised the need for a taper in order to avoid introducing work disincentives and for higher payments to take account of household needs:

The co-payment of rent must be tapered in – rather than tenants experiencing a sudden jump in their payments – so as to flatten any significant humps in the work incentives. Given the overall thrust of Universal Credit is to simplify and improve work incentives, any other policy is irrational.

The co-payment must relate to equivalised resources. In adopting co-payments for higher income tenants, the Government is applying the principle of means-testing (that applies to Local Housing Allowance for private tenants) to social housing. In doing so, the Government must ensure that it is assessing not just the income of the household but also the needs of the household which will vary depending on the composition of the family and the number of children. Successive reforms have failed to follow

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152 Clause 80
153 For more information on this measure see section 3 of Library Briefing Paper 01090, Rent setting: social housing (England).
154 “Pay to stay will be headache for landlords, lawyers say,” Inside Housing, 15 July 2015
155 English Housing Survey, 2012-13, Chapter 4 – EHS Households report, 2012-13: tables, figures and annex tables, Table A4.2
this rather basic logic: Child Benefit was withdrawn on the basis of the highest earner in a household rather than household income; the Benefit Cap (shortly to be £20,000) takes no account of family size. Furthermore, the ‘sweet spot’ in terms of Marginal Deduction Rates varies for different sized households, meaning that the threshold for co-payment should vary as the number of children increases.156

In the same article he raises the issue of long-term residualisation of the social housing stock but questions whether this risk might be overstated:

The theoretical advantages of social housing are threefold – subsidised rent, lower marginal deduction rates (because tenants are less likely to be in receipt of housing benefit and therefore do not have this subsidy withdrawn as they earn more) and security of tenure. Even if they have to pay up to the market rent, it is not obvious that higher earners would flee their social homes in favour of the private market, losing as they would their security of tenure and a subsidised home in the event of loss of job or income. They might also lose other advantages: the average social dwelling scores much higher on various quality metrics than the average private rented home. A much higher proportion of the former meet the ‘Decent Homes’ standard and average energy efficiency is also much higher. From the opposite point of view, there may be advantages if tenants do move – with evidence showing low mobility amongst social tenants. The latter is a symptom at least in part of tenants’ risk aversion about losing the benefits associated with social housing if they were to move house. Reducing the losses to which a tenant is exposed may mean that more are ready to move to take up better-paid work.157

Others argue that pay to stay represents ‘another nail in the coffin’ for social renting as a tenure for mixed incomes. Set alongside the benefit cap and other Housing Benefit reductions, Tom Murtha, former housing association CEO, suggests that housing associations might be moved to exclude the households they were established to assist.158

The Local Government Association (LGA) is calling for authorities to be free to set “differential rent levels based on local circumstances and housing markets” and has expressed particular concern over the method proposed for calculating the additional income which authorities will be expected to pay to the Treasury:

We are concerned that the Bill seeks to establish a process for taking a sum of money from councils based on a national estimate that will unlikely reflect actual local conditions. Councils, like housing associations, should be able to retain the additional income generated from these rents to build new homes. This would have far greater benefits for local communities than the money going to the Treasury.159

The Chancellor’s reference to social housing rent levels being subsidised by ‘other working people’ has drawn comment on the degree to which

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156 Grand Designs? Getting the Government’s pay to stay social housing policy right, SMF, 7 July 2015 [accessed on 18 August 2015]
157 Ibid.
158 “Pay to stay with bring about the death of social housing,” The Independent, 8 July 2015
159 LGA Briefing on the Housing and Planning Bill, October 2015
social housing is *actually* subsidised, particularly compared to other housing tenures. Councils have been able to charge lower rents because of historic subsidy for the loans to build it. These loans had to be repaid (from rental income). From 2008 council Housing Revenue Accounts (HRAs) recorded an overall surplus which was, in turn, paid to the Treasury. Local authorities with retained housing stock became ‘self-financing’ on 1 April 2012 – a one-off redistribution of ‘debt’ took place between local authorities. Some (136) took on more debt while others had their debt levels reduced or became/debt free. The extra debt was taken on to reflect the future surpluses authorities would have paid to the Treasury. Thus the abolition of HRA subsidy is arguably the point at which it became questionable to refer to council housing as subsidised housing.

The grant paid to developing social landlords enables them to charge lower rents which, in turn, reduces Government expenditure on Housing Benefit. In *Building new social rent homes* (2015), a joint report published by the National Federation of ALMOs and SHOUT (Social Housing Under Threat), Government grant is viewed not as a ‘deadweight subsidy’ but a fiscally efficient contribution which produces future welfare savings in addition to a long-term capital asset.

As part of the Government’s deficit reduction programme, grant funding to build affordable housing has reduced since 2010; social landlords are now expected to develop new housing to let at affordable rents of up to 80% of market rents. The additional rental income can be reinvested in new build housing. This shift is accelerating the rate at which new housing association properties can be described as being provided with little or, in some cases, no upfront Government subsidy. The residents of these homes may be entitled to personal subsidy in the form of Housing Benefit but this is no different to residents in privately rented homes.

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160  The debt settlement was intended to allow each council, from rental income, to manage and maintain its stock in a good state of repair for 30 years, or replace it where necessary, with enough left over to meet debt interest and repay the debt over the same period.


162  *Building new social rent homes*, Capital Economics for NFA and SHOUT, 2015, p21
6. Housing, estate agents and rentcharges

6.1 Accommodation needs in England (clause 84)

The 2004 Housing Act introduced a specific duty on local authorities to carry out an assessment of the accommodation needs of Travellers and Gypsies\(^{163}\) when carrying out a review of housing conditions and needs within their areas (a process required by section 8 of the Housing Act 1985).

The Bill will remove sections 225 and 226 of the 2004 Act and amend section 8 of the 1985 Act to remove reference to Gypsies and Travellers. Section 8 will be further amended to make it clear that the duty covers consideration of the needs of people residing in, or resorting to the district for, caravan sites and houseboat mooring sites.

*Inside Housing* has reported comments on the measure from Debby Kennett, chief executive of the London Gypsy and Traveller Unit:

> As soon as the needs of travellers are lumped together with mainstream housing needs, their particular housing needs are going to be lost [from system] completely.\(^{164}\)

6.2 Housing regulation in England (clauses 85-86)

A landlord who applies for a licence to let a House in Multiple Occupation to which mandatory or selective licensing applies must meet a ‘fit and proper person’ test. Paragraph 3 of Schedule 2 to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) specifies the information that a landlord/controller must provide to the local authority in a licence application form. This information forms the basis on which an authority decides whether a landlord is a ‘fit and proper’ person:

(a) details of any unspent convictions that may be relevant to the proposed licence holder’s fitness to hold a licence, or the proposed manager’s fitness to manage the HMO or house, and, in particular any such conviction in respect of any offence involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003;

(b) details of any finding by a court or tribunal against the proposed licence holder or manager that he has practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origin or disability in, or in connection with, the carrying on of any business;

\(^{163}\) Defined in the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) Regulations 2006

\(^{164}\) “Proposed law scraps duty to assess travellers’ needs,” *Inside Housing*, 20 October 2015
(c) details of any contravention on the part of the proposed licence holder or manager of any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against him.

(d) information about any HMO or house the proposed licence holder or manager owns or manages or has owned or managed which has been the subject of—

(i) a control order under section 379 of the Housing Act 1985(a) in the five years preceding the date of the application; or

(ii) any appropriate enforcement action described in section 5(2) of the Act.

(e) information about any HMO or house the proposed licence holder or manager owns or manages or has owned or managed for which a local housing authority has refused to grant a licence under Part 2 or 3 of the Act, or has revoked a licence in consequence of the licence holder breaching the conditions of his licence; and

(f) information about any HMO or house the proposed licence holder or manager owns or manages or has owned or managed that has been the subject of an interim or final management order under the Act.

Clause 85 will add to this list of criteria to provide that landlords must also be entitled to remain in the UK and must not be insolvent or bankrupt. It will be possible for authorities to take account of past failures to comply with duties concerning the immigration status of prospective tenants.

Clause 86 and Schedule 4 to the Bill will amend the 2004 Act to enable authorities to impose a financial penalty as an alternative to prosecution for certain offences committed by landlords.

The LGA has described clause 86 and Schedule 4 as giving “welcome flexibility for councils in private housing enforcement activity.”

6.3 Housing information in England (clauses 87-88)

Since 6 April 2007 tenancy deposit protection has applied to all newly created assured shorthold tenancies in England and Wales where a deposit is taken. Landlords are required to join a statutory tenancy deposit scheme (TDS) if they take deposits from assured shorthold tenants.

Clause 87 will amend the Housing Act 2004 to allow the Secretary of State to make arrangements allowing a TDS scheme administrator to provide information, or share information, with local authorities in England. The purpose of this will be to assist authorities in carrying out their private sector enforcement work under Parts 1 to 4 of the 2004 Act. A fee may be payable to the TDS for accessing information.

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165 LGA Briefing on the Housing and Planning Bill, October 2015
166 Assured shorthold tenancies are the standard type of private sector tenancy in England and Wales.
Similarly, Clause 88 will enable the Secretary of State to make regulations to amend the list of purposes for which an English local authority may use data obtained in exercise of its functions under section 134 of the Social Security Administration Act 1992 (Housing Benefit administration) or Part 1 of the Local Government Finance Act 1992 (Council Tax). The Explanatory Notes to the Bill state that “such data may currently be used by a local authority in exercise of its functions under Parts 1-4 of the 2004 Act.”

The Residential Landlords Association (RLA) argues that local authorities should drop selective licensing schemes and focus on the use of Council Tax data to identify problem landlords:

Measures in the Government’s new Housing and Planning Bill make clear that local authorities can use council tax registration forms to ask tenants for details of a properties’ tenure and its landlord to help root out criminal landlords. The RLA campaigned hard for this measure.

The Bill also includes powers for local authorities to use information held by statutory tenancy deposit schemes to enforce regulations affecting private rented housing.

The RLA is now calling on councils to drop licensing schemes given that the Bill makes clear that they can collect the information they need without levying expensive costs on landlords which inevitably get passed on to tenants in higher rents. The Housing Minister, Brandon Lewis MP, previously dubbed such licensing a “tenants’ tax.”

6.4 Estate agents: lead enforcement authority (clause 89)

This part of the Bill introduces a technical amendment to provide for the regulation of estate agencies by a lead local authority.

Since 1 April 2014, the National Trading Standards Estate Agency Team (NTSEAT), headed by Powys County Council, has been responsible for regulating estate agents across the UK. It took over this enforcement role from the Office of Fair Trading (OFT) under the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc.) Order 2014. The Order completed a programme of consumer landscape improvements that the Government began in 2011. It is the Government’s view that the regulation of estate agencies sits best with the enhanced activities of trading standards. In an open competition to select an appropriate lead authority, the bid by Powys County Council trading standards was successful. A direct grant funding arrangement between the council and the National Trading Standards Board (NTSB) is in place for the duration of a three year contract.

167 Bill 75-EN, para 211
168 RLA: New laws expose the tenants’ tax paid councils, 14 October 2015
169 HC Deb 10 February 2014 cc. 4-6
170 Ibid.
The remit of Powys County Council trading standards is to assess whether or not an individual or business in any part of the UK is fit to carry out estate agency work within the terms of the Estate Agents Act 1979 (EAA 1979).\(^{171}\) The aim of the Act is to make sure that estate agents act in the best interests of their clients, and that both buyers and sellers are treated honestly, fairly and promptly. To this end, the Act sets out the minimum standards of behaviour across the profession.

The National Trading Standards Estate Agency Team of Powys County Council is responsible for issuing warnings and prohibition orders against estate agents who have acted dishonestly or breached provisions of the EAA 1979.\(^{172}\) After conducting a fitness test, it can ultimately prohibit persons it considers unfit from carrying out estate agency work. In addition, it is responsible for:

- maintaining a public register of such banning or waning orders
- approving and monitoring consumer redress schemes
- providing specific advice and guidance to businesses and consumers about their rights and obligations under the EA 1979

Estate agents are not required by law to be licensed or qualified. They are principally regulated by the EAA 1979 and the Consumer Protection from Unfair Trading Regulations 2008. The 2008 Regulations prohibit misleading actions and misleading omissions that cause, or are likely to cause, the average consumer to take a transactional decision s/he would not have taken otherwise. Since 1 October 2008, all estate agents in the UK who engage in residential estate agency work are required to belong to one of three approved redress scheme dealing with complaints about the buying and selling of residential property.\(^{173}\) This is a requirement of the Consumers, Estate Agents and Redress Act 2007.

The Bill

The current Lead Enforcement Authority for the EAA 1979 is named in primary legislation as Powys County Council. It follows from this that if Powys County Council should fail to secure a further contract, a new authority would be unable to exercise its powers. Clause 89 of the Bill is

\(^{171}\) Estate agency work is defined by section 1 of the EA 1979\(^{171}\). It means introducing a third party to a client who wishes to sell, lease, or buy land or property, and being involved in negotiating the subsequent deal. The work must be in the course of business, whether as employer or employee, and as a result of instructions from a client. The land may be commercial, industrial, agricultural or residential. It is important to note that for the purposes of the Act, the definition of estate agency work does not cover the letting of properties. It is important to note that the Enterprise and Regulatory Reform Act 2013 (Commencement No.3, Transitional Provisions and Savings) Order 2013 amends section 1(4) of the EAA 1979, essentially widening the categories of those to whom the Act does not apply. The amendment means that intermediaries who introduce buyers and sellers wishing to arrange private sales, usually through online portals, without giving advice or handling clients’ money will now fall outside of the regulation required of estate agents.


\(^{173}\) The three approved redress schemes are as follows: The Property Ombudsman; Ombudsman Services: Property; Property Redress Scheme
Clause 89(1) and (2) of the Bill inserts into the EAA 1979 a new section 24A and amends section 33. In respect of new section 24A, subsection (1) makes the Secretary of State the lead enforcement authority for the purposes of the EAA 1979, whilst subsection (2) gives the Secretary of State the power to make arrangements for a trading standards authority to carry out the functions of the lead enforcement authority. Subsections (3)(a) and (b) of new section 24A makes it clear that the Secretary of State may make payment to a trading standards authority to carry out the functions of the lead authority, but any arrangements made by the Secretary of State are not permanent. Importantly, the Secretary of State may by regulations make transitional provision for when there is a change in the lead enforcement authority. The regulations may relate to a specific change in the lead enforcement authority or to changes that might arise from time to time.

Clause 89 extends to England and Wales, Scotland and Northern Ireland.

6.5 Enfranchisement and extension of long leaseholds (clause 90)

Most owners of long leasehold houses have a right to buy the freehold of their homes or a lease extension under the Leasehold Reform 1967. Owners of long leasehold flats in a block have a collective right to buy the freehold interest of the block or individually extend their lease agreements under the 1993 Leasehold Reform, Housing and Urban Regeneration Act.

Clause 90 and Schedule 5 to the Bill will amend these Acts to allow for the Secretary of State to make regulations in respect of the calculation of the price payable for a minor superior tenancy (houses) and an intermediate leasehold interest (flats).

6.6 Redemption price for rentcharges

A rentcharge is an annual sum paid by the owner of freehold land to another person who has no other legal interest in the land. The person who receives payment from the rentcharge is known as the ‘rentowner’. Certain types of rentcharge are redeemable under the Rentcharges Act 1977. This means that someone liable to pay the charge can pay a single lump sum in order to relieve themselves of that liability. There are problems with the formula currently used to calculate the redemption figure:

Normally the rentcharges team uses the formula in section 10 of the Rentcharges Act 1977 to work out the redemption figure to enable you as the rent payer to redeem your Rentcharge. However, the formula cannot currently be used because part of it, the gilt (or 2.5% consolidated stock which is represented by the letter ‘Y’ in the formula), has now itself been redeemed and is no
longer listed. This means we are no longer able to calculate a redemption figure for applications that we receive.\textsuperscript{174}

\textbf{Clause 91} will amend the 1977 Act to allow for the Secretary of State to make regulations setting out how the redemption figure for a rentcharge should be calculated.

\textsuperscript{174} GOV.UK Rentcharges [accessed on 20 October 2015]
7. Planning in England

Part 6 of the Bill contains a number of different reforms to the planning system, with the aim of speeding it up and allowing it to deliver more housing. Many of the clauses make amendments to existing legislation. New powers are given to the Secretary of State to intervene in the local and neighbourhood plan making process and a new system of planning permission in principle is introduced.

It is accepted that there is no single ‘silver bullet’ solution for resolving England’s housing shortage; there is also some consensus around the barriers to delivery, of which one is frequently identified as the planning system.

7.1 Neighbourhood planning (clauses 92-95)

In the Queen’s speech, on 27 May 2015, it was announced that the Government would “simplify and speed up the neighbourhood planning system, to support communities that seek to meet local housing and other development needs through neighbourhood planning.” The Government estimates that the neighbourhood planning process takes two years to complete; on average. To this end, clauses 92-95 of the Bill introduce measures which aim to speed up the process.

The neighbourhood planning regime as it currently exists was first introduced by the Localism Act 2011. It allows parish councils and groups of people from the community, called neighbourhood forums, to formulate Neighbourhood Development Plans and Orders, which can guide and shape development in a particular area.

Neighbourhood planning powers are used in respect of “designated areas”. Where there is a Parish Council the designated area will normally cover the same area as the Parish Council area. Applications can be made to cover other areas outside Parish Council areas and applications can be made for multi-parished areas to be designated. The application to formally designate an area must be made to the Local Planning Authority (LPA). Until the LPA approves the application to designate the area, neighbourhood planning powers cannot be formally used.

The previous Government consulted in July 2014 on setting a statutory time limit within which an LPA must make a decision on whether or not to designate a neighbourhood area. A Government response followed in December 2014 and the Neighbourhood Planning (General) (Amendment) Regulations 2015 (SI 2015/20), which came into force on 9 February 2015, now prescribe the date by which a LPA must determine applications for designation of a neighbourhood area as follows:

175 HM Government, Queen’s Speech background briefing notes, 27 May 2015, p28
176 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p12
177 HM Government, Technical consultation on planning, July 2014
Where the area to which the application relates falls within the areas of two or more local planning authorities, the prescribed date is the date 20 weeks from the date immediately following that on which the application is first publicised. In other cases, the prescribed date is the date 13 weeks from the date immediately following that on which the application is first publicised by the local planning authority, or eight weeks where the application is from a parish council and the area to which the application relates is the whole of the area of the parish council.\textsuperscript{178}

The Bill

**Clause 92** of the Bill gives the Secretary of State power to make regulations which mean that the LPA must, except in prescribed cases (which are not provided in the Bill), designate the neighbourhood area if the area meets prescribed criteria or has not been determined within the prescribed period.

As part of the neighbourhood development plan (NDP) and development order-making process, once the NDP or order has been approved by an independent examiner, it must then gain the approval of a majority of voters of the neighbourhood to come into force. If proposals pass the referendum, the local planning authority is under a legal duty to bring them into force. It is the duty of the LPA to consider the recommendations made by the examiner and decide whether or not to hold a referendum. **Clause 93** would give the Secretary of State powers to prescribe time periods in relation to taking its decision on whether to hold a referendum. Once an NDP or development order has been approved by referendum, **Clause 93(3)** would allow a date to be prescribed by which the LPA must officially “make” the NDP or development order.

**Clause 94** gives the Secretary of State powers to intervene in the process, at the request of the parish council or neighbourhood forum. This would be exercisable in three circumstances:

- Where the LPA has failed to decide, by the prescribed date, whether to hold a referendum;
- Where the LPA has not followed the recommendations of the independent examiner on the proposal; or
- Where the LPA makes a modification to the NDP or Order that was not recommended by the examiner.\textsuperscript{179}

The Clause enables the Secretary of State to make arrangements for the referendum, or to refuse one; to extend the area in which the referendum should take place; or to arrange for further examination to take place.

Neighbourhood forums are community groups that are designated to take forward neighbourhood planning in areas without parishes. **Clause 95** will extend to neighbourhood forums an existing power that parish councils have, to request that they are notified of any new planning applications in the area they cover.

\textsuperscript{178} Neighbourhood Planning (General) (Amendment) Regulations 2015 \textit{Explanatory Notes}, para 7.2

\textsuperscript{179} Housing and Planning Bill \textit{Explanatory Notes, Bill 75 EN 2015-16}, p38
Comment
The Local Government Association said that setting a statutory time limit for the determination of neighbourhood designation applications was “unnecessary”, and that LPAs should be able to reflect local conditions to ensure due consideration to each application.\textsuperscript{180}

Planning consultancy Barton Willmore expressed concern about the cost of interference by the Secretary of State in the neighbourhood plan process:

The introduction of a broad power for the Secretary of State to interfere in the preparation of Neighbourhood Plans, against the recommendations of the appointed Examiner, is a cause for concern. The cost of this action, which may require an “independent examination” to consider the issue, would fall to the LPA. This financial burden would unlikely be welcomed by the LPA, which reflecting on local planning, should instead be focusing upon its duty to bring into force an up-to-date Local Plan.\textsuperscript{181}

7.2 Local plans (clauses 96-100)
While statutory provisions, such as the Planning and Compulsory Purchase Act 2004 enable Local Planning Authorities (LPAs) to make a local plan (often called a development plan document), there is no statutory requirement on LPAs to actually use these powers to produce a local plan. In September 2015 the Government reported that 216 of 336 local planning authorities (64%) have adopted and 276 (82%) published a Local Plan.\textsuperscript{182}

In the HM Treasury’s July 2015 Productivity Plan, \textit{Fixing the foundations: Creating a more prosperous nation}, the Government said that it was “vital” that LPAs made local plans to decide how to meet the need for housing in their areas. To this end the Government said that it would publish league tables setting out local authorities’ progress on providing a plan. Where progress is slow or where a plan is not being provided, the Secretary of State would intervene, to arrange for local plans to be written, in consultation with local people.

In a \textit{written statement} to Parliament on 21 July 2015 the Government provided more information saying that “in cases where no local plan has been produced by early 2017—five years after the publication of the NPPF—we will intervene to arrange for the plan to be written, in consultation with local people, to accelerate production of a local plan.”\textsuperscript{183} On the same day the Secretary of State published a letter to Simon Ridley (Chief Executive of the Planning Inspectorate) setting out how planning inspectors are now expected to support local plan making. The letter instructed planning inspectors to “work pragmatically with councils towards achieving a sound Local Plan” and

\textsuperscript{180} Local Government Association, \textit{Housing and Planning Bill}, October 2015
\textsuperscript{181} Barton Willmore \textit{Housing and Planning Bill 2015 Guidance note}, October 2015
\textsuperscript{182} Local Plans: Written question – 9724, 9 September 2015
\textsuperscript{183} 21 July 2015 HCWS166
highlighted that they should identify significant issues to councils very early on, and give councils full opportunity to address issues.\textsuperscript{184}

In the Productivity Plan the Government also pledged to “significantly streamline the length and process of local plans, helping to speed up the process of implementing or amending a plan.”\textsuperscript{185}

Alongside this the Government has also set up an “expert panel” to consider how to simplify the local plan making process. This panel will be chaired by John Rhodes, from Quod (Planning Consultants). Further information about the panel and its members is set out in the press release, \textit{Launch of new group of experts to help streamline the local plan-making process}.

The Bill

LPAs are responsible for making local plans. As part of the local plan making process the local plan must undergo a period of examination with an independent examiner, normally a planning inspector. The planning inspector does not normally approve or reject the whole of the plan – they suggest modifications which the LPA can choose to accept. Where the changes recommended by the inspector would be so extensive as to require a virtual re-writing of the draft Local Plan, the inspector is likely to suggest that the local planning authority withdraws the plan. After the examination process is complete, the LPA can then formally adopt the local plan, which will then become a “material consideration” in the planning process.

\textbf{Clause 97} of the Bill gives the Secretary of State power to intervene in the examination process, to direct, in the form of a notice: that the examination process be suspended; that the examiner should consider any specified matters (as set out in the notice); to hear from specified persons (as set out in the notice); or that the examiner should take other specified procedural steps.

Under section 21 of the \textit{Planning and Compulsory Purchase Act 2004}, the Secretary of State has the power to direct a local planning authority to withdraw its unadopted plan. \textbf{Clause 98} will insert a new provision into this section which will allow the Secretary of State to issue a “holding direction” to require a LPA not to take any steps toward formally adopting the local plan. Clause 98(4) will require an LPA to reimburse the Secretary of State for any expense incurred in relation to section 21 powers.

Section 27 of the 2004 Act allows the Secretary of State to intervene if a LPA is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a local plan. \textbf{Clause 99} replaces this provision and gives the Secretary of State additional powers to require the LPA to prepare or revise a local plan, submit it for examination and consider adoption of it. \textbf{Clause 100} allows the Secretary of State to recover the cost of examination from

\textsuperscript{184} Letter from Greg Clark (Secretary of State) to Simon Ridley (Chief Executive of the Planning Inspectorate) 21 July 2015

\textsuperscript{185} HM Treasury, \textit{Fixing the foundations: Creating a more prosperous nation}, July 2015, para 9.11
the LPA of any document prepared under the use of section 27 powers. Although not explicitly set out in the Bill or the Explanatory Notes, these clauses would allow the Government to fulfil its intention of intervening in early 2017 if an LPA had not produced a local plan.

**Comment**

The Royal Town Planning Institute (RTPI) said that it was “encouraging” that the Government remained committed to the plan-led system and said that it was important to speed up plan making in England. It cautioned however, that the reasons for slow local plan delivery were complex and included a lack of resources and prioritisation.186

Law firm Bond Dickinson said that arguments over housing needs assessments and the complexity of the system could cause inordinate delays even if the government were to use its powers.187 Another law firm, Nabarro, said it was not clear how the Secretary of State’s “interference” in local authority planning would be resourced and how effective his directions to local authorities would be in speeding up the process and ultimately getting more housing delivered.188

The British Property Federation said the fact the Government was taking responsibility for local plans was “particularly welcome as these are crucial to creating sustainable development in local communities.” It suggested however the Government “must not forget” that planning policy needed to reflect that thriving communities needed more than just homes and also needed a mix of amenities for people to work, shop and enjoy themselves.189

### 7.3 Planning in Greater London (clause 101)

In the HM Treasury’s July 2015 Productivity Plan, *Fixing the foundations: Creating a more prosperous nation*, the Government confirmed its intention to provide a number of new planning powers for the Mayor of London these included:

- entering into discussions for the devolution of “major new planning powers” to the Mayor of London, beginning with powers over wharves and sightlines, to be used in consultation with Londoners;
- bringing forward proposals to allow the Mayor to call in planning applications of 50 homes or more;
- proposals to remove the need for planning permission for upwards extensions for a limited number of stories up to the height of an adjoining building, where neighbouring residents do not object. In cases where objections are received, the application

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186 RTPI, *RTPI's initial response to publication of Housing and Planning Bill*, 13 October 2015
187 Bond Dickinson, *How the Housing and Planning Bill seeks to transform housing delivery*, 15 October 2015
188 Nabarro, “The house that David built: The Housing and Planning Bill 2015” 16 October 2015
189 “Housing bill: reaction from the planning sector” *Planning*, 14 October 2015
would be considered in the normal way, focussed on the impact on the amenity to neighbours.\textsuperscript{190} The Explanatory Notes state that the devolution of further planning powers to the Mayor of London will “ensure that London’s housing supply is fully considered, particularly those areas where it would have the most impact.”\textsuperscript{191}

The Bill

Clause 101 of the Bill will allow the Secretary of State to make a development order which would enable the Mayor of London to direct a London borough to consult him before granting planning permission for the type of development described in the direction. The Explanatory Notes to the Bill set out that this clause would allow for the making of secondary legislation with a view to giving effect to these commitments from the July 2015 Productivity Plan over wharves and sightlines.

7.4 Permission in principle and local registers of land (clauses 102-103)

In the Mansion House Speech 2014, the Chancellor George Osborne announced that local authorities would be required to put local development orders on over 90% of brownfield sites that are considered suitable for housing. He suggested that this would mean planning permission for up to 200,000 new homes.

In planning policy brownfield land is referred to “previously developed land”. A formal definition of previously developed land is contained in the National Planning Policy Framework as follows:

*Previously developed land:* Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

The Mansion House speech was later followed by a written statement in the House of Commons by the then Secretary of State for Communities and Local Government, which provided more information about the policy. The statement outlined that councils would be asked to put in place local development orders (LDOs) on brownfield land, which would amount to providing outline planning permission for the type of housing that could be built on a particular site.\textsuperscript{192} LDOs already have a

\begin{footnotesize}
\item[190] HM Treasury, *Fixing the foundations: Creating a more prosperous nation*, July 2015, paras 9.20 and 9.21
\item[191] Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p38
\item[192] HC Deb 16 June 2014 c72WS
\end{footnotesize}
legal basis in sections 61A-61D of the *Town and Country Planning Act 1990*.

Following the May 2015 general election, the current Government made no further mention of LDOs for brownfield sites in policy documents. Instead, in the HM Treasury’s July 2015 Productivity Plan, *Fixing the foundations: Creating a more prosperous nation*, the Government announced that it would legislate to create a “zonal” system for brownfield land identified as suitable for housing on a LPA register which would grant automatic “planning permission in principle”:

> 9.15 The government has already committed to legislating for statutory registers of brownfield land suitable for housing in England. The government will go further by legislating to grant automatic permission in principle on brownfield sites identified on those registers, subject to the approval of a limited number of technical details. On brownfield sites, this will give England a ‘zonal’ system, like those seen in many other countries, reducing unnecessary delay and uncertainty for brownfield development.

### Statistics on planning

The availability of brownfield land for housing development is difficult to estimate, owing to low response rates from local authorities completing statistical returns. A study carried out by the University of the West of England, commissioned by the Campaign to Protect Rural England, has estimate that a minimum of 976,000 homes can be built on brownfield land in England.

The Homes and Communities Agency provide a guide offering an indication of the range of costs involved in the remediation of contaminated land. Predicted costs vary depending on the previous use of the site, the proposed end use and the level of water risk. Former small-scale industrial sites and factories are associated with lower costs than former power stations and refineries, for example.

To remediate land for apartment-style buildings without gardens, costs per hectare can be as low as £50,000 or as high as £1,230,000. For more sensitive new developments (including dwellings with gardens, schools, and allotments) costs are likely to start at £75,000 per hectare and go as high as £1,765,000 per hectare.

The density of buildings around a newly-built dwelling can be calculated by counting all the addresses that fall within a one-hectare square surrounding the dwelling. In 2013-14, the average density of residential addresses surrounding a newly-created residential address was 32 addresses per hectare. For previously-developed land, the density was 37 addresses per hectare and for non-previously-developed land the density was 42 addresses per hectare.

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193 HM Treasury, *Fixing the foundations: Creating a more prosperous nation*, July 2015


density was 26 addresses per hectare. In the Green Belt, the density was lower at 18 addresses per hectare\textsuperscript{196}.

**The Bill: permission in principle**

Clause 102 of the Bill introduces a system of “permission in principle” by inserting a new section into the *Town and Country Planning Act 1990*. This new section gives the Secretary of State the power, by development order, to grant permission in principle to land that is allocated for development in a qualifying document. A qualifying document is expected initially only to contain land allocated on the brownfield register, development plan documents (i.e. local plans) and neighbourhood plans.\textsuperscript{197} Initially the scope of development that permission in principle is expected to allow will be limited to sites suitable for “housing (use), location and amount of development”.\textsuperscript{198} The permission in principle would be granted at the time that the qualifying document is adopted or made by the LPA. The development order would set out how long the permission in principle would be valid for.

The clause also provides for a process to be made, by regulation, whereby an applicant could apply to the LPA for permission in principle to be granted for a particular site. The Explanatory Notes state the Government’s current intention to limit the type of development here to minor housing developments (the creation of fewer than 10 units).\textsuperscript{199} An LPA will be able to either grant or refuse an application for permission in principle, but will not be able to attach any planning conditions to any approval.

The grant of full planning permission would not be obtained until the permission in principle had been combined with a “technical details consent”. The decision on technical details consent must be made in accordance with the permission in principle already granted, meaning that the LPA would not be able to reconsider the principle of whether the development should go ahead. The grant or refusal of technical details consent could only be granted or refused, “on the grounds of previously unconsidered technical matters.”\textsuperscript{200} Planning conditions related to the development could be attached with the technical details consent. The Government intends to consult on the details of the application process for technical detail consent “in due course.” It envisages that any fee payable by the applicant for technical details consent to the LPA would be consistent with that relating to similar types of existing applications in the planning system.\textsuperscript{201}

This clause also provides that where a permission in principle has existed for a prolonged period (which would later be prescribed in the development order) and there has been a “material change of

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\textsuperscript{196} DCLG (2015). *Land use change statistics in England: 2013/14*
\textsuperscript{197} Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p41
\textsuperscript{198} Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p41
\textsuperscript{199} Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p42
\textsuperscript{200} Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p42
\textsuperscript{201} Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p42
circumstances since the permission came into force”, the LPA is not bound by the permission in principle in determining an application for development consent. The Government will again consult on the length of this prolonged period “in due course”.  

Comment

The Local Government Association, while not explicitly disagreeing with planning permission in principle, highlighted how it was important for local communities to continue to have a say on decisions that affect them. It emphasised how existing planning controls ensure developments are of benefit to local communities.

The Town and Country Planning Association said that the introduction of zonal planning could work well if properly implemented with detailed procedures to ensure quality, but that it represented “a major change to English planning that the Government is introducing with no consultation, and no safeguards to ensure we build high quality places.”

The editor of the specialist publication Planning commented on the confusion about whether LPAs still had targets to put LDOs in place on brownfield land or whether this would be replaced by the new permission in principle:

Further detail is promised, but at this point it is not clear how the move to turn local plan site allocations into permissions in principle affects the LDO target. Presumably one of the purposes of making a site allocation almost equivalent to a permission for a small brownfield housing development is that it removes the need to draw up an LDO.

Given that, more than a year after the chancellor announced the target, there is little sign of authorities having been galvanised into producing LDOs, it may be that the government has decided to be less prescriptive about how authorities achieve the grant of permission in principle for housing on brownfield sites. But town halls need clarity about what central government is expecting them to do, and whether the LDO target remains in place.

The Bill: local registers of land

Clause 103 inserts a new section into the Planning and Compulsory Purchase Act 2004. This will enable the Secretary of State, by regulations, to require LPAs to each compile a register of land. The Government intends to use this power to require registers to be kept of brownfield land which is suitable for housing development. The clause provides that the Government could refer to planning policy for a description of the land to be included; no description is provided in the Bill. The regulations could also specify what should be included in the...
register, such as site reference, address, size and an estimate of a number of houses the site could support.

Regulations would allow the Secretary of State to prescribe criteria which the land must meet for entry onto the register. According to the Explanatory Notes, this could include for example that the land must “not be affected by physical or environmental constraints that cannot be mitigated and that it must be capable of supporting five dwellings or more.”

The clause will allow for the register to be split into two parts so that one part could include all the land which, by regulation, must be on it, and another part for land which does not meet this criteria. The idea is that this would also allow brownfield land which is not suitable for housing still to be included on the register, but without meaning that it would be given permission in principle for development.

LPAs would be given discretion in this clause to exclude from the register land that they would otherwise be obliged to include. The example provided by the Government is where the development of land would be particularly controversial and the LPA considers that the normal planning application route would be more appropriate.

The clause will also give the Secretary of State powers to make regulations which would require an LPA to provide information about the register, in order for progress to be tracked about progress made towards compiling the register.

Comment
The Royal Town Planning Institute was pleased to see that there was to be some discretion on the part of LPAs to exclude land from the register.

The Royal Institution of Chartered Surveyors responded positively to the measures to release brownfield land, to “get our country building”. It suggested that measures should be combined with a brownfield map that included privately owned brownfield land, to “increase the supply of affordable and rented properties via councils and housing associations.”

7.5 Planning permission (clauses 104-106)
Permitted development rights
Permitted development rights are basically a right to make certain changes to a building without the need to apply for planning permission. These derive from a general planning permission granted from Parliament, rather than from permission granted by the LPA.

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207 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p43
208 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p43
209 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p43
210 RTPI, RTPI’s initial response to publication of Housing and Planning Bill, 13 October 2015
211 Planning, “Housing bill: reaction from the planning sector”, 14 October 2015

Some permitted development rights relate to building operations, for example, the right to add an extension to a domestic house by a certain amount. Others relate to the change of use of buildings, such as the right to change a restaurant or café into a shop.

For many permitted development rights which relate to change of use of buildings there is a prior approval system, set out in the 2015 Order, which requires the LPA to approve technical aspects of the development, such as its siting, design and transport and highways issues. These pre-approval requirements vary depending on the exact type of change of use permitted development right. If the LPA decides to refuse prior approval on these issues then the change of use may not go ahead.

Clause 104 of the Bill will allow a prior approval process to be introduced for building operation permitted development rights and other development orders. The idea is to delegate this matter to LPAs so that “local conditions and sensitivities can be taken into account”.212

Designation for poor performance

The Growth and Infrastructure Act 2013 provided for applicants for major development to apply direct to the Secretary of State (in practice a Planning Inspector), rather than the local planning authority (LPA), where the LPA has been officially “designated”, by the Secretary of State, for having a record of very poor performance in the speed or quality of its decisions on major development applications.

Major development applications are formally defined in the Town and Country Planning (General Development Procedure) Order 2015 (SI 2015/595), as follows:

“major development” means development involving any one or more of the following—

(a) the winning and working of minerals or the use of land for mineral-working deposits;

(b) waste development;

(c) the provision of dwellinghouses where—

(i) the number of dwellinghouses to be provided is 10 or more; or

(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);

(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or

(e) development carried out on a site having an area of 1 hectare or more;

The minimum threshold for identifying under-performing local planning authorities is currently 40% of major decisions made on time, which is

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212 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p44
due to rise to 50%. A revised criteria document that makes this change was laid before Parliament at the end of July and, subject to parliamentary approval, is due to come into effect in November 2015.

The HM Treasury’s July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation, set out the intention to extend the performance regime to non-major applications, “so that local authorities processing those applications too slowly are at risk of designation.”

Clause 105 of the Bill will allow the Secretary of State to make regulations to introduce a separate category for designation, which could include non-major development. The clause gives scope for the Secretary of State to provide that certain applications could not be made directly to him and should remain with the LPA. This could be, for example, where an LPA was designated for poor performance in respect of major applications, that certain minor applications could still be dealt with by the LPA.

Neither the Bill nor the Explanatory Notes provide any information about whether the thresholds for designation for non-major applications would be set at the same levels as for major applications.

Financial benefits
When an LPA accepts a planning application this will often bring with it financial benefits to the LPA in terms of income from the community infrastructure levy, and grants or other financial assistance from Government, such as the New Homes Bonus.

Clause 106 requires that whenever a planning officer took a planning decision or recommended in a report how the LPA should determine a planning application, a report is made of the financial benefits that accepting the application would bring to the LPA. Regulations would set out exactly which financial benefits should be listed in this report. The report would need to indicate whether or not the financial benefit was material to the planning application being accepted. Regulations could also provide that the estimated amount of each financial benefit was also recorded.

7.6 Nationally significant infrastructure projects (clause 107)
The Planning Act 2008 (the 2008 Act) introduced a new development consent process for Nationally Significant Infrastructure Projects (NSIPs). This was subsequently amended by the Localism Act 2011. NSIPs are usually large-scale developments (relating to energy, transport, water, or waste) which require a type of consent known as “development consent”. An extension of the regime in 2013 now allows certain business and commercial projects to opt into this process. A Development Consent Order (DCO) automatically removes the need to

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213  HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, para 9.17
214  Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p45
215  Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p45
obtain several separate consents, including planning permission, and is designed to be a much quicker process than applying for these separately.

Any developer wishing to construct an NSIP must first apply for consent to do so. For such projects, the Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent. The process is timetabled to take approximately 15 months from start to finish. The 2008 Act sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent.216

A DCO cannot make approval for any housing included within a development. If a developer does want to include housing then if it is temporary accommodation for workers it must be demolished once the construction is complete, or a separate planning application has to be made if it is for more permanent housing. In the HM Treasury’s July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation, the Government said that it would “legislate to allow major infrastructure projects with an element of housing to apply through the Nationally Significant Infrastructure Regime (NSIP).”217

Clause 107 of the Bill will provide the Secretary of State with powers to grant development consent for housing which is linked to an application for an NSIP. According to the Explanatory Notes, guidance to be produced by the Government will set out the amount of housing that may be granted consent within a DCO. This will apparently include housing which is “functionally linked to the infrastructure project”.218 An example provided is housing which is required for workers during the construction phase or for key workers during the operation phase. The clause will also allow consent to be granted for housing where there is no functional link, but where there is a close geographical link between the housing and the infrastructure project.

The Government has not yet set out whether there will be any link between these homes and its Starter Homes duties set out in part 1 of the Bill. Nor is it clear whether section 106 contributions or the community infrastructure levy could be sought in relation to these homes.

The Local Government Association said the powers to extend the NSIP regime would “undermine local accountability and community influence in the planning system.”219

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216 National Infrastructure Planning website, Planning Inspectorate role [on 10 April 2013]
217 HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, para 9.17
218 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p45
219 Local Government Association, Housing and Planning Bill, October 2015
7.7 Urban development corporations (clauses 108-110)

From 1979 a total of 13 Urban Development Corporations (UDCs) were established in England with the objective of securing economic regeneration in their localities. UDCs are normally given planning functions for the area they cover.

The Government believes that the planning process may be delayed while an Urban Development Corporation is established, due to the uncertainty of timescales associated with the Parliamentary process. The Deregulation Act 2015 made some temporary changes to this process which last until 31 March 2016. This change covered the establishment, in April 2015, of a new UDC created to deliver a Garden City settlement of up to 15,000 homes at Ebbsfleet in Kent.

The provisions in clauses 108 and 109 of this Bill will make these temporary changes permanent. They will provide that, before the Secretary of State can make an order designating an area as an urban development area, he must consult: persons representing those living within or in the vicinity of the proposed urban development area; persons representing businesses with premises within or in the vicinity of the proposed urban development area; local authorities for an area falling within the proposed urban development area; and any other person considered appropriate. The Bill also provides for the order creating the UDC to be subject to the negative resolution procedure (instead of the affirmative resolution procedure). A statutory instrument under the negative procedure will automatically become law without debate unless there is an objection from either House of Parliament.
8. Compulsory purchase

8.1 Compulsory purchase (clauses 111-139)

Government, local authorities and certain other acquiring authorities all have powers to purchase land by the compulsory purchase mechanism. Compulsory purchase powers exist in many different pieces of legislation. They are often specialised, for example powers to acquire land for the construction of an airport. Compulsory purchase procedure in the UK is covered by the Acquisition of Land Act 1981, as amended, although compulsory purchase powers come from many different Acts. That Act refers back to the Land Compensation Act 1961 for assessment of compensation.

In 2003 the Law Commission worked on a project called Towards a Compulsory Purchase Code. In July 2000, the Compulsory Purchase Policy Review Advisory Group ("CPPRAG"), which had been established by the Department for Environment Transport and the Regions (DETR), reported that the law was “an unwieldy and lumbering creature” and made a number of recommendations for detailed improvements.222

In 2003 in its final report the Law Commission similarly called the law of compulsory purchase “a patchwork of diverse rules, derived from a variety of statutes and cases over more than 100 years, which are neither accessible to those affected, nor readily capable of interpretation save by specialists.”223 It recommended a Compensation Code as a framework for possible future legislation, and changes to compulsory purchase procedure.

The recommendations of the Law Commission have not been fully implemented. The Planning and Compulsory Purchase Act 2004 aimed to make it easier for local authorities to purchase land compulsorily and removed the need for the Secretary of State to confirm compulsory purchase orders which were unopposed. However, it did not implement all of the changes suggested by the Law Commission. The then Labour Government set out their reasons for this in a written ministerial statement from December 2005:


Although the Commission’s recommendations identify a basic framework for reforming the structure of the law, they do not set out the detailed provisions needed to ensure fairness to those affected, as well as speed and simplicity. The ever-evolving complexity of the statute and case law has shown that these aims cannot always easily be reconciled. As the Law Commission has demonstrated, there are no quick and easy solutions and moving towards a simpler and more readily accessible set of laws would still require substantial further work.

The Government would like to have a single simple compulsory purchase code expressed in modern English. But finding further legislative time for this needs to be balanced against the
Government’s many other priorities. Given the changes providing immediate and tangible improvements were in the 2004 Act, implementing the Law Commission’s proposals is not a practicable proposition for the foreseeable future.

The Government consider it more important to maintain a stable legislative framework providing certainty both for acquiring authorities and for those whose properties may need to be acquired. This should encourage acquiring authorities to exercise their compulsory purchase powers wherever this makes sense in the public interest to further their wider policy objectives.224

In the Autumn Statement 2014, the previous Government announced, that in respect of compulsory purchase reform, it would “publish proposals for consultation at Budget 2015 to make processes clearer, faster and fairer, with the aim of bringing forward more brownfield land for development.”225

The March 2015 Budget launched a Technical consultation on improvements to compulsory purchase processes (the “March 2015 consultation”). The aim of the reforms were stated as making the compulsory purchase system clearer, fairer (for both acquiring authorities and for those whose interests are compulsorily acquired) and faster. The proposals included:

- To give all acquiring authorities the same powers of entry for survey purposes prior to a compulsory purchase order being made; to introduce a standard warrant provision in relation to the proposed new common power of entry for survey; and to introduce a standard notice period of 14 days for entry for survey purposes.
- To develop targets and clear timetables for the confirmation stage of the compulsory purchase order process;
- To allow the Secretary of State to delegate decisions to a planning inspector in certain circumstances;
- Making changes to the process of taking possession of the land and on the timing of the acquisition process;
- Making changes to the system of obtaining advance payments; and
- Changing interest rates for outstanding compensation.

The Government has not yet responded formally to this consultation nor has it published the consultation responses. In the HM Treasury’s July 2015 Productivity Plan, Fixing the foundations: Creating a more prosperous nation, the Government stated that a number of additional proposals had been received from that consultation and suggested that it would bring forward any further proposals “in the autumn.”226

8.2 Compulsory Purchase Order processes

The existing process of compulsory purchase follows a number of stages starting with formulation. This is an information-gathering stage where

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224  HC Deb 15 December 2005 c162WS
225  HM Government, Autumn Statement 2014, para 2.49
226  HM Treasury, Fixing the foundations: Creating a more prosperous nation, July 2015, para 9.16
an “acquiring authority” decides that land is required for a particular purpose, and that they are prepared to use compulsory purchase powers to obtain it.\footnote{Compulsory Purchase and Compensation,\textit{ Compulsory Purchase Procedure}, Communities and Local Government, October 2004. Paras 3.7-3.11}

Once the acquiring authority has completed its initial investigations it can proceed to the next stage: a formal resolution to use compulsory purchase powers, defining the land and stating the purpose for which it is to be acquired. It is best practice for such a resolution to be disclosed, including to the local council, although this is not a requirement.\footnote{Compulsory Purchase and Compensation,\textit{ Compulsory Purchase Procedure}, Communities and Local Government, October 2004. Paras 3.12-3.14}

The next stage is known as “referencing” which involves collecting and recording information on land ownership and occupation, including identification of everyone that has a legal interest or right to occupy the land that is proposed to be acquired. Guidance on the process states:

To assist in this process the authority will usually serve a “requisition for information” form on all people they think own or occupy property they wish to acquire. The form will ask for details of your interest in the land (for example, freehold or leasehold) and also of anyone else who has an interest in it. The form may include a map extract asking you to mark the boundary of your interest. Failure to provide information, or making false or reckless statements, is a criminal offence.\footnote{Compulsory Purchase and Compensation,\textit{ Compulsory Purchase Procedure}, Communities and Local Government, October 2004. Para 3.17}

After referencing the acquiring authority should be in a position to make a Compulsory Purchase Order (CPO) which would usually contain a schedule, showing the ownership of land in the area of the CPO, and a “statement of reasons” saying why the authority wants to acquire the land. The CPO must be submitted by the authority for “confirmation”. However, before doing so it must publish notices:

- in local newspapers for two successive weeks;
- fixed on or near land covered by the order; and
- to all individuals that are “qualifying persons” with an interest in the land (or adjacent land that may be affected).\footnote{Compulsory Purchase and Compensation,\textit{ Compulsory Purchase Procedure}, Communities and Local Government, October 2004. Para 3.25}

Notifications of a CPO will invite the submission of objections to the relevant Government Minister or Welsh Assembly Government within a specified time period. If no objections are made, the Minister will consider the case on its merits and may confirm, modify, or reject the CPO without any hearing. A CPO is effective for three years.

If objections are received (and not withdrawn), the Minister will arrange for a public inquiry to be held, or for the objections to be considered through a written representations procedure.

The acquiring authority may try to negotiate with objectors before the public inquiry or during the written representations procedure. If the
authority is prepared to make amendments to its scheme to address objections, those objections may be withdrawn.

If there is a public inquiry, the acquiring authority will be required to produce a “statement of case” and make the statement and associated documents available for inspection by anybody who wishes to see them. Inquiries are held by Inspectors, appointed by the Minister. Further information on inquiry procedure can be found in the 2004 government publication Compulsory Purchase Procedure.\textsuperscript{231} After an inquiry, the Inspector will report conclusions and make recommendations to the Minister. Inspectors (appointed by the Minister) can also consider objections through a written representations procedure, and make recommendations to the Minister.

The Minister will consider the Inspectors report and will decide whether to confirm, modify, or reject the CPO. If confirmed there are further requirements for notifying interested parties. The validity of a CPO can be challenged in proceeding in the High Court brought within six weeks of the notification.\textsuperscript{232} There may also be circumstances where a decision on a CPO is subject to Judicial Review.

The confirmation of a compulsory purchase order does not by itself vest (or transfer) title to land in the acquiring authority, nor give it the right to possession of that land. This must be done by further processes, in some cases involving exercising further powers.

In some cases acquiring authorities may purchase land by agreement, by procedures for acquiring “short tenancies” or in response to a “blight notice”. Further detail on these is available in the Compulsory Purchase Procedure.

In addition, there is choice of procedures available which the authority can choose between, depending on its objectives.\textsuperscript{233} Title to the land and the right to possession of it are not necessarily acquired simultaneously. In deciding which power to use the acquiring authority must consider:

- how quickly it requires possession of the land; and
- whether it needs to acquire the title to the land as a priority.\textsuperscript{234}

Sometimes it is advantageous to a developer to be able to enter the land immediately following confirmation of a CPO in order to start work and it will leave the assessment of compensation and acquisition of the title to the land to a later date. At other times, the title of the land may be more important to secure first, in order to enable development by a third party.

\textsuperscript{231} Compulsory Purchase and Compensation, Compulsory Purchase Procedure, Communities and Local Government, October 2004.

\textsuperscript{232} Compulsory Purchase and Compensation, Compulsory Purchase Procedure, Communities and Local Government, October 2004. 3.73


A CPO can be exercised either by serving a notice to treat or by executing a General Vesting Declaration (GVD).

**Notice to Treat**

A notice to treat is a formal request from an acquiring authority to agree a price for a property. A notice to treat can only be served once a CPO is confirmed and should be served prior to entry onto the land. If used it must be served within three years of confirmation of the CPO. Following service of the notice to treat, the acquiring authority can take possession of the land by serving a notice of entry. Once the acquiring authority has entered the land via the notice to treat/notice of entry, it may undertake activities in connection with the purpose for which the is being acquired, but it will still not have actually acquired the title. Title does not pass to the acquiring authority until it has been conveyed, which occurs once compensation has been settled, either by agreement or by the Upper Tribunal (Lands Chamber).\(^{235}\)

**General Vesting Declarations**

2004 Government guidance defines a GVD as a “legal procedure used in connection with compulsory purchase whereby an acquiring authority, having obtained a CPO, is able to obtain possession and ownership of the land. This is a procedure for the speedy acquisition of land and normal conveyancing practice does not have to be adopted”.\(^{236}\) The GVD procedure allows an acquiring authority (often a local authority) to take ownership of the title, and possession of a property, in as little as three months.

GVDs are provided for in the *Compulsory Purchase (Vesting Declarations) Act 1981* and the *Compulsory Purchase of Land (Vesting Declarations) Regulations 1990*. Once a CPO has been confirmed (by the confirming authority) the acquiring authority may issue statutory notice of a GVD and wait for a minimum of two months, after which it can make a GVD. After a further 28 days or more (depending on the terms of the declaration) the title and property will be vested (or conferred) to the acquiring authority. The property rights within a GVD will become rights of compensation to be settles and paid after the GVD is made.

Certain interests must be dealt with under the notice to treat procedure rather than GVD such as a minor tenancy, or a tenancy that is about to expire. This prevents the acquiring authority from, being required to compensate tenants whose interests may expire before possession of the land takes place.

A GVD may not be withdrawn (although notice of a GVD does not oblige an authority to make the GVD).

\(^{235}\) Lexis PSL, Practice Notes, *Notice to treat and General Vesting Declaration* [as downloaded on 20 October 2015]

\(^{236}\) *Compulsory Purchase and Compensation, Compulsory Purchase Procedure*, Communities and Local Government, October 2004
Taking part of a claimant’s land – ‘Material Detriment’

Land needed for development projects often cuts across only part of a property. In such cases, developers would only seek to compulsorily purchase the relevant parts required. Where a partial purchase cannot be taken without “material detriment” to the remainder of a landowner’s property, claimants can apply to the Upper Tribunal (Lands Chamber) to compel the acquiring authority to purchase the entire property.237 In *Ravenseft Propertives v London Borough of Hillingdon*238 the Lands Tribunal held that “material detriment” occurred when, compared to the property as it previously existed, the retained portion of land was less useful or less valuable in some significant degree.

When a GVD has been served, the procedure in relation to material detriment is set out in statute. Reference to the Upper Tribunal will prevent entry to land being taken until the issue of material detriment is resolved. Under notice to treat, there is no statutory procedure for requiring the acquiring authority to purchase the whole of land: the procedure is established in case law.

The Government’s March 2015 consultation set out how these existing provisions on material detriment could cause confusion and delay. It proposed to provide a unified statutory system that would clearly allow for claimants to serve a counter-notice requiring the whole of their land to be taken if taking only part would cause material detriment to their retained land. It put forward two proposals, one which would allow entry to land before the issue of material detriment had been resolved by the Upper Tribunal and one which would prevent entry to land until material detriment had been resolved.239 Clause 134 of the Bill introduces the first of these options (entry before the dispute is resolved) and well as providing for landowners to serve a counter-notice on acquiring authorities requesting that it purchase all of a property.

8.3 The Bill

As noted above, a Technical consultation on improvements to compulsory purchase processes set out some proposed reforms. Some of these are introduced by the Bill, including:

- To give *all* acquiring authorities the same powers of entry for survey purposes prior to a compulsory purchase order being made; to introduce a standard warrant provision in relation to the proposed new common power of entry for survey; and to introduce a standard notice period of 14 days for entry for survey purposes – see Clauses 111-117;

- to develop targets and clear timetables for the confirmation stage of the compulsory purchase order process – see Clause 118;

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238 *Ravenseft Propertives v London Borough of Hillingdon* (1968) 20 P&CR 483
239 HM Government, *Technical consultation on improvements to compulsory purchase processes*, March 2015, p34
• to allow the Secretary of State to delegate decisions to a planning inspector in certain circumstances – see Clause 119, and
• making changes to the process of taking possession of the land and on the timing of the acquisition process – see Clauses 121-128.

Clauses 111-139 in Part 7 of the Bill deal with compulsory purchase.

Right to enter and survey land

Clauses 111-117 relate to the right to enter and survey land and introduce a new general power for any acquiring authority which is considering using its compulsory purchase powers, of entry for survey purposes. At the moment only some acquiring authorities (such as local authorities, urban development corporations, and the Homes and Communities Agency) have this power.

Clause 112 provides for the issuing of a warrant to authorise the use of force where entry for survey purposes is prevented (or likely to be prevented). Clause 113 provides for a minimum of 14 days’ notice to be given to the owner/occupiers of the land (and for a copy of the warrant to be provided and information to be given about owner/occupier rights to compensation if damage is done while entering land to conduct a survey.

Clause 114 sets specific requirements where the land to be surveyed is held by a statutory undertaker or includes a street. If the land is held by the undertaker and they object, the consent of the appropriate Minister would be required before the authority can enter the land.

Clause 115 allows compensation to be recovered from the acquiring authority, for any damage caused while exercising the power to enter land to conduct a survey.

Clause 116 introduces offences in connection with exercising the power of entry including the offence of obstruction of entry, and disclosure of confidential information (by the person exercising the power of entry).

Clause 117 deals with the right to enter and survey Crown land. It provides that clauses 111-116 would apply in relation to Crown land if the authorised person has the permission of the appropriate authority.

Confirmation and time limits

Clause 118 relates to the timetable for confirmation of a compulsory purchase order by the confirming authority. Previously this has often been a lengthy and opaque process. Clause 118 inserts new sections into the Acquisition of Land Act 1981, requiring the Secretary of State (or Welsh Ministers) to publish a timetable and setting out the steps to be taken by confirming authorities, and to publish an annual report on compliance with applicable timetables.

Clause 119 allows a confirming authority (usually the relevant Minister) to appoint an Inspector to act in its place in respect of confirming a compulsory purchase order.

240 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p48, para 299
Clause 120 clarifies the time limit for compulsory purchase, providing that notices to treat and general vesting declarations may not be served more than three years after confirmation of the compulsory purchase order.

Vesting declarations: procedure
Clause 121 introduces Schedule 7 which changes the notice requirements for GVDs. A preliminary notice of intention is no longer required before a general vesting declaration may be executed. Instead, a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 must be included in the confirmation notice.241 This clause also requires the confirmation notice to include an invitation to those that are eligible to claim compensation to give their details to the acquiring authority.

Clause 122 changes the minimum time period between the notice period and the point at which land may be transferred (“vest in the acquiring authority”) from 28 days to three months.

Possession following notice to treat etc.
Clause 123 changes the minimum notice period after which possession of land may be taken under the notice to treat/notice of entry procedure from 14 days to 3 months. It also provides that a notice of entry ceases to have effect if, before entering to take possession of the land, the acquiring authority becomes aware of a new or changed interest in the land. In these cases a shorter notice period of 14 days is allowed, providing the new interest is not an occupant of the land.

Clause 124 enables a person in possession of land subject to a CPO to serve a counter-notice on the acquiring authority requiring possession of the land to be taken on a specified date. This date may not be less than 28 days from the date of the counter notice, and may not be before the end of the notice period specified in the notice of entry.

Clause 125 clarifies that an acquiring authority may extend the period specified in a notice of entry by agreement with each person on whom it was served.

Clauses 126 makes the changes provided for in clauses 123-125 in respect of the New Towns Act 1981.

Clause 127 introduces Schedule 8 of the Bill which abolishes a procedure for taking possession of land that has fallen out of use (found in section 11(2) of, and Schedule 3 to, the Compulsory Purchase Act 1965).

Clause 128 extends the minimum notice period for taking possession of land following vesting declaration from 14 days to 3 months.

Compensation
Clause 129 provides regulation-making powers to the Secretary of State to impose additional requirements on the notice claimants must give the acquiring authority detailing their claims for compensation.

241 Housing and Planning Bill Explanatory Notes, Bill 75 EN 2015-16, p49
Clauses 130-133 deal with advance payment of compensation to claimants to help them reorganise their affairs with the minimum of disruption. Clause 130 provides for making a request for advance payment of compensation, clause 131 provides acquiring authorities with the power to make advance payments and addresses the timing of advance payments. Clause 132 addresses the payment of interest on advance payments of compensation. Clause 133 provides for repayment of advance payment where there is no compulsory purchase.

Disputes

Clause 134 addresses objections to the splitting of land and the issue of material detriment (see above). This clause adds Schedules 8 and 9 to the Bill. The Explanatory Notes to the Bill state “The intention is to harmonise (as far as possible) the approach to the treatment of material detriment under the vesting declaration and notice to treat procedures and to allow the acquiring authority to enter and take possession of the land they are authorised to take, before any dispute about material detriment has been determined by the Upper Tribunal”.

Clause 135 provides for a person that disputes the validity of a CPO to challenge it by way of application to the High Court. The Explanatory Notes to the Bill state: “Clause 135 amends section 24 of the Acquisition of Land Act 1981 to clarify that the court has the power to quash the decision to confirm the compulsory purchase order as well as the power to quash the whole or any provision of the order itself. Where the compulsory purchase order itself is found to be sound but there is an error in the decision to confirm the order, the court may decide to quash the decision alone. This means the order will go back to the confirming Minister for reconsideration”.

Clause 136 provides for extension of the compulsory purchase time limit during a challenge from the usual 3 years from the date on which the CPO becomes operative to either (a) a period equivalent to the period from the date an application is made under section 23 until it is finally determined or withdrawn or (b) one year, whichever is the shorter period.

Power to override easements and other rights

Clause 137 introduces a new power for acquiring authorities to override easements and restricted covenants on land. The right to override easements and restricted covenants is already available to local planning authorities and regeneration companies (under the Town and Country Planning Act 1990) and the Bill extends this right to other acquiring authorities (such as statutory undertakers). The Clause extends these rights when building or maintenance works are being undertaken on, or using, land which has been vested in or acquired by a “specified authority”. The Clause also imposes certain conditions on the exercise of this power (for example, requiring planning consent for the building or maintenance work).

242  Housing and Planning Bill [Explanatory Notes, Bill 75 EN 2015-16], p52
243  Housing and Planning Bill [Explanatory Notes, Bill 75 EN 2015-16], p53
244  Housing and Planning Bill [Explanatory Notes, Bill 75 EN 2015-16], p53
Clause 138 provides for the payment of compensation where easements and other rights have been overridden.

Clause 139 introduces Schedule 11 which makes consequential amendments, repealing existing powers to override easements and other rights which will be replaced by the new power in clause 137.

8.4 Comment

The Compulsory Purchase Association (CPA) said that although it had engaged with Government and responded to the March 2015 consultation, that “the Bill’s current content on compulsory purchase does not entirely reflect the position of the Association.”\(^{245}\) It largely welcomed the new survey powers, clearer timetables and reform to advance payments, subject to actually seeing the detail in further regulations. It did not support confirmation of CPOs by inspectors, rather than the Secretary of State, and it did not agree with the provisions which allow entry onto land before a dispute about material detriment had been resolved. It also highlighted “the rather inelegant piece of modern legislative drafting in clause 139 which states that schedule 11 “gets rid of legislation” replaced by clauses 137 and 138.”\(^{246}\)

The CLA, the membership organisation for owners of land, property and businesses in rural England and Wales, expressed some disappointment that reforms implemented by the Bill appear limited to “technical matters” representing “a very small step towards a fairer system that works better both for infrastructure delivery and rural businesses”.\(^{247}\)

CLA Deputy President Ross Murray stated:

“We welcome earlier payment of advance compensation to the owners of property or land being taken which will allow buildings to be replaced before the current ones are lost – previously rural firms have been facing months or even years without buildings which are critical to their operations, such as silage storage or milking facilities.

However, this is an opportunity missed to encourage acquiring authorities – whether that is a local council or a commercial delivery company – to take greater account of business disruption when paying compensation. This flexibility would have enabled a smoother and faster agreement for all involved and it would have reduced wastage of taxpayer funds through protracted appeal processes.

Similarly it is disappointing that the double-standards in interest arrangements that we have seen with HS2 Ltd have not been addressed. The CLA will continue to campaign for a fairer approach.”\(^{248}\)

\(^{245}\) Compulsory Purchase Association, Housing and Planning Bill [downloaded on 20 October 2015]

\(^{246}\) Compulsory Purchase Association, Housing and Planning Bill [downloaded on 20 October 2015]

\(^{247}\) Housing and Planning Bill: long-awaited compulsory purchase reform falls flat, CLA, 13 October 2015

\(^{248}\) Ibid.
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