The Housing and Planning Bill received its (formal) first reading on 13 October 2015. It is essentially the legislative implications of delivering the government’s manifesto commitments to expanding affordable home ownership, improving housing management in both the social and private rented sectors and implementing planning reforms to remove any unnecessary obstacles to these objectives.

The Bill is expected to take up to 18 months to become legislation, with a date for the second reading in the House of Commons yet to be announced.

This briefing outlines the key provisions in the Bill with initial commentary.

It will be of particular interest to members and officers with responsibility for housing and planning and of general interest to other elected members and officers – in all tiers of authority.

Briefing in full

Introduction

The Housing and Planning Bill was introduced into Parliament in the House of Commons on 13 October 2015 when it received its formal First Reading. Debate on the general principles of the Bill will not take place until its Second Reading, whilst discussion on the detail will take place at Committee stage. The Bill consists of 8 Parts

Part 1: New Homes in England

Part 2: Rogue landlords and letting agents in England

Part 3: Recovering abandoned premises in England

Part 4: Social housing in England

Part 5: Housing, estate agents and rent charges: other changes
Part 2: Rogue landlords and letting agents in England

This Part of the Bill deals with matters covered by the government's consultation paper "Tackling rogue landlords and improving the private rental sector" (see LGIU Briefing September 2015). Interestingly, whilst there is a definition of "letting agent" in the Bill, the term "rogue landlord" is not defined.

The Bill enacts suggestions made in the August consultation paper, in particular introducing:

- **Banning orders** - orders banning a person from letting or managing property in England or acting as a letting agent. The legal provisions for making a banning order are set out. Someone subject to a banning order would also not be able to hold an HMO licence and would be prohibited from disposing of properties to family members and other close associates. Local authorities will be able to make management orders to arrange for such properties to be managed either on a temporary or permanent basis.

- **Banning order offences** - to be defined by the Secretary of State by regulation (the consultation paper referred to repeatedly letting unsafe or overcrowded property)

- **Establishing a database of rogue landlords and letting agents** - although the Secretary of State is responsible for establishing the database, it falls to local councils to maintain, update and edit it. Every authority will have access to it.

- **Rent repayment orders** - these will enable a tenant to recover rent paid to a landlord found guilty of specified offences including breaching a banning order or improvement notice, illegal eviction and certain offences under the Housing Act 2004. A local housing authority may also apply for the order.

Part 3: Recovering abandoned premises in England

Changes to the current procedures for landlords to recover abandoned properties were also trawled in the August consultation paper. The Bill will enable landlords to legally recover their property without needing a court order providing that a certain amount of rent (specified in the Bill) is owing and the landlord has served a series of warning notices.

Part 4: Social housing in England
Implementing the Right to Buy on a voluntary basis

The Conservative manifesto included a commitment to introduce Right to Buy for housing association tenants. The election result, and the probability that this would be pursued, sparked the National Housing Federation (NHF) into a rearguard action to mitigate the effects on its members who were already reeling from the Chancellor's unexpected Budget announcement that social housing rents must fall by 1% per annum to 2020.

The campaign was conducted on 2 levels. First, the NHF painted a very public portrayal of the perceived ill-effects in terms of stock loss, despite any duty to replace; negative effect on finances; and the possibility of housing associations being reclassified as public bodies, meaning all their private borrowing (up to £60bn) would be transferred to public debt. Second, the NHF immediately started negotiating with the government to see if a deal could be struck whereby associations introduced Right to Buy on a voluntary basis in return for full compensation for the discounts incurred. The deal was struck a week or so before the Bill's introduction; NHF members voted in favour of accepting it; and this Chapter of the Bill is the result. Details can be found here.

The voluntary deal said this about exemptions:

‘Housing associations would be fully compensated by the Government for the cost of the discount. There would be a presumption that housing association tenants would have the right to purchase a home at Right to Buy level discounts, but associations would have discretion not to sell the home under some circumstances in order to manage their business and charitable objectives. This means that in some cases, housing association tenants would be offered a portable discount to purchase an alternative property to the one that they live in. Housing associations would have the freedom to replace the properties sold with alternative tenures such as shared ownership where this is more appropriate’.

In essence, the Bill would enable the Secretary of State to pay grant to cover the cost of the discount offered to "private registered providers" who offer Right to Buy. It does not stipulate where the grant is coming from - that is covered by the next Chapter and is already causing considerable anger among affected local authorities. The details of how the grant will be calculated and what conditions may be attached are not yet clear. Some in the sector are concerned that the compensation received by housing associations will actually not be the same as the ‘full compensation’ that housing associations thought was contained in the ‘voluntary deal’. The Bill suggests that associations would instead receive grants with ‘any terms and conditions [ministers] consider appropriate’.

The Homes & Communities Agency will have a role in monitoring the performance of housing associations on ‘right to buy’ and home ownership.
Vacant high value local authority housing

There will be a duty on councils to consider selling high value vacant social housing when it becomes vacant. The Secretary of State is empowered to require local housing authorities to make an upfront payment to government calculated by reference to the market value of their "high value" housing stock, rather than just paying over the proceeds of the actual sales.

There is the possibility of the payment to government being reduced by agreement, provided the use of the money is approved, for example to enable it to lead on new build housing.

Although the Bill suggests the sale of high value homes is to encourage efficient use of housing stock, it has been made clear that this is where the grant to reimburse housing associations is coming from. The government will receive the income they need to cover the grant and some councils may have to make up the funding if they do not sell sufficient homes of the right type to cover the levy.

The Chartered Institute of Housing has already cast doubts upon whether sufficient council homes will be sold to cover this.

Reducing regulation

A part of the NHF's deal with government was that the regulation of housing associations would be reduced. This enables the Secretary of State to introduce regulations to achieve this; however, it is couched in very general terms with no detail given.

High income social tenants: mandatory rents

During the life of the coalition government, a consultation paper was published seeking views on whether social housing tenants of both councils and housing associations with a "high income" should pay a market rent. It was generally criticised as being not cost-effective and quietly dropped.

The new government has resurrected it and the Bill empowers the Secretary of State to set the rent for high income tenants of housing associations and, presumably to use existing mechanisms to do the same for local councils. "High income" is £40,000 in London and £30,000 elsewhere but what is to be counted as income is left to regulation, although it is made clear it will be household income.

Social landlords will be able to require their tenants to declare their income and landlords will be able to access HMRC data for verification purposes. Any increased income to local authorities from the higher rents must be paid over to government. The provisions of this chapter will be enforced by the Regulator of Social Housing.

Part 5: Housing, estate agents and rent charges: other changes
This is a ragbag of measures which do not easily fit elsewhere in the Bill

**Assessment of accommodation needs**

This clause makes it clear that, when assessing housing needs, local authorities must make provision for everyone living in or resorting to their area - the separate references to Gypsies and Travellers are removed.

**Licences for HMO and other rented accommodation: additional tests**

This clause amends the existing "fitness" test by stipulating that a licence applicant should not be bankrupt and should be entitled to remain in the UK.

**Financial penalty as alternative to prosecution under Housing Act 2004**

These clauses enable local councils to impose a financial penalty as an alternative to prosecution for Housing Act offences. Again, this was proposed in the August consultation paper.

**Tenancy deposit and other information**

This enables a local housing authority to use certain tenancy deposit information to investigate potential Housing Act offences and empowers the Secretary of State to make regulations extending the purposes for which other information can be used.

**Estate agents: lead enforcement authority**

This makes the Secretary of State the lead enforcement authority for enforcing estate agent legislation, though they are empowered to arrange for a trading standards authority to carry out their duties.

**Enfranchisement and extension of long leases**

This makes changes to the calculation of costs for enfranchisement and lease extension.

**Redemption price for rent charges**

Similarly, this changes the cost to rent payers for redeeming a rent charge.

**Comment**

The first thing that strikes one in the meat of the Bill is how little detail is given and how much is left for the Secretary of State to cover by regulation. For example, the way the income of a "high income" is to be assessed and the rent to be charged to such a tenant is left to regulation.

That said, the Bill’s housing provisions contain few surprises and reflect the government's manifesto commitments. The shift to "affordable" home ownership is
clearly reflected in both the starter homes provisions in Part 1 and the extension of Right to Buy to housing association tenants, albeit voluntary, in Part 4. It remains to be seen how the government will deal with the small number of associations who voted against the NHF's deal (although 55% of the NHF’s 584 members voted in favour of the voluntary scheme earlier this month, 39% abstained or did not respond and 6% opposed it).

The provision to force local housing authorities to sell, or at least consider selling, high value stock, was widely trawled, but its use to fund the discounts to housing association tenants has caused widespread anger among affected councils.

The reappearance of plans to charge high income tenants near market rents was foreshadowed; the government has dealt with criticism that it would be unworkable and not cost effective by lowering the "high" annual income from the consultation paper options of £40,000 to £80,000 to a mere £30,000 outside London, and enabling landlords to require tenants to declare their income, backed up by powers to use HMRC data to verify this.

With no commitment to affordable rented housing, it is unsurprising to see measures to tackle the worst excesses by a minority of private landlords in the Bill. However, there is no prospect of rent control being introduced to the rapidly growing private rented sector; this remains one of the most worrying aspects of renting for tenants in high cost areas.

In summary, the housing provisions of the Bill contain few surprises and reinforce the government's commitment to home ownership above all other tenures.

Planning

Introduction

This section provides a brief summary of the proposed amendments set out in the following parts of the bill:

- Part 1: New Homes in England
- Part 6: Planning in England
- Part 7: Compulsory Purchase etc

More information can be found in the explanatory notes that accompany the bill.

Note that at the same time as the government published the draft bill it confirmed that the temporary permitted development rights for converting offices to houses
without requiring full planning permission – which were due to expire in spring 2016 – are to be made permanent.

Part 1 – New Homes in England

Chapter 1 covers the implementation of the government’s starter homes initiative, which will be written into the planning process. Starter homes are:

- new dwellings (which could be as a result of a conversion) that are only available to eligible first-time home buyers (for example, younger than 40)
- sold at a discount of at least 20 per cent of the market value
- cheaper than the price cap (£250,000 nationally, £450,000 in Greater London).

Planning authorities will have a duty to ‘promote the supply of starter homes’ when preparing local plans, fulfilling the duty to cooperate and deciding on planning applications. The aim is to make starter homes ‘a common feature of new residential developments across England.’

The Starter Homes scheme will now be counted toward affordable home quotas in section 106 agreements.

The detail is vague – a consultation is to be published setting out proposed regulations – but LPAs will be compelled to require a proportion of a development as starter homes, or a commuted sum. Starter homes are to be considered as part of the affordable homes contribution for section 106 negotiations and agreements.

Chapter 2 covers self-build and custom housebuilding. It includes a new duty on LPAs to

‘grant sufficient suitable development permissions on serviced plots of land to meet the demand for self-build and custom housebuilding in their area.’

The level of demand is defined by the number of people on the local authority register wanting to build their own house.

The draft bill states that there may be circumstances in which the Secretary of State grants an exemption to the duty for local authorities, but no detail is included.

Part 6 – Planning in England

Neighbourhood planning

The amendments are intended to speed up the neighbourhood planning process and allow for the Secretary of State to intervene:

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• to require an LPA to designate a neighbourhood planning area if the prescribed criteria have been met
• to direct an authority to make arrangements to hold a referendum
• if councils make what are deemed to be unnecessary changes to a neighbourhood plan ahead of a referendum.

The bill also includes an amendment to require LPAs to notify a neighbourhood forum of planning applications in their designated area (if requested to do so).

It also inserts an amendment requiring LPAs that fail to take prescribed actions to do so ‘by a prescribed date’.

**Local planning**

Here there is a raft of changes that give more powers for the Secretary of State around the preparation of local plans, which will smooth the path for direct intervention where the government deems that LPAs are being too slow (2017 is the current deadline for having an up-to-date plan). This goes as far as a power to direct an LPA to submit a development plan document to the Secretary of State for approval.

In fact, the legislation appears to provide the Secretary of State with the powers to intervene throughout the local plan process. These have been cogently summarised by [Ian Tant and Michael Knott at Barton Willmore](http://www.bartonwillmore.co.uk) and include powers for the Secretary of State to:

• direct amendments to local development schemes
• direct planning inspectors to consider matters as part of a local plan examination
• direct LPAs to stop certain steps in plan preparation until a direction is lifted
• intervene in the preparation, revision or adoption of a local plan if he/she considers that an LPA is not doing what is necessary.

LPAs are to pick up the bill for any of these interventions by the Secretary of State.

**Permission in principle and local registers of land**

This section establishes that Development Orders can be used by the Secretary of State to grant ‘permission in principle’. The bill also makes provision for the Secretary of State to require LPAs to prepare, maintain and publish registers of land. These legislative changes are necessary for the government to introduce the new requirement on LPAs to grant permission in principle for housing on land that is on the Brownfield Register, which has been trailed as the introduction of zoning into the English planning system. The legislation is worded in a way that allows for permission in principle to be extended to other land uses, however the government
says that it only wants to use it to allow for housing developments on brownfield land.

The legislation gives the Secretary of State the power to describe accompanying criteria, but does not specify what these criteria might be. For housing on brownfield sites, the explanatory notes provide a clue:

‘The criteria prescribed by the Secretary of State could for example include that the land must be available already or in the near future for housing development, that it 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.’

Permission in principle for development would be subject to the LPA providing consent on a limited number of technical details. Once the technical details are approved the development would have full planning consent (see diagram below taken from the explanatory notes). The Government intends to consult on the details of the application process for technical detail consent ‘in due course’.

Planning permission etc
Changes to permitted development rights were announced separately by the government. However, there is an amendment to permitted development rights outlined in the bill. It enables LPAs to approve the building operations or the use of the land following those building operations for developments that are subject to permitted development rights. This is so that LPAs can take local conditions and sensitivities into account.

The bill introduces an amendment that enables the Secretary of State to designate an LPA for its performance in determining planning applications that ‘could now include a separate category of non-major development’. The amendments also allow for certain planning applications not to be made to the Secretary of State (the example provided in the explanatory notes suggests that an authority designated for its performance on non-major applications may still be able to continue to decide on certain minor applications).

The bill introduces a requirement on LPAs to ensure that officer reports to planning committees or any other part of the local authority include a list of financial benefits that the council is likely to receive as a result of the proposed development being approved. These benefits include the Community Infrastructure Levy charge, grants or other financial assistance (such as the New Homes Bonus) whether or not they are material to the planning decision.
**Nationally Significant Infrastructure Projects**

The bill provides the Secretary of State with the power to grant development consent for housing that is linked to (same site, next to or close to) an application for a nationally significant infrastructure project (NSIP), for example, as construction worker housing or for key workers. Note, this amendment does not add housing or mixed use developments with a housing element to the list of nationally significant infrastructure projects (something that groups such as the British Property Federation had called for). The Department for Communities and Local Government (DCLG) will prepare guidance on the maximum amount of housing that may be granted consent as ‘related housing development’; there is speculation that the number will be 500.

**Miscellaneous**

Part 6 of the bill also includes sections that are relevant for specific audiences including:

- Planning powers of the Mayor of London (Clause 101)
- Urban development corporations (Clauses 108-110)

**Part 7: Compulsory purchase etc**

This section sets out a number of amendments to the compulsory purchase regime to make it ‘clearer, fairer and faster’. These include changes to:

- the right to enter and survey land
- timetabling and time limits of CPOs
- disputes and compensation.

These changes are detailed and technical and not easily covered in a briefing – for a very short legal summary of the CPO clauses see the blog by Angus Walker on the Local Government Lawyer website.

**Comment**

In my [LGiU briefing on the Queen’s Speech](https://www.lgiu.org.uk) I concluded that

‘There may not be a specific planning bill in the new government’s work programme, but expect to see planning feature prominently in many of the debates about other pieces of legislation in the weeks and months to come.’

Five months on, and what was originally announced as the Housing Bill has now been published as the Housing and Planning Bill. And with good reason: the amendments set out in the bill represent what [Kathryn Hampton, Senior Associate at](https://www.lgiu.org.uk)
the consultancy Nabarro calls 'one of the most significant proposed sets of planning reforms of the last decade.'

For planning, this second term government (which it isn’t exactly, but readers will know what I mean) was supposed to be about delivering the system that had been so comprehensively reformed in the previous five years. So why the new set of proposals?

In a nutshell, the answer is housing, and more specifically the push by government to improve housing affordability by increasing overall supply. The effectiveness of this approach has been – and will continue to be – debated endlessly.

Tweaking elements of the existing system – such as the package of neighbourhood planning reforms – to try and speed up delivery makes good sense where it is obvious that discrete policies aren’t working properly.

More concerning are the major new reforms, most particularly the introduction of what is in effect zonal planning. The Town and Country Planning Association (TCPA) warns that this:

‘repsents 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 government has made it clear that its sole purpose for the change is to increase the amount of housing going onto brownfield land. The editor of Planning Magazine, Richard Garlick, is not convinced:

‘Given the Conservatives’ zeal for stripping down the machinery of planning, it seems perfectly possible that ministers will be pondering extending the zonal approach beyond previously used land.’

Ensuring that areas have enough housing is only one of many considerations for planners. The government risks skewing the planning system towards housing growth at the expense of achieving other critical objectives such as responding to climate change, creating active places and generally enabling balanced and desirable places to live.

Combined with the lack of capacity in the local authority planning sector, as reported recently in research commission by the RTPI, future unintended consequences loom large.

Rethinking planning obligations: can they deliver the housing we need?
Under Construction - Are councils ready to get the nation building (LGiu report)
Tackling rogue landlords and improving the private rented sector
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