



Briefing 07/70 December 2007

Housing and Regeneration Bill

To: All Chief Executives, Main Contacts and Email Contacts (England and Wales)

CC: All Chief Executives, Main Contacts (Scotland and Northern Ireland)

Key issues

Establishes the Homes and Communities Agency.

Enables exclusions from HRA subsidy arrangements.

Reforms of social housing regulation.

Introduces rules for eligibility designed to ensure that social housing is occupied by people who cannot afford to buy or rent at market rate.

Sustainability certificates mandatory for new homes.

1. Introduction

The Housing and Regeneration Bill was published on 15 November 2008 by the Department of Communities and Local Government and builds on the Housing Green Paper 'Homes for the future: more affordable, more sustainable'. The main aim of the Bill is "to deliver more and greener homes, in mixed and sustainable communities".

An electronic version of this document can be found at <http://www.publications.parliament.uk/pa/cm200708/cmbills/008/2008008.pdf>

2. The Homes and Communities Agency

The Homes and Communities Agency (HCA) will operate in England only with the aims of improving the supply and quality of housing, securing the regeneration or

development of land or infrastructure and supporting the creation, regeneration or development of communities. It will take on the role of English Partnerships which will be abolished. The Urban Regeneration Agency and Commission for the New Towns will also be abolished with their property, rights or liabilities transferring to the HCA.

The HCA may acquire, hold, improve, manage, reclaim, repair or dispose of housing, land, plant, machinery, equipment or other property and carry out building or other operations.

The Secretary of State may designate an area wherein the HCA acts as the local planning authority.

The HCA may encourage or develop existing or new businesses, provide employment, business or employment services, provide safe and attractive environments, prevent or reduce anti-social behaviour or crime or the fear of such, provide transport services, health services, social, recreational and religious services and burial or crematorium services or other community services.

The HCA may also contribute to or facilitate any contribution to sustainable development.

3. Housing Finance

The Bill sets out limited new arrangements for the exclusion of all or part of the local authority stock from the Housing Revenue Account subsidy arrangements.

Clause 269 disapplies sections 79 to 80A of the Local Government and Housing Act 1989 where an agreement exists between the appropriate person and a local housing authority. Such an agreement would have the effect that no Housing Revenue Account Subsidy was payable by or to the appropriate person in respect of properties covered by the agreement. The appropriate person is the Secretary of State in relation to England and Welsh Ministers in relation to Wales. Powers are to be exercised by the Secretary of State in relation to England and by Welsh Ministers in relation to Wales.

The provision will enable certain local authorities, on application to the Secretary of State, to opt out of the Housing Revenue Account (HRA) subsidy system. This will mean that such authorities will keep receipts from rents (instead of recycling any profit within the subsidy system), but will no longer receive support from central Government through the subsidy system. Authorities will - as far as housing is concerned - become self-financing, giving them greater freedom.

A further provision will enable certain local authorities, on application to the Secretary of State, to keep rental income from new supply dwellings.

4. Regulation of Social Housing

Part 2 of the Bill refers to the regulation of social housing. The Bill proposes the dissolution of the Housing Corporation. It also sets out a definition of 'low cost rental accommodation' which is available for rent below the market rate and which "is made available in accordance with the rules of eligibility designed to ensure that it is occupied by people who cannot afford to buy or rent at market rent".

A body known as the Office for Tenants and Social Landlords will become the regulator of social housing. The objectives of the body are to encourage and support a supply of well-managed social housing of appropriate quality to meet reasonable demands; to ensure tenants have an appropriate degree of choice and protection with an opportunity for tenant involvement; to ensure that registered providers perform their duties efficiently, effectively and economically; and that they are financially viable and properly managed.

Further aims are to encourage providers to contribute to the environmental, social and economic well-being of the area; to encourage investment in social housing; to avoid the imposition of an unreasonable burden on public funds; and to regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable.

The regulator will have powers to set standards for the nature of the housing demands to be addressed and the extent to which that demand be supplied, allocation criteria, terms of tenancies, rent levels, maintenance standards, complaints procedures, consultation, participation and tenant involvement, antisocial behaviour, estate management and the landlord's contribution to the environmental, social and economic well being of the area. The regulator will have enforcement powers where standards have not been met.

Local authority housing will not be regulated by the Office for Tenants and Social Landlords. Local authority housing providers will continue to be regulated under current arrangements.

5. Sustainability Certificates

The Bill introduces the requirement for sustainability certificates to be issued with all new homes relating to the materials used in the property, other aspects of the design and construction of the property and any service fittings and equipment provided in or in connection with the property.

6. Tenant Empowerment

There will be a change to the procedures where transfer of the housing stock is under consideration to arrange for a ballot of tenants to establish whether or not the tenants wish the disposal to proceed, prior to consent being sought from the Secretary of State or Welsh Minister.

7. Comment

Holistic approach

APSE welcomes the fact that the Bill begins to develop some of the issues raised in the Housing Green Paper 'Homes for the future: more affordable, more sustainable'. APSE has long argued for a more holistic approach to housing to ensure it is meshed with both the regeneration and neighbourhood agendas and elements of the Bill are consistent with APSE's approach. The Bill also reflects the fact that housing remains an important issue both in politician's minds and in terms of public interest.

The creation of the HCA will bring duties under one roof which were previously carried out separately. Some clarity has been brought to the situation which saw a range of organisations, namely English Partnerships, the Housing Corporation, the Urban Regeneration Agency and the Commission for the New Towns undertaking responsibilities which overlapped one another.

Clearly there is a balance to be met between establishing an organisation with such a wide remit that it loses focus on the specific problems of, for example, housing provision or addressing anti-social behaviour on one hand and benefiting from closer working relationships on the other. The HCA will need time to bed in but the advantages of a holistic approach to housing and regeneration should emerge sooner rather than later. The inclusion in the Bill of a specific reference to the functions of the HCA including community services and sustainable development reinforce the holistic approach throughout the Bill.

There is an element of ambiguity in the wording of the Bill. Although APSE welcomes the move to a more holistic approach, it does not support the HCA providing services instead of local authorities. The Bill states that the HCA can, for example, provide recreational, transport or burial services. There may be occasions when HCA would provide the infrastructure and buildings for such services but it is inappropriate for them to run the services. The agency would not have the experience to provide such services nor would it be a democratically accountable body. Further reductions in the services provided by local authorities is unacceptable and this element of the Bill requires clarification.

The persistent call for a large increase in housing supply has been accepted by Government and it would appear that they have also been convinced of the need to ensure that the wider environment is also vital if sustainable communities are to result. The HCA is in a good position to develop this agenda and must be willing to work with local authorities to promote the wide range of activities and services which contribute to sustainable communities.

Rental Income

The provision to enable local authorities to apply to the Secretary of State to keep rental income from new supply dwellings must be combined with a block on the Right to Buy for new dwellings. If this is not the case, the likelihood is that this

revenue stream will be short term and as such, will not be a tool to help combat the problems of a lack of supply of social housing.

Designated Areas

The powers available to the HCA to designate areas wherein bodies can be given planning powers build on the development corporation model. Such models emerged in London and Liverpool docklands and helped to regenerate vacant, derelict and contaminated land and created economically successful sites without many of the delays experienced in some developments where this model has not been used. The problem with such models is that they are not as accountable to local people as the local authority would be. However, this is not a new approach and the ongoing complaint about the delays in the planning system has been overcome to an extent by using this model.

There are also wider planning considerations to be taken into account. Areas designated by the HCA must be duty bound to comply with regional planning and housing strategies as well as Sustainable Community Strategies. The new arrangements for Comprehensive Area Assessment and Local Area Agreements are aimed at closer working between partners in a locality. There is a danger that any designated area may work against this approach by dividing the provision of services further and resulting in a lack of coordination.

Means Testing

The definition of 'low cost rental accommodation' which is available for rent below the market rate and which "is made available in accordance with the rules of eligibility designed to ensure that it is occupied by people who cannot afford to buy or rent at market rent" is a cause for concern. It would appear that an element of means testing is to be introduced into the allocation process for social housing. It is difficult to envisage another method for meeting the definition noted in the Bill other than through means testing.

APSE has long argued for social housing to be a quality affordable option rather than a safety net for the most in need. If social housing is to be occupied only by the most vulnerable, the Government's aim of mixed sustainable communities will not be met and the 'sink estates' so widely criticized in the 1970's and 1980's will re-emerge. The introduction of means testing may well result in their re-emergence.

Currently people can afford to buy or rent at the market rate because housing benefit fills the gap between income and rent. As a result, means testing might result in those on higher incomes but unable to pay market rents, do not have access to social housing because someone on a lower income but getting a higher level of housing benefit gets the house instead. The long term result would lead to the poorer applicants being the only ones able to get social housing - in direct opposition to the desire for people of mixed income levels living in social housing. Equally those people in need but a little better off would continue to suffer.

Such an approach may be more appropriate in London and parts of the South East where property and rent is very expensive because it may help key workers but the outcome, in terms of the poorest living in social housing, is likely to be the same everywhere. APSE has long argued that an approach which includes different solutions for different parts of the country is necessary.

The argument that social housing should be open to all has been a fundamental element of provision, but it is dependant upon supply. Council housing is only available if supply is adequate. If not there remains a built-in barrier to entry. Without adequate supply a significant number of those most in need will remain in hostels, B&Bs or sub-standard private accommodation with all the extra social, economic, health and educational problems that brings. The introduction of further criteria such as means testing will not impact on the underlying issue.

Regulation

The Office for Tenants and Social Landlords has an expanded range of objectives to include aims such as encouraging providers to contribute to the environmental, social and economic well-being of the area, again noting the wider responsibilities of social housing providers.

The Office's aim of avoiding the imposition of an unreasonable burden on public funds and to regulate in a manner which minimises interference are in line with the Government's reduction in red tape over performance measures, inspections and intervention generally. Such a move is to be welcomed and reflects the fact that local councils in particular have embedded the lessons of performance management, participation and empowerment, transparency and good governance within their organisations.

Finance

The powers in the Bill which would enable local authorities to apply to the Secretary of State to opt out of the Housing Revenue Account subsidy system are problematic. Those local authorities who have retained their stock paid in 55% to the national HRA (in 2004-05) but took out only 7% whilst ALMOs and other councils contributed 45% and took 93%. Stock retainers who pay into the system would be far more likely to want to opt out and if allowed to do so would leave primarily councils who take funds out of the HRA – a situation which could not be sustained in the long term. The one-off payments which must be made at the point of opt out are potentially huge amounts and will have an impact on future financial planning. Although the annual variance in the amount of subsidy was a cause for concern amongst those in the system, the scale of these payments provides a different but significant problem.

The argument has been made previously by APSE that those local authorities who retained their stock have managed it effectively but have been failed by the subsidy system. They have been effectively subsidising RSLs and ALMOs who have had debt written off.

The Impact Assessment notes that the pilot of 6 authorities operating outside the HRA subsidy system has identified that a settlement based on the net present value used would not be viable for most councils. The pilots have provided evidence to reflect the benefits and problems which may result from councils opting out of the national HRA subsidy system but the model needs to be altered to provide a workable solution for all councils. This means a further period of trial and error before any opt outs are made real.

The Impact Assessment notes that local authorities would be invited to apply for pilot status starting at the earliest in Spring 2009. It would be unusual if this timetable was not delayed and it is likely therefore that those local authorities applying for the next pilot stage will do so over 2 years after the original pilots. It is acknowledged that this is a major change to the funding arrangements but there will be little appreciation for this fact amongst existing and potential tenants of council housing. APSE is keen for these pilots to be available as soon as possible, to be one of a range of alternative approaches and for council housing funding arrangements to be as transparent and simple as possible. Very few individuals understand the complexities of the system as it currently stands and no tenants do. Such a situation is unacceptable and the opportunity should be taken to rectify the situation.

Councils building houses

The Housing Green paper which preceded the Bill was much more positive in terms of councils providing houses. The Bill however, does not make reference to councils as providers of social housing. The Impact Assessment which accompanies the Bill refers to the need for a "robust delivery chain for delivering Government's objectives and future policies" and goes on to say that the creation of the HCA will "provide local authorities with an expert partner to help them in their place-shaping role".

Local housing companies are identified as models for local authority involvement in the provision of social housing but in reality these are a range of varied projects where the local council has provided the land as part of a joint scheme to provide social housing. There is a place for this type of model but they have evolved prior to the Green Paper being produced in a different set of circumstance. It is a positive development to see a new approach emerging from the Green Paper and the Bill which is based on a substantially increased number of houses being built, a more holistic approach to housing in a neighbourhood context and far greater involvement of local authorities. However, it follows that any models designed as an exception from a previous approach should not be carried forward as the new way of addressing a new set of objectives.

Sustainability Certificates

In theory, the introduction of sustainability certificates for new houses is admirable but the practicalities mean they may be seen purely as another bureaucratic exercise in the same way HIPs are. The use of sustainable materials and design is fundamental to tackle the wider problems of climate change but emphasis must be on the actual materials, design and processes, rather than on the paper exercise of

assessing and issuing certificates. APSE supports the introduction of this type of initiative as a method for ensuring new house builders and material producers appreciate the wider impacts of the building process. This is in line with the APSE policy of extending the Decent Homes Standard to a Decent Neighbourhoods Standard.

Local authority role

Local councils have a long tradition of building, maintaining and managing council houses and providing services for the areas they are situated in. They are also skilled in supporting and engaging tenants in millions of homes across the country. Councils are a vital source of information, knowledge, experience and best practice in providing council housing and to overlook them as a potential provider is a serious mistake. Government should look to introduce arrangements whereby councils can gain access to relevant funding to enable them to make a contribution to housing supply in their localities and put their place-shaping role into effect.

The APSE view is that it is the overall supply of homes and the number of social homes in particular which is causing a problem for the most in need in society. Addressing this issue would have a far greater impact on the quality of life of a large number of people than would the creation of the HCA, better regulation or alterations to the process for stock transfer.

Reductions in investment into social housing as well as the Right to Buy have been major contributing factors to the current lack of social housing. Building houses is the obvious, and proposed, way forward but must be accompanied by a restriction on Right to Buy and a role for local authorities to build.

APSE's interpretation of the Housing Green Paper 'Homes for the future: more affordable, more sustainable' was that there would be a number of practical powers for council's to increase the number of council houses they would be able to build. It appeared a very positive document and APSE was not alone in thinking a new approach to the delivery of social housing was imminent with an enhanced role for local authorities. However the intent in the Green Paper has not been carried forward into the Bill. There are few references to local authorities or their role in providing new council houses.

APSE consider this a lost opportunity and feel that if councils are to successfully adopt the place-shaping role that Government has defined for them, an enhanced role in terms of housing provision is fundamental.

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