



Briefing Paper December 2007

Housing and Regeneration Bill

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 15th November 2007 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.

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

3. Housing Finance

The Bill notes limited new arrangements for the exclusion of all or part of the local authority stock from the Housing Revenue Account subsidy arrangements. This part of the Bill would take forward the HRA pilots that are currently under way.

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 notes the dissolution of the Housing Corporation. It also notes 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 and an opportunity to be involved in its management, 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 minimizes 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.

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

ARCH 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, especially the link to the wider regeneration and neighbourhood agendas. The Bill also reflects the fact that housing remains an important issue both in politician's minds and 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.

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. 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.

Designated Areas

The powers available to the HCA to designate areas wherein bodies can be given planning powers build on the development corporation model. Similar models originated 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 have been overcome to an extent by using this model.

Means Testing

ARCH is concerned about the definition of 'low cost rental accommodation' as noted in the Bill. It is defined as available for rent below the market rate 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". 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. There is an element of ambiguity in the definition and DCLG need to clarify the situation quickly.

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. The Government's desire to create sustainable communities and provide affordable housing to people of mixed income levels is likely to be undermined by this approach.

It is more appropriate in London where property and rent is so 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. ARCH members are located in different parts of the country and recognise that different solutions will be needed for depending on local circumstances in different areas.

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, health and educational problems that brings and any further criteria (including means testing) will not impact on the underlying issue.

Regulation

The Office for Tenants and Social Landlords has expanded the nature of its 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 regulating 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 social housing providers, as well as most public service providers, have embedded the lessons of performance management, participation and empowerment, transparency and good governance into their organisations.

The Minister has recently announced that Sheffield University will look at how council housing can be brought into the new regulatory framework within two years. ARCH considers the form of regulation to be a key issue and wants to be part of the discussions on this matter from the earliest stage and to submit evidence on the detail of how it would apply.

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 would be far more likely to want to opt out of the national HRA and if allowed to do so would leave primarily councils who take funds out of the HRA. The one off payments which must be made at the point of opt out are potentially for significant amounts and will have an impact on future financial planning. Although the annual variance in the amount of subsidy is a cause for concern amongst those in the system, the scale of the payments would provide a different problem.

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. ARCH 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 housing officers, elected members or tenants understand the complexities of the system as it currently stands. Such a situation is unacceptable and the opportunity should be taken to rectify the situation.

The Green paper was much more positive in terms of councils providing houses. The Bill however, doesn't 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 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.

Councils building houses

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 ARCH view is that it is the overall supply of homes and the number of social homes in particular, which is causing a problem for those most in need. 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.

ARCH'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 ARCH 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 councils houses.

ARCH 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 contributing to the better supply of housing to meet the target of 3 million more homes and greater affordability is fundamental.

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