

# Housing & Planning Bill 2015



## Submission to the Public Bill Committee by the Association of Retained Council Housing

### About ARCH

1. ARCH represents councils of all parties in England and Wales that have chosen to retain ownership of council housing and manage it themselves. 162 English councils (exactly half the number of housing authorities) own over 1.6 million dwellings which are home to over 4 million people. 11 Welsh councils own a further 88,000 homes.
2. Our submission focuses on Part 4 of the Bill, and in particular Chapters 2 and 4, which directly affect only councils which own housing, although we also have major concerns about the impact of reforms to the planning system proposed in Part 1 of the Bill.

### Council housing – a real future?

3. In April 2012, the Conservative-led coalition government introduced a new financial regime for council housing based on the principles of self-financing. The new arrangements were based on a prospectus issued in March 2010 entitled “Council Housing – A Real Future”. That future is now in considerable doubt.
4. Councils could have a big role to play in meeting the need for new affordable homes. With the financial strength provided by the self-financing settlement, councils were planning to build at least 20,000 new homes over the next four years. Proposals to reduce council rents by 12% over the next four years included in the Welfare Reform and Work Bill currently before Parliament would force these plans to be all but abandoned. The provisions relating to starter homes in Part 1 of this Bill would largely remove councils’ powers to secure the provision of affordable rented housing through planning obligations. Proposals in Part 4 of the Bill to force sale of high value vacant council housing would further deplete the supply of social rented housing at a time when demand has rarely been higher.
5. The self-financing settlement was a key plank of the last government’s commitment to localism. In what was understood on all sides to be a once and for all settlement, 136 councils took on new debt to make payments of £13 billion to central government, in exchange for an end to the use of council tenants’ rents as a source of income for central government. Only three years later, the rent cuts in the Welfare Reform and Work Bill already threaten the viability of the business plans constructed on the basis of the self-financing settlement, yet the Housing and Planning Bill proposes to introduce requirements for councils with housing to make new payments to the Exchequer in relation to high value housing and rent from high income council tenants.
6. A second key plank of the last government’s localism agenda was that councils should have freedom to decide locally whether to make use of the short-term flexible tenancies for which the Localism Act made provision, and whether or not to adopt Pay-to-Stay schemes for tenants with household incomes above £60,000. That principle has now also been abandoned.
7. ARCH members have varying views on the merits of extending the Right to Buy to housing association tenants but all recognise that the Government were elected on a manifesto pledge to do so. However, members are extremely concerned at the proposal to pay for this policy through the forced sale of high value vacant council housing. Council tenants have had the Right to Buy since 1980. Councils have been expected to absorb the financial impact of sales within their housing revenue account business plans. It is particularly unfair that councils and

their tenants should now be expected to subsidise the costs of discounts for housing association tenants. Our preferred option would be for the requirement to make payments in relation to high value property to be dropped from the Bill altogether. Short of that, we want to see an explicit commitment in the Bill for one-for-one replacement of all properties sold, as promised by the Prime Minister in launching the Conservative Manifesto.



8. In exercising their responsibilities as the local strategic authorities for housing, councils work with housing associations to ensure that all local housing needs are met through provision of an appropriate mix of affordable housing, including housing for social and affordable rents. Councils rely on nomination rights, often originally granted in exchange for free land or other benefits, to ensure their statutory responsibilities towards homeless people and others in housing need are met. They will be even more dependent on help and support from local housing associations in future if council building programmes have to be abandoned because of rent cuts and high-value vacant properties have to be sold. We are, therefore, concerned that the proposals in Chapter 2 of Part 4 to allow the Secretary of State to deregulate housing associations by regulation contain no requirement for consultation with local authorities before making any such regulation. We argue the Bill should be amended to include such a requirement to consult.
9. Councils are already free to operate Pay-to-Stay schemes on a discretionary basis and to charge higher rents to tenants with household income over £60,000. We are not aware of any council which has taken up this opportunity, whether on principle or because of unresolved practical difficulties, or because so few tenants are affected that it is not worthwhile. The proposal in the Budget statement was that a mandatory scheme should apply to all tenants with household incomes above £30,000 (£40,000 in London). This is likely to affect around one tenant in four not in receipt of Housing Benefit. We believe that Parliament should require that Pay to Stay schemes remain voluntary until it can be shown that they are workable and do not have perverse and damaging impacts on work incentives.
10. Our argument on these points is set out in detail below together with suggested amendments.

### **Vacant High Value Local Authority Housing**

#### **The duty to consider the sale of vacant high-value housing**

11. Councils are committed to the efficient management of their housing assets and many are already using the sale of high-value assets to fund local investment priorities including estate regeneration and new housing provision. Consequently, an explicit duty to consider the sale of vacant high-value housing, as proposed in Clause 69, is unnecessary, but not objectionable. However the imposition of a requirement to pay a part of these sales proceeds to central government is unacceptable, and to the detriment of local tenants and applicants for housing who could otherwise have expected to benefit from their use for local investment. Council tenants and councils have already shouldered the full local impact of council Right to Buy; it is unfair that they should also be expected to pay for its extension to housing association tenants.

**Amendment: Leave out Clauses 62 to 68 and 70 to 71.**

## Use of proceeds from high value sales to fund right to buy discounts



12. The Conservative manifesto made an explicit link between sales of high-value voids and extension of Right to Buy to housing association tenants. It said:

“We will fund the replacement of properties sold under the extended Right to Buy by requiring local authorities to manage their assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant.”

13. Nowhere in the Bill is this connection made. Chapter 2 gives the Secretary of State wide powers to determine the level of payments required from local authorities and imposes no limits on their amounts or their use. To avoid these powers being used as a general means of taxing councils and their tenants for the benefit of the Exchequer, it is essential to place a maximum limit on the amount that can be raised which is explicitly linked to the Government’s current rationale for introducing the power.

**Amendment: Clause 62, after line 11, insert “(2A) The total payment required from all affected local authorities in any financial year shall not exceed the total grant paid in that year to private registered providers in respect of right to buy discounts.”**

### Replacement of sold high-value dwellings

14. The Conservative Manifesto, in the extract quoted above, includes an explicit commitment to replace sold high-value homes. In launching the Manifesto, the Prime Minister made it clear that sold homes would be replaced on a one-for-one basis “in the same area” with “normal affordable housing”. But these commitments are not included in the Bill as drafted. The cost of replacements dwellings is not specified as one of the costs and deductions to be made as required by Sub clause 62(2). Clause 67 enables the Secretary of State to reduce a payment by agreement with an individual council if the reduction were to be used for the provision of housing, but this arrangement would be voluntary for both parties and falls well short of the commitment to one-for-one replacement included in the manifesto. Accordingly, ARCH would argue for the amendment of Clause 62 to allow for one-for-one local replacement.

**Amendment: Clause 62, after line 11, insert “(2B) The costs and deductions referred to in section 62 (2) (b) must include an estimate of the cost of replacing each sold high value dwelling with a dwelling with the same number of bedrooms in the same local authority area.”**

### Councils should not be forced to make payments based on unrealistic assumptions

15. A Conservative Party briefing issued to journalists when the Conservative General Election manifesto was launched included potential high value thresholds for each English region and an estimate of the amount that could be raised by forcing sales of vacant council homes above these thresholds. It estimated that there were 210,000 council homes with values in the top third of regional house prices and assumed that 7% of these would become vacant and be sold each year at an average price of £300,000, raising £4.5 billion a year. ARCH has surveyed all stock-owning councils on the impact of requiring sales above these thresholds. Based on returns from 55 councils, we found that many councils would be unaffected but a minority would be heavily affected, including councils in Inner London, those in the East and South East regions on the fringes of London, and university towns such as Cambridge, Oxford, Warwick and York. Most of these would be forced to sell between a quarter and half of homes falling vacant, with a corresponding impact on their ability to meet their housing responsibilities towards housing applicants and homeless households. Some Central London boroughs could be required to sell an even higher percentage of their voids.

16. Despite this, the ARCH survey also indicated that forced sales on this basis could not be expected to raise much more than £1 billion a year - a fraction of the £4.5 billion envisaged in the Conservative manifesto. The reasons for this are that the Conservative manifesto appears to have overestimated both the total number of high-value council properties and the rate at which they can be expected to fall vacant. Based on the same data used to reach the estimate of 210,000 high value homes, research by Savills suggests a much lower figure of 59,000 council homes in the top third of regional house prices. And while the vacancy rate of 7% used in the Conservative manifesto calculation reflects the England average, there is wide regional variation, and rates in London and the South East where high value areas predominate are much lower. High value property is also likely to be more desirable and turn over less often than the average for its area. A vacancy rate of 3-3.5% is more realistic and is borne out by the ARCH survey.
17. A key problem is that there is no reliable and up-to-date data on the market value of council housing. The Conservative Manifesto estimates appear to be based, like the report by Policy Exchange in which the high-value sales policy was first proposed, on data from a sample survey carried out in 2008 and never repeated. The risks inherent in relying on this data are clear from the wide variation between estimates of the amounts the policy would yield. It is important that, before making any determination using the powers provided by this section, the Secretary of State takes steps to obtain adequate information on the market values of council homes and the rate at which they are likely to become vacant, preferably using local authorities' own estimates of the market value of their vacant homes. The danger of a formula-based approach to determining the payments due from local authorities is that it enables the Secretary of State to pass the full risk associated with the inadequacy of the data to local authorities by making unrealistically high assumptions about the number of high-value properties and vacancy rates. Sub clause 7 relieves him of any responsibility to base his assumptions on adequate evidence and should be deleted.

**Amendment: Clause 62, lines 19 to 20, leave out sub-clause (7).**

**No dwelling should be classed as “high-value” if its value is less than the cost of replacement**

18. Not only did the Conservative Manifesto include an explicit commitment to replace sold high-value homes, but it also emphasizes that the policy is about the efficient management of assets, built on the reasonable proposition that where councils have homes built on high-value land it can often make sense to replace them on cheaper land and use the difference to meet other priorities. ARCH does not object to the principle that councils should manage assets efficiently in this way, but to the proposal that councils should be forced to hand over the proceeds to fund right to buy discounts for housing associations.
19. “Managing their assets more efficiently”, however, does not include the disposal of properties without replacement, or with only partial replacement, or with replacement of social housing by shared ownership or discounted starter homes. These may be legitimate policies to pursue under certain local circumstances, but they are not about efficient asset management. Efficient asset management, therefore, cannot include the disposal of properties where the net sales proceeds are less than cost of a replacement property of the same kind. This amendment would limit the definition of a property as high value to cases where its value was above the cost of replacement.
20. Faced with the probability that the high value thresholds in the Conservative manifesto will not yield as much income as expected, or as much as is needed to fund housing association right to buy discounts, Ministers may be tempted to consider the possibility of lowering the high value thresholds to bring more councils and more properties within the scope of the policy. Table 1 below summarises the results of ARCH research to evaluate the potential of this option. It

uses data published by the HCA and GLA on the average cost of new social housing provided through the Affordable Housing Programme in each English region. Data for 2011-14 give an average unit cost of £145,000. Table 1 compares the average regional cost of replacement with an average regional high-value threshold, estimated from the thresholds in the Conservative Manifesto by assuming that high-value stock replicates the same mix of bedroom sizes as the rest of council housing. The table also includes an estimate of the costs involved in the process of sale and replacement, based on an allowance for the costs of administering the same and loss of rent income until the replacement is provided.

21. RTB sales currently attract an administrative allowance of £1300 per property (£2850 in London). However, RTB involves sale to a sitting tenant; the costs associated with selling a vacant high-value property will be significantly higher since the property will need to be marketed and is likely to remain vacant for a significant period. Figures in the table make the conservative assumption of an allowance of £5000 in London and £2500 elsewhere. Rent loss is calculated using regional average rents and the assumption of a two-year gap between sale and replacement. Note that no allowance is included for repayment of the debt associated with the sold property, on the assumption that an equivalent debt is associated with the replacement property.

**Table 1: Comparison of High-Value Sales Threshold with Cost of Replacement, by Region**

Region	Average High-Value Threshold	Average Cost of Replacement	Transaction costs	Difference
North East	125,266	103,208	9,807	12,251
North West	132,508	116,507	9,838	6,163
Yorkshire & the Humber	132,360	103,208	9,733	19,419
East Midlands	148,098	123,794	10,003	14,301
West Midlands	148,119	123,794	10,460	13,865
East of England	222,941	160,259	11,326	51,356
London	425,113	200,000	15,551	209,562
South East	255,633	131,090	11,352	113,191
South West	206,061	131,090	10,221	64,750

22. Table 1 shows that there is dramatic regional variation in the difference between the high-value thresholds and the cost of replacement after transaction costs are taken into account. Outside London, Eastern and Southern regions, however, the net benefit from sales at current thresholds is small, indicating that there is limited scope for reduction of the high-value thresholds without defeating the declared purpose of the policy.

**Amendment: After line 25, insert “(10) Regulations under subsection (8) may not define a dwelling as “high value” if its sale value is less than the cost of selling it and providing a replacement dwelling with the same number of bedrooms in the same local authority area.”**

### Deregulation of Housing Associations

23. In exercising their responsibilities as the local strategic authorities for housing, councils work with housing associations to ensure that all local housing needs are met through provision of an appropriate mix of affordable housing, including housing for social and affordable rents.

Councils rely on nomination rights, often originally granted in exchange for free land or other benefits, to ensure their statutory responsibilities towards homeless people and others in housing need are met. They will be even more dependent on help and support from local housing associations in future if council building programmes have to be abandoned because of rent cuts and high-value vacant properties have to be sold. We are, therefore, concerned that the proposals in Chapter 2 of Part 4 to allow the Secretary of State to deregulate housing associations by regulation contain no requirement for consultation with local authorities before making any such regulation. We argue the Bill should be amended to include such a requirement to consult.

**New clause: Before making any regulations under section 73, the Secretary of State must consult such representatives of local government, private registered providers of social housing and relevant professional bodies as the Secretary of State thinks appropriate.**

### **Mandatory rents for high income social tenants**

#### **No mandatory scheme to be introduced until voluntary Pay to Stay schemes have been shown to be workable**

24. Councils are already free to operate Pay-to-Stay schemes on a discretionary basis and to charge higher rents to tenants with household income over £60,000. However, ARCH is not aware of any council which has taken up this opportunity, whether on principle or because of unresolved practical difficulties, or because the small amount of additional income likely to be collected does not justify the administrative expense.
25. One major problem has been councils' lack of powers to collect income information from tenants and members of their household. While this would be partly resolved by enabling HMRC to pass income data to councils, as Clause 77 provides, this only highlights the related problem of deciding which period is relevant when assessing income. Current rules for voluntary schemes suggest that the relevant income is that earned during the preceding tax year, i.e. income in 2015/16 were the mandatory scheme to be introduced from April 2017. The circumstances of many tenants may well have changed during the intervening period, and there is no guidance on how reduced or fluctuating income is to be taken into account.
26. The Government has made no systematic assessment of the relationship between council rents and the market rents for council properties since 2008. At that time, council rents were estimated to be 71% of market rents on average, but with wide variation between regions, with rents much closer to market levels in Northern regions than in London or the South East. From that time until April 2015 council rents throughout England increased annually in line with Government rent guidelines at RPI + 0.5% plus up to £2 a week to allow for convergence with housing association rents. Market rents, however, have moved in line with property prices, which have been flat in most areas away from London, but have increased sharply in London and nearby areas since 2012. This makes it likely that council rents have moved much closer to market rents in Northern and Western regions, while in London the gap remains as wide or has become wider.
27. Given this wide regional variation in the relationship between council and market rents, the impact of Pay to Stay is also likely to be variable. In some Northern areas, the difference between council and market rents is likely to be so small that any gain from implementing the policy would be outweighed by the administrative costs associated with it. In London, conversely, the policy is likely to imply very substantial rent increases, leading to rents that would be unaffordable even for tenants with incomes above the proposed threshold of £40,000.
28. ARCH would argue that the level of uncertainty about the impact of the scheme is so great that it should be tested on a voluntary basis in a selection of different areas, and the impact

evaluated, before any mandatory scheme is introduced. To this end the start date of any mandatory scheme should be deferred from April 2017 to April 2018.



**Amendment: Clause 74, after line 15 insert – (4A) No regulations under this section shall come into effect before 1 April 2018.**

### **Councils to be able to retain income from higher rents**

29. Clause 79 permits the Secretary of State to require local authorities to hand over to central government any additional income from imposition of Pay to Stay. There is no requirement that this income should be used for housing purposes of any kind. It therefore amounts to double taxation of council tenants, who are being expected to contribute to general government expenditure once through taxes and a second time through rents. This unfair treatment does not apply to housing associations, which will be enabled to retain and invest the additional income. Allowing councils also to retain the additional income would be fairer on councils and their tenants alike, and go a small way towards offsetting the impact of the planned rent cuts on council investment in new housing.

**Amendment: Leave out Clause 79.**