Housing & Planning Bill 2015

Briefing for the House of Lords from the Association of Retained Council Housing and National Federation of ALMOs

About ARCH and the NFA

1. The Association of Retained Council Housing (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. The National Federation of ALMOs (NFA) is the trade body which represents all 39 Arms' Length Management Organisations (ALMOs) across England.

3. This briefing focuses on Part 4 of the Bill, and in particular Chapters 2, 3 and 6, which directly affect only councils which own housing, although along with other local authorities 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?

1. Councils could have a big role to play in meeting the acute national need for new homes, particularly affordable homes for rent. In April 2012, the Conservative-led coalition government introduced a new financial regime for council housing based on the principles of self-financing. This settlement sparked a resurgence in local authority housebuilding with 6,340 new council homes being built since April 2010. Last year saw a 23 year high in council housebuilding. This renaissance is now at risk.

2. Proposals in the Welfare Reform and Work Bill to cut council rents by 12% by 2020 will force most new-build plans to be abandoned. Worse, proposals in Part 4 of the current 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.

3. 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.

4. 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.

5. ARCH and NFA members have varying views on the merits of extending the Right t o 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 from the Government to at least one-for-one replacement of all properties sold, as promised by the Prime Minister in launching the Conservative Manifesto.

6. 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. None have taken up this opportunity, if only because councils lack the necessary powers to access information about tenants' incomes. The Bill provides these powers to both local authorities and housing associations, but housing associations will remain free to adopt their own, voluntary schemes, while a uniform national scheme will be imposed on councils, based on much lower household income threshold of £30,000 (£40,000 in London). This is likely to affect around one tenant in four not in receipt of Housing Benefit. Housing associations remain free to keep any additional rent income they raise, while local authorities will be required to pay it over to the Exchequer. We believe the Government has not sufficiently examined the likely impact of its proposals, and that Parliament should require that Pay to Stay schemes remain voluntary for local authorities as well as housing associations until it can be shown that they are workable and do not have perverse and damaging impacts on work incentives.

7. Our argument on these points is set out in detail below together with suggested amendments.

Vacant High Value Local Authority Housing

1. 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.

2. We accept that sale of high-value voids to fund the extension of the Right to Buy to housing association tenants is a Conservative manifesto commitment. But there was an equally clear commitment to replacement of the high-vlaue council homes sold. The relevant passage from the manifesto read:

    a. "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." (emphasis added)

3. 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. Clause 72 enables the Secretary of State to enter into an agreement with a local authority to reduce the payment due under a determination made using the powers granted by this Chapter, provided the money released is used to provide housing or facilitate the provision of housing. The presumption is that this power will be used to provide for replacement housing, but note that there is no reference in the clause as drafted to either one-for-one replacement (except for London) or the location of

the replacement housing. Nor is there any requirement for either the Secretary of State or any local authority to enter into a reduced-payment agreement under this section.

4. Clause 72 was amended in the Commons to specify that any agreement with a local authority in London must require the local authority to ensure that sold dwellings are replaced by at least two new affordable homes. New affordable homes funded by the GLA may be deducted from this requirement, and the Secretary of State also has power by regulation to disapply the 2-for-1 requirement in specified local authority areas in London. For these purposes, a new affordable home is defined widely as either a new dwelling "made available for people whose needs are not adequately served by the commercial housing market" or as a starter home as defined in Part 1 of the Bill. Nearly all of the homes likely to be sold under these arrangements will have been for social rent, but Clause 72 does not require any of the replacement homes to be for rent, whether social or "affordable".

5. As with the original Clause 72, there is no requirement for the Secretary of State or any London authority to enter into an agreement. The clause as amended requires only that if there is an agreement in London it should provide for 2-for-1 replacement, unless the Secretary of State uses his get-out clause to regulate otherwise. This may have the perverse effect of making it more difficult for London Boroughs to reach agreements under this section.

6. ARCH and the NFA would like to see the Bill improved in three ways:

   - To include explicit arrangements for replacement outside London;
   - To require that in all areas a proportion of the replacement homes should normally be for social or affordable rent;
   - To create a presumption that replacement agreements will be concluded in all affected areas.

Extension of the requirement to replace sold high value homes to high value areas outside London.

1. In the Report Stage debate in the Commons, MPs of all parties asked for similar arrangements as proposed for London to apply in high value areas outside London, including Oxford, Cambridge and South Cambridgeshire, St Albans and other areas in Hertfordshire, Surrey and Kent, and received a sympathetic response from the Minister. However, it is questionable whether 2-for-1 replacement is feasible outside London. To test the feasibility of the high-value thresholds exemplified in the Conservative manifesto, we have compared them with the average cost of new social housing provided through the Affordable Housing Programme. Data for 2011-14 give an average unit cost of £145,000. The table below compares the average regional cost of replacement with an average regional high-value threshold, estimated from the thresholds exemplified in the Conservative manifesto by assuming that high-value stock has the same mix of bedroom sizes as the rest of the council housing stock in that region.

Comparison of High-Value Sales Thresholds with Cost of Replacement, by Region

Region	Average high-value threshold (£)	Average cost of replacement (£)	Difference (£)
North East	125,266	103,208	22,058
North West	132,508	116,507	16,001
Yorkshire and the Humber	132,360	103,208	29,152
East Midlands	148,098	123,794	24,304
West Midlands	148,119	123,794	24,325
East of England	222,941	160,259	62,682
London	425,113	200,000	225,113
South East	255,633	131,090	124,543
South West	206,061	131,090	74,971

2. Ministers have made it clear that the Government is not committed to the thresholds exemplified in the Conservative manifesto. Nor is it necessary that the full cost of replacing sold housing be met from the sales receipt (although it should also be noted that the comparison in the table makes no allowance for the costs of selling each high-value property or the rent loss and other costs incurred until it is replaced). However, the figures in the table help to clarify the constraints within which the high-value sales policy must operate. While 2-for-1 replacement may be feasible in London it will be more difficult in other regions. Nevertheless we want to see the manifesto commitment to replacement honoured and would therefore propose that the presumption should be that outside London agreements under Clause 72 should provide for at least one-for-one replacement and more where feasible.

   To achieve this we propose the following amendments:

Clause 72, page 31, line 42, at end insert –

"(5A) Where the agreement is with any other local housing authority, it must require the authority to ensure that at least one new affordable home is provided for each old dwelling."

Clause 72, page 32, line 2, after "(4)" insert –

"and subsection 5A".

Explanation: to require that agreements under section 72 with councils outside London provide for at least one for one replacement of sold dwellings.

No loss of social rented housing

1. Nearly all of the high value homes liable to be sold under the proposals in this Chapter will have previously been available for rent at an amount set in accordance with the Government formula or local council policy, typically well below market levels. There is nothing in Clause 72 to require that any of the replacement homes provided through agreements with the Secretary of State should also be for rent. Accommodation for social or affordable rent is in short supply in all the areas likely to be affected by the requirement to sell high value properties. We would argue that sales of high value property should not be allowed to lead to a permanent loss of

affordable rented housing and the Bill should therefore be amended so that at least one of the replacement homes provided through agreements must be for social or affordable rent, although any additional homes provided may be for shared ownership or discounted sale. We therefore propose:

Clause 72, line 38, at end insert –

> **"(4A) In any agreement under subsection 4, for each old dwelling, at least one of the new affordable homes to be provided shall be for rent."**

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

1. Councils and housing associations 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.

2. 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 obvious trouble-free approach to dealing with reduced or fluctuating income without creating severe hardship.

3. 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. The picture is further complicated by wide variations in the relationship between council and market rents within regions or even within local authority areas.

4. Given this wide variation in the relationship between council and market rents, the impact of Pay to Stay is also likely to be variable. In some 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 others, especially in London, the policy is likely imply very substantial rent increases, leading to rents that would be unaffordable even for tenants with incomes above the proposed thresholds. This would create large and perverse incentives not to increase income, or not to declare either income or the presence of earners in the household.

5. ARCH and the NFA 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. The Government has already conceded that a compulsory scheme should not be imposed on housing associations. Nor should it be imposed on councils at this time. However, councils should be enabled, like housing associations, to access HMRC data to reduce the administrative obstacles currently inhibiting them from operating voluntary Pay-to-Stay schemes. The following amendment is proposed:

   Leave out Clauses 78 -86.

   Clause 87, line 29, omit "private"

   Clause 88, line 34, omit "private"

   Clause 88 , line 38, omit "private".

   Explanation: to enable local authorities to operate voluntary Pay to Stay schemes on the same terms as housing associations but remove the compulsion for them to do so.

Councils to be able to retain income from higher rents

1. Clause 79 permits the Secretary of State to require local authorities to hand over to central government the estimated additional income arising 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. We would be happy to see an expectation that the additional income should be used to support housing investment and that councils should be accountable for its use. Accordingly we would propose to amend the Bill as follows:

   Clause 84, line 43, at end, add –

   "(3) Rent regulations may enable the Secretary of State to enter into an agreement with a local housing authority to reduce the amount that the authority is required to pay under this section;
   (4) The agreement must include terms and conditions requiring the local housing authority to use the amount by which the payment is reduced for the provision of housing or for things that facilitate the provision of housing;
   (5) the agreement may include other terms and conditions."

Phasing out of "lifetime" tenancies

1. Clause 113 and Schedule 7 of the Bill amend the Housing Act 1985 so that when local authorities offer a new tenancy it must be a flexible tenancy of no more than 5 years in nearly all circumstances. These provisions were not included in the Bill as published but were introduced and debated on the very last day of Commons Committee. They were not included in the Conservative manifesto but only mentioned in an ambiguous reference in the Summer Budget statement to a "review" of lifetime tenancies. There has been no public review. The Government has made no attempt to consult either stock-owning councils or council tenants or

their representatives, or the relevant professional bodies, or other interested parties before introducing this drastic curtailment of tenants rights which were introduced by the first Thatcher government as a key element of the package that included the Right to Buy.

2. We would argue that this change is unnecessary, or at best premature. The Government argues that the amendment is necessary to enable councils to ensure their housing is used to help those in the greatest need. But councils already have the necessary powers. The Localism Act 2012 gave councils the discretion to offer fixed-term flexible tenancies to new tenants and many have done so. Some have chosen to issue new tenancies for a period of 10 years, a few for 5 years. Shorter tenancies may be offered but these have generally been restricted to special and exceptional cases. However, it is less than 5 years since the first of these new tenancies began, so very few have come up for review and there is little experience to draw on that would enable an evaluation of their advantages and disadvantages compared with normal secure tenancies.

3. For all these reasons, we argue that the Government should not proceed to make this change for the time being. Accordingly, we propose:

Amendment: Leave out Clause 113.

1. Failing withdrawal of the proposed changes, we argue that there is a strong case for more exceptions allowing councils to continue to offer old-style secure tenancies to new tenants in specified circumstances. The only exceptions specified in Schedule 7 are where a tenant is transferred at the council's behest or as specified in regulations made by the Secretary of State. In an exchange with Clive Betts MP during the Report Stage debate in the House of Commons, the Minister confirmed the exemption of forced transfers and stated his intention to give local authorities "the freedom and flexibility to apply that to voluntary moves as well". Since this is not currently provided for by the Bill as drafted, it will presumably be done through regulations.

2. We agree that there is a strong case for exempting tenants transferring at their own request, particularly those releasing accommodation which is under-occupied or otherwise in high demand, and where the offer of a short-term tenancy would be a significant disincentive to moving. There are good reasons also to exempt tenants over retirement age and those moving into sheltered, supported or adapted accommodation, whose personal and financial circumstances are unlikely to change significantly in the future. There is no adequate justification for imposing a review of their circumstances every five years nor for denying their reasonable expectations of a tenancy which really is for their lifetime. We therefore suggest the following amendments:

   Schedule 7, page 128, line 30, at end insert "or (2A)"

   Schedule 7, page 128, line 36, at end insert –

   "(2A) A local housing authority that grants a secure tenancy of a dwelling-house in England may grant an old-style secure tenancy if –
   - **(a) the tenancy is offered to a person aged 60 or over, or**
   - **(b) the dwelling-house has been provided or adapted to meet the specific needs of an elderly or disabled person."**