

04/2016 Housing and Planning Bill Update



16/03/16

Key Points

- The House of Lords has been debating the Housing and Planning Bill in Committee. They are likely to have completed consideration of the Bill by 17 March.
- The Lords have so far made no amendments to Part 4 of the Bill, which covers extension of the Right to Buy, sale of vacant high value council housing, Pay to Stay and phasing out of lifetime tenancies.
- In relation to sale of high value housing and Pay to Stay, Peers were unhappy about being asked to delegate extensive powers to the Secretary of State without clear information on how these powers are likely to be used. Ministers promised to supply a timetable for secondary legislation and more detail on its likely content before the Bill reaches Report stage.
- During debate on the Bill, Ministers announced their intention to establish a working party with local government representatives to consider the lessons from Right to Buy for council tenants and the arrangements for voluntary agreements with councils to replace high value homes sold off.

Progress of the Bill

The Housing and Planning Bill received its Second Reading in the House of Lords on 26 January. Peers began detailed consideration of the Bill in Committee on 9 February, beginning with Part 2, on rogue landlords and other private rented sector matters. On 1 March they completed their consideration of Part 2 and moved on to Part 1, Chapter 1, on starter homes. Several amendments intended to soften the exclusive priority the Bill gives to starter homes were debated but withdrawn. Peers completed consideration of Part 1 on 8 March, and began discussing the proposals in Part 4 relating to the extension of Right to Buy to housing associations. On 10 March they began debating the sale of vacant high value council housing, continuing on 14 March when they also covered the proposals on Pay to Stay and fixed term tenancies. The Committee next meets on 17 March when it is likely to consider the remainder of the Bill.

Extension of the Right to Buy to housing associations

Chapter 1 of Part 4 covers the extension of Right to Buy to housing association tenants. Amendments were moved to exclude supported, key worker, rural and some other housing from the scope of Government reimbursement of discounts in relation to the extended right to buy. All were opposed by the Government on the ground that they would undermine the voluntary basis on which housing associations had agreed to offer tenants the Right to Buy. The amendments were withdrawn.

Further amendments were moved requiring one for one local replacement of homes sold under the Right to Buy by housing associations. These were opposed by the Government on the grounds that, while housing associations are, and should be, expected to replace sold homes on at least a one-for-one basis, they need flexibility to decide where replacements should be built. The amendment was withdrawn. The Government also rejected an amendment calling for the discount to be repaid if a home sold under Right to Buy was offered for letting within 10 years, on the grounds that this would involve an inappropriate restriction on the rights of Right to Buy purchasers and that the Government was in any event taking action to reduce the incentives to buy-to-let.

Lord Kerslake (Crossbencher) spoke to an amendment to replace payment of the discount on Right to Buy purchases with an equity loan, arguing that it would be more in line with help given to other first-time buyers through Help to Buy, and remove the necessity to force councils to sell high

value stock to finance discounts. His proposal received widespread support from other peers but was opposed by the Government as contrary to their manifesto commitment to extend the Right to Buy.



Sale of Vacant High Value Council Housing

Chapter 2 of Part 4 of the Bill covers sale of vacant high value council housing. Clause 67 gives the Secretary of State power to levy stock-owning councils in relation to high value vacant properties. Amendments were debated to require deductions from any levy in relation to transactions costs, repayment of outstanding debt on properties sold, and their one-for-one local replacement. In replying, the Government confirmed its intention to make deductions in relation to debt and transaction costs, and to consult local authorities on the detail of these, to be included in the Determination made under powers provided by this clause. Several Peers expressed concern that too much of importance is to be included in secondary legislation about which the Government is currently unable to provide any detail, and which the Lords will not have the opportunity to amend since the convention is that the House of Lords may only pass or reject statutory instruments. Lord Foster (Liberal Democrat) pointed out that the House's Delegated Powers and Regulatory Reform Committee had been highly critical of this aspect of the Bill and of the Government's proposal that the negative procedure be used, rather than the affirmative procedure, which it found "not ... even remotely persuasive". The Minister hinted that the Government might go some way to meet these concerns when it responds formally to the Delegated Powers Committee.

In a later debate, the Minister promised to write to Peers by 18 March with a timetable for laying, and in some cases, debating secondary legislation. She promised that policy notes in lieu of secondary legislation, together with the Government's formal response to the Delegated Powers Committee, would be made available before the Bill reaches Report. She also announced that the Government intends to establish a working party with local government representatives to look at local authority's experience in administering the Right to Buy and the lessons for its extension to housing associations, including tackling fraud. The same working party might be tasked with discussing the arrangements for agreements under Clause 72 to replace sold council homes.

Responding to concerns that large properties would predominate among those categorized as high value, the Minister also confirmed that separate thresholds would be set for properties with one, two, three and four bedrooms, and for different local authority areas. She left open the possibility of individual local thresholds, rather than the regional thresholds exemplified in the Conservative manifesto, although she acknowledged that there would be "a perversity about requiring a house to be sold that would not generate sufficient receipts to cover the specified costs and deductions, the element for funding additional homes and the receipt to government to support the voluntary right to buy for housing association tenants. We will be looking at the data we have collected carefully to ensure that that is not the case".

On one-for-one replacement, the Minister argued that Clause 72 already provides for replacement of sold stock in a more flexible way than proposed in the amendments under consideration.

Peers next debated amendments intended to exclude various types of housing when calculating the high value levy, including newly constructed or renovated homes, homes in regeneration areas, recently improved or specialized housing, and homes managed by Tenant Management Organisations. The Minister replied that arguments for excluding such properties would be taken into account in drafting the secondary legislation.

Chapter 2 was agreed without amendment.

High Income Social Tenants

Chapter 3 of Part 4 includes proposals for a mandatory Pay to Stay scheme for councils and powers to help housing associations to operate voluntary schemes. Shortly before these clauses

were debated the Government published its response to the consultation on Pay to Stay in which it confirmed its intention to apply a taper to rent increases payable by tenants with household income above £30,000 (£40,000 in London).



Amendments were debated to give local authorities the option to adopt a voluntary policy for high-income social tenants, and on the relevant definition of income, calculation of market rents and calculation of the amount payable to the Exchequer in respect of the additional rent collectable. The Minister argued that a voluntary approach would not “help achieve our aim of a consistent and fair approach for all local authority tenants”. She also resisted amendment of the Bill to include more detail on income, market rents or administrative costs on the grounds that these needed further work and consultation with local authorities and should be specified in regulations. “The priority for my department” she said, “is engagement with local authorities and housing associations. The work will inform much of the rest of the regulations and will be focused on three key areas: how “income” is defined for the purposes of the policy; how market rents should be established; and the process for returning money raised from local authorities to the Exchequer. ... We have not decided whether it will be calculated by looking at taxable income and we are also considering whether it should be based on previous income or current income”. However, she subsequently added “there will obviously be an exemption for those on housing benefit”.

Several Peers were concerned about the risk to data confidentiality of the requirement for HMRC to make income information available to councils. The Minister emphasized “HMRC will not collect any new information. The landlords collect it and confirm it with HMRC”. In response to an amendment to add ALMOs to the list of organisations HMRC may disclose information to, the Minister replied: “Local housing authorities which have outsourced part or all of their housing management functions to another body such as an ALMO will have done so under powers in the Housing Act 1985. The Act provides that any function performed under such an agreement shall be treated as if it were done by the local housing authority. Therefore, when that housing management function includes functions related to implementing the policy for high-income social tenants, such as determining and setting rents, an ALMO or other body would be treated as if it were the local housing authority. In short, the reference to “a local housing authority” in Clause 81 already includes a body carrying out that housing management function on behalf of the council.”

Lord Best moved an amendment exempting councils from operating a scheme where costs of operating the scheme would be disproportionate to the additional income receivable. The Minister said: “We will think through carefully the issues that noble Lords raised about areas in which the additional income would be less than operating the cost of the policy, because we agree that that is an important consideration, although details could be set out in regulations if necessary”.

Other amendments were debated seeking to phase in operation of the scheme after pilots, to exempt elderly and disabled tenants and those on seasonal or zero-hours contracts, to apply the scheme only to new tenants, and to limit rent increases to no more than 5% a year. The Government responded that a pilot scheme would be unfair to the tenants in the pilot areas, and opposed the other amendments. Chapter 4 was agreed unamended.

Phasing out of Lifetime Tenancies

Chapter 6 of Part 4 requires local authorities to offer fixed term tenancies of 2 to 5 years to the majority of new tenants. The Government was challenged to explain why it proposed to impose this policy on local authorities that already have the option to offer flexible tenancies where they choose. The Minister answered that not enough councils are taking advantage of this flexibility. There was also a debate on exceptions where a normal secure tenancy may continue to be offered. The Bill provides for exemption of existing tenants transferring at the council’s behest, and for other exceptions to be specified in regulations. In the Commons, the Minister suggested that regulations would be used to exempt voluntary transfers. On this occasion, the Minister’s reply suggested a rather narrower exemption, referring only to transferring tenants downsizing or moving for work.