

Housing and Planning Bill

October 2015



The Government published the [Housing and Planning Bill](#) (with [explanatory notes](#)) on 13 October 2015. This briefing covers the sections of the Bill of interest to the LGA and local government, and sets out the LGA's views on a number of subjects, including:

- Starter Homes
- Extension of Right to Buy
- Vacant High Value Council Homes
- High Income Tenants: Mandatory Rent

Context

- The country needs an additional 230,000 homes per year to keep up with the number of new households and the Government has pledged to deliver 275,000 affordable homes by 2020. This is only achievable if councils play a full part in delivery through partnerships and by building on their own account. The private sector alone will not deliver on the scale required.
- The Government should ensure that local authorities are able to support house building by providing a local and stable planning system; devolving housing funding; allowing councils to keep money raised through their assets; freeing up public sector land; and stronger compulsory purchase powers.
- Tackling the housing deficit will require an increase in supply across all tenures. Councils are supportive of measures that increase home ownership but there is also a need to provide homes for affordable and social rent.
- Investing in affordable housing for low wage earners and those on social housing waiting lists can help reduce the £24 billion annual housing benefit bill; boost employment in the construction industry; support local economies; and reduce the £2.5 billion cost of poor quality housing to the NHS.
- Councils are committed to delivering fast and effective planning services but need to be able to resource planning departments properly. Currently, tax payers are subsidising 30 per cent of the estimated cost of processing all planning applications because nationally set planning fees do not fully cover the costs. The introduction of locally-set planning fees would ensure effective and responsive council planning services that are crucial to growth and building the homes we need.

Briefing

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- Centrally imposed exemptions to affordable housing and infrastructure contributions undermine councils' abilities to ensure new development benefits their communities. National exemptions should be replaced with a more flexible system that allows councils to reflect local market conditions and agree contributions with developers at an early stage so that viability concerns are addressed and lengthy negotiations avoided.

Part 1: New Homes in England

Chapter 1

Clauses 1-7: Starter Homes

Starter Homes are defined as new homes available for first time buyers under 40 at 20 per cent less than the market value, with an initial price cap at £450,000 in London and £250,000 outside. Councils will have a duty to promote Starter Homes, with an option for the Government to introduce regulations to determine that councils only grant planning permission if a specific Starter Home requirement is met. Regulations may vary this requirement for different areas. The Bill enables the Secretary of State to make a compliance direction if a local planning authority is judged to have failed to carry out these functions.

LGA view

- Councils are keen to support home ownership. Starter Homes are being promoted by the Government as an alternative to other housing tenures, such as shared ownership, social rent, discount market rent. Councils need the powers and flexibility to shape the supply of genuinely affordable homes to meet needs of different people in their area, in line with their local plan and the National Planning Policy Framework (NPPF).
- The delivery of 200,000 Starter Homes will put additional pressure on local infrastructure. Exempting Starter Homes from Community Infrastructure Levy and other tariff-based contributions to general infrastructure pots will reduce the amount of funding for infrastructure in some areas. Furthermore, delivery through the planning system will create significant new burdens on council planning teams, and so should be fully funded.
- It is planned that Starter Homes can be resold or let at open market value five years after the initial sale. In our view the restrictions on re-sales and letting at open market value should be in perpetuity. This model already exists through Low Cost Home Ownership schemes run by many councils.

Chapter 2

Clauses 8-11: Self-build and custom housebuilding

There will be a new duty on councils to grant planning permission for enough sites to meet the demand for custom-build and self-build in a local authority area arising from the local self-build and custom build register. It will include a clause to enable the Secretary of State to make regulations about how and when authorities can apply for an exemption from the duty.

LGA view

- The NPPF clearly sets out that councils should plan locally for a mix of housing to reflect local demand, therefore a new legislative duty on councils for self-build and custom-build delivery is unnecessary.

Part 2: Rogue landlords and letting agents

Part 2 of the Bill covers new provisions for tackling rogue landlords and letting agents.

Chapter 2

Clauses 12-21: Banning Orders

Councils will be able to apply to a first tier tribunal to issue a banning order to prevent a person from letting a property or engaging in letting agency work. A financial penalty of up to £5,000 may be issued if a banning order is breached.

LGA view

- We have highlighted the lack of effective deterrents for rogue landlords and letting agents as a serious weakness in the ability of councils to crack down on the worst operators. We welcome new sanctions to prevent rogue landlords and letting agents from operation and will be working with Government to make them clear and workable for both councils and landlords. We recommend that Government should urgently look at tougher penalties from magistrates supported by the introduction of sentencing guidelines.

Chapter 3

Clauses 22-31: Database of rogue landlords and letting agents

Government will set up and operate a 'database of rogue landlords'. This will list information from the banning orders introduced in the Bill. Local authorities will be responsible for entering information on to the database.

LGA view

- The introduction of banning orders will be more meaningful if councils can easily access information about them and use this to inform their enforcement work. The introduction of the database must be properly resourced and allow councils to focus on frontline work rather than administrative processes.

Chapter 4

Clauses 32-46: Rent repayment orders

Rent repayment orders will be extended over a broader range of offences. These require landlords to repay rent to the tenant or the local authority if the tenant is in receipt of benefits (Universal Credit). The Bill extends the range of offences to include failure to comply with an improvement notice (issued for properties in poor condition), eviction and harassment of tenants, and failure to comply with a banning order. Local authorities would be given a duty to consider using rent repayment orders when a person has been convicted of a relevant offence.

LGA view

- Extending the use of rent repayment orders could help councils tackle a wider range of offences. We would be happy to work with Government to streamline the process for issuing rent repayment orders and encourage their use by reducing the financial risk to councils.
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Part 3: Recovering abandoned premises in England

Chapter 3

Clauses 49-55

Clauses 49-55 will give private landlords new powers to reclaim a property that has been abandoned by the tenants.

LGA view

- We welcome further discussion with Government to ensure that new provisions on tenancy abandonment do not create unintended consequences or create additional pressure on council housing and homelessness services.

Part 4: Social housing in England

Part 4 of the Housing and Planning Bill sets out provisions for the extension of the Right to Buy to housing association tenants and the forced sale of vacant high value social housing owned by councils. It was announced last week that housing associations will voluntarily extend the Right to Buy to their tenants through the National Housing Federation's (NHF) offer to the Government. This chapter also contains changes to the regulation of housing associations, and rent changes for social housing tenants on higher incomes.

Chapter 1

Clauses 56-61: Implementing the Right to Buy on a voluntary basis

Implementing the Right to Buy for housing association tenants on a voluntary basis. The Bill gives the Secretary of State, the Homes and Communities Agency (HCA) and the Greater London Authority (GLA) the power to give grants to housing associations for Right to Buy discounts. The Social Housing Regulator will monitor the compliance of housing associations to the policy if requested to do so by the Government.

LGA view

- We will be working with the Government to understand the details not covered by the Bill, such as around exemptions and the location and tenure of replacement homes, so that they continue to meet local need. The extension of the Right to buy should not be funded by the sale of council owned homes. We are keen to pursue alternative methods for funding the extension as this is stated Government policy, for instance by bringing forward more public sector land, including Government and Registered Social Landlord (RSL) assets.

Chapter 2

Clauses 61-72: Vacant High Value Local Authority Housing

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The Bill would allow the Government to require a payment from councils with housing stock by financial year equivalent to the sale of vacant high value council homes, less any costs or deductions. High value is not defined in the Bill and this and other details will be set out in further determinations.

LGA view

- The LGA has argued that the extension of the Right to Buy should not be funded by forcing councils to sell off their homes. It is important that receipts from the sale of high value homes are reinvested into local replacement homes.
- We want to work with the Government to find an alternative method for funding the extension of the Right to Buy. Any funding of Right to Buy must support better management of local authority and RSL housing assets and building local replacements, rather than focusing on a process of taking a nationally determined payment from councils.
- It is important that the Government works with councils to understand the unintended consequences of forcing the sale of vacant council homes, in particular on council waiting lists, homelessness and housing benefit.

Chapter 4

Clauses 74-83: High income social tenants: mandatory rent

Social housing tenants with household incomes of £40,000 and above in London, and £30,000 and above in the rest of England, will be required to 'Pay to Stay,' by paying a market or near market rent for their accommodation. Data from HMRC will be provided to social landlords for the purposes of determining 'high income' tenants. Local authorities will be required to pay an additional income to the Treasury based on an estimated number, with a deduction for costs incurred.

LGA view

- Local authorities want to manage their homes to meet best the needs of communities and should be free to set differential rent levels based on local circumstances and housing markets.
- We are concerned that the Bill seeks to establish a process for taking a sum of money from councils based on a national estimate that will unlikely reflect actual local conditions. Councils, like housing associations, should be able to retain the additional income generated from these rents to build new homes. This would have far greater benefits for local communities than the money going to the Treasury.
- This is important in light of the reductions in social rents contained in the Welfare Reform and Work Bill. LGA briefings on the Welfare Reform and Work Bill are available on [our website](#).

Part 5: Housing, estate agents and rentcharges: other changes

Part 5 sets out other housing changes.

Clause 86

Under the proposals in the Bill, financial penalties can be used as an alternative to prosecution for certain offences under the Housing Act 2004

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LGA view

- This is a welcome flexibility for councils in private housing enforcement activity.

Part 6: Planning in England

Neighbourhood planning

Clauses 92-95: Neighbourhood planning

This Bill introduces a timetable by which councils must undertake key neighbourhood planning functions, and gives the Government the power to intervene in councils decisions. Councils must also notify neighbourhood forums of any planning applications in their area if requested.

LGA view

- Councils are responding positively to neighbourhood planning and have already designated more than 90 per cent of neighbourhood area applications. Imposing a statutory time limit for the determination of neighbourhood designation applications is unnecessary, which should reflect local conditions to ensure due consideration to each application. Government guidance already makes clear that councils should set out and share a decision making timetable which provides clarity for applicants.

Clause 96-100: Local Planning

These clauses give the Secretary of State additional powers to intervene in the local plan-making process.

LGA view

- Councils have made considerable progress with plan making. Getting plans in place requires significant time and effort and we look forward to working with Government on how the process could be simplified. It is crucial that plans are developed with the full involvement of local communities, and that they are not undermined by national policy changes.

Clauses 102-103: Permission in Principle and local registers of land

Clauses 102-103 gives the Government power to grant permission in principle to land that is allocated for development in a qualifying document. A development order will set out the detail of the type of document which will allocate land for a permission in principle.

Initially, the Government intends only land allocated in the Brownfield Register, Development Plan Documents and Neighbourhood Plans will be capable of obtaining permission in principle, and that it would be limited to sites suitable for minor housing development (fewer than 10 units).

Regulations will also require a local authority to compile and maintain a register of brownfield land suitable for housing.

LGA view

- It is important that the planning system remains proportionate with local communities continuing to have a say on decisions that affect them. Planning controls exist to ensure developments are of benefit to local communities. Councils and their planning committees are central to that process, allowing local people to have an influence over the changing shape of their neighbourhoods.
- New burdens funding should be provided to fully cover the costs of councils preparing, publishing and updating the proposed register. Introduction of a sequential test for brownfield land would help councils to ensure developers prioritise brownfield sites.

Planning permission

Clause 105: Local authority planning performance

The proposed amendments allow the Secretary of State to designate a local authority for its performance in determining applications for categories of development described in regulations, which could now include a separate category of non-major development.

LGA view

- Councils recognise the importance of timely and quality planning services, however the planning performance regime is an unnecessary narrow measure which focuses on process targets rather than good quality service provision. Government should work with councils to develop a sector-led approach to improvement.

Nationally Significant Infrastructure Projects

Clause 107: Development consent for projects that include housing

This clause will provide the Secretary of State with the power to grant development consent for housing which is linked to an application for a Nationally Significant Infrastructure Project.

LGA view

- The proposal to extend the Nationally Significant Infrastructure Projects regime and to shift decision to the Planning Inspectorate will undermine local accountability and community influence in the planning system.
- The Government should work with councils to empower community decision making and to enable swift decisions at the local level, for instance by allowing councils to set planning fees locally, rather than expanding the remit of an unelected quango.

Part 7 Compulsory purchase

Clauses 111-139 introduce a series of changes to the compulsory purchase process as outlined in the [consultation](#) earlier in the year.

LGA view

- We broadly welcome the ambition to make the process for compulsory purchase clearer, faster and fairer with an overall aim of bringing more land forward for development.
- The LGA would like to see the reforms go further to include: a default position that all decisions on confirmation of a compulsory purchase order are delegated to the acquiring authority; a more fundamental consolidation and streamlining of the legislative provisions for compulsory purchase; stronger compulsory purchase powers where planning permissions have expired and development has not commenced; stronger compulsory purchase powers to tackle empty homes; and a powers for councils to direct the use of publicly owned land.