



Library Note

Housing and Planning Bill (HL Bill 87 of 2015–16)

This House of Lords Library briefing provides an overview of the provisions of the Housing and Planning Bill. This is a Government Bill introduced in the House of Commons on 13 October 2015. Following completion of its Commons stages, it was introduced in the House of Lords on 13 January 2016. The Bill is scheduled for second reading debate on 26 January 2016.

The Bill includes the following provisions:

- The creation of new duties requiring local housing authorities to promote the supply of starter homes and support self-built and custom-houses.
- The establishment of banning orders against rogue landlords and property agents.
- The extension of the 'right to buy' to housing association tenants.
- Measures intended to encourage local housing authorities to sell vacant high-value housing stock.
- The introduction of different levels of rent for higher-income tenants in social housing.
- Measures intended to reduce social housing regulation.
- The phasing out of secure tenancies for social housing tenants.
- Changes to the planning system, including measures intended to promote the use of neighbourhood planning and local plans.
- Measures to encourage the use of brownfield sites.

This Bill was the first to be considered under the new House of Commons 'English Votes for English Laws' procedure for bills certified as including provisions affecting England and England and Wales only. The briefing provides a summary of proceedings during legislative grand committee stage.

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I. Introduction

This Library briefing provides an outline of the provisions of the Housing and Planning Bill, as introduced in the House of Lords on 13 January 2016, indicating where amendments were made to the Bill in the House of Commons. It also outlines some of the amendments debated at report stage and not made to the Bill, including those on which the House divided.

This Bill was the first to be considered under the new House of Commons ‘English Votes for English Laws’ procedure for bills certified as including provisions affecting England and England and Wales only. The briefing provides a summary of legislative grand committee stage as well as outlining proceedings at third reading.

I.1 Second Reading in the House of Commons

Speaking during second reading in the House of Commons on 2 November 2015, the Secretary of State for Communities and Local Government, Greg Clark, spoke of the need to build homes at a rate not seen since the 1980s and described providing enough homes to meet demand as the “defining challenge” for all MPs.¹ He spoke in support of the measures in the Bill including the extension of the right to buy to housing association tenants, following a voluntary agreement with the National Housing Federation. He also described the Bill as continuing the reforms to the planning system undertaken in the previous parliament.²

The Shadow Minister for Housing and Planning, John Healey, moved an amendment opposing second reading of the Bill.³ While the motion stated the Labour Party’s support for measures in the Bill to tackle rogue private landlords and letting agents, it expressed the view that the Bill as a whole would lead to a loss of affordable housing in England, centralise power in the hand of the Secretary of State and weaken the obligation of private developers to build affordable homes.⁴

The SNP Spokesperson for Cities, Alison Thewliss, argued that social rented housing was a public asset and criticised the right to buy policy as having a negative impact on waiting lists for social housing.⁵ The Leader of the Liberal Democrats, Tim Farron, argued that the Bill was “disappointing and unambitious at best, and brutal and counter-productive at worst” and did not constitute a significant attempt to tackle the housing crisis.⁶

Following the debate, the motion opposing second reading was defeated by 305 votes to 228.⁷ A separate motion that the Bill was read a second time was passed by 306 votes to 215.⁸ The programme motion for consideration of the Bill in public bill committee was passed by 300 votes to 159.⁹ The ways and means motion was passed by 298 votes to 138.¹⁰

¹ [HC Hansard, 2 November 2015, cols 721–34.](#)

² [ibid., col 734.](#)

³ [ibid., cols 735–48.](#)

⁴ [ibid.](#)

⁵ [ibid., cols 794–6.](#)

⁶ [ibid., cols 771–3.](#)

⁷ [ibid., cols 827–31.](#)

⁸ [ibid., cols 831–5.](#)

⁹ [ibid., cols 835–9.](#)

¹⁰ [ibid., cols 839–43.](#)

I.2 Committee Stage in the House of Commons

The Bill was considered at a public bill committee of MPs, over the course of 17 sittings held between 10 November and 10 December 2015. A number of amendments were made by the Government to the Bill including:

- Making the breach of the banning order against rogue landlords and property agents, introduced by the Bill, a criminal offence.¹¹
- The addition of new clauses to prevent local authorities in England from offering secure tenancies.¹²
- Enabling the Mayor of London and combined authorities to prepare development plan documents where local authorities have failed to do so.¹³

A summary of proceeding at committee stage has been provided by the House of Commons Library in its briefing [Housing and Planning Bill: Report on Committee Stage](#).¹⁴

I.3 Report Stage in the House of Commons

Report stage of the Housing and Planning Bill took place over two days on 5 and 12 January 2016.¹⁵ During the first day of report stage, the Government passed a number of amendments to the Bill, including measures intended to reduce regulation of social housing, the introduction of a new special administrative regime for private registered providers that go insolvent, changes to the planning system, and changes to the provisions in the Bill concerning housing offences.

On the second day of report stage, the Government passed amendments including a change to allow housing associations, on a voluntary basis, to decide to charge high-income social tenants different rents. Government amendments were also made to the level of fines that could be imposed on landlords for overcrowding and changes to the financial penalties for other housing offences.

Division on the Programme Motion

Prior to the beginning of report stage on 5 January 2016, MPs divided following opposition to the programme motion.¹⁶ The Shadow Minister for Communities and Local Government, Dr Roberta Blackman-Woods, argued that the programme at report stage would not provide sufficient opportunity for elements of the Bill to be properly scrutinised. She also criticised the late start of report stage at 8:47pm, following four oral statements earlier in the day, and the tabling of a large number of Government amendments over the Christmas period which, she argued, could not be sufficiently scrutinised in the time made available. However, the programme motion was agreed to by 303 votes to 195.

¹¹ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 20.

¹² [ibid](#), clauses 113–4 and schedules 7–8.

¹³ [ibid](#), clause 133.

¹⁴ House of Commons Library, [Housing and Planning Bill: Report on Committee Stage](#), 29 December 2015.

¹⁵ [HC Hansard, 5 January 2016, cols 117–256](#); [12 January 2016, cols 706–828](#).

¹⁶ [HC Hansard, 5 January 2016, cols 117–23](#).

2. Part I: New Homes in England

2.1 Starter Homes

Part I of Bill includes provisions intended to facilitate the creation of 200,000 starter homes in England—a commitment made in the 2015 Conservative Party manifesto—requiring councils to guarantee the provision of starter homes on all reasonably sized developments.¹⁷ The starter homes scheme were established in March 2015 following a government consultation.¹⁸ They are defined in the Housing and Planning Bill as new properties that will be made available to first time buyers under the age of 40 and at a 20 percent discount on the market price.¹⁹ As a measure to prevent the early resale of starter homes, for five years after the initial sale these properties would only be able to be resold at 20 percent less than their market rate.

The Bill creates two new duties for local planning authorities in relation to the building of starter homes. The first would require planning authorities in England to promote the supply of starter homes.²⁰ This general duty would apply in circumstances including the preparation of local plans, cooperating with neighbouring areas on strategic planning matters, and determining planning applications.²¹

The second duty, to be implemented through secondary legislation, would require English planning authorities to only grant planning permission for certain residential developments if they were to include a particular number or proportion of starter homes.²² Alternatively, the developer could provide payment to the local planning authority to be used for the provision of starter homes. Some exceptions could be made for certain types of residential development, to be set out in secondary legislation.²³ The secondary legislation, to take the form of regulations, might also enable the planning authority some discretion when granting planning permission.

The Bill would also require local planning authorities to prepare reports on how they were fulfilling their duties to provide starter homes.²⁴ These reports would be available to the public. Where a local planning authority failed to meet the requirements, the Secretary of State would be able to issue a compliance direction.

2.2 Self-built and Custom-built Properties

The Bill includes provisions intended to increase the number of self-built and custom-built properties. During the 2014–15 parliament, the Self-built and Custom Housebuilding Bill, a private member's bill, was passed by both Houses and received royal assent. The [Self-built and Custom Housebuilding Act 2015](#) requires local authorities to maintain a register of individuals who have expressed an interest in acquiring land for the purposes of the building of self-built or custom-built properties.²⁵ Clauses 8–11 of the Bill amends the Self-built and Custom

¹⁷ Department for Communities and Local Government, '[Historic Housing and Planning Bill Will Transform Generation Rent into Generation Buy](#)', 13 October 2015.

¹⁸ Department for Communities and Local Government, '[Stepping on the Ladder: High Quality Starter Homes For First Time Buyers—Consultation Response](#)', March 2015.

¹⁹ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 2.

²⁰ In this context, planning authorities can include the Secretary of State when granting planning permission.

²¹ [Explanatory Notes](#), para 60.

²² [ibid.](#), paras 63–6; planning authorities include the Secretary of State for the purpose of this provision.

²³ [ibid.](#), para 67.

²⁴ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 5.

²⁵ [Explanatory Notes](#), para 5.

Housebuilding Act 2015 to require local authorities to use the register to establish the level of demand for self-built or custom-built properties in their area, and to grant development permission for suitable plots of land in order to meet this demand.²⁶

2.3 Amendments at Report Stage Not Made

A number of amendments relating to part 1 of the Bill were moved by the Shadow Minister for Housing and Planning, John Healey. This included amendment 39 that would have extended the restriction on the resale of starter homes on the open market from five years to in perpetuity.²⁷ This was defeated on division, by 301 votes to 194.²⁸

The Leader of the Liberal Democrats, Tim Farron, moved amendment 110 to change clause 3 of the Bill, with the aim of expanding the duty to promote supply of starter homes to include other types of affordable housing.²⁹ This amendment was rejected on division, by 304 votes to 190.³⁰

3. Part 2: Banning Orders (Rogue Landlords and Property Agents)

The Bill includes the following measures intended to tackle rogue landlords and property agents in the private rented sector:

- Local authorities will gain the ability to apply for banning orders against rogue landlords and property agents, to be made by the First-tier Tribunal following conviction for a banning order offence.³¹ The offences to be established as banning order offences would be set by the Secretary of State in regulations. Banning orders would last for a period of time set out in the order, which must be at least twelve months. They would have the effect of preventing a person from letting a house and engaging in letting agency or property management work. Breach of the order would result in a financial penalty, set by the local authority at up to £30,000.
- A database of rogue landlords and property agents in England would be established, including those subject to a banning order, while that banning order is in place.³² The Bill would also enable a local housing authority to add someone to the database if they committed a banning order offence but the local housing authority had chosen not to make a banning order.³³ Information held on the database would be made accessible to every local housing authority in England, and might also be used for statistical or research purposes.³⁴
- Rent Repayment Orders would be made available to enable tenants to recover rent from rogue landlords.³⁵ These will be made by the First-tier Tribunal following offences including: breaches of improvement orders and prohibition notices and of licensing

²⁶ [Explanatory Notes](#), para 75.

²⁷ [HC Hansard, 5 January 2016, cols 125 and 145](#).

²⁸ [ibid, cols 153–7](#).

²⁹ [ibid, cols 125 and 136–40](#).

³⁰ [ibid, cols 157–61](#).

³¹ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 13–26.

³² [ibid](#), clauses 27–38.

³³ [Explanatory Notes](#), para 118.

³⁴ [ibid](#), paras 129–30.

³⁵ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 39–54

requirements under the Housing Act 2004; violent entry under the Criminal Law Act 1977; unlawful eviction under the Protection from Eviction Act 1977; and breach of a banning order as set out in the Bill.³⁶ The order may be applied for by the tenant or by a local housing authority up to twelve months after the offence.³⁷

3.1 Government Amendments to Part 2 at Report Stage

Part 2 of the Bill was amended at committee stage, including the passing of a Government amendment making the breaching of a banning order a criminal offence, as set out in clause 20 of the Bill.³⁸ On the first day of report stage in the House of Commons, this section of the Bill was further amended with establishment that the length of the ban should be for a minimum of twelve months as opposed to six, and that the maximum penalty would be £30,000.³⁹ Amendments were also made on the first day of report stage to extend the range of information held on the database and expanding who would be included on it.⁴⁰ Anti-avoidance measures were also added to the Bill.⁴¹

3.2 Amendments at Report Stage Not Made

Amendments moved at report stage to this part of the Bill included two new clauses moved by the Opposition: new clause 55 which would have required local authorities in England and Wales to put in place a licencing scheme for private sector landlords in their area and new clause 56 which would have enabled the Secretary of State to expand the role of the Housing Ombudsman to cover private sector housing and disputes between tenants and private landlords nationwide.⁴² These new clauses were not called and were not added to the Bill.

New Clause moved at Report Stage: Fitness for Habitation

An Opposition motion to add a new clause to the Bill, new clause 52, was debated on the second day of report stage.⁴³ The new clause, entitled ‘Implied term of fitness for human habitation in residential lettings’ would have amended the Landlord and Tenant Act 1985 with the intention of placing a duty on landlords to ensure that properties let were fit for habitation and remained so over the course of the tenancy. New clause 52 was rejected in a division by 312 votes to 219.⁴⁴

4. Part 3: ‘Recovering Abandoned Premises in England’

The Government has stated that the aim of clauses 55–61 is to enable landlords to more easily repossess properties that have been abandoned by tenants without the need for a court order and to speed up the repossession process.⁴⁵ Under provisions in the Bill, a private landlord would be able to give notice to end the tenancy where a certain amount of rent is unpaid, the landlord has given a series of warning notices and the tenant, or a named occupier, has not

³⁶ [Explanatory Notes](#), para 131.

³⁷ [ibid](#), paras 132–3.

³⁸ House of Commons Library, [Housing and Planning Bill: Report on Committee Stage](#), 29 December 2015, pp 15–21.

³⁹ [Explanatory Notes](#), paras 93 and 99.

⁴⁰ [HC Hansard, 5 January 2016, cols 161–81](#); [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 29 and 32.

⁴¹ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 26.

⁴² [HC Hansard, 5 January 2015, cols 163 and 167–9](#).

⁴³ [HC Hansard, 12 January 2016, cols 763–86](#).

⁴⁴ [ibid](#), cols 787–91.

⁴⁵ [Explanatory Notes](#), para 147.

responded in writing to those warning within a certain time-frame.⁴⁶ Under clause 58 of the Bill, within six months of the notice bringing the tenancy to an end, the tenant may apply to the county court for an order reinstating the tenancy if they had good reason for failing to respond to the warning notices.⁴⁷

4.1 Amendments Moved at Report Stage Not Made

The Opposition moved a number of amendments to part 3 of the Bill on the first day of report stage: amendment 49 would have required the relevant local housing authority to confirm that it suspected a property to be abandoned prior to the repossession procedure, and amendments 47 and 48 would have extended the time period between warning notices issued by the landlord and extend the minimum time before eviction.⁴⁸ After the debate, these amendments were not called and were not made to the Bill.

5. Part 4: Social Housing in England

5.1 Right to Buy for Housing Association Tenants

The 2015 Conservative Party manifesto included a commitment to extend the right to buy scheme to housing association tenants.⁴⁹ In October 2015, the Government announced that it had reached an agreement with the National Housing Federation to enable the right to buy to be implemented on a voluntary basis.⁵⁰ The agreement was for housing association tenants to be able to buy their home at the same discount as available to local authority housing tenants, with the Government compensating housing associations for the cost of this discount. Housing associations would retain the sales receipt and, as well as building new housing supply, would be able to replace rented homes with other tenancies, such as shared ownership. Housing associations would also be able to refuse to sell properties in certain circumstances.

Clauses 62–66 would implement the following parts of this agreement:

- Clause 62 would enable the Secretary of State to pay grants to private registered providers to compensate them for the discount on the price.⁵¹ Clause 63 provides for the Greater London Authority to pay these grants in Greater London.⁵²
- Clause 64 would establish that the regulator must monitor and report on the extent to which private registered providers are supporting their tenants to achieve home ownership.⁵³ The criteria for monitoring compliance would be the voluntary right to buy agreement between the Secretary of State and housing associations.⁵⁴

⁴⁶ [Explanatory Notes](#), para 147.

⁴⁷ [ibid](#), para 153.

⁴⁸ [HC Hansard, 5 January 2016, cols 164 and 170–2](#).

⁴⁹ Conservative Party, [Conservative Manifesto 2015](#), p 51.

⁵⁰ Department for Communities and Local Government, '[Historic Agreement will Extend Right to Buy to 1.3 million more Tenants](#)', 7 October 2015; National Housing Federation, '[An Offer To Extend Right To Buy Discounts To Housing Association Tenants](#)', 2015.

⁵¹ [Explanatory Notes](#), paras 157–9.

⁵² [ibid](#), para 160.

⁵³ [ibid](#), paras 161–2.

⁵⁴ [ibid](#), para 162.

- Clause 65 would amend the Housing and Regeneration Act 2008, removing the existing duty of the Homes and Communities Agency to give grants.
- Clause 66 covers the interpretation of Clauses 62–66.

5.2 Opposition Amendment at Report Stage: Right to Buy

On the second day of report stage in the Commons, the Opposition moved an amendment to clause 62, to include a requirement that housing associations spend the equivalent of the market price of a property sold under the right to buy on the provision of affordable housing, with properties sold being replaced with at least one new home.⁵⁵ The amendment was defeated in a division by 297 votes to 212.⁵⁶

5.3 Vacant High Value Housing Stock

Clauses 67–77 would enable local housing authorities to be required to make annual payments to the Secretary of State based on the value of the interest owned by the authority in high value housing that was likely to become vacant during that year.⁵⁷ Which properties would be considered ‘high value’ would be defined in regulations.⁵⁸ Local housing authorities would be able to enter into agreements with the Secretary of State to reduce the size of the payments, on condition that this money was spent on housing or to facilitate housing provision.⁵⁹ A duty would also be placed on local housing authorities to consider selling such housing.⁶⁰

The Explanatory Notes to the Bill state that the intention of these provisions is to:

[...] encourage the more efficient use by local authorities of their housing stock through the sale of their high value housing so that the value locked up in high value properties can be released to support an increase in home ownership and the supply of more housing.⁶¹

5.4 High-income Social Tenants

Clauses 78–89 would introduce a new requirement for tenants in social housing who earn above a set threshold to be charged different levels of rent. This rent could be either equal to the market rate for the property, a proportion of the market rate or determined in reference to other factors. The income threshold for being classified as a high-income social tenant would be defined by regulations.⁶² The Government has described these provisions as introducing a principle of ‘pay to stay’ to high-income social tenants.⁶³ A Government amendment to this part of the Bill was made at report stage to enable housing associations to be able to charge high-income social housing tenants different rents on a voluntary basis.⁶⁴

⁵⁵ [HC Hansard, 12 January 2016, cols 710 and 717.](#)

⁵⁶ [ibid, cols 754–8.](#)

⁵⁷ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 67.

⁵⁸ [ibid.](#)

⁵⁹ [Explanatory Notes](#), para 166.

⁶⁰ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 74.

⁶¹ [Explanatory Notes](#), para 167.

⁶² [ibid.](#), para 193.

⁶³ Department for Communities and Local Government, ‘[Historic Housing and Planning Bill Will Transform Generation Rent into Generation Buy](#)’, 13 October 2015.

⁶⁴ [Explanatory Notes](#), para 192.

5.5 Changes to Social Housing Regulation

Clause 90 of the Bill includes a series of amendments to previous legislation, set out in schedule 4 of the Act, intended to reduce the amount of regulation of social housing.

The Explanatory Notes to the Bill outline the changes set out in schedule 4. These include:

- The removal of the requirement that registered providers of social housing must seek permission from the social housing regulator to dispose of social housing stock.
- Registered providers would no longer be required to gain permission from the social housing regulator if they wanted to restructure or make other changes to their constitution. This would also apply to the dissolution of a registered provider.
- Registered providers would no longer be required to pay the proceeds from certain sales of social housing stock into a Disposal Proceeds Fund.
- Limiting the appointment of new managers for non-profit private registered providers by the social housing regulator to the circumstances in which there had been a breach of legal requirements.⁶⁵

This aspect of the Bill was significantly amended at report stage. Prior to report stage, the Bill provided for the Secretary of State to be able to change the regulatory framework for the social housing sector through secondary legislation. This power was replaced with the changes to the regulatory regime outlined in schedule 4.

Recovery of Social Housing Assistance

The Bill would change the law in regard to the recovery of financial assistance for social housing assistance by the Homes and Communities Agency.⁶⁶ Under the Housing and Regeneration Act 2008, social housing assistance can be provided to enable the provision of social housing. Sections 32–34 of the Housing and Regeneration Act 2008 enables the Homes and Communities Agency to recover social housing assistance in certain circumstances. Clause 91 of the Housing and Planning Bill amends the Housing and Regeneration Act 2008 to prevent the Homes and Communities Agency from recovering social housing assistance disposed of outside the social housing sector. This might happen in the event of a social housing assistance recipient winding up or going into administration, or a lender enforcing its security.

5.6 Insolvency of Registered Providers of Social Housing

Clauses 92–112 would establish a new special administrative regime for registered providers of social housing at risk of entering insolvency proceedings, allowing the Secretary of State or the regulator of social housing to apply for a housing administration order in the courts so that a special administrator may be appointed.⁶⁷ This section of the Bill would also establish the objectives to be pursued by the housing administrator in charge of the private registered

⁶⁵ [Explanatory Notes](#), paras 209–24.

⁶⁶ [ibid.](#), para 225.

⁶⁷ [ibid.](#), para 226.

provider's affairs. These new clauses were added to the Bill on the first day of report stage in the House of Commons.⁶⁸

5.7 Phasing Out of Secure Tenancies

During committee stage in the House of Commons, the Government amended the Bill to prevent local authorities in England from offering secure tenancies for life in most circumstances.⁶⁹ Instead, local authorities would only be able to offer fixed-term tenancies of between two and five years. Clause 113 and schedule 7 of the Bill would amend the Housing Act 1985 and the Housing Act 1996 with the intention of phasing out secure tenancies, which establish that a secure tenant can live in a property for life.⁷⁰ Lifetime tenancies would remain for existing tenants, continuing for new properties if the tenant was required by the landlord to move. Regulations would establish other circumstances where lifetime tenancies might be still be granted.

Clause 114 and schedule 8 of the Bill would also amend the Housing Act 1985 to prevent certain family members from succeeding tenancies if they had lived with the lifetime tenant for over a year.⁷¹ Spouses, civil partners, and those living together as husband and wife would continue to have the right to succeed to a lifetime tenancy.

Amendments to Remove Clauses 113–114 from the Bill

Opposition amendments to the Bill moved on the second day of report stage included amendments to remove clauses 113 and 114 from the Bill.⁷² Speaking to these amendments, the Shadow Minister for Communities and Local Government, Dr Roberta Blackman-Woods, argued that the phasing out of secure tenancies for life was an “attack on people on low incomes”.⁷³ The amendment to remove clause 113 was rejected in a division by 296 votes to 207. The other amendment to remove clause 114 was also not made to the Bill.

6. Part 5: ‘Housing, Estate Agents and Rent Charges—Other Changes’

Part 5 of the Bill—clauses 115–124—include a number of different provisions relating to issues including housing, estate agents and rent charges.

6.1 Assessment of Accommodation Needs: Gypsies and Travellers

Under section 8 of the Housing Act 1985, a local housing authority is required to consider housing conditions and housing needs in respect of the provision of further housing accommodation in its area. The 1985 Act includes a specific reference to the accommodation needs of gypsies and travellers in their area as part of this requirement. Clause 115 would amend the 1985 Act to remove this specific reference and instead would include a requirement that local housing authorities consider the provision of sites on which caravans can be stationed and where houseboats can be moored.⁷⁴

⁶⁸ [HC Hansard, 5 January 2016, cols 161–81.](#)

⁶⁹ House of Commons Library, [Housing and Planning Bill: Report on Committee Stage](#), 29 December 2015, pp 49–51.

⁷⁰ [Explanatory Notes](#), para 310.

⁷¹ [ibid.](#), para 310.

⁷² [HC Hansard, 12 January 2016, col 710.](#) Amendments 142 and 143 refer to clauses 89 and 90 which were the numbers of clauses 113 and 114 prior to amendments made at report stage being added to the Bill.

⁷³ [HC Hansard, 12 January 2016, col 718.](#)

⁷⁴ [Explanatory Notes](#), para 329.

6.2 Fit and Proper Person Test: Houses in Multiple Occupation

Clause 116 would change the ‘fit and proper person’ test for landlords wanting to let out licensed properties, such as houses in multiple occupation. Houses in multiple occupation include houses where at least three tenants live, forming more than one household, or where tenants share toilet, bathroom or kitchen facilities.⁷⁵ The new test, intended to prevent potential rogue landlords and property agents from receiving licences, include the criteria that the applicant should be entitled to remain in the UK and should not be insolvent or bankrupt.⁷⁶ Failure in the past to comply with duties concerning the immigration status of prospective tenants would also be taken into account. The test might also require the provision of supporting evidence.

6.3 Offences under the Housing Act 2004: Financial Penalties

Clause 117 and schedule 9 of the Bill provide for the use of financial penalties for certain offences under the Housing Act 2004 as an alternative for local authorities to prosecution. These provisions were added to the Bill on the second day of report stage in the House of Commons following amendment tabled by the Government.⁷⁷ The offences that might result in financial penalties include:

- Failure to comply with an improvement notice, issued by the local housing authority, requiring action be taken as a result of the identification of a hazard to the health and safety of the occupier.
- Offences in relation to other licencing requirements in Housing Act 2004, including offences committed by people in control of, or managing, houses in multiple occupation.
- Contravening an overcrowding notice made under the Housing Act 2004.
- Contravening the management regulations in respect of a house in multiple occupation.⁷⁸

6.4 Level of the Fine Contravening an Overcrowding Notice

Clause 118 was added to the Bill on the second day of report stage in the House of Commons. The clause would allow for the imposing of a higher fine for breaches of an overcrowding notice in England. Currently the fine is a level 4 fine, a maximum of £2,500.⁷⁹ Clause 118 would set the fine at a level 5 fine, where there is not set maximum amount.⁸⁰

⁷⁵ GOV.UK, ‘[Private Renting: Houses in Multiple Occupation](#)’, accessed 19 January 2016.

⁷⁶ [Explanatory Notes](#), para 334.

⁷⁷ [HC Hansard, 12 January 2016, cols 759–91](#).

⁷⁸ [Explanatory Notes](#), para 336.

⁷⁹ [ibid](#), para 346.

⁸⁰ [HC Hansard, 12 January 2016, cols 759–91](#).

7. Part 6: 'Planning in England'

7.1 Neighbourhood Planning and Local Plans

The 2015 Conservative Party manifesto included a commitment that it would, in government, “let local people have more say on local planning and let them vote on local issues”.⁸¹ The House and Planning Bill includes provisions intended to increase the use of neighbourhood planning and local plans and provide powers for the Secretary of State to intervene in parts of the process.

7.2 Neighbourhood Planning

The Government has argued that the neighbourhood planning process on average takes two years to complete.⁸² Clauses 125–128 of the Bill, as introduced in the House of Lords, are described by the Government as a means of simplifying and speeding-up the neighbourhood planning process.⁸³

The legal framework for neighbourhood planning was established in the Localism Act 2011.⁸⁴ The aim of neighbourhood planning is to enable communities to be involved in local planning decisions, such as where new homes, shops and offices are to be built, what new buildings should look like and what infrastructure should be provided.⁸⁵ Community groups can introduce neighbourhood development orders to determine planning applications or introduce neighbourhood development orders and community right to build orders to grant planning permission for specific developments.

The Bill includes the following clauses in regard to neighbourhood planning:

- Clause 125 would create new powers for the Secretary of State to intervene in the decision making process for designating neighbourhood areas.⁸⁶ Local authority planning may be required by regulations to designate specified areas as a neighbourhood area, following an application.
- Clause 126 would enable the Secretary of State to set time limits on the process by which local groups can decide on whether to hold a referendum on a neighbourhood development order or plan proposal.⁸⁷ The Secretary of State would also be able to prescribe a date by which a local planning authority must make a neighbourhood development order or plan that has been approved in a referendum.⁸⁸

⁸¹ Conservative Party, [Conservative Manifesto 2015](#), p 69. Further information on the planning proposals in the Conservative manifesto are outlined in House of Commons Library, [Planning Reform Proposals](#), November 2015, p 4.

⁸² [Explanatory Notes](#), para 27.

⁸³ [ibid](#), para 3.

⁸⁴ House of Commons Library, [Neighbourhood Planning](#), June 2015, p 4.

⁸⁵ Department for Communities and Local Government, [‘What is Neighbourhood Planning?’](#), 6 March 2014.

⁸⁶ [Explanatory Notes](#), paras 371–2.

⁸⁷ [ibid](#), para 373.

⁸⁸ [ibid](#), para 375.

- Clause 127 would enable the Secretary of State, in certain circumstances, to intervene in decisions made by local planning authorities regarding whether to hold a referendum on a neighbourhood development order or plan proposal.⁸⁹
- Clause 128 would require a local planning authority, on request of the neighbourhood forum, to notify them of planning applications in the neighbourhood area.

7.3 Local Plans

One of the Government's stated objectives in introducing the Housing and Planning Bill was to enable it to have the power to ensure that all councils had local plans in place by 2017.⁹⁰ Local planning authorities are currently encouraged to have in place local plans setting out plans for future developments in an area, however this is not a statutory requirement.⁹¹ In November 2015, the Government stated that 65 percent of local authorities had adopted a local plan.⁹²

Clauses 129–134 of the Bill, as introduced in the House of Lords, include the following changes regarding local plans, summarised as follows:⁹³

- Clause 129 would enable the Secretary of State, or the Mayor of London in the case of London boroughs, to direct an authority to amend its local development scheme. The local development scheme sets out the development plan documents that the authority intend to produce and the timetable for their production.
- Clause 130 would enable the Secretary of State, in instances where someone has been appointed to conduct an independent examination of a local planning authority's development plan, to give directions to that person. These directions might include, for example, that the examination be suspended, to consider specified matters, or to hear from with specific people.
- Clause 131 would enable the Secretary of State to intervene in the development plan process and direct that the plan be submitted to him or her for approval.
- Clause 132 supplements the powers that the Secretary of State currently has to amend development plans where he or she believes there to have been a failure in the process of preparing the plan. This includes directing the local planning authority to prepare or revise the document, and to submit it to independent examination.
- Clause 133 would enable the Mayor of London or a combined authority to prepare a development plan document for a local planning authority within their area where that local planning authority has not done so already. This clause was added to the Bill at committee stage in the House of Commons following a Government amendment.⁹⁴

⁸⁹ [Explanatory Notes](#), paras 376–80.

⁹⁰ Department for Communities and Local Government, '[Historic Housing and Planning Bill Will Transform Generation Rent into Generation Buy](#)', 13 October 2015.

⁹¹ Department for Communities and Local Government, '[Local Plans: Key Issues](#)', 6 March 2014; House of Commons Library, [Housing and Planning Bill \[Bill 75 of 2015–16\]](#), 21 October 2015, p 67.

⁹² [House of Commons, written question: Local Plans, 3 November 2015, 902069](#).

⁹³ [Explanatory Notes](#), paras 382–95.

⁹⁴ House of Commons Library, [Housing and Planning Bill: Report on Committee Stage](#), 29 December 2015, p 53.

- Clause 134 would enable the Secretary of State to recover the costs of providing an independent examination of a development plan document.

Further Government Proposals for Developing new Neighbourhood Plans and Local Plans

Prior to the introduction of the Bill, on 15 September 2015 the Government announced that it would create a panel to consider ways of changing the local plan making process.⁹⁵ In November 2015, the Government also announced the offer of £600,000 resource grant funding for local authorities to pilot new support neighbourhood planning and the introduction of local plans.⁹⁶

7.4 Planning Powers of the Mayor of London

Under the Town and Planning Act 1990, the Mayor of London has powers to decide planning applications that have potential strategic importance to Greater London. Clause 135 of the Bill would enable the Secretary of State to prescribe which planning applications would be subject to these powers with reference to [the Mayor of London's spatial development strategy, the London Plan](#).⁹⁷ Clause 135 would also enable the Mayor of London to require a London borough to consult with the Mayor before planning permission is granted for certain developments.⁹⁸

7.5 Brownfield Land

Clauses 136–137 of the Bill would require there to be a duty on local authorities to keep a register of brownfield land in its area. The Secretary of State would be given a new power to allow 'permission in principle' to be granted to registered brownfield sites. Sites for which permission in principle were granted would only require the developer to apply for 'technical details consent' to the local planning authority prior to being granted full planning permission.⁹⁹ The planning authority would consider the application on the basis of the technical details in the application and not the original permission in principle.¹⁰⁰

7.6 Changes to Planning Permission

Clauses 138–141 include a number of changes to the planning permission process. These include changes to the procedure for development orders. Under the Town and Country Planning Act 1990, planning permission, subject to certain conditions, may be granted by development orders.¹⁰¹ The 1990 Act requires approval from the local planning authority or the Secretary of State in regard to a change of use. Clause 138 would enable permission to also be

⁹⁵ Department for Communities and Local Government, '[Brandon Lewis Launches Expert Panel To Speed Up Development](#)', September 2015.

⁹⁶ Department for Communities and Local Government, '[Neighbourhood Planning and Local Planning: Service Redesign and Capacity Building—Prospectus](#)', November 2015; For further information, see House of Commons Library, '[Planning Reform Proposals](#)', November 2015, p 16.

⁹⁷ [Explanatory Notes](#), paras 396–8.

⁹⁸ [ibid.](#)

⁹⁹ [ibid.](#), para 399.

¹⁰⁰ [ibid.](#), para 411.

¹⁰¹ [ibid.](#), para 424.

granted in respect of building operations. Building operations can include structural alterations, construction, rebuilding, and most demolitions.¹⁰²

Clause 139 concerns the powers of the Secretary of State in regard to granting planning permission.¹⁰³ Following amendments made to the Town and Country Planning Act 1990 by the Growth and Infrastructure Act 2013, planning permission may be sought from the Secretary of State directly rather than a particular local planning authority in certain circumstances. Clause 139 would enable the Secretary of State to designate in regard to a particular local planning authority, in regulations, certain categories of development for which a developer may go directly to the Secretary of State for planning permission.

Clause 140 would change the scope of the reports prepared by local planning authority officers in regard to planning applications, to include a list of financial benefits connected with a particular development.¹⁰⁴

Planning Applications Fees Regulations: Procedure

At report stage in the House of Commons, clause 141 was added to the Bill.¹⁰⁵ This clause concerns the ability of the Secretary of State to make regulations, under section 303 of the Town and Country Planning Act 1990, to allow a local planning authority to charge certain fees for planning applications.¹⁰⁶ At present, such regulations would normally be subject to the procedure in Parliament for affirmative instruments, requiring both Houses to agree the instrument before it can come into force. However, where the regulations applied to only some authorities rather than all authorities, the regulations would be a hybrid instrument and go through a different procedure whereby certain affected groups would be involved during the consideration of the regulations.¹⁰⁷ Clause 141 would establish that all regulations regarding fees for planning applications would be considered using the procedure for affirmative instruments.

7.7 Planning Obligations

Clauses 142–143 relate to planning obligations and were added to the Bill following the passing of Government amendments on the first day of report stage in the House of Commons.¹⁰⁸ Clause 142 would enable someone to be appointed by the Secretary of State to mediate in regard to negotiating planning obligations between the developer and parties affected for a particular development.¹⁰⁹ Such planning obligations are usually included in the application for planning permission.

Clause 143 would insert a new section into the Town and Country Planning Act 1990, enabling the Secretary of State to make regulations to restrict or put other conditions on the enforceability of planning obligations relating to the provision of affordable housing.¹¹⁰ The clause includes a definition of affordable housing.

¹⁰² Department for Communities and Local Government, '[When Is Permission Required?: What Is Development?](#)', accessed 21 January 2016.

¹⁰³ [Explanatory Notes](#), paras 427–9.

¹⁰⁴ [ibid](#), paras 430–33.

¹⁰⁵ [HC Hansard, 5 January 2016, cols 211–56](#); [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 141.

¹⁰⁶ [Explanatory Notes](#), paras 434–5.

¹⁰⁷ For further information, see the Parliament website, '[Hybrid Instruments](#)', accessed 21 January 2016.

¹⁰⁸ [HC Hansard, 5 January 2015, cols 211–56](#).

¹⁰⁹ [Explanatory Notes](#), para 436–51.

¹¹⁰ [ibid](#), para 452–7.

7.8 Nationally Significant Infrastructure Projects: Development Consent

Clause 144 would allow the Secretary of State to grant development consent for housing where housing is an element of a nationally significant infrastructure project.¹¹¹ This housing might be functionally linked to the infrastructure project or linked closely geographically.¹¹² The decision would be made in reference to guidance to be produced by the Department for Communities and Local Government.

7.9 Planning Permission: Alternative Provision of Processing Services

On the first day of report stage in the House of Commons, a Government amendment was passed adding clauses 145–148 to the Bill.¹¹³ These clauses would give the Secretary of State power to introduce, by regulations, pilots involving alternative providers for the processing of applications for planning permission. The Explanatory Notes state that these pilots would “test the benefits of introducing competition in the processing of applications”.¹¹⁴

7.10 Amendments at Report Stage Not Made

A number of amendments relating to planning policy were moved on the first day of report stage by the Opposition and by backbench MPs.¹¹⁵ These were all unsuccessful. One amendment moved by the Labour frontbench, to add new clause 57 to the Bill, would have enabled local planning authorities, when granting planning permission for new housing, to create a planning obligation for a proportion of the housing to be marketed exclusively to local first time buyers.¹¹⁶ This new clause was rejected following a division, by 277 votes to 72.¹¹⁷

8. Part 7: Changes to Compulsory Purchase Etc.

8.1 Changes to the Process for Compulsory Purchase

Part 7 of the Bill—clauses 152–182—includes a number of changes to the process for compulsory purchase. These include:

- Changes to powers of entry for acquiring authorities, prior to a purchase order being made, for survey and valuation purposes.¹¹⁸
- Changes to the confirmation process for compulsory purchase orders, including requiring the Secretary of State to establish timetables to be used by authorities for the procedure.¹¹⁹

¹¹¹ [Explanatory Notes](#), para 458.

¹¹² [ibid](#), para 459.

¹¹³ [HC Hansard, 5 January 2016, cols 211–56](#).

¹¹⁴ [Explanatory Notes](#), para 461.

¹¹⁵ [HC Hansard, 5 January 2016, cols 181–256](#).

¹¹⁶ [ibid](#), cols 213 and 231–2.

¹¹⁷ [ibid](#), cols 244–6.

¹¹⁸ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 152–9; [Explanatory Notes](#), paras 471–85.

¹¹⁹ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 160; [Explanatory Notes](#), paras 486–8.

- Changes to the procedure for general vesting declarations to acquire land. These are made prior to land being acquired as a result of compulsory purchase.¹²⁰
- Changes to the notice period for taking possession, including the introduction of an extended notice period of three months for taking possession following a notice to treat/notice of entry being served.¹²¹
- Changes to the system for making compensations claims.¹²²
- Changes to the law in regard to disputes over compulsory purchase, including in disputes regarding the division of land where a project cuts across a landowner's property.¹²³
- Changes to the law to enable the overriding of easements and other rights in certain circumstances set out in the Bill. The Bill also includes measures for the provision of compensation for overridden easements.¹²⁴

9. Part 8: Public Authority Land

9.1 Disposal of Public Authority Land

Clauses 183–187 include provisions intended to encourage the sale of public authority land. These clauses were added to the Bill following Government amendments made on the first day of report stage in the House of Commons:¹²⁵

- Clause 183 would require ministers and public authorities in England, Wales and Scotland to engage with other public authorities when developing plans for the disposal of land.¹²⁶
- Clause 184 would require public authorities to prepare and publish reports containing details of surplus land.¹²⁷
- Clause 185 would extend the circumstances in which the Secretary of State may require certain public bodies to dispose of public land.¹²⁸
- Clause 186 would require local authorities to publish reports on the sustainability of their building estate and progress made towards the reduction of its overall size.
- Clause 187 would also require the military to assess measures to reduce the size of its estate.¹²⁹

¹²⁰ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clause 163–4; [Explanatory Notes](#), para 495.

¹²¹ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 165–170; [Explanatory Notes](#), paras 497–505.

¹²² [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 171–5; [Explanatory Notes](#), paras 506–13.

¹²³ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 176–8; [Explanatory Notes](#), paras 514–32.

¹²⁴ [Housing and Planning Bill](#), HL Bill 87 of 2015–16, clauses 179–80; [Explanatory Notes](#), paras 533–7.

¹²⁵ [HC Hansard, 5 January 2016, cols 211–56](#).

¹²⁶ [Explanatory Notes](#), paras 541–6.

¹²⁷ [ibid](#), paras 447–52.

¹²⁸ [ibid](#), paras 453–6.

¹²⁹ [ibid](#), paras 457–9.

10. Legislative Grand Committee (English Votes for English Laws Procedure)

The Housing and Planning Bill was the first Bill to be considered in the House of Commons using the new procedure following changes to the Standing Orders passed by MPs on 22 October 2015.¹³⁰ These new procedures enable English and English and Welsh MPs to give their consent to Government legislation where that legislation has been certified by the Speaker as only affecting England or England and Wales and where it's within the devolved legislative competencies.¹³¹ This may apply to the whole of a Bill or, as was the case with the Housing and Planning Bill, parts of a Bill.

The procedure was enacted for the Housing and Planning Bill in the following way. Certification by the Speaker of the House of Commons made on 27 October 2015 and [published in the next day's House of Commons Votes and Proceeding](#), indicating that certain clauses within the Bill were stated as relating exclusively to England and other clauses as relating exclusively to England and Wales.¹³² The Bill was then considered in a public bill committee.

At the end of committee stage, the Department for Communities and Local Government published a memorandum indicating those parts of the Bill it believed applied to England and to England and Wales.¹³³ The Speaker issued two provisional certifications. The [first provisional certification was published on 4 January 2016](#) prior to the first day of report stage, and the [second on 11 January 2016](#) prior to the second day of report stage.¹³⁴

At the end of the report stage and prior to third reading, the [Speaker published a certification for the Bill taking into account amendments at report stage](#).¹³⁵ The House then resolved itself into legislative grand committee, a new stage in the progress of a Bill.¹³⁶ The purpose of this new stage is to ensure that the consent of English MPs and English and Welsh MPs for the relevant certified clauses in the Bill is achieved. At this stage, all MPs are able to take part in the debate, but only MPs representing constituencies in England and Wales can vote on the consent motion.

During the debate, the Minister of State at the Department for Communities and Local Government, Brandon Lewis, stated that, in proceeding with the Bill in accordance with the new Standing Orders, the Government was delivering on a manifesto commitment.¹³⁷ MPs including John Redwood (Conservative MP for Wokingham) and David T C Davies (Conservative MP for Monmouth) spoke in favour of the procedure.¹³⁸ The Leader of the SNP in the House of Commons, John Swinney, characterised the procedure as being damaging to the Union, and argued that legitimately elected Scottish MPs were being denied the right to participate fully in the House.¹³⁹ The Shadow Minister for Housing and Planning, John Healey,

¹³⁰ [HC Hansard, 22 October 2015, cols 1159–258](#).

¹³¹ House of Commons Library, [English Votes for English Laws](#), 2 December 2015 pp 3–4.

¹³² Speaker of the House of Commons, [Speaker's Certificate: Housing and Planning Bill](#), 27 October 2015.

¹³³ Department for Communities and Local Government, [Memorandum for Public Bill Committee on The Application of Standing Order 83I to the Housing and Planning Bill as Amended](#), 14 December 2015.

¹³⁴ Speaker of the House of Commons, [Mr Speaker's Provisional Certification \(SO No 83L\) as at 4 January 2016](#), 4 January 2016; [Mr Speaker's Revised Provisional Certificate \(SO No. 83L\) as at 11 January 2016](#), 11 January 2016.

¹³⁵ Speaker of the House of Commons, [Speaker's Certificate: Housing and Planning Bill](#), 12 January 2016.

¹³⁶ [HC Hansard, 12 January 2016, col 793](#).

¹³⁷ [ibid, col 795](#).

¹³⁸ [ibid, cols 803; and 796](#).

¹³⁹ [ibid, cols 797–803](#).

criticised the procedure on the basis that his party supported English MPs having a stronger voice but not a “veto” in Parliament, arguing that the new procedure amounted to a veto.¹⁴⁰

The consent motions to approve the Bill were agreed to without a division.¹⁴¹ This meant that the Bill was able to proceed to third reading without recourse to further stages set out in the Standing Orders.

11. Third Reading in the House of Commons

Speaking for the Government, the Secretary of State for Communities and Local Government, Greg Clark, argued that the Bill would deliver on the Government’s objective of increasing house building and the number people able to own their own home, describing that this stage of the Bill ought to be used as a moment to reflect on the failure of previous governments to provide sufficient housing supply.¹⁴² Mr Clark argued that key to sustaining housing supply in the future would be to recognise the underlying issues of “supply, affordability and ownership”, as the Government had attempted to do in the Bill.¹⁴³

The Shadow Minister for Housing and Planning, John Healey, argued that the Bill was “a bad Bill”, made worse by “last minute” amendments.¹⁴⁴ He argued that the starter homes championed by the Bill would be out of the reach of many and that the Bill struck the “death knell” for social housing.¹⁴⁵ He also criticised what he described as the expansion of the role of the Secretary of State into local planning decision making. The motion that the Bill be read a third time went to a division, and was passed by 309 votes to 216.¹⁴⁶

¹⁴⁰ [HC Hansard, 12 January 2016, col 804.](#)

¹⁴¹ [ibid, cols 805 and 806–7.](#)

¹⁴² [ibid, cols 807–12.](#)

¹⁴³ [ibid, col 810.](#)

¹⁴⁴ [ibid, cols 812–4.](#)

¹⁴⁵ [ibid, col 813.](#)

¹⁴⁶ [ibid, cols 824–8.](#)

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