



RESEARCH PAPER 00/98  
20 DECEMBER 2000

# *The Homes Bill*

**Bill 5 2000-01**

The *Homes Bill* was presented on 12 December 2000 and is scheduled for Second Reading on 8 January 2001. It extends to England and Wales (except for an amendment to the *Fair Trading Act 1973*).

Part I of the Bill is part of a wider package of proposals that aim to improve the home buying and selling process in England and Wales.

Part II will require local authorities to adopt a strategic approach to combating homelessness and is aimed at strengthening the position of people who are homeless through no fault of their own. It also contains provisions that will facilitate the development of choice-based lettings schemes by local authorities.

This paper provides background to the Bill's measures and discusses responses to the proposals.

Wendy Wilson

SOCIAL POLICY SECTION

HOUSE OF COMMONS LIBRARY

**Recent Library Research Papers include:**

List of 15 most recent RPs

<b>00/82</b>	Concessionary television licences	26.10.00
<b>00/83</b>	IGC: from Feira to Biarritz	27.10.00
<b>00/84</b>	Common European Security and Defence Policy: A Progress Report	31.10.00
<b>00/85</b>	Economic Indicators	31.10.00
<b>00/86</b>	Unemployment by Constituency, October 2000	15.11.00
<b>00/87</b>	Rent Rebates and local Authority Housing Revenue Accounts	16.11.00
<b>00/88</b>	IGC 2000: Enhanced Co-operation	21.11.00
<b>00/89</b>	<i>The Freedom of Information Bill</i> – Lords Amendments [Bill HL 129 of 1999-2000]	23.11.00
<b>00/90</b>	Election of a Commons Speaker	29.11.00
<b>00/91</b>	Economic Indicators	01.12.00
<b>00/92</b>	<i>Shifting Control?</i> Aspects of the executive-parliamentary relationship	12.12.00
<b>00/93</b>	Stem Cell Research and Regulations under the <i>Human Fertilisation and Embryology Act 1990</i>	13.12.00
<b>00/94</b>	Unemployment by Constituency, November 2000	13.12.00
<b>00/95</b>	<i>The Vehicles (Crime) Bill</i> [Bill 1 of 2000-2001]	15.12.00
<b>00/96</b>	<i>The Hunting Bill</i> [Bill 2 of 2000-2001]	14.12.00

*Research Papers are available as PDF files:*

- *to members of the general public on the Parliamentary web site,  
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,  
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

## Summary of main points

In England and Wales, an offer to buy a home and acceptance of that offer are made "subject to contract." Such an offer and its acceptance do not constitute a legally binding agreement. This is usually only achieved with an exchange of contracts. Between agreeing terms and exchanging contracts, both the buyer and seller do a number of things. For the seller, this includes:

- obtaining the title deeds to the property;
- establishing title and producing Land Registry office copy entries where the property is registered;
- replying to pre-contract enquiries;
- preparing a draft contract.

The buyer will:

- conduct local land charge searches; and
- commission a survey of the property if required.

These documents and this information normally become available only after terms have been agreed "subject to contract".

Part I of the *Homes Bill* aims to bring forward the availability of this sort of information to the start of the process. It will require the person marketing a residential property with vacant possession to compile a seller's pack before marketing the property. The pack is expected to contain documents and information similar to those mentioned above, together with a report on the condition of the property. The aim of Part I is to improve the house buying and selling process by making it faster, easier and more consumer friendly. It is the Government's intention that these measures will take effect from 2003.

Part II of the Bill will place a new duty on local housing authorities to adopt a strategic approach to combating homelessness. The Bill will also amend Part VII of the *1996 Housing Act* to strengthen the safety net for people who become homeless through no fault of their own. Specifically the Bill will:

- abolish the current two year period during which authorities are subject to the main homelessness duty and replace it with a duty to secure suitable accommodation until a settled housing solution is found;
- abolish the current duty on authorities to consider whether other suitable accommodation is available before they can secure accommodation;
- provide for additional circumstances in which an applicant can bring the main homelessness duty to an end; and
- give authorities a new power to secure accommodation for homeless applicants who are not in priority need.

It is expected that the homelessness provisions will be brought into force in 2001.

Part II of the Bill will also amend Part VI of the *1996 Housing Act* with a view to facilitating lettings policies that offer more choice to homeless people and others in housing need. The Government believes that lettings policies can help to create sustainable communities, tackle social exclusion and make better use of the national housing stock.

It is expected that the provisions on allocations will be brought into force in 2002.

The Bill extends to England and Wales except for an amendment to the *1973 Fair Trading Act* which will only apply in England. The Secretary of State will have power to make transitional provisions in relation to homelessness and allocations by statutory instrument; in Wales this power will be exercisable by the National Assembly for Wales.

## CONTENTS

<b>I</b>	<b>Part I: The reform of conveyancing</b>	<b>7</b>
	<b>A. The need for reform</b>	<b>7</b>
	<b>B. Consultation on the Government’s proposals</b>	<b>8</b>
	<b>C. Responses to the consultation paper</b>	<b>10</b>
	<b>D. The outcome of consultation</b>	<b>13</b>
	<b>E. The Bristol pilot study</b>	<b>13</b>
	<b>F. Seller’s packs in ‘low demand’ areas</b>	<b>18</b>
	<b>G. Impact of the seller’s pack on small businesses</b>	<b>19</b>
	<b>H. Other Government research</b>	<b>20</b>
	<b>I. Some general responses</b>	<b>21</b>
	<b>J. The Bill</b>	<b>23</b>
<b>II</b>	<b>Part II: Homelessness and allocations</b>	<b>26</b>
	<b>A. Legislation on homelessness</b>	<b>26</b>
	1. Origins	26
	2. Department of Environment Circular (DoE) 18/74	27
	3. <i>The Housing (Homeless Persons) Act 1977</i>	28
	4. Part III of the <i>Housing Act 1985: amendments and Code of Guidance</i>	29
	5. The 1988 Government Review	30
	6. The 1994 Government Review	30
	7. Parts VI & VII of the <i>1996 Housing Act</i>	31
	8. Labour’s amendments to Parts VI & VII of the 1996 Act	33
	<b>B. Homelessness proposals in the Housing Green Paper</b>	<b>34</b>
	<b>C. The Bill: homelessness provisions</b>	<b>35</b>
	1. Homelessness reviews and strategies	35

2. Amendments to local authorities' duties to homeless people	36
<b>D. Responses to the Bill's homelessness provisions</b>	<b>39</b>
<b>E. Housing allocation systems: background</b>	<b>40</b>
1. The current system of allocations	40
2. Constraints on choice in housing allocations	41
3. Housing allocations and sustainable communities	42
4. The Government's proposals in the Housing Green Paper	43
<b>F. The Bill: housing allocations</b>	<b>47</b>
<b>G. Responses to the Government's policy on housing allocations</b>	<b>49</b>
1. Choice in areas of high demand	50
2. Choice and vulnerable applicants	51
3. The banding system	52
4. Choice and sustainable communities	53
5. Local letting schemes	54
6. Exclusions	56
7. Pilot schemes and monitoring	56
<b>Statistical Appendix: Statutory homelessness</b>	<b>58</b>
<b>List of abbreviations</b>	<b>64</b>

## I Part I: The reform of conveyancing

### A. The need for reform

On 7 December 1998, the Government published a report of research undertaken by the Department of the Environment, Transport and the Regions (DETR) into the house buying and selling process.<sup>1</sup> The report involved a tracking survey of nearly 800 buyers and sellers, a retrospective survey of over 500 buyers who had recently bought a home in England and Wales, and a survey of 200 recent buyers in Scotland. Fieldwork took place from October 1997 to July 1998. The main aim of the study into house buying and selling was to find out:

- How long the process takes.
- What are the causes of delay and how avoidable are they.
- What is the incidence of gazumping, gazundering and other problems.
- How satisfied consumers are with the process and with the professionals involved.
- How much it all costs.

The key findings of the report were as follows:

- Home buying and selling in England and Wales is cheap but slow by international standards.
- It typically takes eight weeks from acceptance of an offer on a property to exchange of contract. The majority of problems and delays arise during this period.
- The more prepared a buyer or seller is, the shorter and less prone to problems the period prior to exchange of contracts is.
- The typical cost to buyers of a transaction is £1,060. The costs for sellers are higher, at around £1,400.
- The process is inefficient, with professionals waiting to hear from other professionals, agencies or the consumers before they take action.
- Buyers, sellers and the professionals all agree that sellers should provide surveys/valuations on the property or offer more information up front.

The research report concluded that the housing transaction process in England and Wales is inefficient. It stated:

The housing transaction process does not seem to be designed with the interests of the consumer in mind. While the role of the professionals is felt to be satisfactory, there is a general dissatisfaction with the process as a whole.

---

<sup>1</sup> DETR, *Key research on easier home buying and selling – DETR Housing Research Report*, December 1998

There is a need to spread the risks of the transaction process more evenly between buyers and sellers. At present it is the buyer who runs most financial risk if the transaction fails or if problems arise with the property after exchange of contracts. Currently the seller has no incentive or requirement to be pro-active in the provision of information about the property.

There is a need to reduce the 'period of uncertainty' that accompanies most transactions. Measures are needed to reduce the overall time in which things can go wrong.

The report rejected the option of adopting the Scottish system of conveyancing:

The Scottish system works well in Scotland where the volume of transactions is lower than in England and Wales. It is doubtful, however, whether it would be as effective if applied to more active housing markets in England and Wales where there would be a much higher incidence of failed bids and abortive costs. Also, there is a tradition in Scotland for sellers to move into temporary accommodation to take out bridging loans so that sales are not held up. It would be difficult and probably unpopular to adopt this tradition in England and Wales where it currently does not exist.<sup>2</sup>

The key difference under the Scottish system of conveyancing is that the seller invites offers and a legally binding contract is created as soon as an offer is accepted. This arrangement provides early certainty that the transaction will go through and removes the scope for gazumping. In England and Wales, an offer to buy a home and acceptance of that offer are made "subject to contract." Such an offer and its acceptance do not constitute a legally binding agreement. This is usually only achieved with an exchange of contracts. Between agreeing terms and exchanging contracts, both the buyer and seller do a number of things, such as checking the title deeds of the property and having a survey carried out. During this period the seller is free to accept a higher offer on the property (gazumping) from another buyer despite the fact that the first buyer may have spent a considerable amount of money on the survey and in legal fees.

## **B. Consultation on the Government's proposals**

Also on 7 December 1998 the Government published a consultation paper, entitled *The key to easier home buying and selling*.<sup>3</sup>

The consultation paper set out a package of proposals aimed at making the house buying and selling process quicker, easier and more efficient. These proposals would require action by all the parties to the process. Before reaching final conclusions, the Government

---

<sup>2</sup> DETR, *Key research on easier home buying and selling – DETR Housing Research Report*, December 1998

<sup>3</sup> DETR, *The key to easier home buying and selling – A consultation paper*, December 1998

wanted to stimulate debate about both the problems involved in house buying and selling and the best ways of dealing with them.

The Government's main aim is to reduce the time between making an offer and completing a sale. In the consultation document, it stated:

Everyone who has his or her offer on a home accepted worries in case someone makes a better offer (gazumping). Sellers worry that they will be forced to sell at a lower price (gazundering). In fact, these problems are rare – they happen on average in fewer than one in fifty transactions.

Some people have suggested that gazumping should be made illegal but sometimes a seller may be justified in accepting another offer. We think it would be more useful to speed up the whole process and so reduce the time when gazumping and gazundering can happen.<sup>4</sup>

The main proposal contained in the consultation paper was the provision of a seller's information pack. According to the Government, a seller's information pack would:

... make anyone who wanted to put a home on the market responsible for having a standard set of information and paperwork ready for would-be buyers right at the start. This would cost sellers money up front but would save some money if they were also buying a property.<sup>5</sup>

The consultation paper proposed that this pack should include:

- copies of title documents;
- replies to standard preliminary enquiries made on behalf of buyers;
- replies to local authority searches;
- copies of any planning, listed building and building regulations consents;
- for new properties, copies of warranties and guarantees;
- any guarantees for work carried out on the property;
- a surveyor's report on the condition of the property; and
- a draft contract.

For leasehold properties, the paper proposed that the seller's information pack should also include:

- a copy of the lease;
- accounts and receipts for service charges;
- building insurance policy and receipts for premiums;
- regulations made by the landlord or management company; and

---

<sup>4</sup> DETR summary, *The key to easier home buying and selling – A consultation paper*, December 1998

<sup>5</sup> *ibid*

- the landlord or management company's memorandum and articles.

Other proposals outlined in the Government's consultation paper included:

- Mortgage lenders to supply title documents to the seller's solicitor or conveyancer within five working days of a request and to supply copies to the seller within eight working days.
- Local authorities to meet their target of replying to requests for a standard search within ten working days (they are already required to publish details of their performance against this target). Other organisations receiving search enquiries (such as water companies) should set and keep to similar targets.
- Buyers to be encouraged to obtain a mortgage offer before viewing potential houses. Lenders to set and keep to a target for dealing with mortgage applications (80% within two working days of getting the information), and to publish details of how well they are performing against these targets.
- Insurers to be encouraged to develop and market new insurance policies that will help to protect buyers and sellers from the risks they face from cancelled sales.

### C. Responses to the consultation paper

The Government published an analysis of the 919 responses it received to *The key to easier home buying and selling* in September 1999; a summary of the responses is reproduced below:<sup>6</sup>

Issue	Response
Our objectives	Majority agreement with the objectives of the exercise
Seller's information pack	Strong support for a seller's information pack
Including a property survey report in the seller's pack	<ul style="list-style-type: none"> <li>• Support for a survey report is divided – just over half against</li> <li>• Most concern surrounds the buyer's reliance on the survey</li> </ul>
Voluntary or compulsory?	Strong support for legislation to compel sellers to provide a pack
Buyer preparation	Strongly agree that professionals should encourage 'in principle' mortgage offers
Speeding up requests for title deeds and searches	Strong agreement with proposals
Electronic conveyancing	Agreement that Government should take steps to facilitate electronic conveyancing
Speeding up targets for lenders	Agree that lenders should adopt the target of dealing with 80% of mortgage applications within 2 days of receiving the necessary information

---

<sup>6</sup> DETR, September 1999

Individual members of the public formed the largest category responding to the paper representing nearly 30% of all responses. The legal profession was the next largest group with just over 20% of responses.

Of the respondents that addressed the question of whether delays were the main cause of problems in the current house buying/selling system (197), 60% agreed that delays were the cause of problems. 27% disagreed and placed blame instead on the professionals involved. Solicitors and surveyors thought that chains were a cause of problems.

Almost three-quarters of the respondents addressed the issue of whether the seller should assemble a pack of information. 63% agreed that the seller should assemble a pack of information. Within this group solicitors and surveyors were most likely to agree with this proposition, while estate agents were more likely to express doubts about the practicalities of doing so.

The main reason given by respondents who opposed the idea of a seller's pack was the potential expense involved; a quarter of respondents felt that buyers would still need to carry out their own searches and a further 23% thought that this would place an unfair burden on the seller.

On the items to be included in the proposed seller's pack, the inclusion of a survey report attracted most comment. 56% of respondents opposed the inclusion of a survey report. Just over 26% offered unqualified support for its inclusion and a further 15% supported the idea in principle but recognised that practical difficulties would have to be overcome. Those against the idea were also split between those who were completely opposed and those who were against it because of practical difficulties. The reasons given for not including a survey report included:

- the fact that it would increase costs;
- buyers might not rely on it;
- lenders might not rely on it; and
- it might become out of date.

Over half of the respondents were concerned that a buyer would not rely on the survey. Few respondents came up with suggestions for making surveys more acceptable to buyers. The analysis of the responses states that 'it is clear that some kind of independent body which would help make the survey more acceptable to buyers may address the buyer's reluctance to accept the survey.'<sup>7</sup> A minority of respondents suggested keeping a logbook on a property as an alternative to a survey.

---

<sup>7</sup> para 28

Over half of the respondents that addressed the issue (61%) felt that legislation was needed to make the pack compulsory. The responses gave no clear message on the nature of any sanctions they would like to see introduced for non-compliance.

92% of the 207 respondents who addressed the issue of ‘in principle’ mortgage offers agreed that they should be encouraged by professionals; there were few suggestions on how this might be achieved.

26% of respondents considered the question of speeding up requests for title deeds and search enquiries; 235 agreed with the proposal and only 3% disagreed. A majority of those who answered the question thought that the Government should take steps to facilitate electronic conveyancing.

The respondents expressed some support for the Scottish system of conveyancing. Other possibilities that gained support were the introduction of conditional contracts, cost guarantees and lock-out agreements.

The paper’s summary of responses from various advisory groups is reproduced below; the abbreviations used in the table are:

Council of Licensed Conveyancers (CLC)

Council of Mortgage Lenders (CML)

Incorporated Society of Valuers and Auctioneers (ISVA)

Local Government Association (LGA)

National Association of Estate Agents (NAEA)

Royal Institute of Chartered Surveyors (RICS)

<b>Issue</b>	<b>Response</b>
Our objectives	General agreement with objectives and analysis. NAEA would like to reverse <i>caveat vendor</i> . RICS and ISVA say research findings overstate number of private surveys.
Seller’s information pack	General support for a pack. CML and ISVA concerned about extra costs and effect on number of properties coming onto market.
Including a property survey report in the seller's pack	Law Society, ISVA, CLC are against and RICS is doubtful. CML, NAEA, Consumers’ Association and LGA in favour. Opposition mostly based on doubts over acceptability and practical issues. General agreement that new type of survey necessary if made compulsory.
Voluntary or compulsory?	All agreed that compulsion required.
Buyer preparation	All agree that buyers should be encouraged to obtain ‘in principle’ mortgage offers.
Speeding up requests for title deeds and searches	General agreement with proposals. CML say lenders prepared to look at targets.
Electronic conveyancing	General agreement that government should encourage.

Speeding targets for lenders	General agreement but CML say target setting for lenders not appropriate or cost effective.
Other issues	Broad agreement with views on other options but CLC in favour of conditional contracts. Law society and CLC in favour of chain breaking solutions. CML and RICS say it's for market to decide. LGA say there may be a role for local authorities here. NAEA and RICS in favour of regulation of estate agents as part of any reforms. Law Society and LGA in favour of major review of local search procedures.

## D. The outcome of consultation

The consultation period on the house buying and selling process ended on 31 March 1999.

On 11 October 1999 the Government announced that it would be proceeding with 'a package of complementary measures aimed at making the home buying and selling process in England and Wales faster, more transparent and consumer-friendly'.<sup>8</sup> The key measure would involve the provision of more information at the start of the process. Before putting their homes on the market people would be required by law to create a pack of standard information for prospective buyers. The pack would be likely to have to include copies of documents that the seller currently provides later in the transaction.

The Government confirmed that it would expect buyers to improve their preparation for the transaction by obtaining 'in principle' mortgage offers and that targets for the provision of title deeds and the carrying out of searches (see above) would have to be met by lenders and local authorities. Lenders would also be encouraged to develop 'chain-breaking' loans that will be suitable for a wider range of people than current bridging loans.

The Consumers Association and the professions were asked to work with the Government on the detail of these proposals. A pilot study on some aspects of the seller's information pack was set up in the Bristol area covering some 250 home sellers.

## E. The Bristol pilot study

The terms of reference of the pilot study were set out in an answer to a PQ:<sup>9</sup>

---

<sup>8</sup> DETR press release 940/99, 11 October 1999

<sup>9</sup> HC Deb 27 January 2000 c 273W

**Mr. Kidney:** To ask the Secretary of State for the Environment, Transport and the Regions what are the terms of reference of the pilot scheme in Bristol for testing the Government's proposals for speeding up the system of buying and selling homes in England and Wales; and what will be the cost to public funds of the pilot scheme.

**Mr. Mullin:** The Government announced on 11 October 1999 a package of complementary measures aimed at making the home buying and selling process in England and Wales faster, more transparent and consumer-friendly. The announcement also highlighted the Government's intention to set up a study to pilot some aspects of the seller's information pack with approximately 250 home sellers in the Bristol area, covering properties in different price bands and in popular and less-popular local housing markets.

The pilot was launched on 10 December 1999, and will run for the first half of 2000, reporting in September 2000. The results will help provide a clear picture of the practical operation of a modernised system of home buying and selling. However, the pilot cannot entirely replicate the Government's proposals: there is no element of compulsion; transactions may still experience delays especially where there are chains involving people not in the scheme; and voluntary elements of the Government's proposals are not included, for example faster mortgage processing, and faster release of title deeds.

Terms of Reference:

1. To identify which elements of the pack work best, and where the practical difficulties lie, including consumer and professional attitudes to the home condition report, and the legal material required for the pack.
2. To provide clear information on the difference that a seller's pack makes to the process of buying and selling, including, where possible, whether packs help to avoid problems and delays, which occur under the present system.
3. To assess the potential housing market effects of seller's packs and the benefits of packs for properties in different price bands.
4. To compare the results of the Bristol pilot with existing initiatives which are being taken forward on a voluntary basis.

Cost to Public Funds Total cost: £315,015.

The components of the seller's information pack used in the pilot included copies of:<sup>10</sup>

- title documents;
- answers to standard pre-contract enquiries;
- replies to standard search enquiries;
- planning and building regulations consents (where relevant);
- warranties and guarantees for any work carried out;
- a draft sale contract;

---

<sup>10</sup> DETR, *Quality and Choice: A Decent Home for All*, April 2000

- details of rent charge payments (where relevant);
- a surveyor's report on the condition of the property and its energy efficiency; and
- for leasehold properties, information about the lease, service charges, insurance and management arrangements.

The DETR report on the findings of the pilot study notes that the Bristol pilot pack differed from the proposed content in three ways. A mining search was included because conveyancers advised it was a normal requirement of lenders in the area. Only a summary of the main features of a draft contract were included because conveyancers were concerned that purchasers might sign contracts in estate agent's offices before seeking legal advice. There was also concern that contracts might be copied creating multiple contracts that would breach the Solicitors Practice Rules and lead to unauthorised contract races. Conveyancers preferred, where possible, to obtain the original title deeds from lenders as this was seen as a more efficient way of obtaining other information for the pack, eg lease agreements.<sup>11</sup>

The documents in the pack that are not normally assembled as part of the conveyancing process are the Home Condition Report (HCR) and the energy report. The idea of the HCR is to give the buyer and seller a precise statement of the condition of the property and to help in negotiations over price. It was devised by a group led by the Royal Institute of Chartered Surveyors. It involves the same level of inspection as a current mid-range Homebuyers Survey and Valuation, but does not contain a valuation and presents information in the form of a ratings scale from one to four. The energy efficiency report is designed to give the consumer information on the energy efficiency rating of their home; the intention is to increase awareness about energy efficiency and influence householders' patterns of energy consumption.<sup>12</sup>

Progress on the Bristol pilot scheme was reported on at the end of June 2000:<sup>13</sup>

**Mr. Blizzard:** To ask the Parliamentary Secretary, Lord Chancellor's Department if he will make a statement on progress with the trials of the new system for home buying and selling.

**Mr. Lock:** The seller's information pack pilot project under way in Bristol is now two thirds complete. Citizens' workshops to test how packs might operate in relation to lower value properties have been undertaken in Burnley and Bradford. A summary of the interim research findings was published on 27 June and copies have been placed in the House of Commons Library. A final research report is expected to be published later in the year.

---

<sup>11</sup> DETR, *Evaluation of a Pilot Seller's Information Pack: the Bristol scheme*, p 6

<sup>12</sup> *ibid* p 7

<sup>13</sup> HC Deb 28 June 2000 c 566W

To encourage take-up of the seller's pack, free packs were offered to sellers in the Bristol City Council area who marketed their home through estate agents who were members of the industry's voluntary Ombudsman Scheme. The pilot ran until July 2000 and the findings were published in November 2000.<sup>14</sup>

The key findings were:

- **Transparency:** It was felt that the pack gave buyers a clearer understanding of the property they are purchasing. Information on the condition of the home was more easily understood than the legal documentation. Nearly two-thirds of buyers consulted the Home Condition Report (HCR) before making an offer. Over 90 per cent consulted the HCR at some stage in the process. In contrast few buyers consulted the legal documentation.
- **Certainty:** The pack helped to identify and resolve any potential problems with the sale much earlier in the process. The pack increased certainty because there were fewer transaction threatening problems after an offer had been made. 69 offers were made on properties with packs, of these nine failed, giving a failure rate of 13 per cent compared with a general failure rate of 28 per cent in England and Wales.<sup>15</sup> The costs of failed transactions were lower where the pack was used compared to the current system where the buyer bears most of the risk.
- **Satisfaction:** Approval of the system of buying and selling with a pack was found to be high among consumers, particularly buyers. In the pilot one in 20 buyers was dissatisfied with the process compared with 2 in five buyers nationally under the current system.<sup>16</sup>
- **Pack assembly:** Packs were assembled in an average of 11 working days. 50 per cent of packs were assembled in nine days or less. A target of 10 working days had been set for pack assembly during the pilot. Half of all packs that took over two weeks to assemble were leasehold properties. Packs that took the longest to assemble tended to be those where the legal work was more complicated or time consuming than normal. It is expected that pack assembly will be speeded up through the use of electronic access and delivery of search information through the Land Registry's National Land Information Service. Ultimately packs are likely to be based entirely on electronically stored documents.
- **Estate Agency and Marketing:** Views amongst estate agents were mixed. Some agents who saw clear benefits in the seller's information pack had invested greater time in understanding the potential advantages for the consumer and consequently

---

<sup>14</sup> DETR, *Evaluation of a Pilot Seller's Information Pack: the Bristol scheme*

<sup>15</sup> DETR, *Key Research on easier home buying and selling*, December 1998

<sup>16</sup> *ibid*

spent more time advising clients about the purpose and nature of the pack. Other agents believed assembling the pack delayed the marketing of the property and, under a voluntary scheme this could mean clients missing out on prospective purchasers particularly in a fast moving market.

- **Home Condition Report:** The HCR was well received by buyers. Over half preferred it to other types of survey. Most sellers were also satisfied, though they did not have to pay for the report during the pilot. Surveyors were content with the level of inspection for the HCR but their main concern was the amount of detail to be included. They were also concerned about exposure to professional indemnity claims which could arise if sufficient explanatory narrative was not included to support opinion about the condition of different elements of the property. Both surveyors and estate agents thought the HCR used in the pilot did not provide sufficient detail when compared to a similar mid-range report such as the Housebuyers Survey and Valuation. One third of buyers in the study (16 people) commissioned a separate survey of their own. The main reason for seeking another survey was to get more detail on the condition of the property.<sup>17</sup>
- **Improvements:** While the research has shown that the pack delivers a range of benefits it is clear the potential benefits could be improved. In particular, the Home Condition and Energy Efficiency Reports were felt to need further work on layout and content. Some conveyancers also believed their role could be extended to include summarising and decoding the legal elements of the pack in a consumer friendly format.<sup>18</sup>

Although estate agents taking part in the pilot were asked to gather details of sellers who rejected the pack, in practice few did so; reasons for rejection in the research are therefore based on agents' impressions.<sup>19</sup> One of the main reasons given was the buoyancy of the market in the pilot area from Christmas to Easter. It was felt that sellers did not want to wait up to two weeks (while the pack was assembled) before marketing their properties. The research findings note that agents marketed the seller's pack with differing levels of enthusiasm. Some of the professionals involved were of the view that some agents lost interest in the pilot once they realised it would mean extra work for them or they simply chose not to include 'easy to sell' properties.<sup>20</sup>

An area that has attracted a lot of attention is the likely cost of the pack. Surveyors taking part in the pilot estimated that the HCR would take around £300 to compile with a further £25 for the energy report. These were the most costly items in the pack. Legal disbursements are usually paid for by the buyer; buyers found their transaction costs

---

<sup>17</sup> DETR, *Evaluation of a Pilot Seller's Information Pack: the Bristol scheme*, p 13

<sup>18</sup> *ibid*, pp 4-5

<sup>19</sup> *ibid*, p 9

<sup>20</sup> *ibid*, p 9

‘significantly reduced’ in the Bristol pilot. The research findings note that ‘greater competition in the market place would be expected to drive prices down.’<sup>21</sup>

The research into the Bristol pilot scheme concluded:

The evidence from the Bristol pilot scheme shows that a seller’s information pack can go a long way to helping deliver a more efficient and effective system of buying and selling people’s homes. Buyers in Bristol have supported the concept of the seller’s pack because it gives them better information at a much earlier stage. They value its transparency and the greater certainty offered. The consumer view of the seller’s pack is in marked contrast to the widespread dissatisfaction felt for the current home buying and selling system. However, there is a need to ensure seller expectations are realistic in relation to the objectives of the pack, because it cannot speed up the marketing stage of the process.<sup>22</sup>

The report acknowledges that there is some resistance amongst professionals to the concept of the seller’s pack. This is one of the reasons given for making the preparation of the pack compulsory.<sup>23</sup>

## **F. Seller’s packs in ‘low demand’ areas**

The DETR also sponsored research into how seller’s information packs might operate in areas where demand for housing is low and property values are typically less than £30,000. Case studies in Burnely and Bradford were conducted where there is an ‘over supply’ of property valued at less than £40,000. The findings are summarised below:

- Buyers, sellers and professionals thought that the pack (specifically its cost) might encourage some uncommitted sellers out of the market and thereby assist in tackling the problem of over supply.
- Neither buyers nor sellers supported the idea that the pack should not apply to ‘cheaper end’ properties. There was concern that this would contribute to an area’s decline. There was a feeling that there was much to gain, given that house condition was a key consideration for older properties that are concentrated in these areas.
- Sellers were concerned about the cost of putting the pack together and the ‘shelf life’ of surveys and searches as properties in these areas can be on the market for some time. It was understood that, having sold their properties, they would benefit from not having to pay for searches etc on the property they wanted to buy. Some sellers would prefer to see the cost of the pack ‘rolled-up’ until the sale is concluded (ie paid at the end).

---

<sup>21</sup> *ibid*, p 12

<sup>22</sup> *ibid*, p 16

<sup>23</sup> *ibid*, p 17

- There was a feeling that preparing sellers was only part of the problem. Sales also fall through because buyers are unprepared or unable to support the bid price. It was felt that more work was needed to ensure that purchasers had a mortgage guarantee certificate.

The research concluded:

Overall, the markets in both areas were characterised by severe distrust of all parties involved. While this is present in the housing market in general, in low demand, low value areas it has become exaggerated. The pack was seen by all as a means of addressing this problem, and creating a better functioning market. Buyers saw the advantages quickly, while the seller focused on the costs. Most sellers would become buyers, so the cost issue was, to a degree, mitigated in the mind of the focus group participants. The professionals hoped it would alter the culture of buying and selling a house in England and Wales. They saw both opportunities and certain threats as this new way of working rolled out. The advantages were seen to offset the disadvantages as long as the cost of the pack, and the point of payment are more clearly thought through.<sup>24</sup>

## **G. Impact of the seller's pack on small businesses**

Further Government research was carried out to test the potential impact of the proposals on small businesses operating in the home buying and selling industry. Research was undertaken with a number of estate agents, conveyancers and surveyors. In addition to the seller's pack, other threats and opportunities that the industry is facing are an increased use of the internet as a medium for buying and selling property and e-commerce,<sup>25</sup> which 'will revolutionise the conveyancing process once protocols have been established for electronic signatures'.<sup>26</sup>

This research found:

- A strong belief that small businesses can compete in the reformed market conditions by placing emphasis on quality of service, greater flexibility and developing links with other sectors. Smaller agents are concerned that corporate businesses might be in a better position to respond to new market conditions once the pack is introduced.
- Home sellers are likely to want to have some or all of their fees deferred until the property sells. The extent to which this preference is met will depend on the business strategy adopted by pack providers. Many of the pack costs are already borne within the current system, some paid up front by the buyer. The pack should only increase

---

<sup>24</sup> DETR, Housing Research Summary 130, *Sellers Packs in Low Demand, Low Value Areas*, 2000

<sup>25</sup> e-commerce in this sphere will involve the whole conveyancing process being conducted electronically.

<sup>26</sup> DETR, Housing Research Summary 134, *Home Buying and Selling Reforms: Litmus Test of Impact of Regulations on Small Businesses*, 2000.

costs for transactions where the buyer would not normally commission an independent survey.<sup>27</sup>

- The need for conveyancers and surveyors to form links with agents was considered important for all the parties. Linkages within and across sectors were recognised as important in the post reform environment and so too will be a product or service that differentiates a business from others in the market.
- A common concern of estate agents is the belief that the pack will reduce the number of sellers coming to the market leading to a fall in revenue in the industry. It was acknowledged that this would be offset, at least in part, by lower fall out rates and fewer failed transactions.
- The new process may present opportunities for conveyancers to increase their business but the pack, coupled with electronic conveyancing, could be a threat to some traditional firms who are not gearing up to incorporate new technology into their business processes.
- There is a strong belief that all surveyors, regardless of size, will see a substantial increase in their workload. Volume of work is likely to mean an emphasis on maximising business rather than protecting market share from competition from new entrants to the market by cutting prices.<sup>28</sup>

## **H. Other Government research**

Government commissioned research into a number of industry led initiatives designed to speed up the home buying and selling process was published at the end of March 2000.<sup>29</sup> The research included a detailed examination of the content, mode of operation, and success of a range of pre-sale initiatives, particularly seller's packs currently in the marketplace. There were three main types of initiatives - Survey Packs, Legal Packs and combined Survey/Legal packs. The key findings are reproduced below:

Advantages to consumers of seller's packs:

- A faster transaction, or a smooth, seamless, stress free process - one month could be saved on a traditional three month selling period.
- Buyers feel the pack reduces the prospect of gazumping.

---

<sup>27</sup> It is estimated that only a quarter to a third of buyers pay for their own survey; the remainder rely on the lender's valuation report.

<sup>28</sup> DETR, Housing Research Summary 134, *Home Buying and Selling Reforms: Litmus Test of Impact of Regulations on Small Businesses*, 2000

<sup>29</sup> DETR, Housing Research Summary 108, *Monitoring Industry Initiatives to Improve the Home Buying and Selling Process*, March 2000

- First time buyers feel it makes the process easier as others are doing the work for them.
- A seller's survey could negate the need for a valuation inspection by the lender.
- Problems, such as structural defects, are known about earlier; this might help in the agreement of a realistic final selling price earlier in the process.
- All the legal information is together in one place with less paperwork and chasing of professionals, therefore fewer opportunities for delays.

#### Buyers' and Sellers' Views:

- Seller's packs should be made compulsory.
- Surveys should be included in packs and include details of any necessary repairs; these repairs should be costed.
- Buyers want greater choice of mortgage products in closed vertical schemes.<sup>30</sup>
- Buyers want a greater choice of independent legal advisers.

#### Disadvantages of seller's packs to consumers:

- Sellers do not expect to pay for items traditionally paid for by buyers.
- Sellers do not understand packs and what they are for - an educational awareness programme may be needed.
- Packs may not be popular in a buoyant market where properties may get to offer stage quickly.
- Buyers may be suspicious of the independence of a survey commissioned by the seller, even with guarantees.
- There could still be hold-ups in chains if not all members are using seller's packs.

### **I. Some general responses**

The main concern with the proposals is that they will not outlaw gazumping or gazundering. Professionals that have experience of using packs, albeit without the inclusion of a property survey, generally accept that they do reduce the window of time between an offer made and a sale being completed but stress that 'there is still a period when gazumping and gazundering can take place.'<sup>31</sup> Alternatives that have been suggested to making gazumping and gazundering illegal in all circumstances include the possibility of imposing a time limit within which these practices are prohibited. It has also been suggested that certain groups, such as trustees who are legally bound to get 'the best

---

<sup>30</sup> A vertical integration scheme is where several companies agree to work together on a formal basis and share the profits of the operation. They are likely to have a commercial link and in most cases consumers are given little or no choice of practitioner, ie the consumer will be offered only one name at each stage of the transaction. Vertical schemes are often referred to as 'one stop shops'.

<sup>31</sup> *ibid*

possible price' for a property could be exempt from any gazumping/gazundering measures.

The reliability of the pilot schemes that tested the pack has been questioned on the ground that no sellers taking part actually had to pay for the pack.<sup>32</sup> There is also concern that the pilot scheme, in which fewer than 200 people took part despite the packs being free, has not provided sufficient 'road testing' for the pack.<sup>33</sup>

The cost and level of detail to be included in the survey continue to raise questions. Although the HCR is felt to be adequate for newer properties, surveyors may still recommend full structural surveys for older properties. Sellers will have to pay for these in addition to the HCR on the property they are trying to sell. It has also been pointed out that the HCR will not satisfy mortgage lenders as these require a valuation rather than a survey, so it is likely that buyers will still have to pay for a lender's valuation.<sup>34</sup> Surveyors have warned that fees might rise as they extend personal indemnity insurance to protect themselves from litigation from buyers and sellers.<sup>35</sup> The Law Society does not believe that it is necessary to include a survey in the pack.<sup>36</sup> The Royal Institute of Chartered Surveyors is putting together an accreditation scheme with a view to guaranteeing the objectivity of surveyors carrying out the surveys.

The Legal and General carried out a survey of 1,000 home-owners between the 6<sup>th</sup> and 8<sup>th</sup> of October 2000 and found that only a quarter of them are aware of the Government's proposals. It has reportedly argued for a 'targeted campaign to educate most home-owners who are likely to move to ensure the scheme is a success.'<sup>37</sup>

Lenders are concerned that speculators should not be discouraged from testing the market. However, an agent who took part in the Bristol pilot rejects this argument:

Why should we worry about toe dippers? I could spend £1,000 marketing their property only for them to change their mind. They cause heartache when they pull out at the last minute leaving broken-hearted buyers'<sup>38</sup>

A survey of 2,500 customers carried out by the Countrywide Assured Group estate agency found that only 6 per cent would definitely not put their house on the market because of the cost of the seller's pack. A further 7 per cent reportedly stated that they would probably defer their decision to move.<sup>39</sup>

---

<sup>32</sup> 'Pack that lacks a proper punch', *The Daily Telegraph*, 25 November 2000

<sup>33</sup> 'Home seller's pack deemed a failure', *The Times*, 18 November 2000

<sup>34</sup> 'The aim is to get a move on', *Financial Times*, 25 November 2000

<sup>35</sup> 'Homing in on the cowboys', *The Independent*, 25 November 2000

<sup>36</sup> 'Survey plan will not hit market,' *Financial Times*, 24 November 2000

<sup>37</sup> 'Homing in on the cowboys', *The Independent*, 25 November 2000

<sup>38</sup> *ibid*

<sup>39</sup> 'Survey plan will not hit market,' *Financial Times*, 24 November 2000

## J. The Bill

The Explanatory Notes to the Bill also provide a detailed explanation of its contents.

**Clause 1** sets out the definitions that specify who will be subject to the requirements of Part I of the Bill, when and in relation to what properties.

**Clause 2** identifies who will be responsible for carrying out the duties in relation to seller's packs. These duties are set out in clause 3. Only the seller or 'someone acting as an estate agent' (defined in clause 14) for the seller will be responsible for the preparation of seller's packs and will be liable to prosecution for the offences created by clause 3. If a seller instructs an estate agent with a place of business in England and Wales to put his property on the market, the agent, rather than the seller, will be the responsible person.

A seller will be considered responsible for marketing the property if he takes action that makes it known that the property is for sale. Sellers remain responsible if a person who is not acting in the course of a business (ie does not fulfil the definition in clause 14) takes steps to market the property with the seller's consent. The seller will also remain responsible if he instructs an agent whose place of business is outside England and Wales.

More than one person can be considered responsible for the marketing of a property. The Explanatory Notes to the Bill cite the example of an estate agent who accepts instructions to market a property that is already on the market who then becomes responsible for complying with the seller's pack duties.<sup>40</sup>

The Bill specifies the ways in which sellers and estate agents cease to be responsible for marketing the property, ie if the property is sold<sup>41</sup> or taken off the market<sup>42</sup>. An estate agent will also cease to be responsible if the contract with the seller is terminated and no further marketing activities are carried out. Sellers will cease to be responsible if they instruct an estate agent and carry out no personal marketing activity.

**Clause 3** sets out obligations to make the seller's pack available to potential buyers. From the point that a property is put on the market, the person responsible must have a copy of the seller's pack. The pack must be made available on request (within 14 days) to potential buyers. Reasonable copying charges can be levied.

A person who fails to comply with this provision without reasonable excuse will be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (clause 3(8)). This fine is currently £5,000. If a person is served with a

---

<sup>40</sup> Explanatory Notes para 34

<sup>41</sup> When a legally binding contract for the sale is agreed.

<sup>42</sup> This is not defined in the Bill but is to be given its 'usual meaning'.

fixed penalty notice, the maximum penalty in any subsequent proceedings for that offence will be a fine not exceeding level 2 on the standard scale (currently £500).

**Clause 4** provides that where an estate agent accepts an instruction from a seller to market a property, they must have a copy of the pack before taking any action to communicate information that the property is or may be available to any prospective buyer.

A person who fails to comply with this provision without reasonable excuse will be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (clause 4(5)).

**Clause 5** provides that the requirements in clauses 3 & 4 will not apply in relation to residential property at any time when it is not available for sale with vacant possession. The Secretary of State will have power to provide for further exceptions by Regulation.

**Clause 6** sets out four statutory defences that will be available to a person charged with an offence:

- It will be a defence for any person charged with any offence under this Bill to show that they exercised all due diligence to avoid committing the offence;
- A separate defence will apply to a seller who is responsible for marketing a residential property. Clause 3(2) will require such a seller to have a seller's pack in his possession but this defence permits them to rely on possession of a seller's pack by an estate agent instructed by them;
- Clause 3(3) requires anyone responsible for marketing a property to provide a copy of a seller's pack to any potential buyer. It is a defence if they reasonably believed that the person requesting the pack was not genuinely interested in purchasing the property or was not the sort of person to whom the seller intended or was prepared to sell the property.
- A seller who is responsible for marketing a property will have a defence to a charge of failing to provide a copy of a seller's pack if they can show that an estate agent has the pack, and they inform the buyer.

**Clause 7** gives the Secretary of State power to specify what must be included in the seller's pack by Regulation. Clause 7(5) and (6) provide an indicative list of the contents of a seller's pack.

**Clause 8** contains provisions that relate to home condition reports. The provisions are intended to afford protection to home-buyers, sellers and others who need to rely on the contents of the report. They cover arrangements to ensure that only inspectors who are members of a certification scheme approved by the Secretary of State will be able to carry out inspections and provide home condition reports for inclusion in the seller's pack. *Clause 8(5)* lists a number of points on which the Secretary of State will need to be satisfied before approving any certification scheme, including that inspectors are appropriately qualified, with adequate insurance and complaints resolution procedures.

**Clause 9 and Schedule 1** to the Bill provide for enforcement of the seller's pack duties by local weights and measures authorities (who act by Trading Standards Officers employed by local authorities). Schedule 1 gives Trading Standards Officers power to serve a fixed penalty notice, offering an offender the opportunity to pay a penalty as an alternative to court proceedings. The Secretary of State has power to prescribe the form of fixed penalty notice, the level of penalty and methods of payment and also circumstances in which fixed penalty notices may not be given. Where, following service of a fixed penalty notice, the case is heard by the courts, the maximum fine on conviction will be level 2 on the Standard Scale (currently £500).

The service of a fixed penalty notice has the effect of suspending any enforcement action against an offender for at least 28 days. If the person on whom a notice is served pays the fixed penalty within that period, no court proceedings can be brought. A person paying a fixed penalty in these circumstances will not have a criminal conviction.

Trading Standards Officers will have discretion to decide what action to take over a suspected offence under the Bill. The officer will have the discretion to:

- give advice or a warning;
- to offer a formal caution;
- to serve a fixed penalty notice; or
- to commence a prosecution in the Magistrates' Court.

Schedule 1 also sets out the powers of officers of the enforcement authority, provides that it is an offence to obstruct or impersonate those officers and an offence for an officer of the enforcement authority to disclose information to another person except in performance of the enforcement function. It also provides privilege against self-incrimination.

Paragraph 13 of schedule 1 will amend the *Fair Trading Act 1973* to provide that an offence under clause 3 or 4 of this Bill, committed during the course of a business, will be covered by section 130 of that Act (notice by local weights and measures authority of intended prosecution). This provision will not extend to Wales.

**Clause 10** provides that any enforcement proceedings must be taken by, or with the consent of, the Director of Public Prosecutions or a local weights and measures authority. Proceedings will have to be commenced within three years of the offence or one year of its discovery by the prosecutor, whichever is earlier. Where the offence is by a person not acting in the course of business (for example by a home owner marketing his own home), proceedings will have to commence within six months of the offence.

**Clause 11** deals with offences committed by companies and partnerships and provides that an officer of a company, or a partner in a firm, may be prosecuted for an offence committed by the company or partnership if responsible for the commission of an offence by that company or partnership.

**Clause 12** provides power for the Secretary of State to give grant assistance towards the cost of developing a certification scheme for home condition reports (and for other aspects of the seller's pack).

**Clause 13** provides that regulations are to be made by negative resolution statutory instrument and that the Secretary of State should consult the National Assembly for Wales in respect of any regulations which are to have application in Wales.

**Clause 14** defines the expression "acting as an estate agent".

**Clause 15** gives definitions for expressions used in Part I of the Bill.

It is intended, subject to Parliamentary approval, that these measures will take effect from 2003, except for clause 12 (power to make grants) which will come into force on Royal Assent.<sup>43</sup>

## **II Part II: Homelessness and allocations**

### **A. Legislation on homelessness**

Sections 1-6, which follow, bring together for convenience an overview of the history of the legislation on homelessness up to and including the passage of the *1996 Housing Act* and changes made by the Labour Government since 1997.

#### **1. Origins**

Local authorities' duties towards homeless people can be traced back to the *Old Poor Law* which was consolidated by the *Elizabethan Poor Law Act 1601*. Under this Act the parish was obliged to accommodate certain paupers who could not support themselves; persons seeking the help of one parish could be exported to another parish if they had a "settlement" there, i.e. an earlier connection such as birth or an apprenticeship. Pressures of the Industrial Revolution led to the replacement of outdoor relief by the workhouse system under the *1834 Poor Law Amendment Act*. This Act was designed to make the poor less eligible for relief and to deter people from becoming homeless. Responsibility for poor relief was transferred from individual parishes to "unions" managed by Boards of Guardians who were elected to represent whole groups of parishes.

After the First World War the workhouse system was gradually dismantled as local authorities took over the duties of the Boards of Guardians. The *National Assistance Act 1948* brought an end to the poor law (s.1) and was intended to herald the dawn of a more humane approach to the problems of vagrancy and homelessness. Section 21 of the 1948 Act placed a limited duty on local authorities to provide both residential and temporary

---

<sup>43</sup> Explanatory Notes, para 109

accommodation. Residential accommodation had to be provided for "persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them" (s.21(1)(a)); temporary accommodation had to be provided for "persons who are in urgent need thereof, being need arising in circumstances which could not reasonably have been foreseen or in such other circumstances as the authority may in any particular case determine" (s.21(1)(b)). The provision of accommodation under the 1948 Act was made a social services function by the *Local Authority Social Services Act 1970*.

## 2. Department of Environment Circular (DoE) 18/74

During the 1960s and early 1970s concern with the problem of homelessness increased and the loose drafting of section 21(1)(b) of the 1948 Act caused difficulties. There was doubt over whether cases of eviction came within the local authority duty and uncertainty over the "temporary" nature of accommodation provided.

In early 1974 the DoE issued Circular 18/74<sup>44</sup> which urged that primary responsibility for accommodating the homeless should be shifted from social service authorities to housing authorities. It advised that the social services role should be restricted to providing support services to those in housing difficulties, providing residential accommodation for the elderly and infirm under section 21(1)(a) of the 1948 Act, and providing temporary accommodation to deal with sudden large-scale emergencies and disasters.

The Circular urged authorities to adopt a wider view of their general duty to consider housing conditions and needs when allocating property. It suggested that, where resources were stretched, priority for housing should be given to groups such as families with dependent children (living with them or in care); adult families, or people living alone who became homeless in an emergency eg a fire or flood or who were vulnerable owing to old age, disability, pregnancy or other special reasons. The Circular advised that the causes of homelessness should be disregarded. However, as the Circular could not transfer the legislative duty to aid the homeless away from social services, some families found themselves caught between social service departments pointing to the Circular and housing departments pointing to the 1948 Act. Thus the homelessness legislation was in need of overhaul. As David Hoath notes:

"The confusion existing prior to the *Housing (Homeless Persons) Act 1977* stemmed from fundamental uncertainty as to whether homelessness was a problem of social need and therefore the concern of the social services department, or .... part of the general duty placed on housing authorities under the *Housing Act 1957*."<sup>45</sup>

In response the Government announced a wide-ranging review of the law relating to the provision of accommodation for the homeless.

---

<sup>44</sup> DoE Circular 18/74, *Homelessness*

<sup>45</sup> *Homelessness*, David Hoath, 1983 p 6

### 3. **The Housing (*Homeless Persons*) Act 1977**

This Act was originally introduced as a Private Members Bill by Stephen Ross, Liberal MP for the Isle of Wight. It received Government support and support from the Conservative Party, although the latter expressed reservations.

The aim of the Act was to clarify the law concerning local authorities' duties towards the homeless and to impose those duties firmly on housing rather than social service departments; it repealed section 21(1)(b) of the 1948 Act. Stephen Ross described the intentions behind his Bill as follows:

The need of most homeless people is a permanent solution to their problem which they have been unable to arrange for themselves...What emerged from the responses to the Government's Review [1975] was a unanimous call by the local authority associations and the voluntary movement for a new legislative framework to change the outdated concept that homelessness was a social work problem and to place it clearly in the sphere of housing. That is what my Bill aims to do.<sup>46</sup>

The 1977 Act placed a duty on local housing authorities to secure permanent accommodation for unintentionally homeless people in priority need. The priority need categories are set out below:

- (a) People with dependent children who are residing with, or might reasonably be expected to reside with them, for example, because the family is separated solely because of the need for accommodation; or
- (b) People who are homeless or threatened with homelessness as a result of any emergency such as flood, fire or any other disaster; or
- (c) Where any person who resides or who might reasonably be expected to reside with them, is vulnerable because of old age, mental illness, handicap or physical disability or other special reason; or
- (d) Pregnant women, or a person who resides or might reasonably be expected to reside with a pregnant woman.

The Bill suffered modifications during its passage, most notably the addition of the concept of 'intentionality'. Local authorities and the Opposition were concerned about the additional financial burdens of the Act and its potential effect on traditional allocation policies; there was an idea that the homeless were 'being brought to the front of the queue' ahead of 'deserving' waiting list applicants. Under this pressure the concept of 'intentional homelessness' was developed in order to guard against 'scroungers' and 'rent dodgers'.<sup>47</sup> Local authorities were given no duty to permanently re-house people who were deemed to

---

<sup>46</sup> HC Deb 18 February 1977 cc 898-9

<sup>47</sup> HC Deb 18 February 1977 c 905 & 972

have become homeless intentionally. This provision was added at the Report Stage of the Bill.<sup>48</sup>

There was concern that homeless people without a local connection with an area would be allocated housing ahead of local people on the waiting list. Thus the Bill was amended at Report Stage to enable councils to refer applicants to another local authority in certain limited circumstances. The Act came into force in England and Wales on 1 December 1977 and in Scotland on 1 April 1978. The Northern Ireland Housing Executive took over responsibility for housing homeless households under the *Housing (Northern Ireland) Order 1988*.

The Act was designed to be implemented with reference to a Code of Guidance issued by the Secretary of State. The first Code of Guidance was issued in 1978.

The Government made a commitment to review the operation of the 1977 Act. On 13 May 1982 Michael Heseltine, then Secretary of State for the Environment, announced that there would be no major changes arising from the first review of the Act.<sup>49</sup>

#### **4. Part III of the *Housing Act 1985: amendments and Code of Guidance***

The 1977 Act was consolidated into Part III of the *Housing Act 1985*. The *Housing and Planning Act 1986* amended the definition of homelessness in response to the House of Lord's decision in the case of *R v LB Hillingdon ex parte Pulhofer*.<sup>50</sup>

Amendments to the homelessness legislation were included in the *Asylum and Immigration Appeals Act 1993* which received Royal Assent on 2 July 1993. Sections 4 and 5 and Schedule 1 to this Act modified the duties of housing authorities towards homeless asylum seekers and their dependants; these provisions came into effect on 26 July 1993.<sup>51</sup> Further modifications to authorities' duties to homeless asylum seekers have since been introduced.

The 1978 Code of Guidance was revised in 1983 with minor changes; it was substantially revised in a third edition published in 1991. This edition of the Code placed more emphasis on the quality of service which authorities should provide to homeless applicants; it set specific standards that are expected of authorities when dealing with homeless people. This new Code also reflected the body of homelessness case law that had built up over the years.

Another significant development in the interpretation of the homelessness legislation was the enactment of the *Children Act 1989*. The *Children Act* was welcomed by agencies working with young homeless people as its provisions were thought to provide greater access for

---

<sup>48</sup> HC Deb 8 July 1977 cc 1607-1673

<sup>49</sup> HC Deb 13 May 1982 cc 317-8W

<sup>50</sup> [1985] 3 ALL ER 734, CA; [1986] 1 ALL ER 467, HL

<sup>51</sup> see Library Research Note 92/85

these groups to local authority housing and support services; evidence has suggested that this has not happened in practice.<sup>52</sup>

## 5. The 1988 Government Review

During the summer of 1988 it became clear that the Government was undertaking an internal review of the homelessness legislation. The results of this review were published in 1989.<sup>53</sup> Initially there was concern amongst housing organisations that the Government intended to re-define homelessness as 'rooflessness' and that the local connection provisions would be considerably tightened.<sup>54</sup> In the event, the review concluded that "the legislation has worked reasonably well and should remain in place as a long-stop to help those who through no fault of their own have become homeless."<sup>55</sup> Chris Patten, then Secretary of State for the Environment, set out the main conclusions of the review and announced extra funding for homelessness in a Parliamentary Answer.<sup>56</sup> Emphasis was placed on the need for authorities to provide a better, more consistent approach to dealing with homeless applications.

## 6. The 1994 Government Review

Sir George Young, then Minister for Housing, first announced the Government's intention to reform the homelessness legislation during his speech to the Conservative Party Conference on 7 October 1993.<sup>57</sup> The consultation paper, *Access to Local Authority and Housing Association Tenancies*,<sup>58</sup> referred to:

The shortcomings of the existing arrangements which have, in recent years, blurred the distinction between local authorities' responsibility for providing emergency assistance for families and other vulnerable people who lose their homes through no fault of their own, and for providing subsidised rented accommodation for people whose overall housing needs are substantial and enduring.<sup>59</sup>

The paper went on to state "under current legislation, what should be a safety net has become a fast track into such tenancies, with consequences that are often seen as unfair".<sup>60</sup>

The paper suggested that the homelessness route into social housing had become more attractive than applying to local authority and housing association waiting lists as it gave rise to a statutory right to housing. Research conducted by the DoE (now the DETR) was quoted

---

<sup>52</sup> see CHAR, *The Children Act 1989 – A new Agenda for Young Homeless People?*, July 1993

<sup>53</sup> DoE, *The Government's Review of the Homelessness Legislation*, November 1989

<sup>54</sup> Roof, 'Rubbishing the Act', Nov/Dec 1988

<sup>55</sup> DoE, *The Government's Review of the Homelessness Legislation*, November 1989, p 21

<sup>56</sup> HC Deb 15 November 1989 cc 243-4W

<sup>57</sup> Conservative Party News, 7 October 1993, Rt Hon Sir George Young Bt MP

<sup>58</sup> DoE, 20 January 1994

<sup>59</sup> *ibid* para 1.1

<sup>60</sup> *ibid*

to show that people using the waiting list route had to wait nearly twice as long (on average 1.2 years as against 0.7 years) as people re-housed under the homelessness legislation.<sup>61</sup> In conclusion the paper noted that some of the fears expressed during the 1977 Act's passage through Parliament concerning its potential abuse by applicants and the effect on waiting lists were now justified.<sup>62</sup>

The main elements of the proposals were:<sup>63</sup>

- to confine local authorities' duty to one of securing accommodation for a limited period for applicants who are in priority need, in an immediate crisis that has arisen through no fault of their own, and who have no alternative accommodation available to which they could reasonably be expected to go;
- to make waiting lists the sole route by which people may be allocated a secure local authority tenancy, so that everyone in need of such accommodation has a fair chance of securing it, according to their housing needs, their resources and the length of time they have been waiting for such housing;
- to encourage local housing authorities to help lower income households to find accommodation to suit their needs - whether as a tenant of a local authority or a housing association, or in the private rented sector, or in a shared ownership scheme - by providing more user friendly approaches such as common waiting lists and housing advice centres.

The DoE received over 10,000 responses to the consultation paper; Sir George Young announced the Government's conclusions and the intention to legislate in a statement to the House.<sup>64</sup> Parts VI and VII of the *Housing Act 1996* gave effect, with some changes, to the proposals set out in the consultation paper.

## **7. Parts VI & VII of the 1996 Housing Act**

Detailed background on the homelessness and allocations provisions in the 1996 Act can be found in Library Research Paper 96/10.

The Act created a single route into social housing. Part VI of the Act<sup>65</sup> provides that authorities can only allocate a secure tenancy to 'qualified' persons on their housing registers. Authorities have to adopt an allocation scheme for determining priority between

---

<sup>61</sup> DoE, *Routes into local authority housing: a study of local authority waiting lists and new tenancies*, January 1994

<sup>62</sup> *Access to Local Authority and Housing Association Tenancies*, para 2.9

<sup>63</sup> *ibid* para 3.2

<sup>64</sup> HC Deb 18 July 1994 cc 21-3

<sup>65</sup> Came into force on 1 April 1997

applicants. Authorities have considerable discretion over how their allocation schemes are framed but the 1996 Act, as originally drafted, provided that ‘reasonable preference’ had to be given to the following groups:<sup>66</sup>

- people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- people occupying temporary housing or accommodation on insecure terms;
- families with dependent children;
- households consisting of or including someone who is expecting a child;
- households consisting of someone with a particular need for settled accommodation on medical or welfare grounds;
- households whose social or economic circumstances are such that they have difficulty in securing settled accommodation.

As originally drafted the Act did not allow for ‘reasonable preference’ to be given to persons who had been accepted as unintentionally homeless and in priority need under Part VII of the Act. The system provided that, once accepted as homeless, these people would be automatically placed on an authority’s housing register and would be allocated a secure tenancy under the same allocation scheme that applied to all other non-homeless people seeking social housing. The aim behind the ‘single route’ into local authority housing was to prevent ‘queue jumping’. Andrew Arden QC described the principle effect of the Part VI of the Act in relation to homelessness as:

‘...to lock the homeless out of permanent local authority housing (or housing to which the authority enjoy nomination rights) *unless and until* they qualify within the mandatory scheme, pending which their stay in the authority’s accommodation is necessarily finite, and may even mean a periodic (every two years) move out of the permanent stock for a further year.’<sup>67</sup>

Part VII of the Act<sup>68</sup> amended various aspects of the homelessness provisions contained in Part III of the 1985 Act. The key changes were:

- The Act removed eligibility for assistance under Part VII from ‘persons from abroad’ who are subject to immigration control unless re-qualified by regulations.
- The definition of intentional homelessness was extended to situations where a person enters an agreement that results in his losing accommodation in order to take advantage of the homelessness legislation. The Act also provided that an individual should be treated as intentionally homeless where he is given advice or assistance to secure

---

<sup>66</sup> Section 167(2)

<sup>67</sup> *Homelessness & Allocations: a guide to the Housing Act 1996 Parts VI and VII*, fifth edition, p 25

<sup>68</sup> In force from 20 January 1997.

suitable accommodation and he fails to do so 'in circumstances in which it was reasonably to be expected that he would do so'.<sup>69</sup>

- Unintentionally homeless people in priority need retained their entitlement to assistance with accommodation only if it is deemed that there is no suitable alternative accommodation available to them within the local authority's area. The Act reduced the duty owed to these applicants to providing only appropriate advice and assistance where the authority is satisfied that other suitable accommodation is available for occupation within the area.
- Local authorities' duty to secure accommodation for unintentionally homeless people in priority need was reduced from a duty to secure permanent accommodation to one of securing accommodation for a minimum period of two years. Accommodation can be provided beyond this point after a review of the applicant's circumstances confirming that they are still in priority need, that there is no other suitable accommodation available for them in the area and that they still want accommodation to be secured for them.
- The Act prohibited authorities from using their own accommodation to temporarily house unintentionally homeless people in priority need for more than two years out of any three (whether continuously or in aggregate) unless it is by means of hostel accommodation or accommodation privately leased by the authority from a private landlord.
- Applicants gained a new right to request an internal review of a local authority's decision on a homeless application within 14 days of being notified of the decision.

The priority need categories remained unamended. A new Code of Guidance was published to accompany Parts VI & VII of the *1996 Housing Act*.

## **8. Labour's amendments to Parts VI & VII of the 1996 Act**

The Labour Party's 1997 Manifesto stated that it intended to place a new duty on local authorities to find permanent housing for those who are homeless through no fault of their own and who are in priority need.

As an interim measure the Labour Government extended the 1996 Act via secondary legislation. The *Allocation of Housing (Reasonable and Additional Preference) Regulations 1997*<sup>70</sup>, that came into force on 1 November 1997, amended section 167 of the 1996 Act to add various new categories to the list of people to whom authorities must give 'reasonable preference' in their housing allocation schemes. The new categories

---

<sup>69</sup> Section 191

<sup>70</sup> SI 1997/1902

include people to whom a duty is owed under existing and earlier homelessness legislation. Therefore, since 1 November 1997 it has been possible for an authority to give a homeless household priority for re-housing under its allocation scheme in order to ensure that the household can move into permanent accommodation quickly. The aim of this change was to reduce the length of time a household spends in temporary accommodation provided under Part VII. The measure was welcomed by organisations working with homeless.

The Government revised the Code of Guidance in 1999. The Code now makes it clear that care-leavers, with very few exceptions, should be regarded as 'vulnerable' (and therefore in priority need) and considered under the homeless provisions of the *Housing Act 1996*. Nick Raynsford has also said that homeless 16 and 17 year olds with no back-up support should normally be regarded as 'vulnerable'.<sup>71</sup>

Duties to homeless asylum seekers were further modified by the *Immigration and Asylum Act 1999*.<sup>72</sup>

## **B. Homelessness proposals in the Housing Green Paper**

The Green Paper, *Quality and Choice: a decent home for all*,<sup>73</sup> outlined the following proposals.<sup>74</sup>

- Local authorities will have a duty to secure temporary accommodation for all unintentionally homeless households in priority need. The provision in the 1996 Act that relieves them of this duty where they believe that there is suitable private sector accommodation available is to be repealed.
- The priority need categories will be extended to include homeless people who are vulnerable because they have an institutionalised or care background, or because they are fleeing harassment or domestic violence. Local authorities will determine vulnerability on an individual basis.
- All unintentionally homeless 16 and 17 year olds will be treated as being in priority need.
- The restriction in the 1996 Act that provides that temporary accommodation need only be provided for two years is to be removed.

---

<sup>71</sup> HC Deb 2 November 1998 cc 312-3W

<sup>72</sup> For further details see Library Research Paper 99/16.

<sup>73</sup> DETR, April 2000

<sup>74</sup> *Quality and Choice: a decent home for all*, chapter 9

- The restriction in the 1996 Act that means that authorities may only use their own stock as temporary accommodation for two years in any three is to be removed.
- The Government said it would consider how to give local authorities power to provide temporary accommodation for non-priority homeless applicants where there is scope to do so, i.e. in areas of low demand.
- The duties on authorities in relation to the prevention of homelessness and the provision of support to homeless households will be strengthened.

Consultation on the proposals contained in the Green Paper closed on 31 July 2000. Responses to the Green Paper's proposals are contained in section D below.

## **C. The Bill: homelessness provisions**

The homelessness provisions in the Bill are intended to:

- require authorities to take a more strategic, multi-agency approach to the prevention of homelessness and the re-housing of homeless households;
- ensure that everyone accepted by authorities as unintentionally homeless and in priority need must be provided with suitable accommodation until they obtain a settled housing solution; and
- allow authorities greater flexibility to assist non-priority homeless households, principally through a new power for housing authorities to secure accommodation for such households where they have scope to do so.<sup>75</sup>

### **1. Homelessness reviews and strategies**

**Clause 16** will impose a new duty on local authorities to carry out a review of homelessness within their areas and formulate and publish a strategy to combat homelessness based on the findings of that review. The strategy will have to be published at least every five years and the first one will be due for publication within one year of the Bill's commencement.

The social services authority and other appropriate organisations will have to be consulted prior to the publication of the strategy. Social services authorities will be required to give assistance to the carrying out of the review and the formulation and publication of the strategy.

---

<sup>75</sup> Explanatory Notes to the Bill para 16

**Clause 17** defines a homelessness review as a review of:

- the levels and likely future levels of homelessness in the district;
- the actions being taken to prevent homelessness, to secure that accommodation is or will be available and to provide information or assistance to those who are, or who may become, homeless; and
- the resources available to the authority and other bodies for carrying out the above actions.

The results of the review will be available for public inspection.

**Clause 18** sets out the meaning of a ‘homelessness strategy’ and specifies what the strategies should cover, namely:

- the prevention of homelessness;
- securing that sufficient accommodation is available for those who are, or may become homeless; and
- the provision of satisfactory services to such people.

A strategy may include specific objectives and activities to be performed by the housing and social service authorities, other public authorities or voluntary organisations.

Strategies will have to be kept under review and modified accordingly, after consultation with appropriate bodies.

**Clause 19** defines the meaning of various terms used in clauses 16-18.

## **2. Amendments to local authorities’ duties to homeless people**

**Clause 20** will amend section 192 of the *1996 Housing Act* to enable local authorities to secure accommodation for unintentionally homeless people who do not fall into one of the priority need categories.<sup>76</sup> The current duty towards these people is only to provide appropriate advice and assistance in attempts the applicants might make to secure their own accommodation. Where these people are threatened with homelessness local authorities will be given the power to take reasonable steps to secure that they do not become homeless.

**Clause 21** will amend the provisions of the 1996 Act that govern the period for which local authorities are under a duty to secure accommodation for unintentionally homeless applicants who are in priority need.

---

<sup>76</sup> The priority need categories are set out on page 28

Currently this duty (section 193(3) of the 1996 Act) is owed for a two year period. Section 194 enables, but does not oblige authorities, to continue to secure accommodation after the two-year period has expired.

Clause 21(1) will remove the two-year limit and substitute a new duty to secure accommodation until any of the circumstances specified in the section cause the duty to cease. Section 194 will be repealed and transitional provisions will provide that people accommodated under either section 193 or 194 prior to commencement will be owed the new duty. Authorities will be expected to offer some choice of settled accommodation to someone accepted as homeless and placed in temporary accommodation before bringing the duty to an end.<sup>77</sup>

**Clause 22(1)** will amend section 193(6) of the 1996 Act which sets out circumstances under which the main duty to secure accommodation will cease.

Currently the main duty to secure accommodation ceases if the applicant:

- ceases to be eligible for assistance; or
- becomes homeless intentionally from the accommodation made available for his occupation; or
- accepts an offer of accommodation under Part VI; or
- otherwise voluntarily ceases to occupy the accommodation made available as his only or principal home.<sup>78</sup>

Clause 22(1) will provide an additional circumstance at 193(6)(cc), namely where an applicant accepts an offer of an assured tenancy from a private landlord.<sup>79</sup>

Section 193(7) currently provides that the main duty to secure accommodation may cease where the applicant has refused an offer of accommodation under Part VI. Clause 22(3) will replace and clarify section 193(7). Authorities will have to notify applicants in writing when an offer is a final offer and that the duty will end if it is refused.

Clause 22(4) will insert new subsections before section 193(8) of the 1996 Act. These will provide that where accommodation is made available to an applicant by a private landlord as a result of an arrangement between the authority and the landlord, the authority's homelessness duty under section 193 can be brought to an end if the applicant accepts an offer of an assured shorthold tenancy.<sup>80</sup> The provisions make clear that an applicant is free to reject such an offer without this affecting the duty owed to him by the authority under section 193. They also provide that the acceptance of such a shorthold

<sup>77</sup> DETR, *Quality and Choice: A decent home for all – the way forward for housing*, December 2000, para 7.6

<sup>78</sup> Section 193(6)(a)–(d)

<sup>79</sup> An offer of an assured shorthold tenancy will not fulfil this requirement.

<sup>80</sup> Assured shorthold tenancies afford residents no long-term security of tenure.

tenancy is not effective unless the tenancy is for a fixed term and the applicant confirms in writing that he understand the effect of accepting the offer (ie that it will bring to an end the section 193 homelessness duty owed them by the authority).

**Clause 23** will repeal section 197 of the 1996 Act under which local authorities have no duty to secure accommodation where it is deemed that the applicant is homeless and in priority need but that other suitable accommodation is available for the applicant's occupation. This repeal will mean that applicants will be owed the main homelessness duty under section 193<sup>81</sup> or the duty in the case of those threatened with homeless under section 195.<sup>82</sup> Previously they would have only received advice and assistance in procuring accommodation. It also provides that a person owed the section 197 duty immediately prior to commencement will be owed the section 193 duty or the section 195 duty as the case may be on commencement of the Bill.

**Clause 29** will bring into effect schedules 2 and 3 to the Bill. Schedule 3 will repeal various sections of Parts VI and VII of the 1996 Act including section 207. This section contains one of the principal objectives of the changes wrought by Part VII of the 1996 Act, ie that an authority's own accommodation should not be allocated permanently to the homeless, other than in accordance with the normal allocation criteria. To achieve this section 207 placed a prohibition on the use of an authority's stock for the housing of people accepted as homeless for more than two years out of any three, whether continuously or in aggregate.

The repeal of section 207 will mean that authorities will be able to use their own stock indefinitely to provide housing for households accepted as homeless.

The Bill does not contain provisions to extend the priority need categories to include 16 and 17 year olds; care leavers aged 18-21; and applicants who are vulnerable as a result of an institutionalised background or as a result of fleeing domestic violence or harassment. The Government intends to make these changes 'shortly' by Order under section 189 of the *1996 Housing Act*.<sup>83</sup>

A new Code of Guidance will be published to reflect the changes made by the Bill and local authorities are to be provided with an additional £8 million in revenue funding to meet the additional costs that these measures will incur.<sup>84</sup>

It is expected that these provisions will be brought into force in 2001.<sup>85</sup>

---

<sup>81</sup> To secure that accommodation becomes available for occupation.

<sup>82</sup> To secure that accommodation does not cease to be available for occupation.

<sup>83</sup> DETR, *Quality and Choice: A decent home for all – the way forward for housing*, December 2000, para 7.5

<sup>84</sup> *ibid*, para 7.10

<sup>85</sup> Explanatory Notes, para 110

## D. Responses to the Bill's homelessness provisions

The Government found that there was 'almost unanimous support' from those who responded to the Green Paper's proposals on homelessness.<sup>86</sup> It is therefore expected that the Bill's implementation of these proposals will have the support of a majority of housing organisations.

Some respondents support the principle of more 'liberal' homelessness policies but stress that in pressure areas, such as London, additional resources will be the key to improved services for homeless people:

The ALG supports the proposed rescinding of the two year limitation on the placement of households in temporary accommodation. This will not in itself reduce the time households stay in temporary accommodation, though it will at least avoid unnecessary moves. Similarly, while the ALG supports the proposal to allow local authorities to grant permanent tenancies directly to homeless households, in practice this will make little difference in most London boroughs as the supply of permanent housing is not available. Placement of homeless households for long periods is not primarily a matter of local authority policy, but a necessity due to supply shortage.<sup>87</sup>

It has been pointed out that resources will be further stretched when the Government extends the priority need categories (by Order) next year as this will increase the number of homeless people to whom local authorities will owe a duty to secure accommodation.<sup>88</sup>

The Government has said that it will provide an additional £8 million in revenue funding each year to meet the additional costs that the Bill's measures will incur.<sup>89</sup> On the provision of new affordable housing, the Government has pointed out that the Housing Corporation's Approved Development Programme (ADP) has been increased by £50m to £687m this year (2000/01) and will rise to £1,236m by 2003/04, nearly doubling the programme. In addition, to reflect increases in scheme costs and the proposed move to a new rent regime for registered social landlords (who provide most new affordable housing) the Government has increased the headline grant rate from 54% this year to 60% for the 2001/02 ADP.<sup>90</sup>

---

<sup>86</sup> DETR, *Quality and Choice: a decent home for all – the way forward for housing*, December 2000, para 7.3

<sup>87</sup> Association of London Government's response to the Housing Green Paper, July 2000

<sup>88</sup> *ibid*

<sup>89</sup> DETR, *Quality and Choice: a decent home for all – the way forward for housing*, December 2000, para 7.10

<sup>90</sup> *ibid*, para 5.4

## **E. Housing allocation systems: background**

Chapter 9 of the Housing Green Paper, *Quality and Choice: A Decent Home for All*<sup>91</sup>, set out proposals for ‘modernising policies that affect people’s opportunities to access social housing’. The Paper expressed the Government’s wish to give individuals a greater role in selecting their housing. There is a desire to encourage social landlords to see themselves more as providers of a lettings service which is responsive to the needs and wishes of individuals, rather than as purely housing allocators.

The aim of existing allocation policies has been described as ‘housing people in the greatest housing need’ whereas the new aim is ‘to build and sustain communities whilst contributing to meeting priority housing needs in the local area.’<sup>92</sup>

### **1. The current system of allocations**

As explained on pages 31 & 32, Part VI of the *Housing Act 1996*, which came into force on 1 April 1997, established a new framework for the allocation of housing accommodation by local housing authorities. Aside from certain limited exceptions, all secure tenancies within a local authority’s stock now have to be allocated to persons registered on a housing register; local authorities are required to maintain a register and the Secretary of State may prescribe descriptions of persons who will not be entitled to appear on these registers. The 1996 Act requires authorities to devise allocation schemes that give ‘reasonable preference’ to the following groups:<sup>93</sup>

- (a) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- (b) people occupying housing accommodation which is temporary or occupied on insecure terms;
- (c) families with dependent children;
- (d) households consisting of or including someone who is expecting a child;
- (e) households consisting of, or including someone, with a particular need for settled accommodation on medical or welfare grounds;
- (f) households whose social or economic circumstances are such that they have difficulty in securing settled accommodation;
- (g) people owed a duty by that authority under section 193 or 195(2) of the *Housing Act 1996* or section 65(2) or 68(2) of the *Housing Act 1985* (the main housing duties owed to homeless persons);
- (h) people in respect of whom that authority are exercising their power under section 194 of the 1996 Act (power to secure accommodation after minimum period of duty under section 193 of that Act has expired) and

---

<sup>91</sup> DETR, April 2000

<sup>92</sup> Lettings and Choice in Social Housing Conference, 6 July 2000

<sup>93</sup> Section 167(1) of the 1996 Act (as amended)

- (i) people:
  - (i) who have within the previous two years been provided with advice and assistance by that authority under section 197(2) of the 1996 Act (duty where other suitable accommodation is available); or
  - (ii) who are occupying accommodation secured with such advice and assistance.

Schemes should also ensure that additional preference is given to households within paragraph (e) who cannot reasonably be expected to find settled accommodation for themselves in the foreseeable future.

Regulations may specify certain classes of person who may or may not qualify to register on an authority's housing register. Aside from these provisions, and any other regulations that may be made under Part VI, local authorities have discretion to devise their own allocation schemes and to decide on what classes of persons are, or are not, 'qualifying persons'; i.e. those to whom the authority can allocate a secure tenancy.<sup>94</sup>

Most local authorities have developed their own allocation schemes based on a "points system"; applicants are given points for different aspects of housing need and those with the highest number of points are given priority for housing. Another relatively common scheme is the 'date order' system. This involves applicants being made offers according to the size/type of dwelling they need and according to when they put their names on the register.

The length of time that an applicant on a housing register or a transfer applicant might have to wait before receiving an offer of accommodation will depend on several factors, including: the pressure of demand for accommodation within the area; the size and type of dwelling that they desire/require; and the degree to which they are willing to be flexible over their 'areas of choice'. A feature of existing social housing allocation policies is that applicants are given relatively little, if any, choice over the property that they are offered. In some cases, particularly homeless households, applicants may be penalised by receiving no further offers, or by being suspended from the register, if they refuse an offer of accommodation that is deemed suitable for their needs.

## **2. Constraints on choice in housing allocations**

The Housing Green Paper identified the following 'constraints' in the social housing sector that limit the extent to which people are allowed to exercise choice in their housing decisions:<sup>95</sup>

---

<sup>94</sup> Section 167(6) of the 1996 Act

<sup>95</sup> para 9.8

*Management pressures.* Social landlords are naturally concerned to minimise rent loss through voids and the negative impact that empty properties can have on the community. Some do so by offering each vacancy to those with the greatest assessed needs, with penalties for applicants who refuse offers. In order to reduce the cost of temporary accommodation, the legislation currently enables local authorities to make settled housing available on a "one offer only" basis to households accepted as homeless. People feel forced into accepting grudgingly a valuable public resource that they might not want.

*Complexity of needs assessments.* Authorities must give 'reasonable preference' to certain categories of people. Some landlords have adopted complex points systems for prioritising needs which attempt objectively to weight different needs in different ways. Some people may chase points in order to jockey for position. As others with higher priority move into and out of the list above them, people's positions may fluctuate erratically. None of this is easy to explain to the people who are waiting. Resolving grievances takes time and effort.

*Restrictions on access and movement between areas.* The priority given to allocating vacancies to those on the housing register can limit the scope for existing tenants to move, unless their needs are very pressing. Additionally, some people are denied social housing altogether through blanket exclusion policies. In particular, many social landlords restrict the availability of housing to those who are already living in the area. Moving may be difficult unless people can find someone to swap with them.

The Green Paper acknowledged that there was a 'regional dimension' to these constraints. The Social Exclusion Policy Action Team report on unpopular housing<sup>96</sup> found that some landlords had difficulty filling vacancies in areas of 'low demand' while others, particularly in London, were struggling to cope with the demand for affordable housing. At the same time, pockets of unpopular housing can be found in high demand areas; the pattern is not clear-cut.

### **3. Housing allocations and sustainable communities**

The Social Exclusion Unit's consultative report, *National Strategy for Neighbourhood Renewal*,<sup>97</sup> concluded that the way local authorities allocate social housing reinforces and even causes problems by concentrating the most vulnerable people in one place. It identified 'imaginative use of lettings policies' as a way in which authorities can create more 'mixed communities where problems reduce and a wide range of people want to live'. Three of the Social Exclusion Unit's Policy Action Teams, PAT 5 (Housing Management), PAT 7 (Unpopular Housing) and PAT 8 (Anti-social Behaviour) made recommendations that called for the Housing Green Paper to incorporate more open

---

<sup>96</sup> Policy Action Team 7, *Unpopular Housing*, 1999

<sup>97</sup> April 2000

access and more tenure and income diversification into the social housing stock. These three recommendations were:

- local authorities and registered social landlords should take into account the need to create sustainable communities in forming their housing lettings policies;<sup>98</sup>
- the DETR and the Housing Corporation should examine whether current central policy and guidance give local authorities and housing associations enough flexibility to do this;<sup>99</sup> and
- there should be consultation on a new form of tenancy (assured shorthold) that makes it easier for less vulnerable people to get social housing, bringing a broader social mix to deprived areas.<sup>100</sup>

It is not universally accepted that changes to allocation policies will ‘turn around’ areas of low demand and unpopular housing. A study of these problems by the Department of Planning and Housing at Heriot-Watt University concluded that the most common responses to low demand by landlords were changes to allocation policies; for example, relaxed size matching, local flexibility, ‘easy access’ routes and unlimited offers. Research evidence has shown that these measures can be effective but success is unlikely except where such initiatives are linked to a wider package of measures, including physical work to the stock.<sup>101</sup>

#### **4. The Government’s proposals in the Housing Green Paper**

##### ***a. Housing need***

The Government does not believe that social housing should only be allocated to the poorest and most vulnerable members of the community.<sup>102</sup> However, the risk of excluding those who have no other choice available to them if social housing were open to anyone who applies, was conceded. Therefore, the Green Paper proposed that ‘priority for social housing should generally continue to be given to people in the greatest housing need and for whom suitable private sector housing is not an affordable option.’<sup>103</sup>

The Green Paper suggested that assessments of need for social housing should consider whether the applicant(s) are:

- homeless (including those being housed under the homelessness legislation in temporary accommodation, as well as those who are roofless) or threatened with homelessness; or

---

<sup>98</sup> SEU, Report of PAT 8: *Anti-social Behaviour*

<sup>99</sup> DETR, Report of PAT 5: *Housing Management*

<sup>100</sup> DETR, Report of PAT 7: *Unpopular Housing*

<sup>101</sup> ‘Becoming like a ghost town’, *Housing Today*, 15 June 2000

<sup>102</sup> *Quality and Choice: a decent home for all*, April 2000, para 9.12

<sup>103</sup> *ibid*

- living in housing conditions which (taking into account their personal circumstances, for example, age, health or vulnerability) are not reasonably tolerable, where these conditions can best be resolved through re-housing them (rather than, say, providing assistance to enable them to remain where they are); or
- need to move to a particular location for some reason where, if re-housing in that area were not possible, this would lead to undue hardship (for example, moving somewhere in order to secure or retain a job).<sup>104</sup>

**b. Exclusions**

The Green Paper proposed that the power of authorities to impose ‘blanket exclusions’ from the housing register should be removed. Where some sanctions are desirable, for example to deter anti-social behaviour, the paper stated that authorities will be able to temporarily reduce the priority or suspend the applications of particular households on an individual basis. It was indicated that authorities might also get a power to suspend applications where households are deemed to have engineered their housing circumstances to gain higher priority on the register.

The Green Paper acknowledged that decisions to suspend applications would have to take account of the circumstances of the household in order to safeguard vulnerable groups. It was expected that suspensions would be ‘exceptional’ and open to review.

**c. Choice**

The principles on which the Government has stated that it wants letting schemes to be based are:<sup>105</sup>

*People should have as much opportunity as possible for their views to be taken into account when they are seeking a new home.*

- *Choice should be available both to new applicants and to existing tenants wishing to move.* To limit void periods, people should be able to choose properties before they have become empty wherever possible.
- *Choice should be free.* There should be no penalty for those who do not want a property on offer (although the time allowed for choice may need to be limited in certain situations).
- *Choice should be as wide as possible.* Local authorities and registered social landlords should consider the scope for pooling their property and making it available to people from outside their own local area. Vacancies in areas of lower demand should be available to people in areas of higher demand, although priority might continue to be given to people who have a strong local connection with an

---

<sup>104</sup> ibid para 9.16

<sup>105</sup> ibid para 9.17

area or a pressing need to move there. The flexibility to allow greater priority to local people would enable authorities in areas of high demand (including small village communities with a limited supply of affordable housing) to avoid any additional pressure being placed on their stock.

- *Simple and accessible systems.* People should be able to apply for lettings and transfers easily and know to whom they should turn for help.
- *Choice should be well informed.* People should understand what housing is available and what their chances are of getting it. Housing authorities (in conjunction with social services authorities where necessary) should give additional advice and assistance to those who might otherwise have difficulty finding or applying for housing suited to their needs.
- *Choice for homeless people.* A choice of settled accommodation is as important for homeless people as it is for those in urgent need on the waiting list, although choice may have to be more limited for homeless people in certain circumstances.
- *Systems should be sensitive to local needs.* Under Best Value, and Tenant Participation Compacts, local people and existing tenants should be consulted about local policies. Local lettings policies which restrict individual choice need to be well justified.

Schemes piloting the implementation of choice based letting schemes, such as the Delft system that was pioneered in The Netherlands, are currently in progress at Market Harborough and Edinburgh councils and also Leicester Housing Association. Chris Mullin announced in July 2000 that bids for further pilot schemes would be invited:

**Mr. Mullin:** We will shortly be inviting expressions of interest from local authorities. Bids will be invited from authorities who wish to develop schemes that achieve our aims on a choice based lettings system, including schemes that make innovative use of information technology to help tenants to choose their homes. In inviting expressions of interest we will make it clear to authorities the level of monitoring and evaluation they will be expected to undertake. Any pilot scheme will need to be evaluated fully, including the impact on homeless households.<sup>106</sup>

The Government has since announced that it will make £11 million available over three years from April 2001 to support pilot schemes that test choice-based approaches to lettings policies.<sup>107</sup>

#### *d. Alternatives to points based allocation systems*

The Green Paper made it clear that the Government does not believe that points based systems ensure that social housing lettings meet need in ‘a sustainable way’. The Green

---

<sup>106</sup> HC Deb 28 July 2000 c 937W

<sup>107</sup> DETR, *Quality and Choice: a decent home for all – the way forward for housing*, December 2000, para 6.5

Paper suggested that 'banding' systems might provide an alternative. A simple banding system would involve placing applicants in one of the following bands:

- people with an urgent need for social housing;
- those in non-urgent need of social housing; and
- those with no particular need for it.

The needs of people in each band would be considered to be of broadly similar urgency. Those with no particular need for social housing would not normally be housed before someone with greater priority, however the Government accepted that there could be exceptions to this rule under local lettings policies (see section *f* below).<sup>108</sup>

The Green Paper discussed possible determining criteria that could be used to decide between competing claims within each band of applicant. For first time applicants it suggested using the time the person has been waiting in a particular band; for existing tenants (transfer applicants) it suggested using time spent at the current address.

The advantage of this approach is that it would enable people to balance their own 'felt' need, as measured by the time they felt able to wait, against the availability of the properties they might be able to secure. In effect, waiting time would become the "currency" that those in the social sector could use to optimise their own decisions about where to live, taking into account all their needs and aspirations.

Since those in the highest needs band would have priority over those with lesser needs, there would be no question of the poorest or most vulnerable people having the worst choices. Of those with broadly similar needs, people who had put up with their situation the longest would have the best chance of securing a home which met their requirements.<sup>109</sup>

The Paper stated that authorities in high demand areas may introduce additional bands to differentiate between the increased number of people who will be in the urgent need category.

*e. Information and advertising*

In order to enable people to exercise choice the Green Paper recognised that they will need information and recommended advertising as means of achieving this.<sup>110</sup>

---

<sup>108</sup> *ibid* para 9.19

<sup>109</sup> *ibid* paras 9.21-22

<sup>110</sup> *ibid* paras 9.24-27

The Paper suggested the ‘labelling’ of properties to indicate the type of household for whom they are most suited<sup>111</sup> and supported the publication of ‘outcomes’ so that people can judge their chances of success if they apply for a similar property in the same area.

*f. Local lettings policies*

Local lettings policies generally involve the application of specific lettings policies, which vary from the authority’s usual letting policies, in regard to particular estates or blocks. The Green Paper suggested that local lettings policies may be used as a means of correcting a significant social imbalance, such as excessive child density, on particular estates. It also endorsed the use of these policies to ‘give priority for housing in certain defined areas to households who could help to create more sustainable communities, such as key workers’.<sup>112</sup>

## **F. The Bill: housing allocations**

This part of the Bill is intended to ‘facilitate lettings policies which offer more choice to homeless people and others with the aim of helping to create sustainable communities, tackle social exclusion and make better use of the national housing stock.’<sup>113</sup>

Currently the provisions of Part VI of the 1996 Act do not apply to the allocation of housing to anyone who is *already* a secure or introductory tenant of the authority or an assured tenant of a registered social landlord. The purpose of this was to provide for ‘transfers between authorities outside the framework of the housing register’.<sup>114</sup>

**Clause 24** of the Bill will remove this exemption and will bring transfer requests by existing tenants within the remit of Part VI. Transfers that take place at the instigation of the local authority, eg to facilitate the refurbishment of a block by re-housing the tenants, will still be exempt.

**Clause 25** will remove the obligation on authorities to maintain a housing register. People who are already on a housing register or who apply to go on a register before the Bill comes into force, will be treated as having applied to the authority for housing (clause 25(3)).

Authorities will still be required to allocate housing only to ‘eligible persons.’ Any person will be eligible unless they are subject to immigration control or they are prescribed by the Secretary of State as ineligible. If they are subject to immigration control they will be eligible if prescribed by the Secretary of State as eligible (by regulation). Clause 25(2)

---

<sup>111</sup> *ibid* para 9.28

<sup>112</sup> *ibid* para 9.30

<sup>113</sup> Explanatory Notes to the Bill para 16

<sup>114</sup> SCG Deb 12 March 1996 c 603

will insert a new section 160A to this effect. Authorities will have to notify applicants in writing where they decide that they are ineligible.

**Clause 26** will substitute a new section 166 that will require authorities to provide information and advice on the right to make applications for housing accommodation. This assistance must be provided free of charge to those within the district who fall within the reasonable preference categories (see clause 27 below) and who are likely to have difficulty in making an application.

Applicants will be entitled to general information to enable them to assess when they might be allocated accommodation (clause 26(2)). Authorities will be prohibited from divulging to the public that a person has applied for housing (clause 26(4)).

**Clause 27** will require authorities to include a statement of policy (in their allocation schemes) on offering applicants for housing a choice of accommodation or the opportunity to express preferences about the accommodation they would like to be offered. The clause will also amend section 167 which sets out the categories of applicant to whom an authority must give 'reasonable preference' in their allocation scheme. The revised categories will be:

- people who are homeless;
- people owed certain homelessness duties;
- people living in unsatisfactory housing conditions (including insanitary or overcrowded housing);
- people with a particular need to move on medical or welfare grounds; and
- people with a particular need to move to avoid hardship to themselves or others.

It will be possible to frame allocation systems so that they give additional preference to particular descriptions of people who fall within the reasonable preference categories, ie people with urgent housing needs.

In determining priorities between applicants in the reasonable preference categories authorities will be able to take account of:

- the financial resources available to the applicant to meet their housing costs;
- any behaviour of a person which affects their suitability to be a tenant;
- any links which a person has with the local authority district.

A new subsection 167(2B) will provide that, subject to the reasonable preference categories, allocation schemes may contain provision about allocating particular accommodation:

- to persons who make a specific application for that accommodation;
- to persons of a particular description (whether or not they fall within the reasonable preference categories).

When an authority advises a person that they are eligible for assistance under section 184 of the 1996 Act (the homelessness provisions) they will have to give them a copy of the statement in the allocation policy on choice of housing accommodation or which sets out the applicant's opportunity to express preferences as to the accommodation they will be offered (clause 27(4)).

**Clause 28** will provide that the reference in the 1996 Act in Schedule 1 to the *National Assembly for Wales (Transfer of Functions) Order 1999* should be treated as referring to that Act as amended by this Bill.

**Clause 29(1)** will give effect to Schedule 2 to the Bill which contains minor and consequential amendments. In particular there is an amendment of section 209 of the 1996 Act (which limits the type of tenancies that can be offered to homeless households by a private landlord). It will remove the restrictions in that section in relation to the granting of assured tenancies where a registered social landlord assists a local housing authority discharge its homelessness functions.

Clause 29(2) will give effect to the repeals relating to Part II contained in Schedule 3.

Clause 29(3) will also provide that the provisions of Part II will not affect section 216(2) of the 1996 Act (transitional provisions which apply in relation to applications for accommodation or assistance made before commencement of Part VII of the 1996 Act).

**Clause 31** will give the Secretary of State power to make transitional provisions by statutory instrument. In Wales this power, in relation to homelessness and allocations, will be exercisable by the National Assembly for Wales.

**Clause 32** contains the commencement provisions.

It is expected that these provisions will be brought into force in 2002.<sup>115</sup>

## **G. Responses to the Government's policy on housing allocations**

There is broad agreement amongst local authorities and housing commentators that the Government's objectives in this area are welcome. Responses to the Green Paper reflected some concern over the practical operation and possible consequences of some of the proposals.

The Bill will allow local authorities greater discretion to determine lettings policies that offer applicants more choice of accommodation. The Bill is not prescriptive about the approach that authorities should adopt; it is accepted that policies will vary in the light of local circumstances and that they will draw on the experience of the pilot studies.

---

<sup>115</sup> Explanatory Notes, para 110

Because the Bill is aimed at facilitating choice-based lettings policies and is not overly prescriptive, the responses in this section refer mainly to the detail of the Government's vision of choice-based lettings as set out in the Housing Green Paper.

## 1. Choice in areas of high demand

Several respondents to the Green Paper noted that there were particularly serious problems with the operation of more choice based systems in areas of housing shortage and high demand. It was felt that reforms to introduce choice in these areas might be very limited in scope unless the supply of accommodation could be improved. Indeed, the Housing Director at Hammersmith and Fulham Council, Barry Simons, reportedly described the proposals as 'like re-arranging the deck chairs on the Titanic.'<sup>116</sup> The Local Government Association's (LGA) response noted that 'increased choice will not in itself create more homes that are accessible, affordable, of the right size and type and in areas where people wish to live.'<sup>117</sup>

The Chartered Institute of Housing's (CIH) response emphasised that choice in high demand areas should be about 'enabling people wanting housing to be able to weigh up the pros and cons of their situation for themselves, and choose the best course of action for them in the light of all relevant information.'<sup>118</sup> The Institute suggested that increased choice in these areas would raise expectations which could ultimately lead to frustration:

At the same time it also needs to be recognised that introducing theoretically greater choice in high demand areas could lead to an expectation by homeseekers that the choices are more real than is actually the case, and an initial increase in hanging on for something better, extended sharing and overcrowding, accompanied by growing void periods in less popular stock, but eventually followed by frustration and resentment.<sup>119</sup>

The Association of London Government (ALG) welcomed the Green Paper's recognition that different approaches to choice may be more appropriate in high stress areas but noted that the Paper was silent on how increased choice in these areas might be achieved.<sup>120</sup>

The Government's Housing Policy Statement, which was published after consideration of responses to the Green Paper, reflects the Government's commitment to improving choice in high demand areas:

Whilst we accept that it is not easy to incorporate more choice in areas of high demand, we do not accept that improvements cannot be brought about with

---

<sup>116</sup> 'Whitehall chief hits back at 'Titanic' jibe on allocations', *Inside Housing*, 10 March 2000

<sup>117</sup> LGA's response to the Green Paper, July 2000, p 36

<sup>118</sup> CIH's response to the Green Paper, July 2000, chapter 9

<sup>119</sup> *ibid*

<sup>120</sup> ALG's response to the Green Paper, July 2000, p 2

commitment and imagination. Moreover, we believe the improvements to the supply of affordable housing that will result from our new spending plans will help ease the problems in high demand areas and make it somewhat easier for social landlords to offer a greater degree of choice to new and existing tenants.<sup>121</sup>

## 2. Choice and vulnerable applicants

Shelter has accepted that giving greater choice to applicants is not inconsistent with meeting needs but would like measures in place to ensure that vulnerable applicants are not adversely affected.<sup>122</sup> This issue was raised in several Parliamentary Questions before the summer recess:

**Mr. Kidney:** To ask the Secretary of State for the Environment, Transport and the Regions what plans he has to ensure that (a) victims of violence and harassment and (b) people with mental health problems are given priority in the letting of social housing in areas of high housing demand under the proposals set out in the Housing Green Paper to use waiting time as the criterion to determine priority for households in the same needs band.

**Mr. Mullin:** The Housing Green Paper, "Quality and Choice; A decent home for all", sets out the Government's proposals for increasing choice in social lettings, and gives banding of applicants in similar housing need as an example of how authorities can move away from points based systems. It will remain the responsibility of each local authority to develop housing policies which are pertinent to their local housing markets, whether in high or low demand areas, taking into account the need to ensure equality of access for their most vulnerable residents. The Housing Green Paper also proposes making the victims of harassment a separate priority need category under homelessness legislation.

**Mr. Kidney:** To ask the Secretary of State for the Environment, Transport and the Regions what plans he has to ensure that the proposals set out in the Housing Green Paper to advertise vacancies in social housing do not disadvantage householders (a) with mental health problems, (b) without English as a first language and (c) who are hospitalised; and if he will make a statement.

**Mr. Mullin:** I refer to my earlier answer (PQ 133511) given today. Advertising is an option within developing effective choice based systems. We will shortly be inviting expressions of interest from local authorities in bidding to develop schemes which achieve our aims of choice. These pilots will look at how extra support can be given to those who may need it, such as those whose first language is not English, those with mental health problems, and those who are hospitalised.<sup>123</sup>

---

<sup>121</sup> DETR, *Quality and Choice: A decent home for all – the way forward for housing*, December 2000, para 6.6

<sup>122</sup> Shelter's response to the Green Paper, July 2000, p 22

<sup>123</sup> HC Deb 28 July 2000 cc 937-8W

The ALG's response referred to concerns about how applicants are to be informed and educated in understanding how to use a choice based system:

In particular, the needs of vulnerable applicants who are unable to cope with what is effectively a competitive advertising system must be considered. The Green Paper proposes advocacy, advice and support for such applicants but this is potentially staff intensive. How will it be resourced? Should supported housing and sheltered housing be excluded or treated separately? In a 'transparent' system where all the allocations results are published how can local authorities ensure that applicants in need of support are housed within the community in a way that does not immediately label them as being 'different', thus exposing them to possible harassment or intimidation? Unpopular needs groups such as ex-offenders, refugees and those with problems of drug or alcohol abuse could become even more marginalised than at present.<sup>124</sup>

The National Housing Federation (NHF) would like to see some specialist housing for certain groups excluded from an advertisement based system, for example, where confidentiality is an issue.<sup>125</sup>

The Government's Housing Policy Statement notes that:

Lettings policies will need to be sensitive to the problems which can arise where there is a concentration of poor and vulnerable households within an area of social deprivation, and the need to promote more sustainable communities. This can be particularly important in education, where schools are dealing with multiple social and economic challenges. We shall encourage housing departments to consult with local education departments (or with the local education authority in non-unitary areas) about the impact of lettings policies in areas of deprivation, where these include schools that fall within the Government's categories of schools requiring special help or support.<sup>126</sup>

### **3. The banding system**

There was some concern that the banding system proposed in the Green Paper would be too crude to reflect the often complex circumstances and multiple needs of people seeking social housing.<sup>127</sup>

Responses posed questions over how decisions would be made to house applicants who are in the same needs band. Shelter's response rejected the use of 'waiting time' as an indicator of housing need to decide between competing applicants:

---

<sup>124</sup> ALG's response, p 38

<sup>125</sup> NHF's response to the Green Paper, July 2000, p 33

<sup>126</sup> DETR, *Quality and Choice: A decent home for all – the way forward for housing*, December 2000, para 6.7

<sup>127</sup> Shelter's response, p 28

- Time on the list is not generally a reliable indicator of need. Households may not have been aware of how to access social housing, or may not have been entitled to join a register. This could be as a result of residence policies, debt, or because their previous immigration status has meant that they were not permitted to appear.
- Those who become homeless suddenly, such as people who lose their home through violence or harassment, are likely to be severely disadvantaged by waiting time criteria. In high demand areas, they are likely to wait a long time because, although their needs are assessed as urgent, priority would be given to other people in urgent need who had been waiting a longer.
- Time in need will not take account of the individual circumstances which have led to homelessness, or, for example, the need for settled accommodation on mental health or other grounds.<sup>128</sup>

It appears that these concerns were taken into account as the Bill makes no reference to determining priorities between applicants on the basis of the length of time that an applicant has been waiting for accommodation. The Bill provides that social housing should first and foremost be allocated to people in housing need by requiring authorities' allocation policies to give 'reasonable preference' to certain categories of applicant.<sup>129</sup> Authorities will be able to award 'additional preference' to people with urgent housing needs within these categories and will be able to determine priorities between applicants in each category or band on the basis of:

- the financial resources available to the applicant to meet their housing costs;
- any behaviour of a person which affects their suitability to be a tenant;
- any links which a person has with the local authority district.

Aside from these provisions authorities will be free to determine their own methods of determining priorities between people who apply for housing.

The NHF's response to the Green Paper stressed that banding should be based on objective and transparent allocation policies and that local authorities should have flexibility to determine the appropriate number of bands given prevailing housing market conditions.<sup>130</sup>

#### **4. Choice and sustainable communities**

The CIH's response to the Green Paper noted that greater choice in housing allocations had been widely explored and adopted in low demand areas in the north and midlands. These 'experiments' found that choice and advertising could not overcome low demand or lead to letting of properties that have become very unpopular: 'the contention that

<sup>128</sup> Shelter's response, p 29

<sup>129</sup> Clause 27

<sup>130</sup> NHF's response p 34

some housing has become beyond redemption is strongly borne out by early findings from pilot studies.<sup>131</sup> Other initial findings from the pilot projects at Harborough and Mansfield are that:

- advertising and greater choice does promote interest and an increase in numbers on housing registers;
- penetrating the potential market more effectively can result in some properties prompting interest where previously none was forthcoming, and to the properties being let.<sup>132</sup>

The CIH believes that choice based models of allocation should be applied with ‘extreme caution’ in some areas:

For areas that have not yet reached this position, advertising and choice in low demand areas can still polarise and force a continuing spiral of decline. More reliable evidence from long term or longitudinal studies is not yet available. However, the contention, based on anecdotal evidence and experience, is that when some areas are teetering on the edge of unpopularity then advertising them openly with choice to homeseekers, can result in interest from and letting to people who have no stake in an area.

The result is that the new tenants simply want a short term transitional let and have no intention on taking any responsibility for the property or the area. In extreme cases there can be more definite anti social or criminal intentions, with such properties being used for drug dealing, prostitution, holding stolen goods, ‘blues parties’ and so on. Legal safeguards and security of tenure can then slow the ability of landlords to take action, while in the meantime these activities can rapidly accelerate the decline of an area.<sup>133</sup>

Responses to the paper emphasised that achieving ‘balanced’ or ‘sustainable’ communities was not simply about achieving a mix of income groups or age structures. Respondents argued that changes in allocation policies could only form part of an overall package of measures with this aim in mind.

## **5. Local letting schemes**

The Bill makes no specific reference to local lettings schemes. The NHF regretted the fact that the Green Paper appeared to see local lettings policies as an exceptional measure to be used where there is a need to ‘correct a significant social imbalance’. The NHF would like to see more general use of local lettings policies as, in its view, ‘they can help create more economically mixed communities and avoid creating the stigmatised

---

<sup>131</sup> CIH’s response, chapter 9

<sup>132</sup> *ibid*

<sup>133</sup> *ibid*

neighbourhoods of the future that are associated with problems of crime and low demand'.<sup>134</sup>

Shelter, while accepting that local letting schemes can play a positive role in providing housing and increasing access for people who may not have high priority for social housing, was concerned that where these policies have been developed, they have been based on building sustainable communities through excluding applicants, rather than adopting an inclusive approach. Shelter's research into allocations and exclusions has found that local lettings policies are characterised by:

- seeking to attract new applicants;
- tighter use of selection criteria; and
- wider use of exclusion powers.

Shelter has expressed concern that the desire to create sustainable communities, as set out in the National Strategy for Neighbourhood Renewal, should not 'relegate the importance of meeting need'.<sup>135</sup> Allocation policies, including local lettings policies, that do not give priority to those with the greatest need for housing, particularly in areas where demand for affordable housing outstrips supply, have potential to discriminate against homeless people and others in housing need.

At least one London Borough recently reviewed its allocation policies with the result that local lettings policies have been adopted in certain areas. A report submitted to a meeting of the council's Housing Committee conceded that localised lettings policies: 'may mean that some households remain in temporary accommodation for longer periods of time'.<sup>136</sup> The same report acknowledged the effect that long periods spent in temporary accommodation can have on homeless people:

We provide temporary accommodation of varying standards – but then due to the length of time we keep them there, the high rents we charge to help us finance the accommodation, and the stigma that society attaches to them, we in fact tend to further embed their existing problems and often add to them.<sup>137</sup>

Shelter's response to the Green Paper expressed a desire to see some questioning of the assumptions underpinning local lettings policies and emphasised the need for transparency in this area.<sup>138</sup>

---

<sup>134</sup> NHF's response, p 34

<sup>135</sup> Shelter's response, p 31

<sup>136</sup> *Temporary Accommodation – Supply and Demand*, paragraph 3.6, London Borough of Camden, September 1999

<sup>137</sup> *ibid*, paragraph 6.2

<sup>138</sup> Shelter's response, p 32

One variation of a local lettings scheme is a 'sons and daughters scheme'. This involves giving additional priority for re-housing within a particular area to the sons and daughters of tenants already residing in the area. Some authorities are considering, or have already implemented these schemes. A 1988 study into the impact of allocation policies by the Local Authority Housing and Racial Equality Working Party made the following comments on 'sons and daughters' schemes:

Special lettings schemes for sons and daughters of existing tenants, and other schemes which give priority to existing residents, are often justified on the grounds that they help to preserve and encourage a sense of community. It should be borne in mind, however, that such schemes detract from the principle of allocating housing on the basis of housing need alone – they reduce, for example the range of properties that can be offered to homeless people. They also reinforce the existing racial mix on an estate, be this predominantly white or black. In a situation where black people are living, on average, in worse council properties than white people, this process reinforces and perpetuates an existing system of racial equality. Where an authority does nevertheless wish to proceed with special, local or decentralised lettings schemes, it is strongly recommended that all allocations are monitored via a central database so that any deleterious effects on the chances of black people and other disadvantaged groups can be recognised and fed back into the decision making process.<sup>139</sup>

## **6. Exclusions**

A majority of respondents to the Green Paper welcomed the proposal to end 'blanket' exclusions from access to social housing (this will be implemented by the Bill). Shelter's response supported the use of 'suspensions' on an exceptional basis (backed up by a robust mechanism) and focused on alternative approaches open to authorities to avoid the use of suspensions, for example, debt management and budgeting services.<sup>140</sup> Research by Shelter estimated that up to 200,000 households were excluded from local authority housing in 1996/97 and 1997/98.<sup>141</sup>

## **7. Pilot schemes and monitoring**

Respondents to the Green Paper welcomed the proposal to support a range of pilots on the introduction of choice based models in different contexts. There was a feeling that guidance on any preferred model should not be issued until the pilots are fully assessed. There was a desire for the pilots to focus on scheme implementation and monitoring as well as scheme development.<sup>142</sup>

Several respondents were very concerned that any choice based letting scheme should be subject to rigorous monitoring. The CIH said that new and different forms of monitoring

---

<sup>139</sup> *Allocations*, June 1988, paragraph 2.27

<sup>140</sup> To avoid suspensions owing to previous rent arrears.

<sup>141</sup> *Access Denied*, 1998

<sup>142</sup> *ibid*, p 2

would be required, such as a 'lettings logging system' for local authorities similar to that used by registered social landlords.<sup>143</sup> The NHF response noted:

An important best practice principle of choice based systems that needs to be added to the list set out in the Green Paper is that they should be non-discriminatory. The exponents of choice need to be able to demonstrate that this is the case and the pilots must therefore evaluate the impact of choice on who is housed by: ethnicity, age, vulnerability, occurrence of disabilities or health problems, reasonable preference group and household composition. This is equally true of local lettings policies.<sup>144</sup>

---

<sup>143</sup> The Continuous Recording Monitoring System (CORE)

<sup>144</sup> NHF's response, p 33

## Statistical Appendix: Statutory homelessness

Figures provided by Gavin Berman of the Social and General Statistics Section.

### Homeless acceptances and households in temporary accommodation

England: 1979-1999

	Acceptances		Households in accommodation arranged by local authorities under homelessness provisions: at year end				
			Total	Bed and Breakfast Hotels	Hostels/ Woman's Refuges	Leased dwellings	Other
	Total	Priority					
1979	55,530		5,590	2,030	3,560	..	..
1980	60,400		4,710	1,330	3,380	..	..
1981	66,990		4,840	1,520	3,320	..	..
1982	71,620		9,340	1,640	3,500	..	4,200
1983	75,470		9,840	2,700	3,400	..	3,740
1984	80,500		12,300	3,670	3,990	..	4,640
1985	91,010		15,920	5,360	4,730	..	5,830
1986	100,490		20,790	8,990	4,610	..	7,190
1987	109,170		24,760	10,370	5,150	..	9,240
1988	113,770		30,100	10,970	6,240	..	12,890
1989	122,180		37,900	11,480	8,020	..	18,400
1990	140,350		45,270	11,130	9,010	..	25,130
1991	144,780	137,250	59,930	12,150	9,990	23,740	14,050
1992	142,890	138,740	63,070	7,630	10,840	27,910	16,690
1993	132,380	127,630	53,580	4,900	10,210	23,270	15,200
1994	122,460	118,490	45,630	4,130	9,730	15,800	15,970
1995	121,280	117,490	44,140	4,500	9,660	11,530	18,450
1996	116,870	113,590	42,190	4,160	9,640	10,980	17,410
1997 (a)	..	102,410	45,030	4,520	8,860	14,320	17,330
1998 (a)	..	104,490	49,010	6,070	8,820	15,760	18,360
1999 (a)	..	104,770	62,180	8,120	8,920	22,390	22,750

(a) Figures from 1997 are as under the 1996 Housing Act  
Presentation of these differs from earlier years.

Sources: *HC Deb 17 April 1991 c186w*

*HC Deb 23 July 1996 c305w*

*Homeless Households Reported by Local Authorities in England: First Half  
of 1981, DoE*

*Statistics of local authority activities under the homelessness legislation: England  
DETR Information Bulletin 00/181 and earlier editions*

Table 2

**Decisions taken on applications from eligible households**

England: 1991-99

	Unintentionally homeless & in priority need	Intentionally homeless & in priority need	Homeless but not in priority need	Not homeless	Total decisions
<b>Number of decisions</b>					
1991	137,250	6,370	80,240	77,760	<b>301,620</b>
1992	138,740	6,380	79,820	80,700	<b>305,640</b>
1993	127,630	5,790	72,690	82,140	<b>288,250</b>
1994	118,490	5,080	65,990	80,070	<b>269,630</b>
1995	117,490	4,920	65,480	83,610	<b>271,500</b>
1996	113,590	5,070	60,950	84,290	<b>263,900</b>
1997	102,410	4,970	58,010	77,360	<b>242,750</b>
1998	104,490	6,140	55,290	79,230	<b>245,150</b>
1999	104,770	6,980	55,010	75,700	<b>242,460</b>
<b>Per cent of total</b>					
1991	46%	2%	27%	26%	<b>100%</b>
1992	45%	2%	26%	26%	<b>100%</b>
1993	44%	2%	25%	28%	<b>100%</b>
1994	44%	2%	24%	30%	<b>100%</b>
1995	43%	2%	24%	31%	<b>100%</b>
1996	43%	2%	23%	32%	<b>100%</b>
1997	42%	2%	24%	32%	<b>100%</b>
1998	43%	3%	23%	32%	<b>100%</b>
1999	43%	3%	23%	31%	<b>100%</b>

Sources: *Statistics of local authority activities under the homelessness legislation: England*  
*DETR Information Bulletin 00/181 and earlier editions*

Table 3

**Homeless acceptances by Government Office region**

England: 1991-1999

	1991	1992	1993	1994	1995	1996	1997	1998	1999
<b>Acceptances</b>									
North East	7,870	7,570	6,800	6,060	6,050	5,780	4,430	4,360	4,830
Yorkshire & Humberside	12,480	14,430	13,320	11,060	9,930	9,240	8,960	8,530	8,210
East Midlands	9,730	10,450	10,120	8,890	8,970	8,900	7,980	7,630	7,300
Eastern	8,560	9,300	9,000	8,490	8,730	8,670	8,020	8,660	8,550
London	36,310	37,550	31,570	28,690	36,690	25,730	24,850	26,160	27,840
South East	13,750	13,030	12,630	12,850	13,570	13,700	12,070	12,860	12,380
South West	9,050	8,990	9,370	9,210	9,960	9,830	8,800	8,920	9,490
West Midlands	17,280	17,070	16,440	15,890	17,510	16,240	14,500	14,210	13,360
North West	18,890	16,900	14,980	13,980	13,150	12,940	10,720	11,170	10,860
Merseyside	3,330	3,450	3,400	3,370	2,930	2,560	2,080	10,860	1,950
England	137,250	138,740	127,630	118,490	117,490	113,590	102,410	104,490	104,770
<b>Acceptances per 1,000 households</b>									
North East	7.5	7.2	6.4	5.7	5.6	5.3	4.1	4.0	4.4
Yorkshire & Humberside	6.3	7.2	6.6	5.4	4.8	4.4	4.3	4.1	3.9
East Midlands	6.1	6.5	6.2	5.4	5.4	5.3	4.7	4.4	4.2
Eastern	4.2	4.5	4.3	4.0	4.1	4.0	3.7	3.9	3.8
London	12.8	13.1	10.9	9.8	12.4	8.6	8.2	8.5	9.1
South East	4.5	4.2	4.1	4.1	4.3	4.2	3.7	3.9	3.7
South West	4.8	4.7	4.8	4.7	5.0	4.9	4.3	4.3	4.6
West Midlands	8.5	8.3	7.9	7.6	8.3	7.6	6.8	6.6	6.2
North West	8.8	7.8	6.8	6.3	5.9	5.8	4.8	4.9	4.8
Merseyside	5.9	6.1	6.0	5.9	5.1	4.5	3.6	3.5	3.4
England	7.1	7.1	6.5	6.0	5.9	5.6	5.0	4.6	4.6

Sources: *Statistics of local authority activities under the homelessness legislation: England*  
*DETR Information Bulletin 00/181 and earlier editions*  
*Regional Trends 1998, ONS and earlier editions*

Table 4

**Homeless acceptances by in priority need by reason for loss of last settled home**

	Relative/Friends no longer able to accommodate <sup>(a)</sup>			Relationship breakdown <sup>(a)</sup>			Mortgage arrears	Loss of rented accommodation (a)				Total	Other	Total
	Parents	Others	Total	Violent	Other	Total		End of assured		Loss of other rented or tied accommodation	Total			
								Rent arrears	shorthold tenancy					
1991	..	..	61,020	..	..	23,620	16,630	3,930	..	..	19,960	19,630	<b>144,790</b>	
1992	39,750	19,180	58,930	15,260	8,740	24,000	13,710	3,090	8,710	12,140	20,850	22,310	<b>142,890</b>	
1993	33,210	17,310	50,520	16,950	8,420	25,370	10,740	2,320	11,010	11,690	22,700	20,740	<b>132,390</b>	
1994	25,240	16,040	41,280	17,590	7,900	25,490	10,150	2,070	11,830	11,580	23,410	20,060	<b>122,460</b>	
1995	20,930	15,050	35,980	19,880	7,830	27,710	9,960	2,140	13,110	11,460	24,570	20,920	<b>121,280</b>	
1996	19,560	14,230	33,790	20,080	7,930	28,010	8,210	2,310	13,630	11,010	24,640	20,050	<b>117,010</b>	
1997	15,800	11,400	27,200	18,920	6,950	25,870	5,940	2,360	13,500	9,280	22,780	18,260	<b>102,410</b>	
1998	16,540	11,690	28,230	18,310	6,920	25,230	6,150	2,720	15,390	8,530	23,920	18,240	<b>104,490</b>	
1999	16,860	12,900	29,760	17,670	7,230	24,900	4,910	3,200	14,170	8,160	22,330	19,670	<b>104,770</b>	
<i>Share of total acceptances</i>														
1991	..	..	42%	..	..	16%	11%	3%	..	..	14%	14%	<b>100%</b>	
1992	28%	13%	41%	11%	6%	17%	10%	2%	6%	8%	15%	16%	<b>100%</b>	
1993	25%	13%	38%	13%	6%	19%	8%	2%	8%	9%	17%	16%	<b>100%</b>	
1994	21%	13%	34%	14%	6%	21%	8%	2%	10%	9%	19%	16%	<b>100%</b>	
1995	17%	12%	30%	16%	6%	23%	8%	2%	11%	9%	20%	17%	<b>100%</b>	
1996	17%	12%	29%	17%	7%	24%	7%	2%	12%	9%	21%	17%	<b>100%</b>	
1997	15%	11%	27%	18%	7%	25%	6%	2%	13%	9%	22%	18%	<b>100%</b>	
1998	16%	11%	27%	18%	7%	24%	6%	3%	15%	8%	23%	17%	<b>100%</b>	
1999	16%	12%	28%	17%	7%	24%	5%	3%	14%	8%	21%	19%	<b>100%</b>	

Notes: (a) Changes to the figures collected means that figures for some categories are not available prior to April 1991

Sources: Statistics of local authority activities under the homelessness legislation: England

Table 5

**Homeless acceptances in priority need by need category**

	Household with dependent children	Household member pregnant	Household member vulnerable through:						Homeless in emergency	Total in priority need
			Old age	Physical Handicap	Mental Illness	Young Person	Domestic Violence	Other		
<i>Number of acceptances</i>										
1991	88,950	18,830	5,860	4,430	4,750	..	..	12,610	1,820	<b>137,250</b>
1992	85,320	18,540	6,230	5,440	6,080	4,460	6,470	4,930	1,270	<b>138,740</b>
1993	76,390	16,500	5,920	5,400	6,490	4,470	7,060	4,250	1,150	<b>127,630</b>
1994	68,620	14,060	6,050	6,050	7,100	4,090	7,370	4,170	980	<b>118,490</b>
1995	66,290	13,430	5,890	6,550	7,430	3,760	8,430	4,550	1,160	<b>117,490</b>
1996	63,420	12,930	5,510	6,250	8,180	3,580	8,220	4,410	1,090	<b>113,590</b>
1997	58,780	10,470	4,220	5,310	7,030	3,260	6,780	5,420	1,140	<b>102,410</b>
1998	62,730	10,850	3,960	5,140	7,300	3,480	6,490	5,730	960	<b>106,640</b>
1999	61,270	10,200	3,750	5,170	7,530	3,640	6,100	6,110	970	<b>104,740</b>
<i>Per cent of total</i>										
1991	65%	14%	4%	3%	3%	..	..	9%	1%	100%
1992	61%	13%	4%	4%	4%	3%	5%	4%	1%	100%
1993	60%	13%	5%	4%	5%	4%	6%	3%	1%	100%
1994	58%	12%	5%	5%	6%	3%	6%	4%	1%	100%
1995	56%	11%	5%	6%	6%	3%	7%	4%	1%	100%
1996	56%	11%	5%	6%	7%	3%	7%	4%	1%	100%
1997	57%	10%	4%	5%	7%	3%	7%	5%	1%	100%
1998	59%	10%	4%	5%	7%	3%	6%	5%	1%	100%
1999	58%	10%	4%	5%	7%	3%	6%	6%	1%	100%

Sources: Statistics of local authority activities under the homelessness legislation: England  
DETR Information Bulletin 00/181 and earlier editions

Table 6

**Homelessness acceptances in Wales** <sup>(a)</sup>

	Cases presented	Cases accepted	Persons involved in accepted cases	Households in temporary accommodation at year end
1979	7,080	4,680	12,700	500
1980	8,280	5,450	14,320	610
1981	8,610	5,460	14,740	600
1982	9,060	5,610	13,630	470
1983	9,190	5,010	13,420	490
1984	8,850	5,000	12,630	490
1985	9,210	5,370	13,800	460
1986	9,860	5,970	15,310	490
1987	8,420	5,680	14,400	660
1988	10,010	6,820	17,110	650
1989	11,490	7,810	19,180	830
1990 (b)	14,750	9,960	19,720	1,010
1991	14,170	9,840	24,110	1,210
1992	12,900	10,270	23,170	1,030
1993 (c)	13,430	11,130	23,490	760
1994	12,470	10,290	22,120	610
1995	12,380	9,000	18,360	550
1996	12,770	9,150	17,480	510
1997 (d)		8,640		690
1998 (d)		8,330		850
1999 (d)		8,140		850

Notes: (a) Rounded to nearest 10

(b) Cases presented and accepted include estimates of 2,000 households made homeless as a result of a major flooding incident in Colwyn

(c) Cases presented and accepted include estimates of 237 households made homeless as a result of a major flooding incident in Llandudno

(d) As in England figures from 1997 are as under the 1996 Housing Act. Presentation of these differs from earlier years.

Sources: *Welsh Housing Statistics 2000, Table 7.1, and earlier editions*

## **List of abbreviations**

Approved Development Programme (ADP)

Association of London Government (ALG)

Chartered Institute of Housing (CIH)

Council of Licensed Conveyancers (CLC)

Council of Mortgage Lenders (CML)

Department of Environment, Transport and the Regions (DETR)

Department of the Environment (DoE)

Home Condition Report (HCR)

Local Government Association (LGA)

Incorporated Society of Valuers and Auctioneers (ISVA)

National Association of Estate Agents (NAEA)

National Housing Federation (NHF)

Policy Action Team (PAT)

Royal Institute of Chartered Surveyors (RICS)