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The Housing Corporation (Delegation) etc Bill

Bill 164 of 2005-06

This Bill, which was presented on 30 March 2006, will correct a gap in the constitution of the Housing Corporation, the regulatory and funding body of registered social landlords (RSLs) in England. The Corporation has been delegating the exercise of its statutory functions below board level without having the power to do so.

The Bill will also clarify the legal position with regard to the exercise of the Corporation's past functions and those of Housing for Wales, the regulatory and funding body of RSLs in Wales between 1988 and 1999.

The Bill's provisions extend to England, Wales and Scotland.

Wendy Wilson

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Summary of main points

The Housing Corporation is the regulatory and funding body for registered social landlords (RSLs, also referred to as housing associations) in England.

In January 2006 the Corporation received legal advice that it lacked the statutory power to delegate the exercise of its functions below board level. The Corporation has, in practice, been delegating the exercise of its functions to committees, individual officers and employees. There is also some doubt about decisions made by Housing for Wales, the regulatory and funding body for RSLs in Wales between 1988 and 1998, for the same reason.

The purpose of this Bill is to ensure that the Corporation has the power to delegate the exercise of its functions in future and to clarify the position as regards the exercise of its past functions, and those of Housing for Wales.

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I Background

The Housing Corporation regulates and funds registered social landlords (RSLs, also referred to as housing associations) in England. The legislation under which the Housing Corporation carries out its regulatory duties is the *Housing Associations Act 1985*.

In January 2006 the Corporation received legal advice on its arrangements for decision-making which highlighted the fact that, unlike many other Non-departmental Public Bodies (NDPBs), the Corporation did not have an express power under the 1985 Act to delegate the exercise of its statutory functions below board level. The Corporation has, in practice, been delegating the exercise of its functions to committees, individual officers and employees.

The discovery of this gap in the Corporation's constitutional powers has cast doubts on the validity of a substantial number of decisions previously made, such as the granting of consents for the disposal of land under section 9 of the *Housing Act 1996* and its predecessor legislation, section 9 of the *Housing Associations Act 1985* and section 2 of the *Housing Act 1974*. Disposal is defined widely, so that the Corporation's consent is required for sales, and also for mortgages and charges. This requirement exists to protect public funds by providing a control mechanism for disposals. The Corporation's consent under section 9 confirms to lenders and purchasers that a disposal is valid.

The Corporation introduced new procedures from 12 January 2006 to ensure that where a matter requires a board decision it is put before a board meeting. Since this date the board has been meeting weekly to ensure that, so far as possible, decisions are made in a timely fashion and meet RSL financial deadlines.¹ After further discussions with lenders the Corporation reviewed its internal procedures in order to respond to their specific concerns.

In respect of Wales and Scotland, the Corporation's functions were transferred to Housing for Wales and Scottish Homes by the *Housing Act 1988* and *Housing (Scotland) Act 1988* respectively. Subsequently the functions of Housing for Wales were transferred to the Secretary of State for Wales under section 140 of the *Government of Wales Act 1998*; Housing for Wales was abolished as from 31 March 1999. Scottish Ministers took over the powers of Scottish Homes under the *Housing (Scotland) Act 2001*. There is also some doubt about the validity of decisions made by Housing for Wales prior to the transfer of its powers.

In February 2006 the Government said that it would legislate to bring the Corporation's decision making powers in line with other NDPBs:

The Minister for Housing and Planning (Yvette Cooper): The Government will legislate to modernise the Housing Corporation's decision making arrangements

¹ www.housingcorp.gov.uk/server/show/ConWebDoc.7195

as necessary, at the earliest opportunity. This will clarify its ability to delegate decisions from the Board to subcommittees and to officers.²

Section 9(2) of the *1996 Housing Act* allows the Corporation to issue a General Consent which means that RSLs can effect certain disposals without seeking permission on each occasion. The last General Consent was issued in 2003. On 14 March 2006 the Corporation issued a draft General Consent for consultation. If approved by the Corporation this document will have retroactive effect and will apply to all disposals made before 23 January 2006 where those disposals were made following a consent given under seal of the Corporation. The effect of this would be to validate any consent to dispose of land given under the previous arrangements.³

General information on the role of the Housing Corporation can be found online at: <http://www.housingcorp.gov.uk/>

II The Bill

The aim of this Bill is to ensure that the Housing Corporation has the power to delegate the exercise of its functions in future and to clarify the position as regards the exercise of its past functions.

Clause 1 will insert a new Schedule 6 to the 1985 Act to give the Corporation power to delegate the exercise of its functions to any of its members, committees, sub-committees or employees.

Subsection (2) will give the Corporation and Housing for Wales retrospective power to delegate their functions in the period prior to the Bill receiving Royal Assent.

Subsection (3) will validate anything done or evidenced by a document executed by the Corporation or Housing for Wales under seal in the period before Royal Assent.

Subsection (4) provides that where the fixing of the seal has been authenticated by any member or employee of the Corporation or Housing for Wales in the period prior to Royal Assent it will have been properly authenticated.

The Bill will, in effect, restore the status quo by bringing all parties back to the position they thought they were in before the constitutional gap was discovered. There are no public expenditure or public service manpower implications.

² HC Deb 14 February 2006 c78WS

³ www.housingcorp.gov.uk/upload/pdf/General_Consent_Consultation_Paper.pdf