



# ***Localism Bill: Committee Stage Report***

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This is a report on the House of Commons Committee Stage of the *Localism Bill*. It complements Library Research Papers 11/02 (Local Government and Community Empowerment) and 11/03 (Planning and Housing) prepared for the Commons Second Reading.

The Bill covers a wide range of topics in local government, planning, housing and the governance of London. The Bill was not substantially amended in Committee, although there were some minor technical Government amendments. However, at several points, Ministers agreed to look again at certain issues and consider whether to introduce amendments at Report Stage.

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## Research Paper 11/32

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## Summary

### Local government and community empowerment

The local government and community empowerment part of the Bill was not altered in Committee. The Government did however agree to further consider the following points, or to look favourably on amendments if they are put down:

- Should the provisions for directly elected mayors in the 12 main cities be extended to other cities? (Schedule 2)
- Should the term “closed mind” in the predetermination provisions be changed? (clause 13)
- Should the Government amend the Bill so the Mayor of London and the Assembly would be jointly responsible for the new standards regime? (clause 16)
- Should the senior pay policy provisions apply to contractors in the light of the Hutton report? (clause 21)
- Should there be a method in place to allow alternative ways of participating in the community right to challenge? (clause 68)
- Should there be mechanisms in place to deal with assets of community value that might straddle two local authority boundaries? (clause 71)
- The attention of the Transport Secretary would be drawn to new clause 17, which would give the six integrated transport authorities a general power, similar to that of the fire and rescue authorities.

### Planning

The planning part of the Bill was not substantially altered in Committee, although there were a few technical Government amendments. More important was the fact that in several major areas, the Government promised to reconsider, with the option of bringing proposals at Report Stage:

- Should local authorities need to have an up-to-date development plan in place by the end of 2012, after which a presumption in favour of sustainable development would apply? (clause 92)
- Should Community Infrastructure Levy payments be available for affordable housing? (clause 94)
- How best to give the business community a legitimate role in neighbourhood planning? (Schedule 9)
- Should local government officers and planning inspectors be included among those entitled to carry out independent examination of draft neighbourhood development plans? (Schedule 10)
- Should planning law heritage protection for conservation areas and the setting of listed buildings be maintained by neighbourhood plans? (Schedule 10)

- Should councils have more freedom to sell land below the best available price for community projects? (clause 101 but any change would not necessarily be in the Bill)
- Could the procedure for planning applications for major infrastructure projects of national significance be simplified? (Schedule 13, but any proposals would probably come in the Lords stages)

## Housing

Some minor and technical Government amendments to the housing aspects of the Bill (specifically clauses 124, 125, 128 and Schedule 19) were agreed. No Opposition amendments were made but the Government agreed to consider the following points:

- The process by which applicants for local authority housing are told that they are ineligible for an allocation (clause 122).
- Andrew Stunell agreed to respond in writing to issues raised by Nick Raynsford on the wording of the Bill concerning the creation of a demoted tenancy on termination of a flexible tenancy (clause 131).
- The case for extending the guarantee of continued security of tenure where existing tenants choose to move to an affordable rent tenancy (clause 132).
- How best to address issues raised by the Court of Appeal's decision in *Tiensia v Vision Enterprises Ltd and Honeysuckle Properties v Fletcher and others* in relation to tenancy deposit schemes.

## London

A few minor and technical Government amendments were approved.

# 1 Local government and community empowerment

## 1.1 Second Reading Debate

Second Reading of the Bill took place on 17 January 2011.<sup>1</sup> Opening the debate, Secretary of State for Communities and Local Government, **Eric Pickles**, said

The Bill will reverse the centralist creep of decades and replace it with local control. It is a triumph for democracy over bureaucracy. It will fundamentally shake up the balance of power in this country, revitalising local democracy and putting power back where it belongs, in the hands of the people. The Bill is based on a simple premise: we must trust people who elect us and we must ensure that we trust them to make the right decision for their area...by pushing power out, getting the Government out of the way and letting people run their own affairs.<sup>2</sup>

Shadow Secretary of State for Communities and Local Government, **Caroline Flint**, moved an amendment that declined to give a Second Reading to the *Localism Bill* because

It is a Bill that we will demonstrate over the coming weeks will not, I am afraid, revolutionise local politics, empower the masses to shake up their town halls or reinvigorate local democracy. It is a Bill that the Business Secretary rightly described as "not thought through". Above all, the Bill empowers one person: the Secretary of State. We believe in devolving power to local communities and giving people a real say in how their local area is run: we believe that power should rest in the hands of the many, not the few; and we are optimistic because we have faith that there are few problems so intractable that local communities do not ultimately have the answer.

We would welcome and support a Bill, therefore, that genuinely devolved powers, which is what the Localism Bill was meant to do. We were promised a radical redistribution of power from central Government to people -a new dawn for people power and a groundbreaking shift in power to councils and communities. We were told that this would be the first Government to leave office with much less power in Whitehall than they started with. Today we see that that is just another broken promise.<sup>3</sup>

Other points raised during the debate included:

- The Bill enabled a move towards diversity in the supply of public services. (**Sir Paul Beresford**)<sup>4</sup>
- Concern that if a local authority chooses not to have a code of conduct, there would be nothing between the action of pulling a local councillor up and questioning their actions in some way and taking criminal action against them for failing to deal properly with an issue in relation to which they had a registered interest. (**Clive Betts**)<sup>5</sup>
- The issue of mayors was one about which the Liberal Democrat Benches were concerned. (**Simon Hughes**)<sup>6</sup>

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<sup>1</sup> HC Deb 17 January 2011 cc558-666

<sup>2</sup> *Ibid* c558

<sup>3</sup> *Ibid* c565

<sup>4</sup> *Ibid* c575

<sup>5</sup> *Ibid* c577

<sup>6</sup> *Ibid* c580

- Some Government money would be needed, but probably about a 10th as much as would be necessary if the community did not lead the process. (**Rory Stewart**)<sup>7</sup>
- The community right to challenge could lead to “privatisation by the back door.” (**Joan Walley**)<sup>8</sup>
- The Bill did not contain the back-up, support, funding and guidance necessary genuinely to give people the sense that they could take on these services. Expectations would be raised and people set up to fail, thus setting the community empowerment agenda back years. (**Hazel Blears**)<sup>9</sup>
- The people of Birmingham were quite capable of deciding for themselves whether they wanted to have a directly elected mayor, rather than having one imposed from the centre by the Secretary of State, subject to later endorsement. (**Shabana Mahmood**)<sup>10</sup>
- Advisory local referendums were similar to ‘no-hope petitions’ as well as being much more expensive. (**Zac Goldsmith**)<sup>11</sup>
- Concern about how the charging formula for EU fines would work. (**Henry Smith**)<sup>12</sup>

## 1.2 Developments during Committee Stage

### *Impact assessments*

The impact assessments for the Bill were published on 31 January 2011.<sup>13</sup> **Barbara Keeley**, Shadow Minister for Communities and Local Government, complained during the Committee Stage that the impact assessments for the Bill had only been published at the beginning of the week, which she considered to be an ‘insult to the scrutiny and accountability function’.<sup>14</sup> **Andrew Stunell**, Parliamentary Under Secretary of State for Communities and Local Government, apologised for not producing the impact assessments earlier but said “with a large, complex bill, we ought to aim for thoroughness rather than speed in the impact assessments.”<sup>15</sup>

### *Consultation papers*

The Government issued consultation papers on the community right to challenge and community assets on 4 February 2011. The two consultation papers sought views on particular aspects of the Bill and close on 3 May 2011. The *Community right to buy consultation paper*<sup>16</sup> noted several important points about the policy, including the fact that it relates to the purchase of an asset – i.e. land or building – and not the service attached to that building. This is of interest given the media focus on some of these services recently, such as libraries.<sup>17</sup> The consultation paper says that,

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<sup>7</sup> Ibid c587

<sup>8</sup> Ibid c588

<sup>9</sup> Ibid c607

<sup>10</sup> Ibid c591

<sup>11</sup> Ibid c648

<sup>12</sup> Ibid c612

<sup>13</sup> The full list of [impact assessments](#) is available on the DCLG website.

<sup>14</sup> PBC Deb 3 February 2011 c283

<sup>15</sup> Ibid c289

<sup>16</sup> DCLG, [Proposals to introduce a community right to buy – assets of community value consultation paper](#), Feb 2011

<sup>17</sup> For more information see SN/HA/5875, [Public library closures](#), 18 February 2011

The proposed community right to buy scheme in England and Wales applies to assets only (that is, land and buildings), not services. Community groups may therefore be able to nominate a building to be listed as an asset of community value, but not the service that operates from within that building. For example, a post office is a contractual service and whilst community groups may be able to nominate the building from which the postal service operates, this would not guarantee that continuation of the post office service but that this could be something for the community to take on separately if it so wished. This could also be the case with library services.<sup>18</sup>

The *Community right to challenge* consultation paper was published on the same day; it said:

The reason for closure of a community building or facility may affect the viability of an alternative community ownership proposal. However, community ownership can allow the adoption of a different business model and therefore make the asset viable again (e.g. through the use of volunteers, access to charitable funding or community share investment, or through a more enterprising pattern of service provision) which would not be open to the current private or public sector owners/operators.<sup>19</sup>

### 1.3 Some themes from memoranda submitted to Localism Bill Committee

The Committee Stage took place between 25 January and 10 March 2011. Oral evidence was taken on 25 and 27 January from a number of organisations, and amendments were taken from 1 February onwards. There were more than 180 written submissions.<sup>20</sup>

General support for localism and the aims of the Bill came from most organisations. Comments included:

#### **General**

- The Government has not faced up explicitly to the issue of how decentralization to local authorities and decentralization to communities relate to each other, or recognized the complexity of the issues that have to be faced in the development of community groups. (Emeritus Professor George Jones and Emeritus Professor John Stewart)

#### **General power of competence**

- Breadth of restrictions on a local authority to do things for a commercial purpose under clause 4 must be clarified to allay fears that councils will use the wider powers to enter into direct competition with local businesses simply in order to fund their operations. (British Chambers of Commerce)
- Powers that permit the Minister by order to 'amend, repeal, revoke or disapply' any statutory provision could be used to revoke or repeal important statutory provisions, such as the Public Sector Equality Duty with minimal parliamentary scrutiny. (Equality and Diversity Forum)

#### **Governance**

- There should be an equalisation of the powers that scrutiny has over the council and other partners – including health and crime and disorder partners ...This will help to augment local, democratic accountability. ( Centre for Public Scrutiny)

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<sup>18</sup> *Ibid*, p22

<sup>19</sup> DCLG, [Proposals to introduce a community right to challenge consultation paper](#), February 2011

<sup>20</sup> Copies of the written evidence are available on the [Public Bill Committee's website](#).

### **Mayors**

- Allowing the installation of 'shadow mayors' before a referendum is held risks undermining trust in both local and national decision-makers. (Essex County Council)
- The proposals to allow for an elected mayor in certain circumstances to also become Head of the Paid Service require more detailed consideration. Because such a role would straddle across the elected official and employed official line to a far greater degree than ever before then there would need to be checks and balances in place designed to deliver realistic checks on the exercise of that function. (Association of Council Secretaries and Solicitors (ACSeS))

### **Predetermination**

- Abolition of the predetermination rules are welcome but the Bill should go further and contain a positive duty to engage in certain circumstances. (The Remarkable Group)

### **Standards**

- The Mayor and Assembly should jointly oversee any future standards regime rather than it being solely a matter for the Assembly. (Mayor of London and the London Assembly)
- It would be a backward step to remove the mandatory requirement for a code of conduct; it would not be sufficient to leave any instances of poor conduct solely to be dealt with by the criminal law or through the discipline of the ballot box. (Committee on Standards in Public Life)

### **EU fines**

- EU fines measures have not been subjected to consultation with local representatives and could result in significant financial strain on local authorities. (Brentwood Borough Council)

### **Business rates**

- Proposed extended powers for the granting of discretionary rate relief risks raising false hope in the business community and councils could be faced with an increase in applications. (District Councils' Network)

### **Local referendums**

- The 'California' experience of Local Referendums has shown that the public will always vote for more services, but to pay less money and the lessons should be learned from that experience. (Hampshire Association of Local Councils)
- The petition threshold for referenda is too low to be fairly representative which is key to providing a clear view of community opinion on an issue. (County Councils Network)

### **Council tax referendums**

- The clauses relating to council tax referendums are of particular concern to local government, as they allow for Central Government to dictate what constitutes an "excessive" rate of council tax, without reference to local circumstances. (Local Government Yorkshire and Humber)
- We agree with the Government that it is for local people to determine whether a proposed council tax rise is excessive. (Local Government Group)

**Community right to challenge**

- Safeguards are needed to ensure that the Community Right to Challenge works for the most vulnerable and hardest to reach groups. (Crisis)
- Requirement of community right to consider whether acceptance of the expression of interest would promote or improve the social economic or environmental well-being of the authority's area should be extended to include equality. (Age UK)

**Assets of community value**

- There should be a requirement that the community right to buy expression of interest can only be initiated by a local organisation or a national organisation working with a local community partner. ( Development Trusts Association)
- If the Bill proceeds as currently set out there is a danger that local authorities might be open to legal challenge from private sector owners whose assets have been nominated for inclusion on the list, especially where privately owned land is included. (The Chartered Institute of Public Finance & Accountancy (CIPFA))

**1.4 Oral evidence**

The following summarises some of the main points raised during oral evidence.

- The Local Government Association (LGA) broadly welcomed the Bill, but felt it did not always free up local councils and communities in the way Ministers intended.<sup>21</sup>
- Localis welcomed the Bill and thought that it should be considered in line with a move to localise business rates.<sup>22</sup>
- The Centre for Local Economic Strategies (CLES) welcomed the Bill but felt that it should also have led to decentralisation of local government finance, and that once a challenge was made under the community right to challenge it might not be the community that enjoys the transfer of services or more involvement with them but big business or non-local providers.<sup>23</sup>
- The Local Government Information Unit (LGIU) broadly supported the Government's localism commitment but questioned whether the Bill could achieve its aims. LGIU felt that the GPC (General Power of Competence) did not need to be qualified or limited, and neither did many of the other provisions of the Bill.<sup>24</sup>
- **Professor Jones** said the Bill should not be called a *Localism Bill* ... but a centralism Bill, because it conferred many powers on the Secretary of State to issue regulations and orders.<sup>25</sup>
- The CBI's main concern was whether the Bill could help drive the economic recovery. The CBI also expressed concerns that if business rates were localised, this could imply extra costs for business.<sup>26</sup>

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<sup>21</sup> PBC Deb 25 January 2011 c7

<sup>22</sup> *Ibid* c7

<sup>23</sup> *Ibid* c8

<sup>24</sup> *Ibid* c21

<sup>25</sup> *Ibid* c35

<sup>26</sup> PBC Deb 27 January 2011 c103

- The British Chambers of Commerce (BCC) wanted businesses to have a voice on local referendums, as well as additional guidance about how the Bill would work in practice. The organisation was in favour of the measures relating to the small business rate scheme, but also expressed concern about the potential costs of the localisation of business rates.<sup>27</sup>
- The Federation of Small Businesses (FSB) were concerned that the word ‘business’ did not feature in the Bill, welcomed the automatic payment of small business rate relief, and expressed concern that the localisation of business rates could lead to problems for councils with smaller incomes. The FSB also said that the community empowerment measures should include some recognition of the business community.<sup>28</sup>
- **Shaun Spiers**, Chief Executive, Campaign to Protect Rural England, felt that the assets of community value measure would give communities a stake in their areas by giving them time to consider whether to take over an asset if it is in danger of being sold off.<sup>29</sup>
- **Sylvia Brown**, Chief Executive, Action with Communities in Rural England, commented that they were “particularly concerned about assets that are being lost because it is considered uneconomic to keep them going. Under those circumstances those cases should have some kind of higher priority ... than others that are just part of a wish list within the community.”<sup>30</sup>
- **Neil Cleeveley**, Director of Policy and Communication at the National Association for Voluntary and Community Action, said that “one of the opportunities for the Bill is the development of the relationship between local elected members and their communities. One of the problems of the past has been councillors tending to get stuck in the town hall ... this presents a real opportunity to elicit some real change in that relationship.”<sup>31</sup>

The Committee also took evidence from the Community and Local Government Ministers in charge of the Bill – **Greg Clark**, Minister of State, **Robert Neill** and **Andrew Stunell**, Parliamentary Under-Secretaries of State. Responding to a question about the timing of the Bill from **Barbara Keeley**, **Greg Clark** said “it is absolutely right to put this at the beginning of a new legislative session. If it were later in the Parliament you could produce a draft Bill and do all the other consultative procedures.”<sup>32</sup> **Barbara Keeley** replied that the reason there were so many order-making powers in the Bill was because there had not been enough scrutiny or consultation.<sup>33</sup>

**Robert Neill**, in response to a question from **Brandon Lewis**, noted that

Some of the business representatives gave evidence about the importance of engaging business. In a small way, we make a start on that with the revisions to business rates particularly the power to give a discount on business rates...we are

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<sup>27</sup> *Ibid* c112

<sup>28</sup> *Ibid* c116

<sup>29</sup> *Ibid* c131

<sup>30</sup> *Ibid* c132

<sup>31</sup> *Ibid* c149

<sup>32</sup> *Ibid* c160

<sup>33</sup> *Ibid* c159

creating an incentive once more for local authorities to engage more systematically with their business communities.<sup>34</sup>

**Nic Dakin** raised the number of powers available to the Secretary of State in the Bill. **Greg Clark** responded that he did not “intend this to be centralising, other than where there is a necessary condition to empower.” **Nic Dakin** asked about the measures relating to elected mayors. **Andrew Stunell** responded, “we are not actually imposing mayors on the 12 cities. We are saying that the electors in the 12 cities should have the opportunity to take a formal decision about whether they want to have a mayor”.<sup>35</sup>

## 1.5 Debates on clauses

### **General Power of Competence**

The Committee debated an amendment to clause 1 which would convert the phrase, *general power of competence* (GPC), to the phrase, *power of general competence*. **Barbara Keeley**, who moved the amendment, felt it was a stronger term than the GPC and had been used by the Local Government Association in its draft Bill.<sup>36</sup> **Andrew Stunell** reassured the Committee that the amendment was not necessary as the subsequent clauses clarified the powers to be given to local authorities.<sup>37</sup> The amendment was negated on division.

During the debate on the clause, **Barbara Keeley** raised a number of points, including:

- Would Ministers issue a clear statement of principle on the powers and how they are to be interpreted?
- Would there be clarity about what councils are expected to do, and what they are not?
- There was a danger that councils who wished to innovate would be challenged.<sup>38</sup>

**Andrew Stunell** responded that the various sub-clauses gave more clarity on the powers and that “the courts will find it difficult – we have been advised that they will find it impossible – to unpick” the power.<sup>39</sup> He argued that producing a list of examples of what would be permitted under the power would not work: “as soon as we start to make a list, somebody will say, ‘you’ve done something that wasn’t on the list.’”<sup>40</sup> He also sought to reassure Ms Keeley that “every local authority will retain duties enshrined in other legislation to provide services and not to charge for them, if charging is not allowed at present.”<sup>41</sup>

**Nick Raynsford** expressed his view that,

... it is simply wrong to say that a local authority is in the same position as an individual. A local authority is a corporate body and it is bound by certain regulations...We have no clarity about the limitations on local authorities under that heading, quite apart from the others.<sup>42</sup>

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<sup>34</sup> *Ibid* c164

<sup>35</sup> *Ibid* c168

<sup>36</sup> PBC Deb 1 February 2011 c174

<sup>37</sup> *Ibid* c176

<sup>38</sup> *Ibid* c179

<sup>39</sup> *Ibid* c181

<sup>40</sup> *Ibid* c183

<sup>41</sup> *Ibid* c184

<sup>42</sup> *Ibid* c184

He queried the Henry VIII powers given to the Secretary of State, and asked why the draft regulations were not available to the Committee, as well as raising concerns about the power of local government to do anything for a commercial purpose.<sup>43</sup> Responding to the various points made by the Committee, **Andrew Stunell** said,

... local authorities should trade on an equal footing with the commercial sector; there should be a level playing field, and that is what we are ensuring in requiring them to trade as companies. It is also important from the point of view of taxation...instead of having a regime that can proceed only under permission and under legislation, we are changing it round and saying, "You can do anything an individual can do unless it is forbidden."<sup>44</sup>

Clauses 1 and 2 were ordered to stand part of the Bill. Schedule 2 was agreed to.

**Barbara Keeley** introduced a group of amendments to clause 5 that would change the Secretary of State's powers to make supplemental provisions relating to the GPC. She was concerned that,

... the promise of a radical redistribution of power from central Government to local people is undermined due to the extent to which the Bill hands powers to the Secretary of State to override those devolved powers.<sup>45</sup>

Responding, **Andrew Stunell** said,

... many barriers that the authorities are drawing to our attention are administrative and are posed by the interpretation of regulations. In such cases, clarification by the Secretary of State is appropriate, and it would be tremendously heavy-handed for that to require primary legislation, with all the associated delay and consequences...The Secretary of State's capacity—the reserved power—to intervene is not something that will be used lightly.<sup>46</sup>

**Mr Stunell** noted that "the Government expect to use the power in these subsections very rarely," and he further noted that the Secretary of State could not simply ignore the results of the consultation required under subsection (7).<sup>47</sup> The clause was ordered to stand part of the Bill following a division.

**Jack Dromey**, Shadow Minister for Communities and Local Government, said that the Labour Party broadly supported the proposals in clause 8, relating to the general powers of fire and rescue authorities although he said "we believe that the extension of the Secretary of State's powers is too broad", and criticised the Bill's Henry VIII powers.<sup>48</sup>

**Nick Raynsford** commented,

It seems that the Government have the fire and rescue services well and truly caught. They can do what they like, but cannot do anything that is prohibited by a statute or statutory instrument that came into force before the Act comes into effect or any legislation that comes into effect afterwards.<sup>49</sup>

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<sup>43</sup> *Ibid* c185

<sup>44</sup> *Ibid* c193

<sup>45</sup> *Ibid* c196

<sup>46</sup> *Ibid* c207

<sup>47</sup> *Ibid* c216

<sup>48</sup> *Ibid* c218

<sup>49</sup> *Ibid* c230

Responding, **Robert Neill** said,

... creating a general power for all fire authorities enables stand-alone fire authorities, or Metropolitan authorities...and what are generally referred to as combined fire authorities to have an equivalent power, which gives the freedom to operate.<sup>50</sup>

On the Henry VIII provisions, he said “the suggestion that the Secretary of State seeks to use draconian powers to restrict fire authorities does not reflect the reality of the clause’s intention either.”<sup>51</sup> The clause was ordered to stand part of the Bill following division.

**Robert Neill** responded to a point made by **Jack Dromey** that the Government did not intend the provisions to apply to domestic premises and clarified the extent of the powers of charging.<sup>52</sup> He later confirmed that the measure reflected provisions in the *Fire and Rescue Services Act 2004*, and would cover the channel tunnel, oil rigs and structures such as lighthouses that were beyond the territorial limit but could be reached by coastguard or other boats if they required the assistance of the fire services.<sup>53</sup>

### **Governance**

The Committee debated a number of amendments relating to Schedule 2, which dealt with governance arrangements for local authorities. **Barbara Keeley** noted that Labour supported allowing councils to return to the committee system if they wished. However, they did not support an enduring power of the Secretary of State to prescribe new governance arrangements without the scrutiny of Parliament and considered that such power was ‘centralising’.<sup>54</sup> **Andrew Stunell** noted that although the Schedule was lengthy, 98% of it was a reprint of part 1A of the *Local Government Act 2000*, which he said had included a number of powers for the Secretary of State.<sup>55</sup>

Further debate took place on amendments 40 and 19, which aimed to strengthen the scrutiny function in local authorities. **Barbara Keeley** said that,

... the amendments offer the opportunity to clarify the inconsistencies in legislation, to take account of changes to policy and practice since it was passed, and make the law on scrutiny easier to understand.”<sup>56</sup>

The amendments would also expand the number of organisations with which scrutiny could engage. **Nick Raynsford** said that if the Government

... allow a situation to develop where it is presumed that scrutiny will apply only in authorities with cabinet and executive responsibilities and structures, and not in local authorities with committee structures, a two-tier system will develop. The benefits of that wider scrutiny of partners and outside bodies will not occur in a local authority with a traditional committee structure because there is no obligation to have that scrutiny function.<sup>57</sup>

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<sup>50</sup> *Ibid* c232

<sup>51</sup> *Ibid* c234

<sup>52</sup> *Ibid* c237

<sup>53</sup> PBC Deb 3 February 2011 c281

<sup>54</sup> PBC Deb 1 February 2011 c241

<sup>55</sup> *Ibid* c242

<sup>56</sup> *Ibid* c251

<sup>57</sup> *Ibid* c258

Responding to the amendment, **Andrew Stunell** said that “Labour Members want to introduce yet another control on local authorities and yet another prescription on what they shall and shall not do.”<sup>58</sup> He concluded that “there does not seem to be any need for the amendments in practice.”<sup>59</sup> The amendments were withdrawn.

Further debate took place on amendments to allow local authorities rather than the Secretary of State to prescribe the circumstances in which meetings must be open to the public or might be held in private, and what written records would be kept. **Andrew Stunell** responded that “neither the Government nor the ministerial team are in any way inclined to add burdens to local authorities”<sup>60</sup> The amendments were withdrawn.

**Barbara Keeley** introduced amendment 7 to remove the proposal to allow an elected mayor to be the chief executive of a local authority. She said she was “not convinced that there is any compelling reason why elected mayors should become the chief executives of their authority.”<sup>61</sup> **Mr Stunell** replied,

... the Government believe that where such mayors exist, there is no need for a high-profile and highly paid chief executive sitting alongside the mayor and carrying out the same activities.<sup>62</sup>

The amendment was withdrawn.

**Barbara Keeley** moved further amendments to remove the power for the Secretary of State to require a specified local authority to confer a local public service function on its elected mayor, and to allow the transfer of functions to elected leaders as well as to elected mayors.<sup>63</sup> **Julie Elliot** raised her concern that Newcastle was among the 12 but Sunderland was not.<sup>64</sup> **Robert Neill** responded,

... we chose the 12 major cities outside London that have not so far had a referendum...the people of Sunderland had a referendum and chose not to have a mayor, which is why it is not on the list...if the hon. Lady believes that Sunderland wishes to be included on the list and tables an amendment on the subject the Government will consider it sympathetically.<sup>65</sup>

He also said that the same applied in Durham, in response to a question from **Ian Mears**.<sup>66</sup> The amendment was withdrawn.

**Barbara Keeley** moved amendments to remove the Secretary of State's power to direct or order the imposition of shadow mayors as the move is ‘anti-democratic’ and centralising.<sup>67</sup> **Robert Neill** responded, “we believe that, with the new system, it is good to have a short period in which people can see an elected mayor in practice and get a sense of what is on offer.”<sup>68</sup> The amendment was withdrawn.

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<sup>58</sup> *Ibid* c258

<sup>59</sup> *Ibid* c259

<sup>60</sup> *Ibid* c261

<sup>61</sup> *Ibid* c262

<sup>62</sup> *Ibid* c268

<sup>63</sup> *Ibid* c270

<sup>64</sup> *Ibid* c271

<sup>65</sup> *Ibid* c272

<sup>66</sup> *Ibid* c272

<sup>67</sup> *Ibid* c276

<sup>68</sup> *Ibid* c277

Schedule 2 was agreed to.

### **Predetermination**

**Barbara Keeley** asked for a change to the term ‘closed mind’ in clause 13 (Prior indication of a matter not to amount to predetermination etc) in line with a recommendation from the Law Society. The Law Society had expressed concern that “the benefit of the clause could be eroded if an individual expresses a view on development and is later perceived to have had a closed mind.”<sup>69</sup>

Robert Neill did not believe the wording was problematic but undertook to speak to the Law Society and report back if necessary. He also clarified that the term ‘county borough council’ was used to capture all directly elected authorities.

### **Standards**

**Barbara Keeley** moved amendment 41 to clause 16 relating to voluntary codes of conduct, that would make a code of conduct for councillors mandatory rather than voluntary, as “the ballot box was no guarantee against misconduct.”<sup>70</sup> **Nick Raynsford** noted that he understood the view made by many Members that the Standards Board was unduly prescriptive, but he “did not understand, and certainly did not support, any suggestion that a recognised code of conduct should not exist in every local authority.”<sup>71</sup>

**Andrew Stunell** responded to the debate. He said the Government believed,

... that if a local authority wants to adopt its own code of conduct, it should be free to do so. It is almost inconceivable that authorities will not adopt one...The primary protection for any employee stems from their position as an employee. The employer – the council or the police service, for example – has a legal duty to provide employees with a safe system of work. Allowing a situation to arise where an employee is subject to bullying or harassment would be a breach of that employer’s legal duty.<sup>72</sup>

The amendment was negated on division.

**Barbara Keeley** said “It seems obvious from the debate we have just had, that the local government ombudsman will take the brunt of cases”.<sup>73</sup> She asked what the DCLG’s estimate of the increase in work would be; what resources would be required; and whether the Government planned to amend the Bill so the Mayor of London and the Assembly would be jointly responsible for shaping the regime. **Andrew Stunell** responded that in London the Assembly would be responsible, but that representations on the matter would be further considered; he undertook to write to clarify any outstanding issues.<sup>74</sup> He later responded to the question relating to the Local Government Ombudsman:

We think the impact will be slight. The assumption that the impact will be large is based on a view that conduct will deteriorate, that more cases of maladministration will arise and that councillors will be able to get away with more poor conduct more easily, thus creating injustice that must be referred to the ombudsman, but we do not accept that.<sup>75</sup>

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<sup>69</sup> PBC Deb 3 February 2011 c282

<sup>70</sup> *Ibid* c284

<sup>71</sup> *Ibid* c285

<sup>72</sup> *Ibid* c287-8

<sup>73</sup> *Ibid* c291

<sup>74</sup> *Ibid* c292

<sup>75</sup> *Ibid* c301

The Clause was agreed to on division.

**Nick Raynsford** asked why an order under clause 17, relating to disclosure and registration of Member's interests, could be made determining which interests should be declared, and commented that Ministers "having said that they trust local authorities to develop their own code...do not trust them to have procedures for declaring interests".<sup>76</sup> **Barbara Keeley** noted that Labour supported the tightening of the legislation and the criminal offences for such things as a failure to declare a financial interest or an attempt to make a financial gain.<sup>77</sup>

**Andrew Stunell** responded, noting that the reason for the power was to ensure transparency and a register of interests that was published and available. He also said that the main difference between the requirement to have a voluntary code of conduct and the requirement to register interests was that "if criminal law is involved, it is right that Parliament takes a decision that applies to councils everywhere".<sup>78</sup>

In response to a question from **Nick Raynsford** about the Government's intention regarding the regulations that the clause allows, **Mr Stunell** said

... clearly, the Secretary of State will produce his regulations as soon as practicable. There will be a consultation exercise. I think that it would be quite surprising if the result of the circulation of the draft and the consultation was not a set of requirements that were, broadly speaking, identical to what we currently have.<sup>79</sup>

The clause was agreed to on question.

### ***Pay transparency***

**Jack Dromey** moved amendments to clause 21, on senior pay policy statements, and also moved new clause 1. He noted that "Amendments 45 to 56 would ensure that councils publish a low pay policy statement alongside their statement on senior pay. New clause 1 would require local government contractors to provide pay transparency statements if the value of their contract or contracts was in excess of £250,000."<sup>80</sup>

**Robert Neill** noted that the Government's position was that they would be prepared to revisit the issue in the light of the Hutton report.<sup>81</sup> The amendment was withdrawn "on the assurance that we will return to the matter on Report, in the light of the Hutton report."<sup>82</sup>

**Mr Stunell** noted, in response to a point made by **Nick Raynsford** about clause 23, relating to guidance on the pay measures:

The intention is for the Secretary of State to publish guidance on the practical operation of the [pay] measures. The Bill, as it stands, does not include the level of remuneration that should be brought to the attention of a full council. With inflation and other matters that might come to bear, over the years what the appropriate figure should be could change. The clause simply gives the Secretary of State the capacity to set parameters for the proposals that a council needs to take into account.<sup>83</sup>

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<sup>76</sup> *Ibid* c293

<sup>77</sup> *Ibid* c294

<sup>78</sup> *Ibid* c299

<sup>79</sup> *Ibid* c301

<sup>80</sup> *Ibid* c303

<sup>81</sup> *Ibid* c316

<sup>82</sup> *Ibid* c319

<sup>83</sup> *Ibid* c320

**Promotion of democracy**

**Jack Dromey** put on record Labour's concern and opposition to clause 27 which removed the duty on local authorities to promote democracy, placed on local authorities by the *Local Democracy, Economic Development and Construction Act 2009*. He noted that there had been no consultation on the measure before the Committee Stage, and that the 2009 duty had come about as a result of "considerable consultation and scrutiny".<sup>84</sup>

**Greg Clark** replied that the previous Government had not brought the provisions into effect because of the likely costs, which he noted had been estimated at £32m in the impacts assessment published with the December 2008 white paper.<sup>85</sup> He noted that the Government were trying to address the fundamental causes of a lack of participation in democracy rather than trying to deal with its symptoms.<sup>86</sup>

**Barbara Keeley** asked if the Committee would discuss the various disqualifications to being a local councillor, as some of those disqualified - such as teaching assistants and lollipop ladies – would be well placed to represent their local communities.<sup>87</sup> **Greg Clark** responded that there was no lack of opportunity for people to participate in their communities in ways other than through their employment, "but it is right that we reflect on the safeguards necessary to guard against possible conflict of interests."<sup>88</sup>

The clause was ordered to stand part of the Bill

**Jack Dromey** expressed his opposition to clause 28 on the repeal of provisions about petitions to local authorities. He noted that the original provision, in the Act 2009, had given local communities the legal right to accept and respond to local petitions but "under the Government's proposals citizens will be able to petition but a local authority will be under no obligation to respond."<sup>89</sup> He concluded the Government's commitment to localism, to the big society and empowering local communities is undermined by the removal, in defiance of 1,000 years of tradition, of the legal requirement for the right of every citizen to be heard."<sup>90</sup>

**Greg Clark**, responding to the comments, noted that the Government was not against petitions but the detailed prescription of them, and he reminded the Committee that LGA had cited the prescriptions on petitions as one of the top five most resented burdens on local authorities. He concluded, "repealing the duty does not in any way remove people's ability to petition their local council, but it removes a £4m burden and allows people to respond more directly to their local population."<sup>91</sup>

The clause was ordered to stand part of the Bill.

**EU fines**

**Barbara Keeley** announced that Labour objected very strongly to these provisions and would not support clauses 30 to 34 on the power to require local or public authorities to make payments in respect of certain EU financial sanctions. She commented that "EU fines are unfair at a time when the budgets of many local authorities are affected by the swingeing,

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<sup>84</sup> PBC Deb 3 February 2011 c322

<sup>85</sup> *Ibid* c326

<sup>86</sup> *Ibid* c326

<sup>87</sup> *Ibid* c328

<sup>88</sup> *Ibid* c329

<sup>89</sup> *Ibid* c331

<sup>90</sup> *Ibid* c331

<sup>91</sup> *Ibid* c333

front-loaded cuts imposed by the Government. The added threat of national fines being delegated to local councils by Ministers is unjustifiable.”<sup>92</sup> **Jonathan Reynolds** asked how the Government would ensure that no local authority would be liable for fines for pollution or other things that occurred before the Bill was passed.<sup>93</sup>

**Greg Clark** noted that clause 30 would require the Secretary of State to publish a policy paper for exercising the power and determining the amounts of fines, which the Government would draw up in consultation with the London Boroughs and the LGA. He further commented that “we are talking about cases where a particular local authority has an identifiable responsibility, was warned in advance and had the power to do something about the matter.”<sup>94</sup>

**Barbara Keeley** argued that there was no scope for local authorities to pay such fines given the extent of the cuts to their budgets, and asked how much the potential fines could be.<sup>95</sup>

**Greg Clark** responded that the UK had not had a fine from the EU, so it was not possible to say what a typical fine would be. However, “the whole purpose of the provisions is to ensure that we never have a fine, because they provide the right incentives for everyone who might contribute to an infraction to prevent it happening in the first place.” He also noted that clause 32 required the Minister to take account of the effect on the authority’s finances of any fine.<sup>96</sup>

The clause was ordered to stand part of the Bill following a division, as was clause 31.

Clauses 32 to 34, relating to EU financial sanctions, were each agreed on division.

### ***Business rates***

**Nick Raynsford** questioned the need for clause 35 on business rate supplements given that the *Business Rate Supplements Act 2009* allowed local authorities some discretion over whether to hold a ballot, rather than forcing them to hold one as the current Bill required.

**Robert Neill** said that the Government’s position was that business rate supplement (BRS) schemes should not be imposed without the affected businesses having a say.<sup>97</sup>

**Nick Raynsford** also noted that the Bill would not apply to BRS imposed before the section came into force, and argued that this would mean the Crossrail project could go ahead without requiring a ballot.<sup>98</sup> **Robert Neill** countered that Crossrail had to be exempt because a ballot would risk unpicking the whole of the funding settlement.<sup>99</sup>

**Jack Dromey** welcomed the principle of clause 36 relating to business rates discretionary relief but raised concerns as to the ability of councils which had been hit hard by the local government finance settlement to fund discounts.<sup>100</sup> **Robert Neill** responded that the principle behind the legislation was to give local authorities the choice as to how they fund it and in what form.<sup>101</sup>

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<sup>92</sup> *Ibid* c333

<sup>93</sup> *Ibid* c336

<sup>94</sup> *Ibid* c337

<sup>95</sup> *Ibid* c337

<sup>96</sup> *Ibid* c337-8

<sup>97</sup> *Ibid* c347

<sup>98</sup> *Ibid* c347

<sup>99</sup> *Ibid* c348

<sup>100</sup> *Ibid* c349

<sup>101</sup> *Ibid* c349

**Jack Dromey** welcomed the measures in clause 37 on small business rate relief and raised an issue made in representations from the British Chambers of Commerce (BCC) suggesting that the current drafting could result in many small businesses having to apply in future, and asked if the Minister would change the clause's wording to ensure that any new rate relief would automatically apply to small and medium-sized enterprises?<sup>102</sup>

**Robert Neill** was not convinced about the risk identified by the BCC but would continue to talk to them to ensure that any practical issues were picked up. He also said that he did not believe that the drafting gave rise to the concerns that had been raised, and that the issue would be better addressed through an information campaign.<sup>103</sup>

### **Local referendums**

**Barbara Keeley** introduced amendments to clause 39 that would ensure that a local authority would not hold more than two referendums in a year, in order to keep costs at a reasonable level. She noted that the costs of referendums could be 10 times as much as the cost of petitions, and said that amendment 87 was a probing amendment in order to determine what would happen if a local authority became deluged by requests and petitions to hold local referendums.<sup>104</sup>

Other points raised by the Committee were: the timing of referendums could mean that a decision had to be taken before a referendum could be set up; the non-binding nature of such referendums would lead to expectations locally that would not be matched by the outcome; and the petition system was already suitable to address local concerns on a matter and should not have been abolished.

Answering these points, **Andrew Stunell** said:

We are not imposing referendums on local government, but providing an opportunity for citizens in their communities to call one if they think it is appropriate. They will do so, one presumes, if they believe that the authorities are not delivering on something that they want to see happen or not happen.

The Bill does not specify every possible conceivable safeguard, but it introduces a mechanism for developing those safeguards, so that when the proposals come into force, they will be in place.

A number of points were made about the costings and some criticism was raised about the impact assessment. I remind the Committee that the provision is a new one, so it is covered by the new burdens doctrine, which is an obligation on central Government to ensure that no additional costs falls on local government collectively.<sup>105</sup>

**Barbara Keeley** introduced amendment 77 to clause 39 and amendment 78 to clause 50. The amendments would require local authorities to publish an accessible guide to the referendum process and for communities.<sup>106</sup> **Andrew Stunell** did not support the amendments as "the amendments go back to the bureaucratic and cumbersome petitions

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<sup>102</sup> *Ibid* c351

<sup>103</sup> *Ibid* c353

<sup>104</sup> *Ibid* c356

<sup>105</sup> *Ibid* c365

<sup>106</sup> *Ibid* c376

imposed on councils by the Labour government”.<sup>107</sup> The amendment was negated on division.

A number of similar issues were raised during the stand part debate. **Barbara Keeley** said “unless [**Andrew Stunell**] is prepared to give assurances that it will not be a costly burden, and there will be some safeguards, - and details of what the safeguards will be – we will vote against the clause.”<sup>108</sup> The clause was agreed on division.

**Stephen Gilbert** moved amendment 123 to clause 40 relating to petitions for local referendums and said that the clause allowed the local authority to vary the percentage at which a petition that has been duly signed by electors is accepted. He said that this was unnecessary given that the Bill already allowed the council to decide on a referendum if a majority of councillors want one.<sup>109</sup> Amendments 81, 82 and 83 were taken with amendment 123. Amendment 81 would change the required percentage from 5% to 10% of the local electorate. Amendment 82 would remove the power of the Secretary of State to change the trigger threshold through secondary legislation, and amendment 83 allowed the Secretary of State to increase the threshold but not lower it. **Barbara Keeley** said that in her party’s view the 5% threshold was too low and should be 10%, otherwise at ward level the trigger for a referendum could be as little as 400 signatures.<sup>110</sup>

**Andrew Stunell** responded by noting that “a referendum held at the same time as a local election can cost 50p per head, and if not held with an election the cost is around £1.50 per head.”<sup>111</sup> **Nick Raynsford** raised a point that had been made by Sir Simon Milton, that the cost of a GLA referendum if held on the same day as an election would be £5m, and if held separately it would cost £11m, and asked why there was a discrepancy in the Minister’s figures.<sup>112</sup> **Mr Stunell** replied that “there is a significant fixed cost to having any election, so at a ward level the number is different from...that on a GLA basis.”<sup>113</sup>

**Andrew Stunell** continued,

... our 5% figure, reflecting as it does on exactly the same practice as the previous Government did, is the right one to have...<sup>114</sup>

Clause 40 was ordered to stand part of the Bill.

**Barbara Keeley** introduced an amendment to clause 42 relating to the request for a referendum, that would mean that a local referendum would be required only if at least 25% of the members of that authority made a request for it. She reasoned,

... setting the level at one or more members, as the Bill does, means that a councillor from a single-member ward, or two or three members from one ward, could make a request for a local referendum. The amendment aims to ensure that those councillors also have the support of councillors from other wards.<sup>115</sup>

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<sup>107</sup> *Ibid* c376

<sup>108</sup> *Ibid* c381

<sup>109</sup> *Ibid* c382

<sup>110</sup> *Ibid* c384

<sup>111</sup> *Ibid* c389

<sup>112</sup> *Ibid* c389

<sup>113</sup> *Ibid* c389

<sup>114</sup> *Ibid* c390

<sup>115</sup> *Ibid* c395

Responding, **Andrew Stunell** said

We should be very careful about advancing an argument in this place that there should be rules designed to exclude small numbers of democratically elected councillors, however unpleasant their views. The clause does not do that, A ward councillor in a district with a single-councillor ward could bring a referendum forward; if it is a three-person wars, it requires a majority of the councillors to bring a referendum forward.<sup>116</sup>

The amendment was withdrawn and the clause ordered to stand part of the Bill.

**Ian Mearns** asked in relation to clause 43 on the duty to determine appropriateness of referendum

If the 5% criterion has been fulfilled in a district and the question is passed to the county, will the county, in making its determination, decide that the 5% criterion has been fulfilled in its area?<sup>117</sup>

**Andrew Stunell** said:

I completely assure the hon. Gentleman that that situation will not arise, because the threshold is 5% within the area where the referendum is intended to be held.<sup>118</sup>

The clause was ordered to stand part of the Bill.

**Barbara Keeley** and **Stephen Gilbert** moved amendments to clause 44 relating to grounds for determination to remove extra powers in the Bill for the Secretary of State to determine the extent of local matters. **Ms Keeley** asked “why the Secretary of State thinks he is able to determine for a local authority what a local matter is,”<sup>119</sup> and **Mr Gilbert**, who raised the issue of wind farms as affecting local areas but were national policies, argued,

I find it quite bizarre that the Localism Bill should include a clause that allows a national politician to determine what those local issues are—and, more crucially, what those local issues may not be, and therefore the matters on which people may be denied the chance to have a referendum.<sup>120</sup>

**Andrew Stunell** responded that “He has an order-making power, but it must be used in consultation with local authorities and other interested bodies in order to establish what the framework should be.”<sup>121</sup> The amendment was negated on division and the clause was ordered to stand part of the Bill.

**Stephen Gilbert** moved an amendment to clause 50 which would stop a local authority from taking sides in a local referendum and by so doing incurring large costs promoting its own particular view.<sup>122</sup> **Andrew Stunell** responded that local authorities would have to bear in mind the code of practice on local authority publicity when deciding how to act in such cases.<sup>123</sup>

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<sup>116</sup> *Ibid* c398

<sup>117</sup> *Ibid* c402

<sup>118</sup> *Ibid* c403-4

<sup>119</sup> *Ibid* c405

<sup>120</sup> *Ibid* c406

<sup>121</sup> *Ibid* c409

<sup>122</sup> *Ibid* c422

<sup>123</sup> *Ibid* c424. See DCLG, [The code of recommended practice on local authority publicity](#), 2011

**Andrew Stunell** clarified that in relation to clause 52, local authorities would be required to take account of the decision in a local referendum but would not be required to obey it, and that the clause aimed to ensure that the council gave some practical consideration to the matter.<sup>124</sup>

The clause was ordered to stand part of the Bill.

**Nick Raynsford** noted in relation to the application to parish councils of clause 53 that “it seems perfectly reasonable that there should be provisions for the holding of polls or referendums by parish councils” but that the call on their resources by a flood of referendum petitions would be substantial.<sup>125</sup> **Andrew Stunell** noted that in relation to the cost, an impact assessment would follow the preparation of a scheme, which would follow consultation with the National Association of Local Councils and others.<sup>126</sup>

The clause was ordered to stand part of the Bill.

**Nick Raynsford** queried clause 54 relating to the discharge of functions as it “appears to require any decisions regarding the referendum duties to be made by the whole council not by the executive. In the case of the Greater London Authority, decisions would be made not by the Mayor but jointly by the Mayor and the Greater London Assembly.”<sup>127</sup> **Andrew Stunell** said that the reason behind the clause was to ensure decisions could not be taken by single-party executives but would have to be taken by the full council to allow a debate and the resolution to be passed by all members of the council.<sup>128</sup>

The clause was ordered to stand part of the Bill.

### **Council tax**

Schedule 5 would implement the Bill’s measures to abolish council tax capping and introduce council tax referendums for excessive council tax increases. **Barbara Keeley** made a number of points about the schedule, including

- It would allow the Secretary of State to direct that referendum provisions are not to apply in cases where the authority will be unable to discharge its functions in an effective manner or meet its financial obligations. Cuts to local authority budgets may mean that they cannot discharge their functions in an ‘effective’ manner. What levels of service are meant by this provision?<sup>129</sup> and
- Would councils facing large redundancy payments greater than they will receive through the Government’s capitalisation scheme be put in breach of this provision?<sup>130</sup>

**Robert Neill** responded,

... the key factors to bear in mind are, first, the test that the authority will be unable to discharge its functions. When local authorities have statutory obligations, they are obliged under legislation outwith the Bill to meet those statutory functions. In order to

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<sup>124</sup> *Ibid* c426

<sup>125</sup> *Ibid* c427

<sup>126</sup> *Ibid* c432

<sup>127</sup> *Ibid* c432-3

<sup>128</sup> *Ibid* c434

<sup>129</sup> *Ibid* c437

<sup>130</sup> *Ibid* c436-7

set a lawful budget, they will therefore have to ensure that they have put forward a budget requirement that enables them to fulfil such functions.<sup>131</sup>

He also said that the provisions relating to financial obligations did not refer to a situation where there were particular cost items such as redundancy.<sup>132</sup>

Schedule 5 was agreed to.

### **Wales**

**Alun Cairns** moved amendment 103 to clause 57 on the powers of the National Assembly for Wales to apply the provisions relating to council tax referendums to Welsh authorities, as he said the Welsh Assembly Government had “made it clear that they have no intention of devolving the rights for referendums”.<sup>133</sup> **Robert Neill** sympathised with the amendment but said, “the legitimate political argument must be made in Wales.”<sup>134</sup> The amendment was withdrawn and the clause was ordered to stand part of the Bill.

### **Community right to challenge**

**Barbara Keeley** introduced a number of amendments to clause 66 on the community right to challenge, which would:

- add additional considerations to those which a local authority must have regard under its duty to consider an expression of interest, including whether it promoted or improved equality for people who work in the area, and whether it would disadvantage vulnerable groups and impact on the service in questions.
- ensure that a relevant body is a local and not for profit body, and
- ensure that expressions of interest in running a local public service could only be submitted by two or more employees of a local authority if they had secured the support by ballot of a majority of the relevant employees whose principal work was in that service.<sup>135</sup>

**Greg Clark** responded that these points would generally be dealt with in relation to the consultation exercise currently being undertaken, although he noted:

The second aspect of the amendment, however, would require anyone who expressed an interest to commission a poll of service users in advance, but that would clearly be liable—whether intentionally or not—to block the take-up of this important right. Amendment 92 would restrict the right to express an interest to local bodies. It overlooks the potential of many national organisations to provide a useful service.<sup>136</sup>

**Jack Dromey** was concerned that the provision allowing an expression of interest from two or more employees of the council could lead to ‘insider trading’, and that unless a safeguard was built into the Bill, the provision was open to abuse.<sup>137</sup> **Greg Clark** responded that to

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<sup>131</sup> *Ibid* c440

<sup>132</sup> *Ibid* c440-1

<sup>133</sup> *Ibid* c444

<sup>134</sup> *Ibid* c445

<sup>135</sup> PBC Deb 10 February 2011 c449

<sup>136</sup> *Ibid* c461-2

<sup>137</sup> *Ibid* c470

require any group of employees to conduct a ballot before expressing an interest would be a burden, and would be costly and could put those employees off.<sup>138</sup>

**Barbara Keeley** introduced an amendment to remove the power of the Secretary of State under clause 66(2)d to specify through regulations further persons and bodies to be considered as relevant authorities. She was concerned that this would allow the Secretary of State to include a number of other bodies, such as NHS bodies or housing associations.<sup>139</sup>

**Greg Clark** responded:

The only thing that I would say to the hon. Lady is that these definitions change. I shadowed the office of the third sector portfolio, so I know that members of the social enterprise community are very insistent that they are regarded as enterprises and as being in the social business. A degree of flexibility in the definitions is needed to accommodate the myriad types of organisations that, quite rightly, fall into the category that we have in mind.<sup>140</sup>

The amendment was withdrawn and the clause was ordered to stand part of the Bill.

**Jack Dromey** asked whether private companies could derive commercial advantage by way of contracts. **Greg Clark** responded,

It is absolutely clear that this chapter of the Bill—"Community right to challenge"—is about community organisations or existing employees.<sup>141</sup>

On the issue of the fire and rescue service, he said,

If we are to give the general power of competence to fire and rescue authorities as to local authorities, we will want to have a similar regime, not least because some fire and rescue authorities have the same characteristics as local authorities. The approach is designed to avoid anomalies.

The amendment was withdrawn and the clause was ordered to stand part of the Bill.

**Barbara Keeley** introduced an amendment to clause 67 on the timing of expression of interest to remove powers from the Secretary of State. **Greg Clark** responded that "It is ... reasonable for the Secretary of State, through regulation, to be able to set a minimum window in which voluntary organisations have the opportunity to make challenges. That seems a proportionate and sensible way forward."

**Barbara Keeley** introduced amendments to clause 68 on the consideration of expression of interest which would:

- create a mechanism whereby community groups who wanted to assist in the provision of a service but did not wish to run it could do so, (amendment 95)
- remove the power of the Secretary of State to regulate the minimum and maximum time for the local authority to consider an expression of interest and instead make that the responsibility of the authority, (amendment 96)

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<sup>138</sup> *Ibid* 470

<sup>139</sup> *Ibid* c472

<sup>140</sup> *Ibid* c475

<sup>141</sup> *Ibid* c477

- ensure that a local authority took a number of matters into account when assessing an expression of interest, including whether it promoted equality or disadvantaged vulnerable groups, (amendment 97)
- remove the power of the Secretary of State to specify the grounds on which an expression of interest may be rejected, (amendment 98)
- remove the power of the Secretary of State to regulate the timing of the process, (amendments 99 and 100) and to require a local authority to publish documents in print as well as on its website. (amendment 101)<sup>142</sup>

**Greg Clark** responded that “some of the amendments fail, perhaps unintentionally, to capture the real essence of the clauses, which is to protect voluntary groups from the behaviour of a council determined to thwart the exercise of the powers”, and accordingly disagreed with them. However, in relation to amendment 95, he said:

I understand the intention, in amendment 95, to offer alternative ways of participation, and to allow partial participation in the provision of a service, rather than a taking over of the whole thing. My understanding is that the Public Contracts Regulations 2006 impose some rather onerous requirements on how that is done, but I will see what can be done to capture the spirit of the amendment, and if something can be done to provide that new kind of route, I will investigate. I have no objection in principle, but the question is whether it would work in practice.<sup>143</sup>

In relation to amendment 97, he noted that legislation in the form of the *Equality Act 2010* was already in place.<sup>144</sup>

The amendments were withdrawn and the clause ordered to stand part of the Bill.

### ***Assets of community value***

**Alison Sebeck**, Shadow Minister for Communities and Local Government, moved an amendment to clause 71 which would make five years the statutory minimum length of time for land to be included on the list.<sup>145</sup> **Andrew Stunell** said that the Bill already provided for assets to be removed from the list after 5 years because,

... unlike for a heritage listing, which is obvious for something of enduring value it is not obvious that something of community value will endure for decades. For example if a pub was listed as a community asset but then another pub opened in the village, it might no longer be appropriate for that particular pub to be on the list.”<sup>146</sup>

He also commented that the five year period “was not completely arbitrary...it was exactly the same as the community right to buy in Scotland.”<sup>147</sup>

The amendment was withdrawn.

**Alison Sebeck** moved an amendment to provide protection for statutory providers of transport, and asked about the impact of the measures on schemes of national importance,

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<sup>142</sup> *Ibid* c483-4

<sup>143</sup> *Ibid* c485

<sup>144</sup> *Ibid* c487

<sup>145</sup> *Ibid* c493

<sup>146</sup> *Ibid* c494

<sup>147</sup> *Ibid* c495

in the light of representations from Network Rail.<sup>148</sup> **Andrew Stunell** replied “we recognise that it is not always appropriate for an asset to be listed and the exact definitions...will be determined in regulations.”<sup>149</sup>

**Nick Raynsford** asked about a proposal from Lewisham to replace a library with one in Greenwich. He said “I cannot see any arrangement in these provisions to deal with an asset of community value that might straddle two local authority boundaries.”<sup>150</sup> **Andrew Stunell** agreed to look at the point and consider including a mechanism if there were no provisions available to cover these issues.<sup>151</sup> The amendment was negated and the clause ordered to stand part of the Bill.

**David Ward** moved amendment 122 to clause 72 to exclude private individuals and private businesses from the measures as this could devalue the property itself.<sup>152</sup> During the debate on the amendment a number of Members raised the issue of local pubs, which were private businesses but nonetheless might be seen as community assets. **Andrew Stunell** disagreed with Mr. Ward’s amendment and noted that “there is a tension between the community’s rights and those of the individual” but the problems highlighted during the debate would be dealt with by regulations.<sup>153</sup> The amendment was withdrawn and the clause ordered to stand part of the Bill.

**Alison Seabeck** moved amendments to clause 73 to expand the types of groups that could make a community, to provide a definition of “community organisation” and remove the right of local authorities to list land as being of community value in case councils could manipulate the price of land by adding to or removing from the asset list.<sup>154</sup> **Andrew Stunell** responded that he was sympathetic to the principles relating to local connections behind amendment 106, but that further decisions should be based on the outcome of the consultation exercise. He rejected the basis of amendment 108 as it was important that principal councils had the same powers as town and parish councils.<sup>155</sup> The amendment was withdrawn and the clause was ordered to stand part of the Bill.

The Committee debated clause 74, on the procedure on community nominations. **Alison Seabeck** asked whether a community would need to provide evidence or an explanation establishing a burden of proof for the community value of each piece of land if a nomination is to be deemed valid. She also asked who would judge whether land was of community value and on what evidential basis, and whether that could be challenged.<sup>156</sup> **Andrew Stunell** responded that the clause required the local authority to consider the community nominations it received and that the authority was then required to accept the nomination if the land or building was in its area and was of community value. He noted,

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<sup>148</sup> *Ibid* c497

<sup>149</sup> *Ibid* c498

<sup>150</sup> *Ibid* c499

<sup>151</sup> *Ibid* c499

<sup>152</sup> *Ibid* c501

<sup>153</sup> *Ibid* c506

<sup>154</sup> *Ibid* c509

<sup>155</sup> *Ibid* c510

<sup>156</sup> *Ibid* c512

... we intend to provide a definition through regulations under clause 72 to establish the matters to which local authorities will need to have regard, albeit accepting that there might be different criteria even within an authority area.<sup>157</sup>

Clause 74 was ordered to stand part of the Bill.

**Alison Seabeck** introduced amendments to clause 76 that would create important safeguards in the review process by ensuring that a review must take place relatively quickly and that any appeals process must be independent. Amendment 109 stipulated that the review should take no longer than 12 weeks.<sup>158</sup> The amendments were discussed with amendment 190, which was introduced by **Nick Raynsford**. The amendment sought to make sure there were no vexatious nominations to the assets list by providing compensation where this happened.<sup>159</sup>

**Andrew Stunell** responded,

I advise the Committee not to accept her amendment, but to await the consultation responses and see whether something nearer to six weeks is better than 12 weeks. However, I assure her that it is our intention that there should be such a limit.<sup>160</sup>

In relation to amendment 190, **Mr Stunell** said “the safeguards that he seeks to introduce are already in the legislation before us.”

**Alison Seabeck** moved probing amendments to clause 79 to introduce a right of first refusal for community groups on land held by the public or third sector, rather than privately, that was to be disposed of. This would introduce a system similar to that in Scotland.<sup>161</sup>

**David Ward** moved amendments to clause 82 to require compensation to be paid where appropriate. **Andrew Stunell** reassured the Committee that a compensation scheme would be introduced, and that the consultation document on the scheme invited views on how this might operate.<sup>162</sup> The amendments were therefore withdrawn. In response to a point from **Alison Seabeck**, he noted that the responses to the consultation paper would be published by the time further stages of the Bill were reached.<sup>163</sup>

**Alison Seabeck** asked for clarification of the definition of ‘assets of community value’ in clause 88, because of concerns that this could apply not just to land and buildings, but to the uses of that land such as mineral working. **Mr Stunell** responded that the definition referred to every sort of land, including mines and minerals.<sup>164</sup>

## 1.6 New clauses

**Barbara Keeley** moved new clause 17, Integrated transport authorities and passenger transport executives, which would give the six integrated transport authorities a general power, similar to that of the fire and rescue authorities, in recognition that integrated transport

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<sup>157</sup> *Ibid* c512

<sup>158</sup> PBC Deb 15 February 2011 c519

<sup>159</sup> *Ibid* c521

<sup>160</sup> *Ibid* c522

<sup>161</sup> *Ibid* c528

<sup>162</sup> *Ibid* c538

<sup>163</sup> *Ibid* c539

<sup>164</sup> *Ibid* c540

authorities are single purpose authorities.<sup>165</sup> **Andrew Stunell** agreed to draw the Secretary of State for Transport's attention to the matter.<sup>166</sup>

**Gavin Barwell** moved new clause 21 which would allow the Secretary of State by order to amend, repeal, revoke or disapply any provision that required a local authority to fund a service from which its residents did not benefit. He said that his desire in moving the amendment was to focus on an issue that affected his constituency, namely the *Lee Valley Regional Park Act 1966* to which many London boroughs contributed. He argued that a number of boroughs were forced to contribute to the maintenance of the Park even though they would prefer to spend the money on their own areas.<sup>167</sup>

**Robert Neill** replied,

I am more than happy to meet him to see what we can do, but I suspect that there would have to be a consensus among the participating bodies that currently fund the park for a change to be made, and I do not hold out great hope that such a provision is likely to be deliverable.<sup>168</sup>

The clause was withdrawn.

## 2 Planning

### 2.1 Second Reading Debate

No detailed points were elucidated during the Debate. Secretary of State, **Eric Pickles**, gave an overview of the measures:

The Bill will return the planning system to the people. Targets do not build homes, and regional plans do not get communities involved. Today, we have an adversarial, confrontational system, fomented on mistrust and a sense of powerlessness. It is simply not working. The Bill will therefore create genuine neighbourhood planning, by which the community will develop in ways that make sense for local people. Instead of instructions being handed down from on high, the Bill will offer incentives to invest in growth. Instead of unelected commissioners making national decisions on important national infrastructure, those choices will again be down to democratically elected Ministers in this House.<sup>169</sup>

**Barbara Keeley**, summing up for the Opposition, was critical:

The Bill aims to allow communities a say on developments in their area through the planning system, but those measures are particularly poorly thought through. Indeed, the Royal Town Planning Institute says that work is needed on the Bill

"to remove those barriers in its drafting that deaden its effectiveness and hinder the ability of Government to achieve its own objectives"

and that

"the lack of a coherent strategic planning system combined with the complexity of the neighbourhood planning system"

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<sup>165</sup> PBC Deb 10 March 2011 *Ibid* c958

<sup>166</sup> *Ibid* c961

<sup>167</sup> *Ibid* c962

<sup>168</sup> *Ibid* c965

<sup>169</sup> HC Deb 17 January 2010 c563

that the Bill proposes will

"hinder...economic recovery...addressing climate change and enhancing the environment".

On that last point, 17 organisations in the Wildlife and Countryside Link say that the Bill must:

"Introduce...strategic planning across local authority boundaries".

They feel that the Bill risks creating a two-tier system in which

"only well-resourced neighbourhoods can take part",

which echoes the comments that we have heard from many hon. Members.<sup>170</sup>

## 2.2 Some themes from memoranda submitted to Localism Bill Committee

- General support for localism

(Town and Country Planning Association, Planning Officers Society, Mobile Operators Association, Royal Town Planning Institute)

- The need to strengthen the duty to co-operate so as to replace regional planning

(Confederation of British Industry, Campaign to Protect Rural England, Wildlife and Countryside Link, Royal Town Planning Institute, Town and Country Planning Association, County Councils Network, Planning Officers Society)

- Neighbourhood planning procedures too complicated

(Town and Country Planning Association, Royal Town and Country Planning Institute, British Chambers of Commerce, Country Land and Business Association, Planning Officers Society, National Farmers Union)

- Business should be empowered to play a key role in neighbourhood planning

(Royal Institute of Chartered Surveyors, British Chambers of Commerce, London First)

- Clarification needed on the relationship between neighbourhood plans, neighbourhood development orders and local plans

(Royal Institute of Chartered Surveyors, Campaign to Protect Rural England, Mobile Operators Association)

- Greater emphasis on sustainable development, including for neighbourhood planning

(Wildlife and Countryside Link, Town and Country Planning Association, Community Land and Business Association, Mobile Operators Association, Planning Officers Society)

- Further details needed on the Community Infrastructure Levy

(British Chambers of Commerce, London First, Confederation of British Industry, Planning Officers Society)

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<sup>170</sup> HC Deb 17 January 2010 c652

- The duty to consult could increase the burden on small businesses and other developers  
(London First, British Chambers of Commerce)
- Limited community third party right of appeal should be introduced  
(Campaign to Protect Rural England, Wildlife and Countryside Link)
- Against third party rights of appeal  
(Country Land and Business Association, British Chambers of Commerce)
- The enforcement provisions welcomed  
(Planning Officers Society)
- Need for timely decisions on major infrastructure  
(UK Major Ports Group, Confederation of British Industry)
- Need to maintain the system of planning for aggregates supply at national/strategic level  
(Minerals Planning Associations)
- The National Planning Policy Framework might need to be embodied in statute  
(Wildlife and Countryside Link, Royal Town Planning Institute)

### 2.3 Oral evidence

A summary of the oral evidence cannot do justice to the wide range of witnesses who appeared. The comments below do not include statements duplicating the written evidence from the same organisation.

#### ***Neighbourhood Planning***

**Councillor Porter** (Local Government Association) said that neighbourhood planning should work really well, if everything went according to plan. We should use the neighbourhood plans to build a district-wide plan. The previous system had failed to deliver the necessary housing. He hoped a planning system built from the bottom up would deliver development that communities did need, and want.<sup>171</sup> **Alex Thomson** (Chief Executive of Localis Think Tank) agreed.<sup>172</sup> **Neil McInroy** (Chief Executive of the Centre for Local Economic Strategies) also agreed but did not want neighbourhood plans to cause a more confused picture when large-scale strategic planning decisions needed to be made.<sup>173</sup> **Andy Sawford** (Chief Executive of the Local Government Information Unit) thought the Bill had the right approach in principle, but it would only work if there was a partnership between councillors and communities, because people would need to be supported to bring forward neighbourhood plans.<sup>174</sup>

**Tony Burton** (Civic Voice) said what really mattered about neighbourhood planning was whether anyone did anything different as a result of the legislation. The key thing was a network of support to help communities through the process on their own terms. His worry

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<sup>171</sup> PBC Deb 25 January 2011 cc15-16

<sup>172</sup> *Ibid* c16

<sup>173</sup> *Ibid* c16

<sup>174</sup> *Ibid* c16

was that the Bill would be picked up much more quickly in areas of high social capital, in rural areas, and in those areas where developers or landowners would essentially fund the neighbourhood planning process.<sup>175</sup> **Mayor Pipe** (Mayor of Hackney) said there was a lack of clarity over how neighbourhood planning would work.<sup>176</sup>

**Andrew Warner** (Royal Institution of Chartered Surveyors) said that if neighbourhood plans were going to put forward coherent development policies, there would often be a need to assemble land, requiring the use by local authorities of a compulsory purchase order.<sup>177</sup> **Trudi Elliott** (Royal Town Planning Institute) was concerned that local planning authorities might move resources away from the Local Development Framework to the development of neighbourhood plans.<sup>178</sup>

### ***Planning and Housebuilding***

**Councillor Robb** (Chief Executive of Shelter) said the Bill could benefit from consistent guidance to local authorities about how they assess the local housing need.<sup>179</sup> **David Orr** (Chief Executive of the National Housing Federation) said it had been a mistake to remove regional spatial strategies without a replacement.<sup>180</sup>

**Roy Donson** (Barratt Developments) said the presumption in favour of sustainable development was needed in the Bill because of a growth of hostility towards development over recent decades.<sup>181</sup> Neighbourhood development plans and orders would have to conform to strategic local plan policy, but the term “strategic” was not defined. In order to make proper informed decisions about detailed land use a good deal of important knowledge was required. The crucial point was that proposals should be viable or development would not happen.<sup>182</sup>

**Pete Redfern** (Taylor Wimpy) supported the principle of localism and the idea of change to the planning system. However, this large-scale change was taking place too quickly, which would have negative impacts on house building delivery.<sup>183</sup>

**Jennie Daly** (Harrow Estates) welcomed some parts of the Bill but was concerned at the lack of the presumption in favour of sustainable development, the lack of linkage to new homes bonus as an incentive to authorities to deliver homes and a reliance on secondary legislation for much of the operational detail.<sup>184</sup>

**Alan White** (Emerson Group) supported the Bill. However, he feared that the bottom-up approach might lead to gold-plating of national regulations. Also, local councillors might not have the ability to take on board the more free-thinking aspects of the Bill to gain the most advantage from it.<sup>185</sup>

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<sup>175</sup> *Ibid* cc28-9

<sup>176</sup> *Ibid* cc52-3

<sup>177</sup> PBC Deb 27 January 2011 cc135-6

<sup>178</sup> *Ibid* c139

<sup>179</sup> PBC 25 January 2011 c65

<sup>180</sup> *Ibid* c65

<sup>181</sup> *Ibid* pp81-2

<sup>182</sup> *Ibid* c79

<sup>183</sup> *Ibid* cc75-6

<sup>184</sup> *Ibid* c75

<sup>185</sup> *Ibid* c76

**Adrian Whitaker** (Home Builders Federation) said that because so few houses were being built, we needed a system that was pro-growth, pro-development and removed barriers rather than erecting mazes.<sup>186</sup>

### **Major Infrastructure Projects**

**Jessica Bauley** (CBI) said that infrastructure had to be upgraded to underpin the economic recovery. When decisions on major infrastructure projects were returned to Ministers, there had to be an absolute red line for the three-month ministerial sign off.<sup>187</sup> **Roger Culceth** (Federation of Small Businesses) regretted the proposed abolition of the Infrastructure Planning Commission.<sup>188</sup>

### **Duty to co-operate**

**Simon Marsh** (RSPB) argued that the proposed duty to co-operate was little more than a duty to discuss with neighbouring authorities, and very much focused on strategic infrastructure, not on the wider range of environmental issues requiring strategic planning.<sup>189</sup>

**Shaun Spiers** (CPRE) was concerned that the means of achieving planning on more than a local scale appeared to be local enterprise partnerships. They were led by business, and had no duty to consider sustainable growth.<sup>190</sup>

## **2.4 Debates on clauses**

### **Clause 90 Duty to co-operate in relation to planning of sustainable development**

amendment 194 and new clause 8 (NC8)

**David Ward** proposed amendment 194, arguing for a statutory base for local enterprise partnerships (LEPs). The Government wanted LEPs to take on a strategic function in planning and infrastructure but there was no statutory involvement or requirement. They would be taken more seriously if they were given a role in the duty to co-operate.<sup>191</sup>

**Jack Dromey** supported NC8, which would give LEPs a statutory basis. Regional Development Agencies (RDAs) should have been reformed rather than abolished. He praised Advantage West Midlands but was challenged that job creation rates declined during its existence. There was a danger that sites owned by RDAs as potential industrial sites would be sold off for housing to maximise returns to the Treasury.<sup>192</sup>

**Greg Clark** rejected the idea in NC8 that the country should be divided into economic areas with one LEP in each. The Government had invited businesses and communities to describe the economic geography they considered most relevant. The Local Government Association opposed NC8, so as to retain as much flexibility as possible. LEPs covered 87% of the English population. The sale of RDA assets had to secure the best return for the taxpayer.<sup>193</sup>

The amendment was withdrawn.

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<sup>186</sup> *Ibid* c92

<sup>187</sup> PBC Deb 26 January 2011 c116

<sup>188</sup> *Ibid* c109

<sup>189</sup> PBC Deb 27 January 2011 cc124-5

<sup>190</sup> *Ibid* c125 and 134

<sup>191</sup> HC Deb 17 February 2011 cc605-8

<sup>192</sup> *Ibid* cc608-15

<sup>193</sup> *Ibid* cc615-8

**Clause 91 Local Development Schemes**

**Jack Dromey** moved amendment 151 putting in place a statutory duty to ensure that local development schemes would have regard to sustainable development, and should also include a “town centre first” policy. A strong Parliamentary statement in favour of “high street first” was particularly important in view of a report by the Association of Convenience Stores showing that one in seven high street stores was empty.<sup>194</sup>

**Greg Clark** said that the place for a “town centre first” policy was in policy, rather than in legislation.<sup>195</sup>

The amendment was withdrawn.

**Nick Raynsford** moved amendment 188, taken with new clause 6 (NC6) requiring each local authority to carry out a housing assessment report prior to the preparation of a development plan document. There were serious doubts that the Government’s approach would lead to enough houses being built. Housing assessments would enable everybody to check whether the approach was working.<sup>196</sup>

**Jack Dromey** stressed that NC6 would not impose national or regional targets on local authorities. The information required by the amendment and NC6 would improve transparency. It would be consistent with the Conservative Party document “Open Source Planning”.<sup>197</sup>

**Heidi Alexander** stressed the shortage of housing but had been struck by the way that so many residents are opposed to any proposed development.<sup>198</sup>

**Greg Clark** said that the way planning operated under the Labour Government had turned people against development, making it harder to persuade people that development was in their interests. The proposed amendment was centralising and prescriptive. The Government was already committed to ensuring that enough land was made available to satisfy housing need:

The approach that we are taking is ... to require that there should be a rigorous and numerical assessment of housing need. That is one of the key tests of the soundness of the local plan, and if it fails, the plan will not be adopted. Neighbourhood plans will be required to conform with that, too, so that every neighbourhood plan, to address the point made by the hon. Member for Lewisham East, cannot suggest a total amount of housing that is less than the amount in the local plan—only more—so we are very concerned to make sure that the test is numerical, rigorous and defensible.<sup>199</sup>

The requirement for a housing assessment should not be in the Bill, partly because the *Planning and Compulsory Purchase Act 2004* s.13 already required a wide range of assessments. *Planning Policy Statement 3: Housing* (PPS3) already required a housing assessment. If primary legislation singled out a need for a housing assessment, there would be pressure to add other requirements, for example relating to economic development.<sup>200</sup>

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<sup>194</sup> *Ibid* cc625-8

<sup>195</sup> *Ibid* cc628-9

<sup>196</sup> *Ibid* cc630-2

<sup>197</sup> *Ibid* cc632-4

<sup>198</sup> *Ibid* cc634-5

<sup>199</sup> *Ibid* c636

<sup>200</sup> *Ibid* c637

**Nick Raynsford** was unconvinced. The Bill was very prescriptive in many areas – for example in relation to assets of community value. For something as important as housing, the Government should have included a provision requiring local authorities to make an assessment of housing need and demand in their area, along with plans to meet that need.<sup>201</sup>

The amendment was defeated with seven votes in favour and 13 against. Clause 91 was ordered to stand part of the Bill.

### ***Clause 92 Adoption and withdrawal of Development Plan Documents***

**Jack Dromey** moved amendment 133, to explore the Government's commitment to the presumption in favour of sustainable development, and to reflect concerns about delays that the introduction of local plans might bring. The amendment would place a deadline on local authorities so that they would need to have an up-to-date development plan in place by the end of 2012, after which a presumption in favour of sustainable development would apply.<sup>202</sup>

**Greg Clark** said that **Jack Dromey** had made a good case, and the Government would consider the suggestion:

We very much intend that the presumption of sustainable development should apply, but there are some practical issues on which we shall need to reflect. The hon. Gentleman and others will know of an earlier intention under the 2004 Act to set a drop-dead date for LDFs to be introduced, but that requirement had to be repealed because it proved impossible to meet. The previous Government's ambition that the plans should not be delayed was similar to ours, but they found that it was difficult to achieve in practice.

I will reflect very carefully on the hon. Gentleman's suggestion. It is entirely consistent with the approach that we wanted: to send a signal that the presumption would apply and could not be held at bay by failure to produce a plan. I will reflect on that point, and particularly the practicalities of introducing it, and return to the House on Report.<sup>203</sup>

The amendment was withdrawn. Clauses 92 and 93 were ordered to stand part of the Bill.

### ***Clause 94 Community Infrastructure Levy: Approval of Charging Schedules***

**Jack Dromey** moved amendment 134, taken with 135 and 136. He said that the amendment would ensure that the community infrastructure levy (CIL) was set at a level that would not prejudice the delivery of affordable housing.<sup>204</sup>

**Greg Clark** argued that this point was covered by the Government's approach, but he promised to reflect further:

Let me address the amendments before us. It is important that there is no point having the payment if it jeopardises the provision of affordable housing, which we are all in favour of. Section 211 of the Planning Act 2008 requires the charging authority—I dare say that that was in the minds of our predecessors—to have regard to the economic viability of development in setting the charge, including a consideration of affordable housing, so that needs to be taken into account now. That is further reinforced by the requirement for local planning authorities to have regard to the Secretary of State's guidance, which says that the CIL schedule of charging must take development costs into account and should consider the effect on affordable housing. We reiterate our

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<sup>201</sup> *Ibid* cc638-9

<sup>202</sup> *Ibid* cc639-41

<sup>203</sup> *Ibid* c641

<sup>204</sup> *Ibid* cc641-2

commitment to that principle. It is also worth emphasising that social housing—affordable housing—is exempt from payment of the levy, so our commitment is further reflected in that way. The measures and reforms that we have in mind for CIL far from undermine the viability of affordable housing. It is important that that does not happen, especially at this time, so our approach will continue.

The right hon. Member for Greenwich and Woolwich asked about the use of section 106 payments to pay for affordable housing. I have received representations suggesting that the provision of affordable housing might be a proper use of CIL. It would provide a greater opportunity for revenue to flow into affordable housing if it were regarded as part of the infrastructure of a community, which, in many respects, it is. It is clearly part of the essential make-up of an area that has an infrastructural effect. I want to reflect on those representations and consider whether clarifying the definition in such a way would be [to] make things clearer and provide not only protection, but an increased opportunity for affordable housing. I hope that the right hon. Gentleman will be satisfied, but will also welcome my contemplating and considering those representations.<sup>205</sup>

**Greg Clark** later confirmed that he would consider the matter further and, if appropriate, table amendments on Report.<sup>206</sup>

The amendment was withdrawn and clause 94 ordered to stand part of the Bill.

#### ***Clause 95 Use of Community Infrastructure Levy***

**David Ward** said it would be useful if local councillors were allowed to use the proceeds from CIL for purposes other than the building or upgrading of local infrastructure.<sup>207</sup> **Barbara Keeley** said that the definition of infrastructure was crucial. She also wanted to know what proportion might go to other persons.<sup>208</sup>

**Greg Clark** explained the Government's intentions:

A balance must be struck in the community infrastructure levy. It is an opportunity to have local people recognise that development is not against their interest but contributes to a better community for them. Indeed, the more they feel that that is the case, the more likely they are to accept and even encourage development and so, as it were, the cake grows. It is important to see the uses to which these funds can be put as a means of encouraging development by allowing people to participate in the returns. At the same time, that must be balanced against the explicit and quite specific need to provide the roads that connect the developments to the rest of the community.

It is worth reflecting, in the way that the hon. Member for Worsley and Eccles South suggested, on whether the proposals are drawn in precisely the right way at the moment, and on whether local communities should have more discretion over how the funds are deployed, which is the point that my hon. Friend the Member for Bradford East made. It is worth reflecting on that so that we can achieve the right balance between ensuring that we have enough funds to provide the roads, railways and other contributions, and ensuring that we are making greatest use of the possibility for people very locally to see some benefits of development.

We will, therefore, consult on that, and I want to reflect on two aspects of it. Consistent with the approach that we are taking of amending rather than repealing or replacing the

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<sup>205</sup> *Ibid* cc643-4

<sup>206</sup> *Ibid* c644

<sup>207</sup> *Ibid* c645

<sup>208</sup> *Ibid* cc645-6

measures, the question of the definition of infrastructure is important. We must consider whether affordable housing is a legitimate opportunity. In addition, providing a piece of infrastructure that is funded through CIL and not being allowed to contribute to its maintenance costs in the future, seems to me to be a rather perverse situation. If one can build something that is clearly a piece of infrastructure but one does not have the funds to maintain it in good condition, we should reflect on that. In answer to the question that was raised by the hon. Member for Birmingham, Erdington, we are looking at the ongoing costs, which are what we have in mind. We will consult on that, however.

The other aspect, which the hon. Member for Lewisham East raised, was the question of other bodies. (...) We think that there should be an expectation that the people who are directly affected by development should have some entitlement to share in its benefits, which should not be kept at a higher level. There should be some obligation on the part of authorities to share benefits with the people who are affected, in much the way that the hon. Member for Bradford East mentioned. We want a proportion to be spent locally, either by the local authority, or, if there is a democratic body below that level, perhaps devolved to that body. Again, that will be the subject of consultation and further measures in regulatory form, should we find that there is support for it.<sup>209</sup>

**Nick Raynsford** objected that the Government proposals had not been properly thought out.

In many areas, I hope the Government will go on thinking, because, frankly, a lot of what they put in the Bill is not adequate and needs further thought, but I wish they would have done that thinking before they presented a Bill to Parliament and asked us to scrutinise it. Frankly, it makes a mockery of the scrutiny process in Committee. We simply cannot wrestle with the detail because we do not know what it will be.<sup>210</sup>

**Greg Clark** explained why he was not yet fully decided upon the details of CIL:

The right hon. Gentleman will know that CIL is available to local authorities. It is not required of them but is an option available to them, so the provision in no way places any burdens or obligations on them. The only question that we are addressing—it would be unreasonable to close our ears to representations—is whether we ought to make the provision more empowering, but what they have is there, and it holds. Determining whether we want to extend the flexibility seems a perfectly reasonable way to proceed.<sup>211</sup>

**Greg Clark** said the Bill had made substantial progress. **Nick Raynsford** said it was unchanged. **Greg Clark** said he had made commitments to return to certain issues at Report Stage. **Nick Raynsford** was unsatisfied:

The crucial point is not that the Minister has not given commitments to give further consideration to concerns, but that the policy issue is not clear. On issues such as the community infrastructure levy, he will know that it matters fundamentally to local authorities whether provision for affordable housing is part of the CIL level that they set. If it is, they will set it at a different level from that which they would set if they knew that any provision for affordable housing should be handled separately under section 106. Although I take the Minister's point that the CIL is there for local authorities to use, in effect, until there is greater clarity on that policy, they are in a difficult position. It

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<sup>209</sup> *Ibid* cc646-7

<sup>210</sup> *Ibid* c647

<sup>211</sup> *Ibid* c648

would be foolish of them to set in place provisions that would have to be altered rapidly because of a change of Government policy on the CIL.<sup>212</sup>

**Greg Clark** fundamentally disagreed and said that the Bill had achieved a surprising amount of consensus. On the particular point:

I will only make the point that all we are talking about is extending the powers available to local authorities. At the moment they cannot take provision for affordable housing into account. I said I would reflect, in response to representations, on whether they should be allowed to in the future. That does not stop them publishing a charging schedule at the moment. It is entirely a consideration I am giving of a request to go further. That is in the spirit of the legislative process—if Parliament exists to scrutinise and improve legislation, it would be churlish not to consider representations that are made. Many organisations in civil society have spent much time considering the clauses of this Bill and making suggestions. The right hon. Member for Greenwich and Woolwich recommends that the Government turn a deaf ear to any constructive suggestions made, but I do not think would be good for the reputation of the House.<sup>213</sup>

### ***Schedule 9 Neighbourhood Planning***

**Greg Clark** moved Government amendment 158, taken with amendments 159-63. He described them as technical amendments. They concerned how to have neighbourhood planning in an area without a parish council.<sup>214</sup>

**Jack Dromey** moved amendment 140 relating to the provision that a local planning authority must make a neighbourhood development order if more than half of those voting in a referendum under that Schedule have voted in favour of the order. It would insert “those voting constitute at least 20% of those eligible to vote in that referendum.” It was taken with amendment 141 which would insert the same phrase into the provisions relating to a referendum on a neighbourhood development plan.

He welcomed proposals to empower local people, but argued that the Government's proposals had fallen short. They risked being utterly undemocratic because it would be possible for only three people from a community to be involved in the creation of a neighbourhood plan.<sup>215</sup>

**Greg Clark** said that Parliament had decided not to have a threshold for the May 2011 referendum and it was normal practice not to have a threshold. The last time a threshold was set had been in 1979. The previous Government had had referendums, without thresholds, for Scotland, Wales, the London Mayor and other aspects of local governance.<sup>216</sup>

The amendment was put to a vote and defeated with seven votes in favour and 15 against.

**David Ward** proposed amendment 206, which was taken with amendments 207, 208, 137, 138, 139, 208, 193, 191, 192, 209, 142, 130. He welcomed increased community involvement in planning, but asked whether the new neighbourhood planning framework was fair or workable in some communities:

The question is whether the new neighbourhood planning framework is not only fair, but workable in many communities. My principle concern about delivery relates to the

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<sup>212</sup> *Ibid* c649

<sup>213</sup> *Ibid* cc649-50

<sup>214</sup> *Ibid* cc650-1

<sup>215</sup> *Ibid* cc652-4

<sup>216</sup> *Ibid* cc653-7

neighbourhood forums for non-parished areas. Unlike parish councils, neighbourhood forums are seemingly accountable to nobody, and there is no obligation for members to disclose financial interests. It is not long ago that we discussed the importance of requiring local councils to have registers of interests for members, but such bodies and organisations do not have to declare any financial interest in a plan's outcome. As a result, they will not and cannot command the necessary community legitimacy—and I think legitimacy is the right word.<sup>217</sup>

He proposed a solution:

Parishing overcomes nearly all the problems of accountability and representation, and the boundary issues for neighbourhood planning in urban areas. I would have thought that it would also fit in very well with the Government's localist agenda, giving people an opportunity to engage democratically at a much lower level, empowering communities to make their own decisions about the issues that matter in their area.<sup>218</sup>

**Jack Dromey** wanted to improve the democratic legitimacy of the process. Amendments 137 to 138 would increase the number of members required to constitute a neighbourhood forum from three to 20, and one of them would have to be an elected councillor. Amendment 142 would apply the *Equality Act 2010* to neighbourhood forums.<sup>219</sup> The Bill's proposals would create different systems in different parts of the country. Parish councils had democratic legitimacy, but neighbourhood forums did not.<sup>220</sup>

**Heidi Alexander** noted the uneven distribution of developable land throughout the country, and thought it wrong that people in the local neighbourhood would hold the wider area to ransom by saying they only wanted a certain type of development.<sup>221</sup>

**Greg Clark** said that the Government could have required those areas without a parish or town council to have one, but some areas had consciously decided they did not want to do that. It would be perverse to force them to have a council if all they wanted was a neighbourhood plan.

The amendment was negated.

Three Government amendments – 160, 161, 162 and 163 were proposed, with minor changes to the wording of Schedule 9.

**Jack Dromey** noted that several business organisations had felt excluded from the process of neighbourhood planning. **Greg Clark** said that he wanted to allow the participation of business owners even if they lived outside the area. Agreement was reached to look at the matter again:

**Jack Dromey:** I welcome what has just been said. May I make this suggestion? In light of the earlier helpful exchanges we have had and the other issue we have agreed should be addressed, it is important that the matter become an agenda item in the next-stage discussions before Report, because where there is a will, there is a way. I think there is a common will among all parties that the business community should have a legitimate voice in this process. We now need to discuss how best we give effect to that.

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<sup>217</sup> *Ibid* cc663-4

<sup>218</sup> *Ibid* cc663-4

<sup>219</sup> *Ibid* cc664-6

<sup>220</sup> PBC Deb 1 March 2011 c672

<sup>221</sup> *Ibid* c681

**Greg Clark:** I entirely agree with the hon. Gentleman's suggestion and I am very happy to agree to that.<sup>222</sup>

Schedule 9, as amended, was agreed to. The HM Treasury/BIS [Plan for Growth](#), 24 March 2011 announced Government action:

**4) The Government will enable businesses to bring forward neighbourhood plans and neighbourhood development orders.**

2.16 The Government has already set out its plans to provide an opportunity for neighbourhoods to put forward plans for development. Neighbourhood plans will be able to shape development, but not to block it. The Government will set out clear requirements for any neighbourhood forum or parish council to consult and engage local business and take into account their views in preparing neighbourhood development plans and orders. It will ensure that neighbourhood plans are only adopted if they fit with the local authority plan and national planning policy, and they show that they have considered representations from business.

2.17 Further, the Government will enable businesses to bring forward neighbourhood plans and neighbourhood development orders. This will mean that businesses are able to develop and implement planning frameworks, or to set up neighbourhood development orders, reducing the need for additional planning consents, for example on a single or shared use industrial site or town centre. Businesses will need to work with and gain the agreement of the local community and pass independent examination before neighbourhood plans or orders are formalised.

***Schedule 10: Process for making of Neighbourhood Development Orders***

**Greg Clark** proposed two technical Government amendments – 164 and 165 – to clarify that the relevant local planning authority to approve neighbourhood development plans was the one for the area on which the plan is based. **Nick Raynsford** reminded the Minister of his earlier concession that there probably was a need to reflect on arrangements that should apply in those neighbourhoods that cross borough boundaries. **Greg Clark** agreed and would consider ways to ensure that there were no perverse outcomes.<sup>223</sup>

Amendments 164 and 165 were agreed.

**Jack Dromey** moved amendments 132 and 143-9, which sought to ensure that neighbourhood plans would be built on a robust up-to-date evidence base and enable effective participation. Amendment 149 aimed to maintain the current level of heritage protection, because the Bill would remove the statutory obligations that protect the setting of listed buildings and conservation areas.

A neighbourhood development group need not, as local authorities must, pay special regard to the desirability of preserving the setting of listed buildings or the character of conservation areas when making planning decisions. We argue strongly that there is no need to remove those specific protections, which date from 1990 and have been regarded as a mainstay of our heritage.<sup>224</sup>

It would not be adequate to say that everything would be put right by the national planning policy framework.

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<sup>222</sup> *Ibid* c695

<sup>223</sup> *Ibid* c696

<sup>224</sup> *Ibid* c699

**Greg Clark** answered the earlier amendments by stressing the Government's intention that the relevant environmental and other EU standards would apply to neighbourhood plans. On amendment 149 he agreed to reconsider:

On the question of heritage, the hon. Gentleman anticipated my response, and it is certainly not the Government's intention to weaken the protection for heritage assets. Although English Heritage has suggested that planning policy statement 5 should be revised and made simpler, that is very different from suggesting it should be weakened or dispensed with. The hon. Gentleman is right: as drafted, the Bill gives rise to understandable concerns on the part of the heritage community, not least the hon. Gentleman with his penchant for history. We want to make it absolutely clear that those concerns are not diminished in any way, but, in the usual course of things, although we are sympathetic to his amendment, the normal practice is for us to take it away and check with the lawyers whether any tweaks need to be made to it. We will come back at a later stage with something that reflects the amendment's intention.<sup>225</sup>

The amendment was withdrawn.

**Nick Raynsford** moved amendment 128, relating to the persons who might be appointed to oversee the independent examination of a neighbourhood development plan or order. The provisions designed to ensure impartiality and competence were perfectly reasonable. However, it was perverse to exclude local government officers and planning inspectors.

**Greg Clark** again agreed to reconsider:

The right hon. Member for Greenwich and Woolwich is absolutely right that our intention was that the process of examining neighbourhood plans, which already have the safeguards that we discussed earlier, should be relatively straightforward instead of a great festival of QCs locking horns with each other. He is on to something when he says that we might be inadvertently excluding people who may have the skills but might not be inclined to proceed in that way. I agree with the thrust of his amendment, and when local authority officers or other Crown employees, such as planning inspectors, have something to offer, they should be available. In the spirit of the approach that we need to take with such things, we will reflect on his words and return with something that reflects that intention.<sup>226</sup>

### ***Schedule 11***

**Greg Clark** moved Government amendment 166, correcting an error in Schedule 11, where it referred to neighbourhood development instead of community right to build.

Amendment 166 was agreed. Schedule 11, as amended, was agreed. Clauses 97-9 were ordered to stand part of the Bill.

### ***Clause 100 Financial assistance in relation to neighbourhood planning***

**Jack Dromey** noted concern about the lack of financial assistance the Government would provide for neighbourhood planning, and the decision to end funding for Planning Aid on 31 March 2011.<sup>227</sup> **Heidi Alexander** noted that the Impact Assessment estimated costs of neighbourhood plans at between £17,000 and £63,000.<sup>228</sup>

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<sup>225</sup> *Ibid* cc700-1

<sup>226</sup> *Ibid* cc703-4

<sup>227</sup> *Ibid* cc705-6

<sup>228</sup> *Ibid* c706

**Greg Clark** said DCLG had secured £5.5m of Government money to support the early stages of the new neighbourhood planning system. It would have been inconsistent with the approach taken elsewhere in the Bill to have had a single body as the only source of advice to communities on neighbourhood planning. The Government had invited applications for the fund, of which Planning Aid England was one.<sup>229</sup>

Clause 100 was agreed and ordered to stand part of the Bill.

### **Clause 101 Consequential Amendments**

**Jack Dromey** moved an amendment to give councils more freedom to dispose of their land for the price and purposes of their choosing. That would enable more land to be provided for community use and affordable housing. They would still be required to proceed in the public interest and with due prudence. **Greg Clark** sympathised but said it was not a matter for the Bill. In any case, applications to the Secretary of State for more freedom were very rare.

I undertake to reflect on alternative ways of addressing the issue, which has merit.<sup>230</sup>

The amendment was withdrawn and the clause ordered to stand part of the Bill.

### **Clause 102 Consultation before applying for planning permission**

**Jack Dromey** moved amendment 152 – requiring an independent examination of the social and economic impact of the proposed development – which was linked to his support for the town centre first policy.<sup>231</sup> **Nick Raynsford** moved amendment 189 – requiring advice from the local design review panel to be considered. He stressed the importance of good design, praised CABE [the Commission for Architecture and the Built Environment], which the Labour Government had formed, regretting that it was now being reduced and merged with the Design Council.<sup>232</sup>

**Greg Clark** rejected both amendments. The independent review required in amendment 152 would result in delay, and would not increase consultation directly with the affected communities. Any local planning authority engagement with design reports should be voluntary.<sup>233</sup>

The amendments were withdrawn and clause 102 was ordered to stand part of the Bill.

A relevant publication since Second Reading is DCLG, [Pre-application consultation with communities: a basic guide](#), 28 February 2011

### **Clause 103 Retrospective Planning Permission**

**Stephen Gilbert** argued that the clause would mean that a local planning authority could issue an enforcement notice after an application for retrospective planning consent. Consequently the planning merits of the case would not be considered before rejection of the application.<sup>234</sup> **Robert Neill** said the clause aimed to tackle abuse of the system, not honest mistakes. It would only apply when a retrospective planning application was submitted after the issue of an enforcement notice.<sup>235</sup>

Clauses 103 and 104 were ordered to stand part of the Bill.

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<sup>229</sup> *Ibid* cc709-11

<sup>230</sup> *Ibid* c713

<sup>231</sup> *Ibid* cc714-5

<sup>232</sup> *Ibid* cc715-6

<sup>233</sup> *Ibid* cc718-9

<sup>234</sup> *Ibid* cc720-3

<sup>235</sup> *Ibid* cc724-6

### **Clause 105 Planning Offences: Time Limits and Penalties**

**Jack Dromey** raised concerns about offering immunity from planning enforcement after a certain time, fearing that cuts to local authority budgets would mean that enforcement departments would often detect infringements of planning consent at a later date.<sup>236</sup> **Robert Neill** said that the clause strengthened the position of authorities, especially in relation to deliberate concealment of breaches of planning law.<sup>237</sup>

Clauses 105 and 106 were ordered to stand part of the Bill.

### **Clause 107 Abolition of Infrastructure Planning Commission**

**Jack Dromey** asked if the Government accepted that returning the final decision over infrastructure to Ministers risked politicising the wrong kind of infrastructure planning.<sup>238</sup> **Greg Clark** agreed on the importance of a fast-track, dependable process for granting consents for national infrastructure. The system introduced by the Labour Government lacked democratic accountability. The new system would be just as quick. **Nick Raynsford** wondered how a Secretary of State would take forward an unpopular recommendation when a large body of his supporters opposed it.<sup>239</sup> **Nic Dakin** asked the Government to commit to reviewing the new system if it turned out not to be as speedy as the processes in the Infrastructure Planning Commission were intended to be.<sup>240</sup> **Greg Clark** gave that commitment.<sup>241</sup>

Clause 107 was ordered to stand part of the Bill.

### **Schedule 31 Infrastructure Planning Commission: Transfer of functions to the Secretary of State**

**Jack Dromey** moved amendments 239 and 240.<sup>242</sup> The threshold for most types of projects considered nationally significant was a clear numerical figure except for highway and railway projects. The amendments would introduce such figures. **Greg Clark** disagreed because a small part of a network might be of strategic importance.<sup>243</sup>

The amendment was withdrawn

**Jack Dromey** moved amendment 246, which was taken with 242, 243, 244, 245, 167, 238, 247 and new clause 16 – ability to waive compliance with procedures. These were probing amendments designed to test whether the Government would simplify the procedure. **Greg Clark** was sympathetic to some of the technical amendments:

I have sympathy with the intent behind the amendments, and some technical changes might be appropriate. We will have the opportunity on Report or more likely, given the technical content of the amendments, in the House of Lords, to accept any changes that are in keeping with the spirit in which they were tabled by the hon. Member for Birmingham, Erdington, to speed up and to increase the certainty of the speed of those processes. With that in mind, I hope that he will withdraw the amendment, so that we may come back to that subject later.<sup>244</sup>

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<sup>236</sup> *Ibid* c726

<sup>237</sup> *Ibid* c727

<sup>238</sup> *Ibid* cc727-9

<sup>239</sup> *Ibid* c732

<sup>240</sup> *Ibid* c733

<sup>241</sup> *Ibid* c733

<sup>242</sup> *Ibid* c734

<sup>243</sup> *Ibid* cc734-5

<sup>244</sup> *Ibid* cc737-9

The amendment was withdrawn and a technical Government amendment made. Schedule 31, as amended, was agreed to.

### **Clause 108 Transitional Provision in connection with abolition**

**Jack Dromey** said that the Bill left on a case-by-case basis what to do with live applications once it was enacted. He proposed an amendment to provide more certainty.<sup>245</sup> **Greg Clark** endorsed the intention behind the amendment but thought that the actual amendment could cause problems.<sup>246</sup>

Clause 108 was ordered to stand part of the Bill.

### **Clause 109 National Policy Statements**

**Jack Dromey** moved amendment 248, taken with 249, 250 and 251, relating to responsibilities of neighbouring authorities.<sup>247</sup> **Greg Clark** did not support them.<sup>248</sup> The amendments were withdrawn. Clauses 109-120 were ordered to stand part of the Bill.

### **New Clause 11 Community Right of Appeal**

**Stephen Gilbert** moved new clause 11, which was taken with new clause 15 – Efficient and effective planning, and new clause 19 – Compensation for compulsory purchase, assumptions as to planning permission. Ireland, Australia and New Zealand had a community right of appeal but it had not been an impediment to economic growth.<sup>249</sup> **Greg Clark** stressed the need for elected councillors to have the flexibility to allow some variation from an adopted local plan.<sup>250</sup>

**Barbara Keeley** spoke to new clause 19, calling for reform to the calculation of compensation for compulsory purchase. Anomalies in recent cases had resulted in compensation for land as if it had planning consent for housing, even though it only had consent as open space. **Jack Dromey** spoke to new clause 15, calling for quick implementation of the Killian-Pretty and Penfold recommendations on the planning system.<sup>251</sup>

**Greg Clark** said he would consider new clause 19, along with experts. He rejected new clause 15 as proposing an excessive power for the Government.

None of the clauses were pressed to a vote.

## **3 Housing**

### **3.1 Second Reading Debate**

In his opening speech **Eric Pickles** described the housing elements of the Bill as giving councils and communities “the power that they need to tackle the housing challenges that they face.”<sup>252</sup> He highlighted the discretion councils would gain to offer “a short term helping hand” to new tenants, while ensuring “appropriate protections for the most vulnerable

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<sup>245</sup> *Ibid*

<sup>246</sup> *Ibid* c740

<sup>247</sup> *Ibid* cc741-2

<sup>248</sup> *Ibid* c741

<sup>249</sup> PBC Deb 10 March 2011 cc930-3

<sup>250</sup> *Ibid* cc933-6

<sup>251</sup> *Ibid* cc945-6

<sup>252</sup> HC Deb 17 January 2011 c564

families.”<sup>253</sup> On the reform of housing finance, he said that the Government was building on the proposals of the Labour administration “but with a more generous offer.”<sup>254</sup>

Responding for Labour, **Caroline Flint** expressed “disappointment” with the Bill’s housing provisions.<sup>255</sup> She said Labour would not support the measure to enable councils to discharge their duties towards homeless households in the private rented sector without the household’s consent. She referred to the lack of housing of a suitable standard within the private rented sector and the absence of any measures in the Bill to address this issue.<sup>256</sup> She rejected the introduction of flexible tenancies on grounds that they have potential to create fear and uncertainty, as well as acting as a disincentive to work.<sup>257</sup> She described the cuts to the housing budget as “a hammer-blow to the hopes of hundreds of thousands of families who are trying to get their own home” and criticised the Bill for failing to address “how we get more new affordable homes.”<sup>258</sup>

Several contributors to the debate focused on the need to increase the supply of social housing. **Simon Hughes** called for localism “within parameters guaranteeing that we build and increase the number of social homes.”<sup>259</sup> **Clive Betts** expressed the concern that future development in the social sector would focus on flexible tenancies let at rents related to market rents “thereby effectively ending the provision of any new social housing.”<sup>260</sup> **Nick Raynsford** said that the housing and planning provisions in the Bill would “destabilise the planning and housing process at a time when, above all, we need confidence and certainty to get the new homes that we need.” He went on to describe the changes to social tenancies and the homelessness provisions in the Bill as “misconceived”.<sup>261</sup>

**Shabana Mahmood** and others questioned measures that could lead to more vulnerable households seeking housing in the private rented sector at a time when their Housing Benefit entitlement is being cut.<sup>262</sup> **Martin Vickers** voiced reservations over the proposed (discretionary) two-year minimum term for new social housing tenancies, arguing that it could act as a disincentive to tenants to invest in their homes.<sup>263</sup> Several Members questioned the desirability of new tenants of social housing being charged higher rents (under the Affordable Rent scheme) to fund new social housing development – **Kate Green** said there was a role for mid-market housing “but not as a substitute for subsidised, low cost housing.”<sup>264</sup> Alternatively, **George Hollingbery** supported the Affordable Rent scheme as a way to recycle assets and build more social housing.<sup>265</sup>

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<sup>253</sup> *Ibid*

<sup>254</sup> *Ibid*

<sup>255</sup> *Ibid* c572

<sup>256</sup> *Ibid*

<sup>257</sup> *Ibid* c573

<sup>258</sup> *Ibid*

<sup>259</sup> *Ibid* c582

<sup>260</sup> *Ibid* c579

<sup>261</sup> *Ibid* c584

<sup>262</sup> *Ibid* c592

<sup>263</sup> *Ibid* c606

<sup>264</sup> *Ibid* c634

<sup>265</sup> *Ibid* c635

### 3.2 Debates on clauses

The Committee considered the Bill's housing provisions during its 18<sup>th</sup> – 24<sup>th</sup> Sittings. Government amendments to clauses 124, 125, 128 and Schedule 19 were agreed. These amendments were minor and technical and corrected drafting errors in the Bill. No Opposition amendments to the Bill's housing provisions were agreed.

Clauses 127, 133, 135, 136, 138, 139, 143, 145, 146, 147, 149, 151, 152, 154, 155, 156, 157, 158, 160, and 161, together with Schedules 14 and 18, were agreed without debate.

#### **Clause 121 Allocation of housing accommodation**

This clause provides for council tenants who wish to transfer to alternative housing to have their applications assessed on a different basis to people applying via the housing waiting list.<sup>266</sup>

**Alison Sebeck**, Labour's Shadow Housing Minister, moved an amendment aimed at enabling certain people living with social housing tenants, i.e. those in a "subsisting relationship," family members acting as a carer, and siblings of tenants, to retain a right to a secure or assured tenancy in the event of being rehoused.<sup>267</sup> **Andrew Stunell**, the Minister, said the effect of the amendment would be to "allow certain people to get into social housing without having to meet the local authority's qualification criteria."<sup>268</sup> The Shadow Minister acknowledged that the amendment was not perfectly drafted but emphasised that concerns had been raised about the impact of the Government's reforms on people who have resided in social housing for a considerable time without holding a tenancy.<sup>269</sup> The amendment was rejected on a division of the Committee.<sup>270</sup>

#### **Clause 122 Allocation only to eligible and qualifying persons**

Clause 122 will govern the eligibility of applicants for local authority housing in England.

**Alison Sebeck** sought to place an additional duty on the Secretary of State, prior to issuing regulations under this clause, to carry out a full consultation exercise.<sup>271</sup> The Minister rejected this on the basis that consultation is "good administrative practice" and including this in the Bill would be "unnecessarily cumbersome."<sup>272</sup> The Minister agreed to consider points raised by **Nick Raynsford** and **Alison Sebeck** concerning the process by which applicants for local authority housing are told that they are ineligible for an allocation.<sup>273</sup>

#### **Clause 123 Allocation schemes**

This clause will govern the allocation of housing in accordance with an allocation scheme in England.

The Shadow Minister asked for clarification on what factors the Secretary of State might determine that local authorities should not take into account in their allocation schemes.<sup>274</sup> **Andrew Stunell** explained that while clause 123 would allow authorities to devise their own

<sup>266</sup> Unless the authority is satisfied that they should be given "reasonable preference".

<sup>267</sup> PBC 1 March 2011 c742-6

<sup>268</sup> *Ibid* c748

<sup>269</sup> *Ibid* c751

<sup>270</sup> *Ibid* c752

<sup>271</sup> PBC 3 March 2011 cc755-6

<sup>272</sup> *Ibid* c756

<sup>273</sup> *Ibid* c759

<sup>274</sup> *Ibid* c762

housing allocation schemes, there was a need for a “backstop provision” to “ensure that local authorities’ allocation schemes do not result in a completely unreasonable exercise of that power” – he included specific reference to local authorities excluding applicants from applying for housing for previous anti-social behaviour.<sup>275</sup>

### **Clause 124 Duties to homeless persons**

This clause will enable local authorities to discharge their duty to homeless households by offering suitable private sector accommodation.

Both Labour and Liberal Democrat members of the Committee moved amendments to this clause. **Alison Seabeck** also sought to insert two new clauses into the Bill, one of which (new clause 13) would have required an authority to assess the housing needs of applicants “with a view to targeting its advice towards those specific needs.”<sup>276</sup> New clause 14 would have placed a duty on local authorities to operate a voluntary accreditation scheme for private landlords. **Alison Seabeck** argued that there is support in the industry for regulation in order to raise standards of management and “drive out cowboys.”<sup>277</sup> The Committee divided on these new clauses and both were rejected by 14 votes to 7.<sup>278</sup>

The specific amendments sought to clause 124 concerned a requirement that privately rented properties offered to homeless households must be affordable, and to remove the provision enabling local authorities to discharge their duties towards homeless households by offering suitable accommodation in the private rented sector against the applicant’s wishes.<sup>279</sup> **Alison Seabeck** said there was a need to “oppose the plans to weaken the rights and protections afforded to people accepted as unintentionally homeless.”<sup>280</sup>

For the Liberal Democrats, **Stephen Gilbert** sought to introduce a two-stage process where local authorities discharge their homeless duties by using privately rented accommodation. The amendment would have required authorities to assess (and meet) the support needs of households and to ensure that the accommodation offered was affordable and that the households placed in the private sector were aware of their tenancy rights. The aim of the amendment was to “reduce the long-term likelihood that accommodation will fail and additional costs befall the local authority.”<sup>281</sup> Further amendments would have required local authorities to only discharge their homeless duties by offering privately rented housing owned by an accredited landlord. **Stephen Gilbert** referred to the need to ensure that taxpayers’ money is spent on “accommodation that befits the people who are being put there.”<sup>282</sup> When referring to the standard of accommodation available in the private rented sector, **Mr Gilbert**, and other Members, made reference to the Local Housing Allowance cuts that will be implemented from 1 April 2011.

**Andrew Stunell** moved two minor and technical Government amendments to clause 124 to correct drafting errors. In response to the Labour and Liberal Democrat amendments he stressed that the use of private rented housing would be an “option” for local authorities. He

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<sup>275</sup> *Ibid* c762-3

<sup>276</sup> *Ibid* c769

<sup>277</sup> *Ibid* c777

<sup>278</sup> PBC 10 March 2011 cc953-5

<sup>279</sup> PBC 3 March 2011 c770

<sup>280</sup> *Ibid*

<sup>281</sup> *Ibid* c780

<sup>282</sup> *Ibid* c781

advised that the existing requirement for an authority to ensure that accommodation offered is “suitable” covers issues including affordability, size, condition, accessibility and location.<sup>283</sup>

On new clause 13, he acknowledged that housing options services “serve a crucial purpose” but felt it would be “burdensome” to place a statutory duty on authorities to provide them.<sup>284</sup>

**Alison Seabeck** pressed amendment 226 (to insert “affordability” as a requirement in clause 124) to a vote. The amendment was negated by 14 votes to 9.

There followed a lengthy stand part debate on clause 124 during which **Siobhain McDonagh** focused on the potential work disincentive of placing households in receipt of Housing Benefit in the private rented sector where rent levels are higher than those in social housing. **Alison Seabeck** asked about the capacity of the private rented sector to accommodate the expected 20,000 households that may be discharged into this sector and the lack of a “full health and well-being impact assessment” on the homelessness measures in the Bill.<sup>285</sup>

Clause 124, as amended, was ordered to stand part by 13 votes to 9.

#### ***Clause 125 Duties to homeless persons: further amendments***

This clause provides that where a local authority has discharged the main homelessness duty with an offer of an assured shorthold tenancy in the private rented sector, the duty will recur if the household becomes homeless again within two years through no fault of their own.

**Andrew Stunell** moved two Government amendments to this clause – both of which were agreed. Amendment 170 has removed the requirement on a local authority to supply applicants with information on its policy over offering choice in allocations<sup>286</sup> and amendment 171 has provided for a recurring duty to arise if a homeless household placed in private sector housing has their tenancy terminated within two years. As originally drafted the main homeless duty on local authorities would only have arisen once.

**Nick Raynsford** moved amendments to provide for households who become homeless as a result of a restriction in Housing Benefit entitlement not to be treated as intentionally homeless. He described the amendments as putting safeguards in place:

... to ensure that people housed in the private rented sector who find that they cannot sustain their tenancy, not through any fault of their own but because their benefit entitlement is cut, are not penalised.<sup>287</sup>

The Minister rejected the amendments on the grounds that “it is a perfectly clear matter of law” that a person cannot be deemed to be intentionally homeless if homelessness arose out of a reduction in their financial resources that is beyond their control. He said that “the Government will carefully monitor decisions from April onwards, and can issue further guidance to local authorities on the use of intentionality should that be necessary.”<sup>288</sup>

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<sup>283</sup> *Ibid* c786

<sup>284</sup> *Ibid*

<sup>285</sup> *Ibid* cc794-806

<sup>286</sup> This was deemed necessary as there will no longer be a presumption that households will be offered a social housing tenancy.

<sup>287</sup> PBC 3 March 2011 c807

<sup>288</sup> *Ibid* c809

**Nick Raynsford** described the Minister's response as unsatisfactory and pressed amendment 252 to a vote. The amendment was rejected by 9 votes to 13.<sup>289</sup>

**Alison Seabeck** sought to place a new duty on local authorities to prevent the homelessness of all unintentionally homeless people who approach them by providing emergency accommodation, mediation, relationship support or other advice and assistance.<sup>290</sup> While expressing sympathy with the amendment, the Minister said that placing a duty on authorities to provide accommodation for all homeless households would be "costly and impractical" – he said local authorities' existing discretionary powers strike "a reasonable balance."<sup>291</sup>

### **Clause 126 Tenancy strategies**

Clause 126 places a new duty on local housing authorities to publish a tenancy strategy setting out the matters to which all registered providers of social housing should have regard in framing their own policies.

**Alison Seabeck** said that Labour Members had "no objections in principle to tenancy strategies" – concerns expressed focused on the Bill's drafting and the implications of some of the measures.<sup>292</sup> She said the Labour amendments would:

...strengthen as well clarify aspects of how strategies will work and interact with the public, registered providers of social housing and the private rented sector, and how they fit together with other strategies relating to homelessness or housing.<sup>293</sup>

**Andrew Stunell** explained that these strategies will be high level documents setting out broad objectives to which the policies of individual providers of social housing should have regard. He committed to reflect on the apparent requirement in clause 126 that local authorities should summarise individual providers' policies, and the question of how frequently tenancy strategies should be amended. **Alison Seabeck** had expressed concerns that too frequent revisions would result in uncertainty and instability. The Minister also said that the Government would require landlords' tenancy strategies to take account of the needs of vulnerable households, including those in residential accommodation.<sup>294</sup>

### **Clause 128 Standards about tenancies etc**

This clause provides that the Secretary of State may direct the social housing regulator to set a standard on tenure.

A Government amendment was agreed to clarify that the *Housing and Regeneration Act 2008* will include the new power under which the Secretary of State will direct the housing regulator.<sup>295</sup>

During the clause stand part debate **Alison Seabeck** raised concerns voiced by the National Housing Federation. The Federation has said that the extension of the Secretary of State's powers to direct the regulator as to the contents of a tenancy standard could "threaten

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<sup>289</sup> *Ibid* c810

<sup>290</sup> *Ibid* c811

<sup>291</sup> *Ibid* c812

<sup>292</sup> *Ibid* c814

<sup>293</sup> *Ibid* c815

<sup>294</sup> *Ibid* cc813-20

<sup>295</sup> PBC 8 March 2011 c823

registered providers' independence of government and will create a vehicle for 'policy passporting.'<sup>296</sup>

In response, the Minister said that the power was central to the Government's proposals on tenure reform and that it was "right for the Government to give direction on the content of the tenancy standard to the regulator."<sup>297</sup> The Government published a summary of responses to its consultation document, *Local decisions: a fairer future for social housing*, together with its intentions on the next steps of social housing reform, in February 2011, *Local decisions: a fairer future for social housing – summary of responses to consultation*. This document sets out the broad policy aims that the direction to the regulator is expected to deliver:

Our overarching policy aim is ensure that social landlords grant tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability of the community and the efficient use of their housing stock.

How social landlords meet those broad objectives will be determined locally, but it will be essential that it is done in a transparent way, and as a matter of policy we would expect social landlords to publish and maintain a clear and accessible tenancy policy which contains at least the following elements:

The kinds of tenancies they will grant.

Where they grant tenancies for a fixed-term, the lengths of those terms.

The broad circumstances in which they will grant a tenancy of a particular kind.

How a tenant or prospective tenant may appeal or complain against the length of the term, including a decision by them not to grant a secure or assured tenancy.

The broad circumstances in which tenancies may or may not be reissued at the end of a fixed-term in the same or a different property.

How a tenant may appeal or complain against a notification by them that they do not propose to grant another tenancy on the expiry of the fixed-term of the existing tenancy.

Provisions to take account of the needs of those who are vulnerable, for example by reason of age, disability or illness, and households with children.

The advice and assistance, including on finding suitable alternative accommodation, that will be available to tenants where a decision that a further tenancy will not be issued is made.

The circumstances in which they will grant discretionary succession rights.<sup>298</sup>

There will be formal consultation on a draft direction; the Government's aim is to issue a final direction to the regulator "at the earliest possible opportunity following Royal Assent."<sup>299</sup>

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<sup>296</sup> *Ibid* cc823-4

<sup>297</sup> *Ibid*

<sup>298</sup> CLG, *Local decisions: a fairer future for social housing – summary of responses to consultation*, February 2011, section 8

<sup>299</sup> PBC 8 March 2011 c824

### **Clause 129 Relationship between schemes and strategies**

This clause requires local housing authorities to have regard to their current allocation schemes, tenancy strategies and, where appropriate, the London Housing Strategy, when formulating their homelessness strategies.

**Alison Seabeck** moved an amendment to require authorities, when drawing up or modifying their homelessness strategies, to take account of the homelessness strategies of neighbouring authorities. The amendment was aimed at building co-operation and preventing tensions between neighbouring authorities' strategies.<sup>300</sup>

**Andrew Stunell** said the Government already encouraged this approach and making such practice a legislative requirement "would be bureaucratic and could give rise to practical problems."<sup>301</sup>

### **Clause 130 Flexible tenancies**

This clause gives local authorities the power to offer flexible tenancies to new social housing tenants. A flexible tenancy will be a secure tenancy with a fixed-term of not less than two years. Where a local authority does not wish to renew a flexible tenancy the Bill provides for the courts to be able to grant mandatory possession order where the landlord has followed the required process.

**Nick Raynsford** moved an amendment to give the court discretion not to grant an order for possession if it considers that granting an order would be "disproportionate." This amendment, he argued, was necessary in the light of a decision of the Supreme Court in [Manchester City Council v Pinnock](#). In this case the Supreme Court held that if our law is to be compatible with Article 8 of the European Convention on Human Rights (ECHR):

Where a court is asked to make an order for possession of a person's home at the suit of a local authority, the court must have the power to assess the proportionality of making the order, and in making that assessment, to resolve any relevant dispute of fact.<sup>302</sup>

This judgement has subsequently been upheld in three further possession cases concerning mandatory possession orders. **Nick Raynsford** questioned whether, in the light of these judgements, the Secretary of State should have declared the Bill to be compatible with the ECHR.<sup>303</sup>

In response **Andrew Stunell** said the amendment would "completely undermine the purpose of the clause."<sup>304</sup> He went on:

The right hon. Gentleman referred to the Supreme Court judgments—the Pinnock case and the Powell, Hall and Frisby cases—which established that local authority landlords seeking to recover a property to which they have an unqualified right of possession, which certainly will include expired flexible tenancies, will need to consider the tenant's rights under article 8 of the European convention on human rights in those cases where the tenant raises a defence based on the proportionality of the landlord's decision. The right hon. Gentleman did not, however, provide all of the Court's

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<sup>300</sup> *Ibid* cc824-5

<sup>301</sup> *Ibid*

<sup>302</sup> [Manchester City Council v Pinnock](#) para 49

<sup>303</sup> PBC 8 March 2011 c827

<sup>304</sup> *Ibid* c828

judgments in those cases, because if he had, it would have emphasised the strong presumption that if landlords have followed proper procedures—for example, giving tenants a right to review decisions—it will normally be proportionate to make a possession order. It is right that landlords should, in light of their tenancy policy, be able to make policy decisions about renewing tenancies without routinely having the basis for such decisions challenged in the courts.<sup>305</sup>

The amendment was pressed to a vote and was negated by 15 votes to 9.

During the debate on this clause the Minister noted that a majority of respondents to the consultation paper, *Local decisions: a fairer future for social housing*, viewed a two-year tenancy as too short a period in most cases. The Government's response accepts that two years should be an exceptional minimum period for special circumstances; **Andrew Stunell** said "we would normally expect the shortest period of tenancy to be five years."<sup>306</sup>

In the stand part debate on clause 130 **Alison Seabeck** said that Labour Members wanted it (and clause 131) deleted.<sup>307</sup> Several issues were raised by Members during the debate including:

- the importance of security of tenure for tenants' work, education and health;
- the impact of a lack of security of tenure on landlords' ability to encourage tenants to invest in their homes and communities;
- the administrative burden on landlords in managing flexible tenancies;
- the potential impact on lenders' willingness to invest in the sector if flexible tenancies increase uncertainty and risk;
- the lack of a manifesto commitment to introduce flexible tenancies; and
- the desirability of simplifying landlord/tenant law rather than introducing an additional type of tenancy agreement.

In response, the Minister noted that around two-thirds of landlords who responded to *Local decisions: a fairer future for social housing* had said that they expect to take advantage of flexible tenancies.<sup>308</sup> He emphasised the discretionary nature of flexible tenancies:

A local authority can decide to make no change at all to the way in which it allocates tenancies, or it can decide that it will apply to a certain category or type of tenants.<sup>309</sup>

And:

What needs to be underlined is the fact that, in many cases, we would expect the tenancy to be renewed.<sup>310</sup>

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<sup>305</sup> *Ibid* cc828-9

<sup>306</sup> *Ibid* c828

<sup>307</sup> *Ibid* c833

<sup>308</sup> *Ibid* c850

<sup>309</sup> *Ibid* c842

<sup>310</sup> *Ibid* c846

He referred Members to pages 48 and 49 of [Local decisions: a fairer future for social housing – summary of responses to consultation](#) for a full picture of the Government's intentions in relation to flexible tenancies.<sup>311</sup>

Clause 130 was ordered to stand part by 15 votes to 10.

**Clause 131 Flexible tenancies: other amendments**

Clause 131 provides that the right to improve and to be compensated for improvements (currently enjoyed by secure tenants of local authorities) will not apply to a flexible tenancy. The clause also prescribes the circumstances in which an introductory tenancy<sup>312</sup> will, on coming to an end, become a flexible tenancy. The clause also prescribes that when a flexible tenancy is demoted<sup>313</sup> the tenancy will revert to being a flexible tenancy on successful completion of the period of demotion.

**Alison Seabeck** sought clarification of whether the two-year minimum fixed-term of a flexible tenancy would be in addition to any period spent as an introductory tenancy or whether this would be subsumed into the minimum fixed-term. The Minister confirmed that “the introductory tenancy period is in addition to the flexible tenancy period and not deducted from it.”<sup>314</sup> He also confirmed that where a tenancy is demoted, when the tenants come to the end of the demotion period “they get back what they had before,” i.e. they will not automatically have a flexible tenancy if they were previously secure tenants.<sup>315</sup>

**Nick Raynsford** questioned whether the wording in the Bill referring to the creation of a demoted tenancy on termination of a flexible tenancy would actually achieve the Government's aim – given that on termination of a flexible tenancy the landlord would have a mandatory ground for repossession. The Minister agreed to respond to this in writing.<sup>316</sup>

**Clause 132 Secure and assured tenancies: transfer of tenancy**

Clauses 132 and 133 provide that, subject to certain conditions, existing secure and assured tenants will be able to retain a similar level of security on exchanging their property with a social tenant with a less secure tenancy (known as a mutual exchange). The grounds on which a landlord may refuse to comply with a request for a mutual exchange are set out in Schedule 14 to the Bill.

During the stand part debate on clause 133 **Alison Seabeck** drew the Committee's attention to paragraph 8.12 in [Local decisions: a fairer future for social housing – summary of responses to consultation](#) setting out the Government's position on retention of security of tenure for existing tenants:

The Government will protect the security and rights of those who were social housing tenants at 31 March 2012 by granting them a tenancy with no less security where they

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<sup>311</sup> *Ibid* c848

<sup>312</sup> Local authorities have discretion to offer introductory tenancies to all new tenants – if anti-social behaviour is exhibited during the period of the introductory tenancy it is easier for landlords to evict the tenants.

<sup>313</sup> Local authorities may seek to “demote” a tenancy for a period of time where the tenant is exhibiting anti-social behaviour.

<sup>314</sup> PBC 8 March 2011 c853

<sup>315</sup> *Ibid*

<sup>316</sup> *Ibid* cc853-4

choose to move to another social rent home (this requirement does not apply where a tenant chooses to move to an affordable rent home).<sup>317</sup>

She questioned whether the final sentence of this paragraph undermined previous commitments given in respect of existing tenants' security of tenure and cited the following statement by the Minister for Housing and Local Government:

...there is no chance of, or way in which, a social tenancy can be broken or changed for anybody already in council or housing association homes.<sup>318</sup>

**Andrew Stunell** said that the guarantee of retained security of tenure will always apply if existing secure or assured tenants are required to move by the landlord but will not apply if an existing tenant chooses to move to an affordable rent tenancy (these tenancies may or may not be flexible tenancies).<sup>319</sup> **Nic Dakin** raised the options available to an overcrowded household with a secure tenancy:

**Nic Dakin:** I think the Minister is saying that there is no assurance to tenants in overcrowded conditions who need to move for personal reasons. They might have to choose to take a less secure tenancy to address those needs. My right hon. Friend the Member for Greenwich and Woolwich is clearly saying that there is no assurance to such people in that situation, which is disgraceful.<sup>320</sup>

The clause was pressed to a vote – it was agreed that clause 132 should stand part by 15 votes to 10.

During the afternoon sitting of the Committee the Minister said he would “reflect further on the case for extending the guarantee of continued security where existing tenants choose to move to an affordable rent tenancy.” He acknowledged that there was a need to minimise disincentives for existing tenants to move.<sup>321</sup>

#### **Clause 134 Succession to secure tenancies**

Clause 134 removes the statutory right of those other than spouses and partners to succeed to a secure tenancy (this provision is not retrospective). There can only be one statutory succession to a secure tenancy. Currently, in the absence of a spouse or partner, the close relatives of a secure tenant who have resided in the dwelling as their only or principal home for 12 months prior to the tenant's death also have a right to succeed to the tenancy. The statutory right of these people to succeed is to be replaced with a discretionary power for local authorities to include additional succession rights as express terms in their tenancy agreements.

**Alison Seabeck** moved an amendment to clause 134 to extend succession rights to carers, live-in siblings and to people in a relationship but who are not married.<sup>322</sup> The Minister set out the purpose of the clause and advised that amendments may be needed to correct the wording:

**Andrew Stunell:** Clause 154 is needed, because at the moment different rules exist for secure tenants of arm's length management organisations and councils, and for

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<sup>317</sup> CLG, *Local decisions: a fairer future for social housing – summary of responses to consultation*, February 2011, para 8.2

<sup>318</sup> HC Deb 28 February 2011 c19

<sup>319</sup> The rent on these tenancies will be up to 80% of the market rent.

<sup>320</sup> PBC 8 March 2011 c856

<sup>321</sup> *Ibid* c864

<sup>322</sup> *Ibid* cc857-8

assured tenants of registered social landlords. Both types of tenants can be succeeded by a spouse or a partner, but secure tenants can also be succeeded by another family member. Importantly, there can be only one succession to a tenancy, so if the existing tenant was a successor they cannot by law be succeeded by anyone else, regardless of the circumstances. We propose an equalisation of rights for new social tenants with secure, assured, flexible or assured shorthold tenancies, with one mandatory succession for spouses and partners. I must say for the sake of completeness that we are looking at the case for a technical amendment to clauses 134 and 135, because there may be some confusion or ambiguity in the wording. It is not clear that a non-spouse or partner can succeed where there has not already been a succession, and we intend to correct that in due course.

We propose to give landlords the power to vary tenancy agreements to give whatever further succession rights they choose, which is a move in the direction that the hon. Member for Plymouth, Moor View is seeking. At the moment, the succession rights are clear and absolute, but giving landlords the ability to vary tenancy agreements means that they can, at their discretion, have a tenancy policy that covers the point that the hon. Lady has made. That will happen for the first time. This new freedom will allow landlords to act on a case-by-case basis; if they believe that the individual circumstances of the household merit a further succession, they can vary the tenancy agreement accordingly.<sup>323</sup>

**Alison Seabeck** indicated that she may return to succession rights on Report.<sup>324</sup>

#### ***Clause 137 Assured shorthold tenancies: notice requirements***

Clause 137 amends the notice requirements where a housing association has let a property under an assured shorthold tenancy for a minimum of two years. When these landlords do not intend to grant another tenancy they will be required to give tenants at least six months' notice in writing advising them of that fact and informing the tenant how they can obtain help and advice.

During the stand part debate on this clause **Alison Seabeck** asked whether the potential additional costs to be incurred by landlords in the form of court fees (a sum of £5 million is cited in the [Impact Assessment](#)) had been considered, in addition to existing pressures and delays in the court system.<sup>325</sup> The Minister confirmed the potential costs of implementing the clause as stated in the [Impact Assessment](#).<sup>326</sup>

#### ***Clause 140 Abolition of Housing Revenue Account Subsidy in England***

Clause 140 brings Schedule 15 to the Bill (abolition of Housing Revenue Account (HRA) subsidy in England) into effect.

There is cross party agreement on the need to reform the HRA subsidy system. During the stand part debate on clause 140 **Alison Seabeck** questioned the decision to retain the system of pooling 75% of capital receipts – she indicated that this issue may be returned to at a later stage.<sup>327</sup>

#### ***Clause 141 Settlement payments***

Clause 141 sets out the framework for calculating the value of each local housing authority's (LHA) housing service. Some authorities will be required to make a payment to the

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<sup>323</sup> *Ibid*

<sup>324</sup> *Ibid* c859

<sup>325</sup> *Ibid* c863

<sup>326</sup> *Ibid* c864

<sup>327</sup> *Ibid* c866

Government and others will receive a payment. The framework will be used for calculating the value of these “settlement payments” – the detail of which will be published by the Secretary of State in a determination.

**Stephen Gilbert**, for the Liberal Democrats, sought to insert a new clause into the Bill to enable local authorities to retain 100% of capital receipts raised from the Right to Buy. He referred to the need to enable authorities to reinvest the money from these sales in new social housing.<sup>328</sup> The Minister responded on this point:

... We have not made any specific projections of the right to buy sales, but it would seem realistic to assume that that low level of right to buy sales will continue for a significant part of the next four years, for the same reasons: shortage of mortgage finance, the preference given to more marketable properties, and the capacity of tenants to become purchasers in the current economic environment.

That has a direct consequence on the impact of the 75% retention. In 2006-07, the amount of money that was retained or surrendered to central Government by local government as a result of right to buy was £831 million. By 2009-10 that had fallen to just £133 million, a reflection of the very much reduced level of sales. I therefore want to say to friends and colleagues on the Committee that whatever the merits or otherwise of this retention, it will have a small effect—certainly as compared with previous years—on the spending power or capital-raising power of local authorities.

In an ideal world I would agree with colleagues in local government who sought a 100% retention of receipts. However, for exactly the reason to which I alluded before—the reason that the right hon. Member for Greenwich and Woolwich, when he was standing on this side of the Committee, found it difficult to get his reforms a hearing—one has to arrange these matters so that there is a consensus that allows the reform to be delivered. This is part of the consensus-building in order to achieve that.

I hope that my hon. Friend the Member for St Austell and Newquay is, if not satisfied, at least slightly reassured that the amount of money being returned to the Treasury is now substantially less than it was even three or four years ago. We project that that reduced contribution will be the norm during the period of the comprehensive spending review.<sup>329</sup>

**Mr Gilbert** did not press new clause 20 to a Division but expressed the hope that the Government will return to this issue over the course of the Parliament.<sup>330</sup>

### **Clause 142 Further payments**

This clause allows for the settlement payment to be revisited in certain circumstances.

During the stand part debate on clause 142 **Alison Seabeck** said that it had “probably drawn the most concern from local authorities”. She asked for an explanation of why the Secretary of State needed a power to reopen the buy-out figure and for reassurance that the power would only be used in extremely limited circumstances.<sup>331</sup> The Minister provided the following response:

In exercising the power in this clause, central Government would have to issue a further determination and consult on it. Exercising this power would represent a major

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<sup>328</sup> *Ibid* cc867-8

<sup>329</sup> *Ibid* cc869

<sup>330</sup> *Ibid* c870

<sup>331</sup> *Ibid* cc870-1

change in policy and would entail a new and significant programme of work for both local and central Government. The purpose of the clause is to protect both parties to the agreement—both central Government and local authorities—from being locked into a deal that, because of changes in policy affecting either a landlord's income or cost, no longer reflected a fair valuation and might have a material impact on viability. For instance, if the Government were to introduce a major change to national rental policy, or perhaps a significant increase in the environmental standards expected of council housing, that could upset the arithmetic of the equation. In those cases, it would be right for there to be an option for the reconsideration of the payment regime. I understand that councils may be concerned about that possibility, because they think that it may introduce instability and prevent effective long-term planning.

The hon. Lady drew attention to London Councils' views on that. I want to place it on the record that we would only use this power on an exceptional basis, such as if a change to a relevant matter had made a substantial material change to the value of the landlord's business. I hope that gives the hon. Lady the reassurance that she needs, and that councils reading the record will take that assurance and feel that they can accept with confidence that clause 142 is rightly part of the Bill.<sup>332</sup>

### **Clause 144 Limits on indebtedness**

Clause 144 gives the Secretary of State the power to set a maximum amount of housing debt that can be held by each LHA. This power to issue a determination may be exercised "from time to time."

**Alison Sebeck** questioned the need for the Secretary of State to impose borrowing limits given that local authorities are already bound by the Prudential Code.<sup>333</sup> The Minister justified the borrowing caps in the following terms:

Self-financing will give local authorities direct control over a large income stream. Prudential borrowing rules have been effective in ensuring that local authority borrowing is affordable locally, but our reforms must also support the coalition's first priority of reducing the national deficit, so borrowing under self-financing must be affordable within national fiscal policies, not just within local finances.

For most authorities, the borrowing cap will be set at the self-financing valuation. That will mean that local authorities whose notional borrowing for housing revenue account subsidy purposes is the same as their actual borrowing, will have a cap which is set at the level of their opening debt under self-financing. Our recently published policy document, "Implementing self-financing for council housing," states that any council whose opening debt is above its self-financing valuation at the start will have its cap set at the higher level.

I can commit to the fact that the aggregate housing borrowing cap will not be reduced, nor will we reduce individual councils' housing borrowing caps. The borrowing cap will place pressure on some councils in the early years of self-financing. Those pressures, however, should be seen in the context of the deal that significantly increases funding for all landlords and of a very tight fiscal position across the public sector in the next few years.<sup>334</sup>

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<sup>332</sup> *Ibid*

<sup>333</sup> *Ibid* c872

<sup>334</sup> *Ibid*

The Minister went on to say that of the 171 councils with housing stock, between 20 to 30 would have no headway to increase their borrowing. The total amount of capacity to be released is in the order of £3 to £4 billion.<sup>335</sup>

**Clause 148 Standards facilitating exchange of tenancies**

Clause 148 will amend the *Housing and Regeneration Act 2008* to give the social housing regulator the power to set a standard for registered providers in respect of assisting tenants with regard to mutual exchanges. The Secretary of State will be able to give directions to the regulator in regard to facilitating mutual exchanges.

There is cross party agreement over the need to facilitate mobility amongst social housing tenants. **Alison Seabeck** asked about the implications for any national scheme of the Mayor's desire for a separate pan-London mobility project. In response, the Minister said that the national scheme would "enhance any local scheme."<sup>336</sup> **Nick Raynsford** again raised the question of retention of security of tenure for existing tenants and the impact that a lack of retention might have on the success of a national mobility scheme – the Minister provided the following assurance:

Existing secure tenants retain security of tenure if they move, even if they swap with a flexible tenant. I hope that reassures him on the specific point. There is a more general point. For the foreseeable future, the number of affordable-rent tenancies available, in proportion to the total number of social-rent tenancies, will be very small. So the large majority of new tenancies offered to people on the waiting list or people who are seeking to transfer will continue to be social tenancies, rather than affordable-rent tenancies.<sup>337</sup>

**Clause 150 & Schedule 16 Transfer of functions from Office for Tenant Services (TSA) to the Homes and Communities Agency (HCA)**

Clause 150 provides for Schedule 16 to the Bill to have effect. This Schedule will abolish the TSA and provide for its functions to transfer to a newly created Regulation Committee of the HCA.

During the clause stand part debate Alison Seabeck expressed regret over the "watering down of the body that represents tenants in social housing."<sup>338</sup> The clause was ordered to stand part of the Bill by 14 votes to 10.

**Alison Seabeck** moved amendments concerning the administration, membership and governance of the Regulation Committee that will be responsible for the economic regulation of registered providers of social housing. The Minister advised that the level of detail in the amendments would not be appropriate for the Bill.<sup>339</sup>

During the clause stand part debate on Schedule 16 **Nick Raynsford** asked how the HCA would manage potential conflicts of interest between its tenant-focused consumer regulation objectives and its landlord-focused economic regulation objective.<sup>340</sup> The Minister dismissed his concerns on the grounds that the Government is not creating a new situation:

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<sup>335</sup> *Ibid* c873

<sup>336</sup> *Ibid* cc874-5

<sup>337</sup> *Ibid*

<sup>338</sup> *Ibid* c876

<sup>339</sup> *Ibid* cc879-81

<sup>340</sup> *Ibid* c882

We are transferring two regulatory functions from one body to another, so we can dispose of some of the straw men that the right hon. Gentleman erected without any difficulty. In addition, these objectives are regulatory, not investment ones. This is about setting a regulatory framework, not making a judgment about investments on the one hand and rents on the other.<sup>341</sup>

**Mr Raynsford** said he was not reassured by this response as under previous arrangements the TSA had not played a role in promoting new development. He predicted tensions between the Government's aim of building new homes financed by higher rents with the regulator's role in relation to ensuring affordability for tenants.<sup>342</sup>

### ***Schedule 17 Regulation of social housing***

This Schedule amends the 2008 Act to bring about a change in the role of the regulator in respect of consumer matters. The regulator will only be able to use its monitoring and enforcement powers if it has reasonable grounds to believe there has been a serious failure (or a risk of such a failure exists) affecting tenants.

**Alison Sebeck** moved a series of amendments on issues of concern to the National Housing Federation. The amendments covered the nature of the powers of the regulator.<sup>343</sup>

**Andrew Stunell** argued that the amendments would weaken protection for tenants as they reflected the "landlords' agenda."<sup>344</sup> The amendments were not pressed to a vote.

### ***Clause 153 Housing complaints***

Clause 153 will amend Schedule 2 to the *1996 Housing Act* to provide that only a "designated person" may refer a complaint to the Ombudsman. A designated person will be either an elected councillor, MP or designated tenant panel. A "designated tenant panel" will be a group of tenants recognised by a social landlord "for the purpose of referring complaints against the social landlord." Thus the Bill will create a "filter" process for complaints to the Ombudsman service.

**Alison Sebeck** expressed "deep reservations" over the introduction of a filter system for tenants' complaints. She sought to amend the requirement that complaints must be referred via a designated person, arguing that the filter "has the potential to slow down and frustrate people's access to the ombudsman."<sup>345</sup> Andrew Stunell set out the Government's view:

The Government's view is that the filter that we have established is the best way to ensure that disputes are resolved locally and that the ombudsman focuses on addressing cases where effective local resolution is not possible. Intervention from the centre, whether by the Government or the ombudsman, should be the last resort and not the first port of call.<sup>346</sup>

The amendment was rejected by 14 votes to 10.

### ***New Clause 12 Tenancy deposit schemes***

**Stephen Gilbert** sought to improve the existing mandatory tenancy deposit scheme (provided for in the *2004 Housing Act* and associated regulations) to "clarify the

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<sup>341</sup> *Ibid* c884

<sup>342</sup> *Ibid*

<sup>343</sup> *Ibid* cc885-7

<sup>344</sup> *Ibid* cc887-8

<sup>345</sup> *Ibid* cc888-9

<sup>346</sup> *Ibid* c890

circumstances in which landlords must protect deposits, and give judges greater discretion over the size of the penalty for landlords' non-compliance to ensure that it is appropriate."<sup>347</sup>

There is a widely held view that the decision of the Court of Appeal in *Tiensia v Vision Enterprises Ltd and Honeysuckle Properties v Fletcher and others*<sup>348</sup> has undermined the protection offered by the mandatory tenancy deposit scheme. The Minister said he was sympathetic to the main thrust of the new clause but argued that it would make changes that do not flow from the Court of Appeal decision and would miss one of the key issues that did arise in the Court of Appeal.<sup>349</sup> He set out the Government's position in some detail:

The key finding of the Court of Appeal concerned the application of a financial penalty for non-compliance with the requirements of tenancy deposit protection legislation in a situation when the tenancy is still in place and the landlord has protected the deposit after the deadline of 14 days. While the new clause tackles that issue, one of the reasons behind the Court's view concerned the ability of a landlord to use section 21 of the Housing Act 1988 to evict a tenant when they were found to be in breach of tenancy deposit protection legislation. Under the legislation as it stands, a landlord who fails to comply with the deposit protection legislation cannot use section 21 to evict a tenant. That is important, because section 21 is one of the key characteristics of assured shorthold tenancies to which the tenancy deposit scheme relates. It allows a landlord to evict a tenant, having given reasonable notice, on a non-discretionary basis and without having to give a reason. The ability to gain possession of their property is key to a landlord's confidence in letting out that property in the first place, and in the current economic climate, we would not want to undermine that confidence.

As the Court of Appeal pointed out, under the tenancy deposit protection legislation as currently drafted, it could be argued that once a landlord has failed to protect a deposit, they would be unable to use section 21 in connection with that tenancy, even when they had subsequently protected the deposit and, where appropriate, paid the fine imposed by the court. That outcome is not the intention of the legislation, and we are therefore clear that any amendments aimed at tightening up the requirement to protect tenants within 14 days must also address that point.

The Government's view is that to address fully the concerns underlying the Court of Appeal's decision, it is important to allow the courts greater discretion than currently available when setting the financial penalty. My hon. Friend the Member for St Austell and Newquay relayed the current regime to the Committee. However, subsection (11) of the new clause does not offer sufficient flexibility, because as well as allowing flexibility up to a maximum tariff, it still leaves the minimum of one times the deposit. We think that there should be no lower limit. If the objective of such legislation is to encourage landlords to comply and to protect the deposits they take, it cannot be right to levy a substantial penalty when a well-intentioned landlord had made a mistake that, for instance, could result in the deadline for protection being missed by only one day. It is essential that the courts have the discretion to do justice in those de minimis cases, but that would not be possible if the minimum sanction were to be the payment of a penalty equal to the full amount of the deposit.<sup>350</sup>

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<sup>347</sup> PBC 10 March 2011 cc948-53

<sup>348</sup> [2010] EWCA Civ 1224, November 12, 2010

<sup>349</sup> PBC 10 March 2011 c951

<sup>350</sup> *Ibid* c952

The Minister said he would “reflect further on how the matter might best be addressed.”<sup>351</sup> Stephen Gilbert withdrew new clause 12.

## 4 London

**Jack Dromey** agreed with **Robert Neill** that there was a high degree of consensus on the proposals on London in the Bill. The only changes to the Bill were minor technical Government amendments.

### ***Clause 159 The London Housing Strategy***

Clause 159 will amend the *Greater London Act 1999* to make the GLA responsible for exercising housing functions in London rather than the HCA.

**Alison Seabeck** sought to amend the clause to insert an obligation on the Mayor to consult all London Boroughs when preparing the London Housing Strategy and to have regard to investment plans published by the boroughs.<sup>352</sup> The Minister explained that sections 42 and 43 of the 1999 Act already provide for this consultation.<sup>353</sup>

### ***Clause 162 Abolition of London Development Agency and Transfer of its Property***

**Robert Neill** said that the London Development Agency would close by March 2012 and most assets were expected to transfer to the Greater London Authority or the London boroughs, but the clause contained a residuary power for assets to transfer to the Secretary of State.<sup>354</sup>

The clause was ordered to stand part of the Bill.

### ***Clause 163 Mayor’s Economic Development Strategy for London***

**Jack Dromey** welcomed these powers.<sup>355</sup>

Clause 163 along with clauses 163 and 164 were ordered to stand part of the Bill.

### ***Schedule 19 Housing and Regeneration: Consequential Amendments***

**Robert Neill** moved some minor technical amendments.

### ***Clause 169 Mayoral Development Corporations: Establishment***

**Nick Raynsford** moved amendments relating to the designation of Mayoral Development Corporations (MDCs). The legislation gave the Mayor carte blanche to propose an MDC in any area of London. There was no provision for what would happen if the Mayor proposed an MDC but the local authority or local neighbourhood forum did not like the idea. The Bill should be amended to give the Secretary of State more discretion and to require him to have regard to representations from other people. **Robert Neill** said that this point would be better addressed by considering strengthening the checks and balances within the system of devolved London governance.

The amendment was withdrawn and clause 169 ordered to stand part of the Bill along with Schedule 21 and clauses 170-2.

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<sup>351</sup> *Ibid* c953

<sup>352</sup> PBC Deb 8 March 2011 cc892-3

<sup>353</sup> *Ibid*

<sup>354</sup> *Ibid* c895

<sup>355</sup> *Ibid* c897

**Clause 173: Functions in relation to Town and Country Planning**

A minor Government amendment was agreed and clause 173 was ordered to stand part of the Bill, along with clauses 174 to 184.

**Clause 185: Powers in relation to Discretionary relief from non-domestic rates**

A technical Government amendment was agreed and the clause was ordered to stand part of the Bill, followed by clauses 186-93 and Schedule 22.

**Clause 194: delegation of functions by Ministers to the Mayor**

**Barbara Keeley** argued that any delegation from Ministers to the Mayor should be open to scrutiny and require the support of London local authorities.<sup>356</sup> **Robert Neill** said that the amendment would give the boroughs a veto over all proposed delegations which went too far.<sup>357</sup>

The amendment was withdrawn and the clause ordered to stand part of the Bill.

**Clause 195: The London Environment Strategy**

**Barbara Keeley** moved an amendment requiring the inclusion of “open air recreation and enjoyment” among the subjects on which there had to be policies in the Mayor’s London environment strategy.<sup>358</sup> **Robert Neill** said that open spaces and their importance to London could be included without spelling out the need to do so.<sup>359</sup>

The amendment was withdrawn and the clause ordered to stand part of the Bill, along with Schedule 23 and clauses 196-8.

**Clause 199: London Assembly’s Power to Reject Draft Strategies**

**Nick Raynsford** raised concerns about the delicate balance between the Mayor, the GLA and the boroughs.<sup>360</sup> **Robert Neill** dismissed those concerns and said that royal parks would only be delegated to the Mayor by consensus, and the Bill did not contain powers to do so.<sup>361</sup>

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<sup>356</sup> *Ibid* c911

<sup>357</sup> *Ibid* c911

<sup>358</sup> *Ibid* c913

<sup>359</sup> *Ibid* cc913-4

<sup>360</sup> PBC 10 March 2011 cc918-22

<sup>361</sup> *Ibid* cc922-5

## **Appendix 1 – Membership of Committee**

Chairs: Mr David Amess and Hugh Bayley

26 Members

Gavin Barwell  
Fiona Bruce  
Alun Cairns  
Greg Clark  
Nic Dakin  
Simon Danczuk  
Jack Dromey  
Julie Elliott  
Stephen Gilbert  
Pat Glass  
John Howell  
Barbra Keeley  
Brandon Lewis  
Siobhain McDonagh  
James Morris  
Robert Neill  
Eric Ollerenshaw  
Mr Nick Raynsford  
Alison Seabeck  
David Simpson  
Angela Smith  
Henry Smith  
Iain Stewart  
Andrew Stunnell  
Mr David Ward  
Bill Wiggin