The social rented sector, conduct of tenants and Housing Benefit in the Housing Bill

[Bill 44 of 1995/96]

Research Paper 96/12

25 January 1996

Part I of the Housing Bill, which was presented on 18 January 1996, will extend the powers of the Housing Corporation and Tai Cymru to register and regulate non-profit making landlords. It will also give tenants of future dwellings provided with public funding the right to buy their homes at a discount.

Part IV of the Bill amends provisions governing the payment of Housing Benefit and Council Tax Benefit and the payment of subsidy in regard to these benefits, while Part V is aimed at strengthening the powers of social landlords when dealing with complaints of anti-social behaviour on their estates.

This paper outlines the main provisions in these Parts of the Bill and gives background and comment on the changes. The provisions in the Bill relating to homelessness and housing allocations are covered by Library Paper 96/10; the provisions on houses in multiple occupation, the private rented sector and leasehold housing are covered by Library Paper 96/11.

Wendy Wilson
Education and Social Services Section

House of Commons Library
Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.
## CONTENTS

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Part 1</strong> The social rented sector</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. Background</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>B. The Bill (Part 1)</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>1. Registered social landlords (Clauses 1-6)</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>2. Disposal of land and the right to buy for housing association tenants (Clauses 7-16)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>3. Grants and other financial matters (Clauses 17-31)</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>4. General powers of the Corporations (Clauses 32-48)</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>5. Housing complaints and general provisions (Clauses 49-61)</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td><strong>Part II</strong> Housing Benefit (Part VI)</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>A. The Bill</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>1. Clause 87</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>2. Clause 88</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>3. Clause 89</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td><strong>Part III</strong> The conduct of tenants (Part V)</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>A. Background</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>B. Existing local authority remedies and approaches</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>1. Evicting the perpetrator</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>2. Injunctions</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>3. Mediation</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>4. Moving the perpetrator or the victim</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>5. Use of byelaws</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>6. Use of covenants on right to buy properties</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>C. Perceived problems with existing remedies and approaches</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>D. The Bill and responses</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>1. Probationary/introductory tenancies (Clauses 91-107)</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>2. Grounds for possession (Clauses 108-114)</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>3. Injunctions (Clauses 115-121)</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td><strong>Part VI</strong> Tenant's choice</td>
<td>27</td>
</tr>
</tbody>
</table>
Part 1

The social rented sector

A. Background

In June 1995 the Government published a White Paper, Our Future Homes, Opportunity, Choice, Responsibility,¹ in which it set out its ideas for a new framework for social renting:²

'The Government is committed to a social rented sector alongside a healthy private rented market. The most cost effective way of ensuring that people with permanently low incomes have a decent home is to give direct subsidy to landlords to provide social housing at rents below market levels. This social rented housing need not be in public ownership, as housing associations have successfully demonstrated. We aim to encourage a wider range of private landlords into the sector, alongside existing housing associations, and to expand the programme of voluntary transfers of council housing, with tenants' consent, to new landlords. The public sector's role is increasingly as enabler in the provision of and access to rented homes, and to ensure that both tenants and taxpayers are protected.'

A consultation paper linked to the White Paper was published in July 1995.³ More Choice in the Social Rented Sector asked for responses to the following proposals:⁴

Mr. Curry: The consultation paper set out Government proposals to increase competition in the social rented sector by removing current restrictions on who should be able to compete for Housing Corporation grant or take on transferred local authority housing. It argued that new forms of non-profit landlord should be able to register with the corporation, and that a licensing system should be established to enable profit-making landlords to receive grant and transferred stock. A series of proposals regarding the monitoring and regulation of social housing were put forward, including rent controls and provisions to recoup excessive surpluses. The paper also proposed the establishment of a statutory ombudsman for the independent social rented sector, and sought views on the appropriate approach to determining the standards to which housing schemes must conform.

¹Cm 2901
²Ibid p.26
³More Choice in the Social Rented Sector
⁴HC Deb 19.1.96 c.783W
The Housing Bill will implement some of the proposals outlined above, including:

- allowing new forms of non-profit making landlords, such as local housing companies, to register with the Housing Corporation or Tai Cymru (Housing for Wales);
- establishing a statutorily independent ombudsman to cover the independent social rented sector;
- providing new powers for the Housing Corporation and Tai Cymru to protect publicly funded stock and tenants' interests in the event of a landlord becoming insolvent.

The Bill does not include:

- Measures to introduce profit-making landlords into the sector, with associated controls over rent levels and surpluses. These have been deferred "because of the urgent need to deal with leasehold issues in a Bill of manageable size". The Department of the Environment (DoE) intends to consult on draft clauses covering these provisions with a view to including them in future legislation.

- As legislation opening up competition on housing association grant (HAG) to profit-making companies has been postponed, the Government has also put off plans to abolish non-charitable associations' entitlement to Tax Relief Grant under Section 54 of the Housing Act 1988 "at this stage". The DoE and Housing Corporation are commissioning a study into the feasibility of developing a series of housing quality indicators on which a report is expected in May 1996.

---

5 Ibid

6 Ibid

7 Ibid, currently this provision allows non-charitable associations to offset their liability for income and corporation tax on their surpluses; in 1994/95 this was worth around £55 million in total to an estimated 600 associations

8 HC Deb 191.96 c.783W
B. The Bill (Part I)

1. Registered social landlords (clauses 1-6)

Chapter I of the Bill provides for the Housing Corporation and Tai Cymru ("the Corporations") to register and regulate non-profit making landlords, including housing associations, as social landlords. It re-enacts and up-dates the powers currently contained in the *Housing Associations Act 1985*. Those provisions of the 1985 Act which will remain unchanged are not covered by this paper.

Clause 2 will extend eligibility for registration with the Corporations to non-profit, non-charitable companies. Registration with the Corporations is a prerequisite for receiving public funding in the form of HAG. The Corporations' regulatory powers are also extended to cover these bodies (clauses 4-6).

The powers of the Corporations to take action to protect the assets and tenants of a registered landlord, where there is good reason to suspect mismanagement or misconduct, are strengthened. Clause 6 will give effect to Schedule 1 to the Bill which provides for the regulation of registered social landlords.

This part of the Bill is aimed at implementing the Government's intention to encourage a diverse range of social landlords to emerge, including local housing companies. There is no objection amongst housing commentators to the principle of allowing a wider range of social (non-profit making) landlords to compete for HAG, as long as the new landlords deliver good quality, low cost housing with proper safeguards.9 The more controversial proposal of allowing profit making companies to compete for HAG is not included in this Bill (see page 2).

The Association of Metropolitan Authorities (AMA) and the Association of District Authorities (ADC) do not accept that allowing a wider range of landlords to compete for HAG will necessarily improve the social rented sector's efficiency and effectiveness.10 There is some concern that the extension of competition will threaten the achievement of local

---

9National Housing and Town Planning Council's response to *More Choice in the Social Rented Sector*, para 13

10AMA/ADC response to *More Choice*, para 3.2
strategic aims and place pressure on standards of development and management.\textsuperscript{11} The consultation paper prompted wide concerns over future development standards; the Bill does not deal with this issue as it is intended that the Corporation will continue with its current approach for the time being.

Other points raised on the potential impact of increased competition include:\textsuperscript{12}

- the existing competitive advantage of larger associations will be enhanced and this will in turn reduce diversity amongst associations;
- the specialist role of certain associations, eg black and ethnic minority associations, may suffer owing to their lack of competitive advantage.

The Bill marks a significant increase in the responsibilities of the Corporations. It is generally accepted that the Corporations are the only bodies capable of regulating the expanding number of social landlords, but it has been questioned whether they will be able to cope with the expansion in their roles:\textsuperscript{13}

"The expansion that would be necessary will result in an unacceptably large, unelected body and unnecessarily duplicate functions which are either already carried out by local authorities, or would more effectively be done by local authorities."

The Association of London Government (ALG) believes that much of the monitoring role would be more effectively performed by local housing authorities.\textsuperscript{14}

The Chartered Institute of Housing (CIH) has said:\textsuperscript{15}

"In relation to the involvement of local authorities in the regulatory function, the Institute would like to see the development of an idea based on the ‘client’ role in CCT. In their housing

\textsuperscript{11}Ibid, section 3
\textsuperscript{12}Ibid
\textsuperscript{13}Ibid
\textsuperscript{14}DoE Press Notice 18.10.95 Government gets tough with nuisance neighbours
\textsuperscript{15}Chartered Institute of Housing Neighbour Disputes: Responses by Social Landlords, 1993, p.114
management contracts, local authorities have already set performance expectations in the areas listed in paragraph 5.59 (void levels, rent arrears, relet times, etc). In relation to new landlords, particularly those set up as a result of stock transfer, there is no reason why this principle should not be developed further to include part of the regulatory function. If the local authority could demonstrate its ability in the strategic role, it could enter into binding agreements with new landlords, setting performance targets at least equivalent to those of the Housing Corporation. Failure to achieve these targets would involve action by the authority (eg refusal to endorse future HAG applications), in the first instance. Only if higher targets were then also triggered would the Corporation itself intervene."

2. Disposal of land and the right to buy for housing association tenants (clauses 7-16)

Chapter II of the Bill will re-enact and update provisions in the 1985 Act regarding the consent of the Corporations to disposals of land by registered social landlords (clauses 8-14). The existing provisions, under which unregistered housing associations must obtain consent before disposing of land which has been provided with public support, are retained and extended to cover disposals by any landlord who was previously registered.

Chapter II also includes provision to give qualifying assured tenants of future dwellings provided by registered social landlords with public funding the right to buy their homes at a discount (clauses 15 & 16). The consultation paper, Proposals for a Purchase Grant Scheme for Housing Association Tenants,\textsuperscript{16} suggested that the discount offered would be between £8,000 and £16,000, depending on the location of the property concerned. The right to buy will also apply properties which are transferred to registered social landlords from local authorities. The Corporations will be required, before issuing a social housing grant, to advise that the dwelling(s) provided will be open to the right to buy and allow the grant recipient an opportunity to withdraw his application within a specified time. As regards housing associations' existing properties, the decision to give these tenants the right to buy will remain at the discretion of housing associations.

Part V of the Housing Act 1985, which governs the existing right to buy for secure tenants of councils and housing associations,\textsuperscript{17} will apply to the right to acquire under clause 15, subject to orders issued by the Secretary of State. Regulations may provide, \textit{inter alia}, for the provisions in Part V relating to acquisition on rent to mortgage terms, restrictions on disposals in National Parks and the preserved right to buy, not to apply. Clause 16 provides for regulations to be issued specifying the rate of discount which will apply and designating certain rural areas in which the right under clause 15 will not arise.

\textsuperscript{16}June 1995

\textsuperscript{17}Part V covers matters such as qualifying time spent as a tenant, application procedures etc
Clause 12 provides for the placement of restrictions on the people to whom a property, which was previously owned by a registered social landlord and which is situated in a National Park or designated rural area, may be sold to. For example, only people who have lived and/or worked in the local area for three years immediately prior to applying to buy these properties will qualify.

Those aspects of the right to buy scheme which have changed since the Government initially set out its proposals in the consultation paper, Proposals for a Purchase Grant Scheme for Housing Association Tenants, are:

Mr. Curry: Following the publication of the housing White Paper, "Our Future Homes", over 3,000 copies of the consultation paper on purchase grants for housing association tenants were sent out to interested parties, and 341 responses have been received.

I have carefully considered the views of many housing associations that future HAG-funded properties should not be subject to the new right to buy. But the Government continue to believe that tenants ought to have this new right, and provision for this will appear in the forthcoming Housing Bill.

I have, however, decided to make a number of changes to the schemes as originally proposed in the light of the responses received. These changes are:

- the exemption from the schemes of properties in all rural communities of less than 3,000 population, because of the particular difficulties in providing replacement properties;

- replacement properties need not be new-build, but could be either rehabilitated existing stock or bought on the open market if this represents the best value for money;

- associations will be allowed to offer tenants alternative properties from their stock, for which purchase grant will be available;

- Housing Association grant repayment may be waived on all receipts from sales to tenants on condition that they go into the ring-fenced fund to provide replacement properties;

- Large-scale voluntary transfer associations will be treated in the same way as other associations— that is they

---

18. 27.6.95

19. HC Deb 15.1.96 c.369W
will not have to bear the burden of grant themselves, as originally proposed;

in the statutory scheme, associations-and other independent social landlords-will not be required to sell properties where the outstanding private sector debt is greater than the market value;

in the voluntary scheme, participating associations will not be required to sell where:

the property was built entirely by private donation or funds;

properties are subject to restrictive legal covenants or agreements;

the costs of acquisition and improvement (but not repair), or the outstanding private loan debt on the property, are greater than the market value.

The Government announced its plans to introduce a scheme to enable tenants of charitable housing associations, and those who have become tenants since the enactment of the 1988 Housing Act, to buy their homes in the White Paper, Our Future Homes: Opportunity, Choice, Responsibility:

"We want to offer more social tenants the opportunity to buy their home. Some social tenants do not have the Right to Buy - particularly housing association tenants whose landlord is a registered charity, or who have become a tenant since 1988. Although these tenants can take up a 'Tenants Incentive Scheme' cash grant to help them buy in the private sector, they cannot generally buy the home they live in."

It is estimated that around 550,000 tenants may benefit from the scheme; however, demand may be dampened by the fact that over 60 per cent of housing association tenants are in receipt of housing benefit and some 38% are aged 65 or over.

The housing association movement is not opposed in principle to the extension of the right to buy but has expressed some detailed concerns over the operation of the scheme, some of which have been allayed by the changes set out above. Social housing landlords in general

---

20 27.6.95
21 Council of Mortgage Lender's response to the consultation paper, para 4
do not want the extension of the right to buy to prejudice the available supply of rented housing.22

The potential impact of the scheme in rural areas gave rise to widespread concern on publication of the consultation paper linked to the White Paper. A variety of organisations, including the Rural Development Commission, the National Federation of Housing Associations (NFHA) and the Farmer's Union, urged the Government to exempt rural developments from the scheme. It was argued that associations largely depend on being granted "exceptional" planning permission to develop in these areas and that this is often only granted on the basis that the housing will be used to meet local needs and will remain available for rent for ever. There was concern that the introduction of the right to buy in rural areas would deplete the supply of affordable rented housing and its replacement would be threatened by the lack of local land availability and general resistance from local residents and landowners.

The NFHA has hailed the Government's agreement to exempt properties in rural areas with a population of 3,000 or less as a victory.23 However, it is intended to put pressure on the Government to protect the stock of low-cost housing in areas with a population greater than 3,000.24

The NFHA response to the consultation paper also raised the issue of the scheme's possible effect on inner-city areas where similar replacement problems may arise. The NFHA proposed a much longer list of exemptions to the scheme than that envisaged by the DoE and has also put forward its ideas for an alternative Home Ownership Scheme for Tenants (HOST) which it believes combines the best aspects of the Government's proposals with greater flexibility and choice.25 The concession to allow the replacement of properties sold under the scheme by rehabilitating existing stock or by buying properties on the open market has relieved some worries about the potential impact of the scheme in inner city areas, as has the change to allow landlords to offer properties for sale other than the one in which the tenant resides.

Since 1989 housing associations have been required to fund a percentage of the cost of new developments with private sector finance. The Council of Mortgage Lender's (CML) response to the consultation paper noted that it could have an adverse effect on the level of private finance which associations can borrow in future as they will find their assets being reduced

---

22Joint AMA/ADC response to the consultation paper, para 2

23Inside Housing 19.1.96 "Federation hails victory after right to buy U-turn"

24Housing Association Weekly 19.1.96 "Key changes to VPG scheme for right to buy"

25see Housing Association Weekly, 22.9.95 "Purchase Grant Scheme - the NFHA response"
as dwellings will not be replaced at the rate at which they are sold. The CML (on behalf of lenders) asked for assurances that their loan security would not be undermined; lenders and associations alike stressed the need for "cost floor" provisions to prevent properties from being sold for less than their original development cost. The Government has conceded that registered social landlords will not have to sell properties where the outstanding private sector debt is greater than the market value (to be provided for in regulations).

The changes to how the scheme will operate in regard to large scale voluntary transfer (LSVT) associations (see the Minister's announcement above) have been welcomed.

The desirability, of encouraging home ownership 'at the margins' at this time has been questioned by Shelter.26

"Repossessions are currently occurring at a rate of 1000 weekly (Shelter, Ford,1995), and over 250,000 households owe mortgage arrears of 6 months or more (DoE,Ford, Kempson and Wilson, 1995). Recent figures from the CML show that the number of properties taken into possession by mortgage lenders in the first half of 1995 was 4 per cent higher than in the second half of last year (CML Press Release, 26 July 1995). The proposals may therefore lead to increased homelessness, and are being suggested at the same time as proposals to weaken duties to homeless households."

The CML has said:27

"Lenders have expressed some concern about the sustainability of home ownership which is derived from sales. The Survey of English Housing indicates that sitting tenants do have a slightly higher propensity to be in arrears or to have had difficulty with their repayments. Taken together, this does not suggest that such purchasers do have difficulties and that applicants for grants under this scheme will require careful assessment by both associations and lenders."

The Chartered Institute of Housing (CIH) and various other respondents to the consultation paper are concerned that there should be some restriction on the inclusion of leasehold flats in the scheme given the problems experienced by tenants who have exercised their right to buy in blocks of flats.28 These problems, which relate to an inability to resell and high service

---

26Shelter's response to the consultation apaper, para 2  
27CML's response to the consultation paper, para 5  
28CIH's response to the consultation paper, section 3
3. Grants and other financial matters (clauses 17-31)

Chapter III re-enacts the provisions in the 1985 Housing Associations Act allowing the Corporations to pay grants to registered social landlords (clause 17). Clauses 19 and 20 will enable the Corporations to pay grants to landlords in respect of discounts on sales to tenants; this relates to the implementation of the right to buy under clause 15. The application procedure for these grants and the manner and time, or times, at which grant is to be paid will be specified by the Corporations. In addition, the Corporations will be able to make payment of the grant subject to compliance by registered social landlords with certain conditions.

Clause 20 provides for the Corporations to make grants to registered social landlords in regard to discounts given on the disposal of properties other than under the right conferred by clause 15, ie disposed of voluntarily and where the landlord enables a tenant to buy a property of which they are not the tenant. The discount, and therefore the amount of grant issued, will be no more than that which would have been given under clause 15.

Clause 23 will require registered social landlords who have received HAG to show the surpluses arising from increased rental income, as a result of housing activities to which the grant relates in a given period, in a separate account known as a "surplus income fund." The Corporations will specify the method of constituting this fund and how surpluses should be calculated. The Corporations will be empowered to redeem surpluses on demand and/or give directions on the use of these funds (clause 24).

Clause 26 will require the net proceeds from sales of properties to be held in a "disposals proceeds fund." These funds will only be available for use for purposes determined by the Corporations; funds which are not applied as directed within a specified time will be repayable on demand (clause 27).

This plan to 'ring fence' the account in which receipts raised from the sale of properties under this scheme will be placed, and to require that they are used to replace properties which are sold, has been welcomed. The ADC/AMA response to the consultation paper made the point that local authorities should also be allowed to apply 100 per cent of their capital receipts to reinvest in housing.31

---

29 Our Future Homes, p.14
30 for example, the Exchange Sale Scheme and other measures in the Housing Bill (see Library Research Paper 96/11)
31 ADC/AMA response, para 2
"Regrettably since the introduction of RTB for council tenants there have been significant cuts in housing investment and tighter controls on the use of capital receipts at a time when the need for social rented housing has been increasing. The Association, therefore, welcomes the recognition of the need for housing associations to retain sale receipts in order to build replacement properties for social renting. The Department is strongly urged to apply the same logic to council housing by also allowing local authorities to reinvest 100% of their capital receipt income from house sales."

Clause 29 will give the Corporation power to recover a sum of money from a landlord in certain events such as the breach of a grant condition or the disposal of some of their housing. These provisions will apply to stock constructed or transferred after the Bill is enacted; they supplement provisions in the Housing Act 1988 which will continue to apply to older stock.

Clause 31 will give the Secretary of State, after consultation with a housing association, the power to commute payments of special residual subsidy payable under paragraph 2 of Part I of Schedule 5 to the Housing Associations Act 1985 for the financial year 1998/99 and subsequent years.

4. General powers of the Corporations (clauses 32-48)

Chapter VI provides a general power for the Corporations to collect information from registered landlords and updates provisions in the Housing Associations Act 1985 (clause 32). The Corporations will have a new power to make a “transfer order” under which a manager may be appointed to take over the housing of a registered social landlord and secure its transfer to another landlord for an appropriate price where an inquiry has found misconduct or mismanagement by that landlord (clauses 41-48).

5. Housing complaints and general provisions (clauses 49-61)

Clause 49 and Schedule 2 to the Bill will require registered social landlords to be members of an approved ombudsman scheme. The Secretary of State will have wide powers to make provisions for different types of schemes for different areas and housing activities and also for different types of registered landlords.

The proposal to put the current Housing Association Tenant Ombudsman on an independent statutory footing was widely supported by respondents to More Choice in the Social Rented Sector.
Part II

Housing Benefit (Part VI)

Part VI of the Bill will amend parts of the Social Security and Administration Act 1992. At the time of writing there is no comment available on this part of the Bill.

A. The Bill

1. Clause 87

Clause 87 will amend section 5 of the 1992 Act (regulations about claims for and payments of benefit) to enable the Secretary of State to require the payment of housing benefit (HB) to a third party (eg landlord) on behalf of a claimant in circumstances 'as may be prescribed.' This amendment will be deemed to have always had effect.

This amendment will validate existing regulations which compel local authorities to make direct payments in certain cases. The aim is to remove the risk of adverse effects on local authorities and those in the business of letting property which would arise from a successful legal challenge to the existing provisions.

2. Clause 88

Clause 88 will give effect to Schedule 6 which will amend Part VIII of the 1992 Act (arrangements for housing benefit and council tax benefit and related subsidies). Schedule 6 will amend section 134 of Part VIII to enable the Secretary of State for Social Security to specify exceptions to the general rule that responsibility for administering HB rent allowance claims ultimately rests with the authority in whose area the property is situated.

It is apparently proposed to use this power to provide that, where a local authority owes a duty to people under the homelessness legislation, they will be required to administer and fund all HB rent allowance claims resulting from the discharge of this duty without regard to the area in which these people are accommodated. This appears to be intended to act as a deterrent to housing authorities who discharge their duties to homeless people by placing them in another authority's area.
Schedule 6 will also amend section 134 to enable the Secretary of State to express permitted totals for local authorities’ discretionary expenditure under the HB/Council Tax Benefit (CTB) scheme as fixed amounts.

This provision will allow discretionary expenditure to be expressed as an amount, where currently it can only be expressed as a percentage of the overall in-year expenditure. The aim of this provision is to enable local authorities to administer their discretionary budgets more effectively. It may be presumed that authorities will be concerned to have their 'permitted totals' set at realistic levels in order to prevent hardship amongst claimants who would ordinarily be assisted by discretionary payments.

Schedule 6 re-enacts the provisions in Part VIII (section 140) in relation to the payment of subsidy for HB and CTB with certain changes. The Secretary of State will be able to specify amounts of benefit and administration subsidy to be paid to individual local authorities and to specify that nil subsidy will be paid on certain expenditure.

This provision is aimed at simplifying the drafting of secondary legislation covering the HB and CTB subsidy arrangements by removing the need for complex formulas, allowing for clearer drafting of the Subsidy Order and specification of nil subsidy on certain expenditure. It appears to give the Secretary of State wide powers to determine the method by which subsidy is to be calculated and may provide that subsidy paid 'in respect of any matter' will be a fixed sum.

The Secretary of State will be able to make payments of subsidy by instalments to local authorities, impose conditions as to the payment of subsidy and recover overpaid subsidy or subsidy paid where there has been a breach of the conditions.

This provision will give a statutory basis to payments currently made to local authorities in advance of a subsidy claim, which cannot be submitted until the end of the financial year, and is aimed at enabling payments of subsidy to be properly policed.

The Secretary of State will also be empowered to make one Subsidy Order with common provisions for both HB and CTB which will be open to amendment and updating. Currently an Order with separate parts covering HB and CTB must be made for each financial year. As the Order cannot be amended during the year, the current practice is to make it at the end of the financial year.
3. Clause 89

Clause 89 restates the power of the Secretary of State to confer functions on rent officers and will enable him to make an order which may provide for landlords to be charged where they make an application to a rent officer for a pre-tenancy determination. It seems doubtful that landlords will welcome being charged for this service. They may pass the cost on to tenants or decide not to apply for pre-tenancy determinations.

32 see Library Research Paper 95/67 for information on pre-tenancy determinations.
Part III

The conduct of tenants (Part V)

A. Background

Part V of the Bill is aimed at making it easier for local housing authorities to take action against tenants who indulge in anti-social behaviour.

There is a wide range of views on what constitutes anti-social behaviour. Different people are annoyed by different things. However, it could be described as behaviour that destroys the quality of life for those living in the proximity of the perpetrators. The DoE issued a consultation paper in April 1995, Anti-social Behaviour on Council Estates, in which it noted:

"Such behaviour manifests itself in many different ways and at varying levels of intensity. This can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joyriding, domestic violence, drugs and other criminal activities, such as burglary."

Anti-social behaviour and neighbour disputes are not confined to the residents of public housing but this is the area where the problem has attracted most attention, perhaps because occupiers can turn to their landlord for assistance instead of dealing with it themselves. Although the vast majority of neighbour disputes are satisfactorily resolved by housing officers, in recent years concern has been raised over the amount of time that is being devoted to a small but growing number of more serious cases. Research in this area has found that up to 20 per cent of housing managers' time is now spent on dealing with neighbour nuisance issues, and that between two and ten per cent of tenants on any given estate have been the subject of a complaint.

33 Anti-Social Behaviour on Council Estates, April 1995, para 1.2
34 Ibid para 1.3
In April 1995 the Government issued a consultation paper entitled *Anti-Social Behaviour on Council Estates.* Part V of the Bill will implement the proposals set out in this paper and a further package of measures announced in October 1995.

B. Existing local authority remedies and approaches

1. Evicting the perpetrator

Schedule 2 to the *Housing Act 1985* sets out the grounds upon which a court may grant an order for possession against a secure council or housing association tenant. Ground 2 provides for the eviction of a tenant, or any person residing in the dwelling-house, who has been guilty of conduct that is a nuisance or annoyance to neighbours, or who has been convicted of using the dwelling-house or allowing it to be used for immoral or illegal purposes. The nuisance or annoyance must be to a neighbour but this does not mean that the occupier’s property is necessarily physically contiguous [*Cobstone Investments Ltd v Maxim* (1985) Q.B 140].

Ground 1 of schedule 2 to the 1985 Act provides for the granting of a court order where rent due from the tenant is unpaid or where an obligation of the tenancy has been broken or not performed. Councils may insert additional terms into tenancy agreements that, if breached, can give rise to eviction proceedings. Many authorities have included an obligation to refrain from racial harassment in their tenancy agreements so that eviction action under Ground 1 can be pursued against perpetrators should the need arise. Before granting a possession order under Grounds 1 or 2 the court must be satisfied not only that the alleged breach has occurred, but also that it is reasonable to grant the order.

The grounds on which an order for possession may be granted against an assured tenant of a housing association are set out in Schedule 2 to the *Housing Act 1988*. The "nuisance" Ground is Ground 14; as with secure tenants it is a discretionary Ground and a court will only grant possession to the landlord if it thinks it reasonable to do so.

---

36 Ibid
2. Injunctions

An injunction is a court order that prohibits a particular activity or requires someone to take action, eg to avoid causing a nuisance. Several social landlords, including the London Borough of Hackney and Manchester City Council, have successfully sought injunctions against some of their tenants in an attempt to tackle vandalism, violence, noise, harassment, threatening and unneighbourly behaviour on their estates.

Normally the ability to seek an injunction would be limited to the person(s) who had actually suffered from the nuisance; however, landlords may bring an injunction where it can be shown that the tenant in question is in breach of a tenancy condition not to indulge in particular sorts of behaviour, provided tenancy agreements are clearly and unambiguously drafted.

An injunction may be perpetual, ie a final order, or interlocutory, which is an interim order pending the final outcome of the matter. An interlocutory order can, in an emergency, be obtained without the defendant being given notice of the proceedings (ex parte). This has the effect of "freezing" the situation for a few days until an application for a further interlocutory injunction is made. With an interlocutory order if the nuisance ceases no further action is taken, if it continues a perpetual injunction must be sought. Failure to comply with an injunction is contempt of court which is punishable by fine and/or imprisonment.

The following extract describes Manchester City Council's experience of using injunctions to combat anti-social behaviour:

"The experience of Manchester City Council, which started seeking injunctions in 1992, has been that they can be effective in controlling unneighbourly behaviour. When appropriate, an injunction is sought against people breaking the clause in the tenancy agreement which prohibits causing a nuisance. The initiative originally came from housing management staff but received the support of tenants' groups and councillors. Housing staff are aware that some judges in the County Court are reluctant to grant injunctions and have therefore been careful only to seek them when they can put forward a strong case, supported by conclusive evidence.

After nine months, sixteen injunctions had been obtained and all except two were regarded as immediately successful in stopping the offending behaviour. In other cases warning the offender that an injunction would be sought had been effective. In two cases where offending behaviour continued despite the injunction, possession action was taken and the tenants have now been evicted. The fact that there had been a prior history of injunctions was helpful in making the case to the court for possession.

[37 Chartered Institute of Housing Neighbour Disputes: Responses by Social Landlords, 1993, p.114]
Injunctions have covered a variety of subjects, the most frequently occurring being noise with associated fighting and drunkenness in some cases. Other subjects include trespass by a squatter, the threat to knock down a wall in the course of a boundary dispute and driving over a green.  

Local authorities may also rely on their general power to institute proceedings leading to an injunction under section 222 of the *Local Government Act 1972*. This enables an authority where it considers it expedient to promote or protect the interests of inhabitants of its area, to prosecute, defend or appear in legal proceedings. Coventry City Council reportedly used section 222 to obtain an order excluding two brothers from their mother's home following a string of burglaries on her estate.  

3. **Mediation**

A number of local authorities have developed their own in-house mediation services and others have used the services of independent organisations such as Mediation UK. Several reasons are advanced in favour of using mediation to resolve neighbour disputes:

- it can reduce the amount of officers' time that is spent on neighbour disputes;
- legal remedies are not appropriate for all cases, they are expensive and can often make disputes worse before they get better;
- officers of an independent organisation are seen as impartial and without conflicting interest;
- it can prevent a dispute from escalating into a more serious disturbance that may require court action;
- residents feel that their complaints are being taken more seriously as the dispute handler can devote more time to the problem.

4. **Moving the perpetrator or the victim**

Some local authorities have traditionally adopted a "management transfer" approach to neighbour disputes under which either the victim or the alleged perpetrator is moved to another property. In England and Wales these moves can only take place with the consent of the tenant involved, in Scotland it is possible to enforce a transfer. This has been criticised as a "nuisance pays" approach to harassment, particularly if the household which has been moved has been a victim of racial harassment. However, councils may prefer this method to eviction proceedings as it is quicker, cheaper and produces a more predictable result.

---

38 *Roof* July/August 1995 "Antisocial antidotes"
5. Use of byelaws

District councils and London borough councils have a general power to make byelaws under section 235 of the *Local Government Act 1972*. Byelaws may lay down provisions for controlling the use of public open spaces and thus attempt to remove causes of friction between citizens, eg by requiring that all dogs be restrained. In addition, local housing authorities may, under section 23(1) of the *Housing Act 1985*, "make byelaws for the management, use and regulation of their houses."

Breach of a byelaw will amount to a criminal offence; thus, an authority must be able to prove its case beyond reasonable doubt. It seems that few authorities make use of their byelaws other than in relation to non-residential parts of estates.39

6. Use of covenants on right to buy properties

If a serious dispute arises between a council tenant and an occupier who has exercised their right to buy the council has no powers to evict the owner occupier. Several local authorities use covenants on right to buy sales as a means of demonstrating both to buyers and their tenant neighbours that expectations about behaviour are the same for owners as for tenants.

Typical clauses which authorities include in covenants will prohibit:

- the use of properties for illegal or immoral purposes;
- creating a nuisance, annoyance or inconvenience to neighbours;
- failing to keep the garden tidy;
- keeping animals without permission.

C. Perceived problems with existing remedies and approaches

No single remedy or approach is appropriate to all neighbour disputes. There is general agreement that public sector landlords need to develop a coherent strategy to deal with this issue which incorporates all the options available. Some authorities, such as Manchester City Council and Refrew in Scotland, have taken this a step further and have set up specific teams

---

39 Chartered Institute of Housing *Neighbour Disputes:Responses by Social Landlords*, 1993, p.132
to deal with neighbour nuisance complaints. Manchester has also set up multi-agency groups that bring together the police, tenants' associations and other departments such as social services, environmental health and education. The purpose of these groups is to assist in the provision of information and case building.

Despite these efforts certain authorities have been vocal in demanding a strengthening of their powers to deal with the perpetrators of anti-social behaviour. The following problems have been identified with their existing powers:

- possession actions can encounter problems that are inherent in any litigation, ie they can be time consuming and expensive to pursue and can involve long delays;

- there are often difficulties in proving a case, in marshalling evidence and in persuading witnesses to appear because of fear of retaliation;\(^{40}\)

- the nature of neighbour disputes means that the rights and wrongs of a situation are often unclear. Even where the original source of the dispute shows an innocent party, subsequent escalation usually draws both sides into culpable behaviour and makes possession action against one party inappropriate;

- courts can sometimes be reluctant to grant a possession order for neighbour nuisance, it is a discretionary ground;\(^{41}\)

- although injunctions can provide a speedy and effective remedy they can also be expensive\(^ {42}\) and involve time-consuming court proceedings;

- when an injunction is breached the punishment inflicted may not be severe; if a term of imprisonment is imposed it may be suspended or for as little as one or two weeks;

- the parties may simply refuse to take part in efforts to mediate.

---

\(^{40}\) some authorities have tried to overcome this problem by using detective agencies to acquire evidence and act as professional witnesses (see The Independent "Under private investigation" 20.3.95)

\(^{41}\) Manchester CC is reportedly planning to hold a seminar for judges on the problems faced by local authorities in dealing with neighbour disputes (see Roof July/August 1995 "Antisocial antidotes")

\(^{42}\) Manchester City Council's Director of Housing estimates that they are spending about £100,000 a year on injunctions (see Roof July/August 1995 "Antisocial antidotes")
The Chartered Institute of Housing’s (CIH) publication, *Neighbour Disputes: Responses by Social Landlords*, notes the following reasons why landlords are reluctant to bring actions for possession in nuisance cases:

- The legal sections of local authorities, often acutely conscious of budgetary constraints, are frequently unwilling to take court action where they feel they do not have a good chance of winning.

- There is frequently weak co-ordination between local authority housing and legal departments with a lack of support and guidance given to housing officers by lawyers. Smaller housing associations may lack in-house legal expertise.

- There is also an understandable desire on the part of social landlords and their officers not to be seen to be 'worsted' in court by a tenant against whom they take unsuccessful action.

- Legal sections will want to feel sure that the evidence the landlord wishes to rely on is reliable. Nuisance actions are also not easily won and judges in the County Court may require a great deal of proof before granting the remedy sought - proof that may have to be put forward in a highly formal way, such as, in the case of a noise nuisance, a 'diary' detailing the matter complained of, the type of noise, its dates and time of occurrence, its duration and quality. The complainant may not be able or willing to supply such evidence or have it corroborated.

- District judges, who hear most possession actions in the County Court can often regard neighbour disputes as 'six of one and half a dozen of the other' and so are unsympathetic to the landlord's attempts to gain possession.

- Fear of reprisals may cause victims and witnesses to be unwilling to act as witnesses.

- Witnesses may need assistance, for example in the form of child-minding and transport, to get to the court. Explanations may also need to be given to employers about time being taken from work.

- The law tends to reinforce the reluctance of landlords to be involved. For an 'annoyance' to pass the threshold of becoming a legal nuisance, the matter complained of must clearly have gone beyond the bounds of 'give and take', 'live and let live'.

- A tendency for courts to award suspended possession orders makes the weapon of possession ineffective and further inhibits witnesses and victims.

- The feeling that the problem is merely pushed to another address.

- The feeling by local authorities that the 1985 Housing Act Part III (homeless persons) makes the sanction ineffective for many families, although they may, of course, be deemed intentionally homeless.

---

43 pp 107-8
D. The Bill and responses

When announcing these proposals, after the consultation period, the Housing Minister, David Currey, stated:\textsuperscript{44}

"These measures, working in parallel with other activities such as mediation, counselling, and physical security and design measures, will enable council tenants to live safely without despair."

1. Probationary/introductory tenancies (Clauses 9-107)

Chapter I will give local authorities and housing action trusts (HATS) the power to offer introductory tenancies to all people who would have been given a secure tenancy except for certain limited exceptions, eg where a secure tenant transfers to another dwelling (clause 91). These tenancies will last for one year; continuous periods spent as an introductory tenant or an assured shorthold tenant of another registered landlord will count towards the one year period (clause 92).

Possession against introductory tenancies will only be obtainable by court order (clause 94). A court may only grant a court order where the landlord has complied with the necessary notice provisions\textsuperscript{45} (clause 95) and informed the tenant of his right to request a review of the landlord's decision to seek possession under clause 96. Where the provisions in clauses 95 and 96 have been complied with the court will be obliged to grant an order.

If a landlord has not sought possession of an introductory tenancy at the end of 12 months the tenancy will automatically become a secure tenancy. Introductory tenants will have rights in relation to succession, the right to repair (to be applied by regulation), a right to information about introductory tenancies and the right to be consulted on housing managements matters (clauses 97, 101, 102 and 103).

The idea behind introductory tenancies is that councils will be able to act quickly to remove new tenants who exhibit anti-social behaviour. The consultation paper states:\textsuperscript{46}

\"A probationary tenancy, to be converted automatically on its satisfactory completion, would give a clear signal to new tenants that anti-social behaviour was unacceptable and that it would result...\" 

\textsuperscript{44}DoE Press Notice 18.10.95 \textit{Government gets tough with nuisance neighbours}

\textsuperscript{45}The notice must set out the reasons for the landlord's decision to apply for a possession order.

\textsuperscript{46}\textit{Anti-social behaviour on council estates}, April 1995
in the loss of their home. It would also give reassurance to existing tenants that their authority would take prompt action to remove any new tenants acting in this way."

Anti-social Behaviour on Council Estates\(^{47}\) asked for views on the proposal to give councils and (HATs) the power to introduce a probationary (introductory) period of 12 months for all new tenants. The paper draws a distinction between behaviour which is "different, but not necessarily anti-social" and refers to the need for local authorities to exercise the proposed new power "responsibly and sensitively". People who are evicted because they breach their probationary tenancies would, the consultation paper states "typically be regarded as intentionally homeless, and the duty owed [to rehouse] in such cases is very limited".

Although some authorities have lobbied hard for the introduction of probationary tenancies, most notably Manchester CC and Dundee District Council\(^{48}\), the housing movement as a whole is not persuaded that they will be of any great assistance in tackling the issue of anti-social behaviour on estates.\(^{49}\) Some housing commentators have bemoaned the fact that there has been little research into the history and causes of nuisance behaviour and are of the view that more account should be taken of local authorities' management practices, the design of estates and the impact of allocation policies, before strengthening the legal remedies at the disposal of authorities.\(^{50}\) Several respondents to the consultation paper emphasized that anti-social behaviour is not a problem which is confined to council estates and were worried that council tenants would be at risk of further stigmatisation by having to "serve probation" order to obtain a permanent tenancy.

More specifically, there is concern that these tenancies will result in the erosion of all tenants' rights because of the criminal/anti-social behaviour of a minority. A number of respondents to the proposals have pointed out that, for probationary tenancies to be successful, the offending tenant will have to show signs of anti-social behaviour within 12 months of moving into a property. Local authorities' experiences have shown that problems may not manifest themselves so quickly; probationary tenancies will do nothing to assist existing anti-social tenants.

The fact that the proposals in the consultation paper contained no clear definition of social behaviour led Shelter to comment that there would be "potential for inconsistent interpretation,

\(^{47}\)April 1995

\(^{48}\)The Scottish Office has also consulted over the introduction of probationary tenancies and the Scottish Affairs Committee is investigating the issue of anti-social behaviour on estates.

\(^{49}\)In the following section if no specific source is given the comments refer to a selection of responses to the consultation paper including Shelter, the Association of London Government, Chartered Institute of Housing and the local authority associations.

\(^{50}\)Housing July/August 1995 "The myth of the bad neighbour"
and judgemental and arbitrary decision making”. The danger of vulnerable tenants being evicted owing to anti-social behaviour rather than being provided with adequate support was also highlighted. The Bill makes no reference to the circumstances in which local authorities may seek to terminate an introductory tenancy.

Given that the main argument in support of introductory tenancies is that they would provide councils with a speedy means of getting rid of nuisance tenants, it is significant that the Chartered Institute of Housing (CIH) and the various local authority associations do not believe that this will work in practice:

"Prior to the 1980 Housing Act local authorities could end unprotected tenancies by a simple four week Notice to Quit. This resulted in constant challenges by tenants in the Court of Appeal. If the proposal signals a return to periodic tenancies, this will inevitably trigger a series of judicial reviews being heard in the High Court in an attempt to overturn the serving of a Notice to Quit. Whilst any judicial review may be unsuccessful, it will still prevent authorities from taking swift action and will delay possession for months or even years. This means that, far from being a swifter route to possession, there will be no advantage over proceedings under section 83 of the 1985 Act."

The consultation paper envisaged that a tenant within his or her probationary period could have the tenancy terminated simply by the service of a notice to quit (in not less than 28 days) if their behaviour was deemed to be anti-social. The fact that the Bill provides for the termination of introductory tenancies only by court order is likely to be welcomed by bodies concerned with the protection of tenants’ rights.

---

51 Shelter's Response to the White paper "Our Future Homes" September 1995, p.36
52 Association of London Government's Response to Probationary Tenancies, May 1995, p.6
54 This view has been endorsed by counsel's opinion obtained by the Tenant Participation Advisory Service, see Housing Association Weekly "Evicting probationary tenants could be a lengthy problem, lawyers warn" 28.4.95.
Respondents have argued that authorities make insufficient use of existing remedies at their disposal; Russell Campbell, a solicitor with Shelter, has written.\textsuperscript{55}

"Most worryingly, those who advocate probationary tenancies appear woefully ignorant of the extent and effectiveness of existing legal measures to deal with these problems. The right approach is to combine the use of injunctions with possession proceedings."

Alternatively, North British Housing Association, which has been involved in the introductory tenancies pilot scheme on Manchester's Monsall estate, has hailed them as effective.\textsuperscript{56} Fifty one tenancies on this estate have been let on six-month assured shorthold basis with consent from the Housing Corporation. By mid October eight tenants had been switched to permanent tenancies and two had had their probationary tenancies extended by a further six months. Respondents to the consultation paper felt that powers to operate a probationary tenancy scheme should not be granted until full results from the pilot scheme became available.

It appears that the Government has taken account of respondents to the consultation paper who felt that a tenant who moved after partially completing a probationary period should only be required to complete the remainder of the term with the new landlord (if that authority has decided to operate a system of probationary tenancies).

2. Grounds for possession (Clauses 108-114)

Chapter II will amend provisions in the \textit{Housing Act 1985} and the \textit{Housing Act 1988} so that local authorities, charitable housing trusts, registered social landlords and private landlords of properties occupied by secure or assured tenants will be able gain possession against tenants for behaviour \textit{likely} to cause a nuisance (clauses 108 and 109).

Clause 111 will extend the 'nuisance or annoyance to adjoining neighbours' ground for possession in Schedule 2 to the 1988 Act to cover behaviour in the vicinity of a tenant's property and will include behaviour by visitors to the property. This measure is intended to deal with two problems associated with the existing ground. The first is that the behaviour must relate to the property; there is no effective remedy if it arises elsewhere. The second is that judges can sometimes be reluctant to grant possession where the offender appears to be beyond the tenant's control, ie a visitor.

Clauses 109 and 112 introduce a new ground for possession which will enable local authorities, charitable housing trusts and registered social landlords to evict a tenant who has been left in occupation by a partner fleeing domestic violence towards themselves or their

\textsuperscript{55}Roof May/June 1995 "Putting security on probation"

\textsuperscript{56}Housing Association Weekly "Probationary tenancies effective - North British" 25.8.95
children, where the property concerned is "larger than reasonably necessary" for their needs. Before granting such an order the court will have to be satisfied that the partner who has left is unlikely to return.

Landlords will have the right to start possession proceedings on the basis of nuisance or annoyance as soon as a notice of seeking possession has been served (clause 110). Currently 28 days must elapse after the service of a NISP before an application to the court can made.

These measures and those concerning injunctions (see below) have been broadly welcomed by the local authority associations, most of which argued for a review of the overall framework within which possession proceedings and injunctions are sought in their response to the consultation paper. Some of these proposals were suggested by the associations themselves. However, there is remaining concern that the Government has failed to come up with proposals aimed specifically at speeding up court procedures when dealing with possession cases.57

3. Injunctions (Clauses 115-121)

Chapter III provides that where there has been violence, or threatened violence, a power of arrest can be attached to injunctions obtained by landlords who are local authorities, HATs and registered social landlords to prevent anti-social behaviour. It also provides for a power of arrest to be attached to injunctions taken out for a breach of a tenancy agreement obtained by a local authority under their general powers to protect or promote the interests of its inhabitants58 (clauses 115-116).

Clauses 118 and 119 requires that persons arrested must be brought before the court within 24 hours and allows that they may be remanded for medical reports. The power of arrest may apply for a shorter period than the length of the injunction (clause 120).

57Inside Housine “Crackdown not enough” 20.10.95
58s.222 of the Local Government 1972
Part VI

Tenants' choice

Part VII of Schedule 12 to the Bill will repeal the provisions in the *1988 Housing Act* (sections 93-114) which gave tenants of local authorities the right to opt for an alternative 'approved' landlord.

The Minister for Housing issued the following statement on the reasons for repealing the tenants' choice scheme:59

"Part IV of the Housing Act 1988 introduced the tenants' choice scheme in 1989. The scheme has been overtaken by more effective initiatives which meet its objectives of improving housing management performance and providing local authority tenants with opportunities to change their landlords. Better services and more tenant control are being delivered through right to manage and tenant consultation on housing management compulsory competitive tendering. Change of landlord can be achieved through large scale voluntary transfers, and the new estates renewal challenge fund. The tenants' choice scheme no longer serves a useful purpose and the forthcoming Housing Bill will include provisions to repeal the legislation in England and Wales."

By March 1993 only 830 dwellings had been transferred to an alternative landlord under the tenants' choice scheme.60

---

59HC Deb 17.1.96 cc605-6W

60HC Deb 16.3.93 c.164W