

Update on the Housing and Planning Bill – Scrutiny

The Housing and Planning Bill is continuing its journey through Parliament, following its introduction to the House of Lords in February 2016.

A detailed analysis of the Bill by Ranjit Bhose QC, [*The death of the social rented sector? Selective thoughts on the Housing and Planning Bill*](#), was published in our February 2016 Housing Newsletter. This article provides a brief update on some of the developments which have taken place in the Lords since then. As a reminder, it will suffice to say that the main provisions in the Bill concerning social housing were originally as follows:

- The phasing out of secure tenancies ‘for life’, and the introduction of a requirement that all new secure tenancies be for fixed terms of between 2 and 5 years only.
- The mandatory introduction of market rents for higher-income social housing tenants, known colloquially as ‘pay to stay’. As currently proposed, the rule would apply to any household which has an annual income above £40,000 p.a. in London or £30,000 p.a., in the rest of England.
- The extension of the right to buy to housing association tenants, based on an agreement reached with the National Housing Federation (NHF) in October 2015. This which would provide for voluntary sales by housing associations with similar discounts offered as under the statutory right to buy.
- The introduction of new duties for local authorities:
 - To consider selling their interests in ‘high value housing’; and
 - To make payments to the Secretary of State assessed in accordance with the value of their interest in ‘high value housing’ which is likely to become vacant in any one year. It is understood that these payments are intended to fund, in whole or part, reimbursements to housing associations whose properties have been sold at a discount under the voluntary right to buy provisions.
- A package of measures intended to reduce social housing regulation and allow housing associations to move back into the private sector.

The Bill underwent line by line examination during the Committee stage in March 2016 and entered the Report stage on 11 April. The fifth and final day of the Report stage is scheduled for 25 April. At the time this article was written, therefore, Report stage debates had not concluded. However it was already clear that the Lords had taken a robust approach to some of the criticisms and concerns raised about the Bill, and the Government had suffered at least eight defeats related to some of the key provisions.

On the end of secure tenancies, the Government made a key concession by agreeing to introduce local authority powers’ to grant fixed term tenancies of up to ten years “*in certain circumstances*”. This is a significant extension as fixed-term tenancies would otherwise be limited to between two and five years. The exception will apply to persons with disabilities, but additional circumstances will also be discussed in further readings. One possibility is to grant longer tenancies to cover the period when dependent children will be attending school; another may consider those moving homes to escape violence.

Regarding right to buy, the Peers focused their attention on the proposed sale of ‘high value’ local authority properties. Developments here included:

- The redefinition of ‘high value’ properties as ‘*higher-value*’ in the bill. This is intended to ensure that, for the purposes of defining homes to be sold, properties can be compared to the council’s own stock, as opposed to the wider regional housing market overall;

- Further rules setting the precise value and definition of 'higher value' will not be made by ministers but through regulations, which will be subject to parliamentary approval;
- Baroness Susan Williams gave undertakings on behalf of the Government to consider allowing councils to ensure 'one-for-one' and 'like-for-like' replacements of properties sold under right to buy, in some circumstances. Her speech in the Lords suggested, however, that this policy may only apply to local authorities outside of London. A proposed amendment which would have required councils to ensure one-to-one replacement was withdrawn on foot of these undertakings.
- Undertakings included a commitment to reconsider forced sale of local authority homes in national parks and areas of national beauty.

On 'Pay to stay', the Peers adopted amendments as follows:

- Local authorities to have discretion over whether to implement the policy within their areas;
- The threshold for tenants considered to be 'high income' would be raised to £50,000 in London and £40,000 in the rest of England, up from £40,000 and £30,000 respectively;
- For tenants who are caught by the policy, the increased rent which they would have to pay would be limited, in that rent should not equate to more than 10p for each pound of a tenant's income above the minimum threshold. The market rent previously proposed was for an equivalent rent of 20p per pound.

If enacted in the final legislation, these amendments would significantly water down the mandatory 'pay to stay' scheme envisaged by the Government. The existing voluntary 'pay to stay' policy, which came into effect on 1 April 2015, has had limited take up in areas with low numbers of 'high earning' tenants, where local authorities feared that the administrative costs of setting up and enforcing the scheme would outweigh any additional revenue generated.

In terms of housing association regulation, the Government increased its efforts to remove housing associations from the public sector by putting forward an amendment which would, if enacted, give the minister power to create regulations which would limit or remove local authorities' ability to "*exert influence*" over registered providers of social housing. This amendment is in addition to the existing proposals which would give housing associations unfettered discretion as to how to use the funds from sale of their properties. The amendment had not been considered by the Lords at the time of writing this article. The type of measures envisaged by the ministerial powers include:

- Removing local authorities' ability to appoint or remove officers to housing associations, such as those appointed to act as board members, or limiting the number of officers which can be appointed;
- Giving housing associations power to remove officers previously appointed by local authorities;
- Removing local authorities' right to vote on the boards of housing associations;

The Bill is scheduled to begin its Third Reading on 27 April, following the conclusion of the Report stage with a final day of debate on 25 April. This is the final stage of the legislative process in the House of Lords before the Bill is returned with the Lords' amendments for the consideration of the Commons. That process is currently diarised to begin on 3 May.

As soon as the legislation is enacted Cornerstone Barristers plans to produce a special edition of our Housing Newsletter with in-depth analysis and discussion. Details will be announced in due course.

Tara O'Leary
Cornerstone Barristers
Barrister