

Housing and Planning Bill: Second reading briefing (House of Lords)

Summary: The shortage of homes, especially affordable homes, is at the root of every problem Shelter see through our services. The government's intention to build more homes is therefore welcome, as are many of the measures in this Bill to improve private renting.

However, we believe the Bill needs a great deal of further thought to avoid unintended consequences.

- As currently drafted it risks leading to a net loss of homes affordable to people on low and middle incomes – with existing public resource diverted to schemes for those on more comfortable incomes. **The Bill introduces changes to low-rent social and council housing that, taken together, would be the most significant in its history.**
- These changes are pursued through **a considerable transfer of power and resource from local authorities to central government.** Many hinge on information the government has not yet revealed to Parliament and is instead deferring to regulations.
- Low-rent affordable homes are currently a vital lifeline for communities across the country. They offer a security that private renting does not, while low-rents help families save. They also play a significant role in tackling and preventing homelessness. **We are extremely anxious about undermining the supply of these homes.** While we recognise the government's mandate to expand home ownership schemes, we believe that these can and should be delivered in a way that does not come at the expense of homes for vulnerable people and those on low incomes.

This briefing contains information on all parts of the Bill, but we believe Peer's priorities should be:

1. **Forced sale of council homes.** Local authorities will be compelled to sell council homes deemed 'high value' when they become vacant and pass receipts to central government. This will fund Right to Buy discounts for Housing Association tenants. The relevant definitions of 'high value' are not in the Bill and will instead be defined in regulations. Based on available information, Shelter estimate that 113,000 council homes could be lost, with many areas potentially losing vast swathes of council homes. **Alternative funding mechanisms for Right to Buy should be explored, and forced sale of council homes rejected by Peers - at least until further key details are published. Short of that, significant safeguards and exemptions should be put in place.**
2. **Changes to secure council tenancies.** This measure was introduced by government on the final day of committee in the House of Commons. It will compel councils to offer 2-5 year tenancies as standard for new council tenants. At present all council tenants have a secure, indefinite tenancy. The terms on which tenancies would be reviewed are not in the Bill but will be published in regulation. **Peers should reject this measure until more detail is published. Short of that, new fixed term tenancies should be increased from 2 years to at least 10 years.**
3. **Starter Homes.** Reforms will force local authorities to ensure Starter Homes (homes for sale at 80% of market price) are built, with funding diverted from existing affordable housing provision. **Local authorities should have more discretion to build other forms of affordable housing, such as social housing, if Starter Homes are not affordable to their local community.**
4. **Improving the private rented sector.** Measures include banning orders for the very worst landlords, 'rent clawback' measures, and better data sharing on bad landlords. **These are welcome reforms which will improve the lives of many renters. There is an opportunity to do even more to improve the sector by further protecting and empowering tenants.**
5. **Repossession of 'abandoned' properties.** The government's proposal will allow landlords to evict tenants without going through the courts, where they believe a property is 'abandoned'. **This should be removed from the Bill. Landlords already have strong powers to reclaim their property and this proposal could easily be abused by a minority of rogue landlords to illegally evict tenants.**

Background: England's shortage of affordable homes

- Home ownership, especially for those on lower incomes, has been declining since 2003. There are now 11 million private renters, including 1.6 million families with children. Half of private renters pay so much in rent they have nothing to save at the end of the month towards a deposit. Government statistics shows 1 in 6 private rented homes contain a health hazard.
- 100,000 children in Britain will wake up homeless this Christmas, in temporary accommodation while their family wait for a home they can afford to become available.
- This can be fixed. At the heart of all this is a shortage of homes, especially affordable homes. This is the fault of inaction over a generation by successive governments. England needs to be building at least 250,000 new homes a year to meet demand. 50% of these new homes need to be private market, 20% intermediate (such as shared ownership) and 30% need to be low-rent affordable homes. Shelter and KPMG recently published a five-year blueprint on how this can be done: www.thehomesweneed.org.uk

Figure 1. What we need per year vs. what we build

The homes we need	Number	Proportion
Market homes	125,000	50%
Intermediate	50,000	20%
Social	75,000	30%
Total	250,000	100%

Homes delivered in 2014/2015	Number	Proportion
Market homes	65,940	53%
Intermediate	50,080	40%
Social rent	8,470	7%
Total	124,490	100%

Proposals in the Housing and Planning Bill:

1. Forced sale of council homes in 'high value' areas (Part 4, Chapter 2).

- This chapter will compel councils to sell 'high value' council homes when they become vacant (e.g. a tenant moves out or dies), instead of moving a new tenant into the property from their waiting list. Sale receipts must then be passed to central government.
- The definition of a 'high value' council home is not defined in the Bill, and is deferred to future regulations. However, as the government hopes to raise around £4.5bn a year, this will necessitate a broad definition. During the election the Conservative party suggested it could be defined by regional house price thresholds (figure 2). Based on these, Shelter estimates around 113,000 council homes would be at risk of forced sale.
- By definition this proposal will take badly needed low-rent council homes out of areas where they are most needed (areas with high house prices and rents), where waiting lists are often at their highest. Examples include St Albans, where 60% of council stock is at risk of forced sale), Harrogate (29%), York (18%), Westminster (76%), Kensington & Chelsea (97%), South Cambridgeshire (25.7%), Camden (50%) and Oxford (12%). Around half of all council homes lost would be in London.
- Most of the money raised from this policy will be used by central government to fund new Right to Buy discounts for Housing Association tenants. **Better funding mechanisms for these discounts should be found. One possibility, suggested by Lord Kerslake, is a Help to Buy style equity loan for HA tenants to help them buy their home. This would be both a more secure and fairer funding stream.**

Figure 2: Regional house price thresholds above which council homes would be sold (Conservative party press release, April 2015) (£)

	1 bedroom	2 bedroom	3 bedroom	4 bedrooms	5 or more bedrooms
North East	80,000	125,000	155,000	250,000	310,000
North West	90,000	130,000	160,000	270,000	430,000
Yorkshire and the Humber	85,000	130,000	165,000	265,000	375,000
East Midlands	105,000	145,000	175,000	320,000	430,000
West Midlands	100,000	145,000	180,000	305,000	415,000
East	155,000	220,000	265,000	440,000	635,000
London	340,000	400,000	490,000	790,000	1,205,000
South East	165,000	250,000	320,000	495,000	755,000
South West	135,000	200,000	260,000	375,000	535,000

- The exact policy will operate on a levy basis. Local authorities with 'high value' council stock will be billed by DCLG on an annual basis for a sum of money. This sum will be based on a calculation by DCLG of how many council homes of high value that authority has, and how many are likely to become vacant in the forthcoming year. Clause 67(7) states that "a determination may provide for assumptions to be made in making a calculation whether or not those assumptions are, or are not, borne out by events."

Local authorities will then have a duty to meet this payment, regardless of how accurate the estimates or predictions are, by selling high value council homes when they become vacant.

- The definition of a 'vacant' home is so broad as to create unintended perverse incentives. At present, it includes vacancies created as a result of internal transfers within stock – where a tenant moves from one local authority home to another, usually because their present home is unsuitable. If this remains the case, councils are likely to reduce internal transfers in order to depress vacancy rates in order to reduce levy payments and ultimately the number of council homes they have to sell. The effect of this will be families stuck in council homes too small or large for them. **Vacancies created as a result of internal transfers should be excluded from both the formula and duty on which this policy is based.**
- There is currently no commitment in the Bill to replace council homes like-for-like in the areas they are sold. After negotiation with Conservative MPs in London (led by Zac Goldsmith), the government has committed to negotiating deals with councils in London to leave them with sufficient sale receipts to build 2 new affordable homes for every 1 sold. **We would like to see this protection extended to all high value areas around the country, with sufficient receipts staying locally to cover the cost of building at least one new council rented property.**

2. **Changes to secure council tenancies** (Part 4, Chapter 6)

- This clause was introduced by the government on the last day of Committee stage. At present, councils can offer tenants long-term, indefinite tenancies (with flexibility for councils to evict if tenants miss rent payments or commit ASB). However, **this clause will compel local authorities to offer most new council tenants a tenancy of 2-5 years only.**
- Local authorities already have discretion to offer shorter-term fixed term tenancies. However, the effect of this clause will be to make 2-5 years the standard offer in council housing. After this fixed period a tenant's tenancy will be reviewed, though the terms of this review will only be set out in regulations. There is a risk that tenants will be evicted into the private rented sector.
- With limited social housing there are legitimate arguments to be had around the efficient use of stock. However, security is the cornerstone of any healthy housing market. With the termination of a private rented sector tenancy now the single lead cause of homelessness, we are concerned that this part of the Bill risks introducing the worst aspects of the private rented market – instability– into council housing.
- **If this policy goes ahead, the minimum term should be increased from 2 years to 10 years. It is also appropriate that councils have maximum discretion to offer the sort of tenancies they deem needed in their local area. This must be allowed to include indefinite tenancies for those most risk of homelessness or least likely to change their circumstances, such as pensioners.**

3. Starter Homes (Part 1, Chapter 1)

- Starter Homes will be homes for sale at 80% of the market price, up to a value of £250,000 (£450,000 in London). They will be built by private developers and sold to first time buyers.
- The Bill provides a duty on local authorities to deliver a certain proportion of Starter Homes as part of any large-scale development. The exact proportion will be defined in regulations.
- The Prime Minister has confirmed that this will mean diverting funding from existing affordable housing obligations (called 'Section 106' obligations). At present local authorities can oblige developers to build low-rent homes as part of any large scheme, as the price of planning permission. In future, this subsidy would be diverted to fund Starter Homes instead.
- Shelter research recently found that the average Starter Home will be unaffordable to families on middle incomes in a majority (58%) of the country by 2020. A family on the new National Living Wage will not be able to afford a Starter Home in 98% of the country.
- Shelter supports building Starter Homes but they should not come at the expense of genuinely affordable homes, as this Bill currently proposes. Section 106 obligations currently deliver around 1/3 of all affordable homes each year. This supply is put at risk by these changes. We estimate 84,841 genuinely affordable homes that would be built between now and 2020 will now not be as a result. **Local authorities should have far more discretion to provide other forms of affordable housing via developer agreements, if they believe these are right for their community.**
- This policy also potentially threatens government efforts around estate regeneration. Local authorities would end up being compelled by planning law to build Starter Homes on regenerated estates before, or instead of, socially rented properties for those who have been displaced. It is thus becomes hard for councils to re-generate estates without pricing out existing tenants. **Regeneration schemes are exempt from the Starter Home requirement in the Bill. Peers should support an amendment being planned by Baroness Doocey to this effect.**
- There are alternative ways to deliver Starter Homes that do not replace the building of low-rent affordable homes. For instance, Starter Homes can be delivered through stepping up the government's original policy for delivering them: zoning new development land specifically for Starter Homes.

Figure 2. Map of local authorities where Starter Homes are affordable to families on the new National Living Wage



4. Planning reforms: improving Compulsory Purchase Orders (CPO) (Part 7)

- The bill proposes measures to make Compulsory Purchase Orders more efficient. CPO is used to assemble land for infrastructure and complex developments where landowners are reluctant to sell.
- The high price of land at the root of the reason England doesn't build enough homes. While these measures do not directly address that, **they are a welcome first step to giving local authorities the powers they need.** In future we need reforms to allow local authorities to CPO land at low enough price to enable them to build high quality developments with the affordable homes their community needs. This is how CPO works in countries with successful development markets, like Germany and Holland.

5. Pay to Stay (Part 4, Chapter 3)

- Families in low-rent council homes with a household income of more than £30,000 (£40,000 in London) will see their rents increased towards market levels over time. This will only apply to council tenants, and the additional rent will go to the Treasury, not the council.
- We are not against the principle of some social housing tenants paying slightly higher rents depending on their income, but we believe **these income thresholds are far too low given how unaffordable market rents are in many parts of the country**. The proposed income threshold is barely above that of two minimum wage earners, who will now be classified as 'high earners.' When the policy was originally proposed the income threshold suggested was £100,000. Local authorities should also keep the extra money generated to invest in affordable housing.

6. Improving conditions in the Private Rented Sector (PRS) (Part 2)

- The decline of alternatives to private renting make the government's private rented sector reforms even more urgent. We support the government's existing proposals in the Bill to:
 - **Introduce banning orders for rogue landlords.** This will address the very worst landlord/letting agent practice. Offenders will be banned from letting property and face either criminal or financial sanctions. **This is a very welcome step. It is important that local authorities are adequately resourced to enforce this.**
 - **Create a database of rogue landlords.** This will be shared between local authorities. **This is very welcome and should be publicly available to help inform tenants' choices in the market.**
 - **Strengthen rent repayment orders (RROs).** This would more easily allow tenants to claw back rent payments when they have had to endure poor conditions. Councils will be able to keep the money where the renter is on housing benefit. **This is a positive move. Government should remove barriers to renters exercising this right: for instance, making landlords bear tenant's legal fees.**
 - **Penalty fines for rogue landlords.** **We welcome the government's decision to increase the maximum fine from £5,000 to £30,000.**
- There is an opportunity for the government to go even further and introduce three common-sense reforms to help professionalise the sector and drive up conditions; **(1)** requiring landlords to carry out five-yearly electrical safety checks; **(2)** updating the existing law so that all private properties are required to be fit for human habitation; and **(3)** introducing mandatory client money protection for letting agents to protect both landlords and tenants money if letting agents go out of business.

7. Abandonment: Speeding up repossessions of property deemed 'abandoned' (Part 3)

- This takes the courts out of the eviction process for reclaiming a property if a landlord deems it to be 'abandoned'. In the Bill, a property is 'abandoned' if a certain amount of rent is unpaid (i.e. two consecutive months) and the landlord has given three warning notices without response.
- As currently drafted, this change would allow an unscrupulous landlord to carry out illegal evictions more easily. We have particular concerns about tenants who may be unaware of the notices or unable to respond such as people admitted to hospital unexpectedly or imprisoned for a short period.
- Arrears allow a landlord to attempt reclaiming the property through this abandonment clause but delays in the benefit system can also tip tenants into arrears: government data shows the average time taken to process a new housing benefit claim is 22 days.
- **Shelter recommends removing this part of the Bill entirely. If it remains, strong safeguards must be introduced where an independent party (e.g. a Local Authority or Tribunal) could verify the landlord's claim that a property is genuinely abandoned. Local authorities are well placed to do this as they are able to check an abandonment claim against benefit claimant records or the details of those known to social services, who are less likely to respond to such letters.**

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Annex A: Potential impact on affordable rented housing, Housing and Planning Bill¹

Policy	What we know	Calculation	Potential impact
Starter Homes (Part 1, Chapter 1 of the Housing and Planning Bill)	<p>Section 106 contributions to affordable housing will not be sought on Starter Home exception sites (source).</p> <p>The Prime Minister said in his conference speech that developers will be able to build Starter Homes instead of affordable homes to rent to deliver their S106 obligations.</p> <p>The housing bill makes clear that Starter Homes will be delivered through S106, replacing rented homes, and that the details of this will be set out in regulations (source).</p>	<p>Section 106 contributes a large proportion of affordable housing each year.</p> <p>The JRF estimates that from 2004/05 to 2013/14 there were 234,279 affordable homes delivered through S106 (with or without support from grant), more than half the total affordable homes built in that period (Source). A ten year average gives an average for both a buoyant housing market (pre 2007) and a low volume market (post 2008).</p> <p>In 2010/11, 72% of the homes delivered through S106 were for social rent or intermediate rent (2011 Housing Strategy Statistical Appendix).</p>	<p>If the number of homes built through S106 is the same over the next five years as it was on average over the previous ten and the proportion of these that were for low rent remains the same as in 2010/11, we are losing around 85,000 low rent homes we could have built over the next five years.</p>
Vacant High Value Local Authority Housing (Part 4, Chapter 2)	<p>The government has a manifesto pledge to sell low rent council homes onto the open market to pay for, among other things, Right to Buy discounts to housing associations.</p>	<p>Shelter has previously calculated that at least 113,000 council homes are at risk of sale, based on information about the policy in the public domain (source)</p>	<p>By applying vacancy rates to the levels of high value stock, Shelter calculates that by 2020-21 the number sold will be approximately 19,000 council homes</p>
Implementing the Right to Buy for Housing Association tenants (Part 4, Chapter 1)	<p>The government wants to see the Right to Buy extended to all housing association tenants not currently covered by the current Right to Buy for local authority tenants (Source).</p>	<p>The National Housing Federation have calculated that 850,000 households would be eligible for the new Right to Buy extension by excluding those who already have the Preserved Right to Buy (source).</p> <p>Shelter then applied the same take-up rate of the first Right to Buy deal in the 1980s (9% of total stock).</p>	<p>By 2020-21, Shelter estimates that if the same take-up rates apply, approximately 76,000 low rent homes would be sold under the extension of Right to Buy.</p>
TOTAL			<p>In total, approximately 180,000 genuinely affordable homes for low rent could either not be built or sold-off in the next five years.</p>

¹ Figures here are an estimate based on all information, including government data sets and historical record, publicly available at the time of writing. For more detail please see Shelter's policy blog 'The loss of our low rent homes'.