

Social Justice Committee SJR-01-03(p.4)

Date: June 2003

Venue:

Title: Draft Housing Bill

Purpose

To advise the new Social Justice Committee of the proposed housing provisions in the draft Housing Bill.

Summary / Recommendations

The Government has developed the measures in the draft Bill to ensure: that action is taken to counter unacceptably low standards in rented housing provision; that there is an adequate supply of affordable homes available and to make access to home ownership available within sustainable communities.

Background

Consultation

The Government has (unusually) taken the step of testing out its proposals by consulting on its published draft proposals before bringing the Bill before Parliament. The consultation on the draft Bill, which was published on 31 March is contained within Command paper 5793 issued jointly by Jeff Rooker and myself and is accessible electronically at: <http://www.housing.odpm.gov.uk/information/consult/housingbill/01.htm>

The draft Bill consultation comprises:

- A consultation section that highlights particular issues on which views are sought (pages 12-33)
- The draft Housing Bill (pages 34-170)
- Explanatory notes that provide a short explanation of the clauses of the Bill in non-legal

language (pages 171-215)

- Regulatory Impact Assessments for the core proposals covered by the Bill. These will be further developed and updated during the consultation process (pages 216-274)

The current consultation ends on 9 June 2003.

Close collaboration is being maintained with the Office of the Deputy Prime Minister to ensure that Welsh interests are fully taken into account in drafting of the Bill. The exception being the creation of a single social housing ombudsman for Wales, where the Assembly has led on this Wales only clause.

Timing

An illustrative timetable indicates that the Bill could be introduced to Parliament late autumn or fourth quarter 2003 with Royal Assent in the second quarter 2004. This is, of course, subject to the availability of legislative time.

Consideration

Content of the Draft Bill

Housing in Multiple Occupation (HMO) Licensing, Selective Licensing of Private Rented Sector

The Housing Bill contains provisions for mandatory licensing of "high risk" and discretionary licensing of other HMOs. There will also be selective licensing of other privately rented homes. The new arrangements will ensure that tenants are better protected from unscrupulous landlords and be of particular benefit to Communities with high concentrations of HMOs.

The Bill contains provisions that will enable the Assembly to ensure that the new arrangements will be sensitive to the needs of Wales. Selective licensing will also be available on a wider basis in Wales where local authorities will be able to licence within criteria set by the Assembly.

The measures affirm the Assembly's commitment to the introduction of mandatory HMO licensing and the selective licensing of other properties in the private rented sector as set out in 'Better Homes for People in Wales'.

Housing Health and Safety Rating System (HHSRS)

The Bill includes provision for a new Health and Safety Rating System to replace the current fitness standard.

The current Housing Fitness Standard, which sets out the basic conditions houses should meet, has been in place since 1990. The standard has nine items and if a house "fails" on any one of them it is not considered to be fit for human habitation. The intention is to replace the current fitness standard with a new Housing Health and Safety Rating System (HHSRS) based on risk assessment and vulnerability. Overall the new system will be more sensitive to the needs of the 21st Century and will more closely link the health and safety of the occupants than with the condition of the property.

The Government will ensure that there are adequate powers in subordinate legislation to introduce the new arrangements in a way, which are sensitive to the needs of Wales.

Home Information Pack

The Bill provides for the introduction of a "Home Information Pack" (previously commonly referred to as a "Seller's Pack"). There will be a legal duty on people marketing residential properties to compile a pack of standard documents and information for prospective purchasers to consider .

In England and Wales acceptance of an offer to purchase is made "subject to contract". Such an offer and its acceptance do not constitute a legally binding agreement, which is usually only achieved with an exchange of contracts. The current processes sees the buyer and seller (or their agents) undertake several actions, including: obtaining the title deeds, establishing title, replying to pre-contract enquiries and local land searches and surveys which are important to the transaction, yet normally these are only available after terms have been negotiated and agreed 'subject to contract'. The aim of compiling the pack is to provide such information "up front" in the marketing process. This should also have the effect of speeding up the transaction and reducing the time (between acceptance of an offer and exchange of contracts) during which gazumping can occur.

Changes to the Right to Buy

The Bill proposes to extend the qualification period for the Right to Buy from two to five years.

It is also proposed to extend (from three to five years) the period after sale during which landlords may require owners to repay some or all of their discount on early re-sale. The Bill also makes it clear that landlords have discretion to waive the obligation to repay.

Social Housing Ombudsman for Wales

To introduce a new single complaints body for the whole social housing sector in Wales, a Social Housing Ombudsman for Wales (SHOW).

The proposal is to make provision for the Commissioner for Local Administration in Wales (CLAW) to also act as the Social Housing Ombudsman for Wales (SHOW).

At present the National Assembly regulates Registered Social Landlords (RSLs) in Wales and also considers complaints against them. The potential for conflict of interest between these two roles has been of concern for some time.

The CLAW, which was established to investigate complaints of maladministration against local authorities in Wales should, in future, also investigate complaints against RSLs. To do this, CLAW would be given a separate function of Social Housing Ombudsman in Wales. An independent complaints body will mean that the Assembly no longer undertakes this function for RSLs.

The CLAW is agreeable to this proposal and the Assembly will provide resources to cover any additional costs of this new function.

Increasing effectiveness of powers to regulate Registered Social Landlords

In parallel with the main consultation on the draft Housing Bill, a separate Joint ODPM/ Welsh Assembly Government consultation document (a copy of which has been previously provided to members) has been issued making proposals for revisions to the legislation under which Registered Social Landlords (RSLs) are registered, regulated and funded. Subject to consultation, some or all of these proposals could be included in the Housing Bill when it is introduced into parliament.

Most of the proposals are individually relatively minor but together could improve the ways in which the Assembly can exercise its regulatory powers over RSLs in Wales. They are summarised below.

Proposals to improve protection of tenants and publicly funded assets.

- make removals of RSLs from registers of other registrars or regulators subject to the sealed consent of the Assembly;
- make amendments to governing instruments of charitable RSLs subject to the sealed consent of the Assembly;
- ensure that assets of charitable RSLs may only be transferred to another charitable RSL on winding up;
- provide powers to appoint a special manager where an RSL is in difficulty.

- strengthen and clarify powers where the Assembly has directed a statutory inquiry into the affairs of an RSL;
- ensure the validity of intra–group transfers of covenanted surpluses.

Proposals to strengthen control and to allow a more proportionate use of regulatory powers.

- provide new intermediary powers to direct action to remedy breaches of the Regulatory Code where an inquiry is not justified.
- provide for RSLs external auditors to report directly to the Assembly
- provide for tougher sanctions on larger RSLs that fail to provide audited accounts on time
- reduce the burden of accounting and audit requirements on small RSLs

Proposals to reduce bureaucracy and provide greater flexibility

- repeal obsolete accounting requirements for a Rent Surplus Fund that has fallen into disuse
- remove the requirement to make a determination before making or recovering grants;
- extend powers to allow payment of SHG to bodies other than RSLs.

Speaking note

In March I wrote to Lord Rooker agreeing to the issue of a joint consultation paper containing proposed amendments to regulatory powers contained in the Housing Act 1996. It is proposed that the changes would apply to both England and Wales.

The proposed changes are not in response to any new or particular concerns about the financial management or governance of the RSL sector in Wales, but are based on experience of working with the current legislation since it was last updated in 1996. None of the changes imply a major change to the regulatory regime for RSLs in Wales.

Financial Implications

Financial effects of the draft Housing Bill are set out in paragraphs 314 to 307 of the Consultation Paper. Those paragraphs note that there will be little effect on public expenditure.

Costs arising from the proposals to increase the effectiveness of powers to regulate RSLs are set out in Annex D, paragraphs 17 to 20, to that Consultation Paper. In summary, there may be minimal additional costs to the Assembly, which would be easily contained within existing budgets; additional costs could be incurred by any RSLs that breached the Regulatory Code; there will be minimal additional cost to the Charity Commission.

Budgetary provision has been made for funding the Social Housing Ombudsman and to support local authorities in respect of the introduction of private sector licensing.

Action for Subject Committee

1. To note the draft Bill proposals and, the consultation on increasing the effectiveness of powers to regulate RSLs,
2. To consider whether the Committee has observations to be relayed to the UK Government.

Mrs Edwina Hart

Minister For Social Justice

May 2003

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