



House of Commons

ODPM: Housing, Planning,
Local Government and the
Regions Committee

The Draft Housing Bill

Tenth Report of Session 2002-03

Volume I



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Report, together with formal minutes

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The ODPM: Housing, Planning, Local Government and the Regions Committee

The ODPM: Housing, Planning, Local Government and the Regions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Deputy Prime Minister and its associated public bodies

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Summary

The Government has an admirable objective to provide a decent home for everyone. This draft Bill introduces a number of measures that it hopes will help to achieve this aim—

- a new rating system to replace the current housing fitness standard;
- licensing schemes for parts of the private rented sector;
- reforms to the home buying and selling process with a Home Information Pack; and
- reforms to the Right to Buy.

A number of these measures have been the subject of significant consultation and development over several years. It is therefore worrying that witnesses, including advocates of the changes, have highlighted so many potential problems with implementation of the Home Information Pack and the rating system. The Home Information Pack in particular has not been tested widely enough for professionals to feel confident about its effects.

We welcome the introduction of licensing to the private rented sector—a sector which currently includes some of the worst physical conditions and management practices—but we are disappointed that the Government has not gone further. All houses in multiple occupation should be subject to mandatory licensing, all councils should have been given the discretionary power to license private landlords and the opportunity should have been taken to introduce a tenancy deposit scheme.

We also welcome the Government's commitment to reform Right to Buy. Again there are a number of additional measures that should be introduced in the Bill to reduce abuses of the system.

1 Introduction

1. ODPM's housing objective is to ensure,

“A decent home for everyone.”¹

In its Green Paper, *Quality and Choice: A Decent Home for All*, the Government described the three main challenges it faces in bringing about this objective:

- “First, to improve the conditions and opportunities of the minority who face severe problems, such as poor housing conditions in both public and private housing;
- Second, to tackle the more general problems faced by most people at some point in their lives such as the difficulties that can be found in selling and buying a home.
- Third, to do this without undermining the successful features of the current system, which delivers decent housing to the majority of people.”²

2. The draft Housing Bill aims to address these challenges and is targeted primarily at the operation of the private sector of the housing market, through proposals to:

- license parts of the private rented sector;
- reform the home buying and selling process with the introduction of a Home Information Pack; and
- reform the Right to Buy.

It also seeks to introduce a new Housing Health and Safety Rating System to replace the existing housing fitness standard, which applies to all tenures. As the Minister explained,

“This draft Bill is a central element in the Government's action plan to tackle the problems in private sector housing.”³

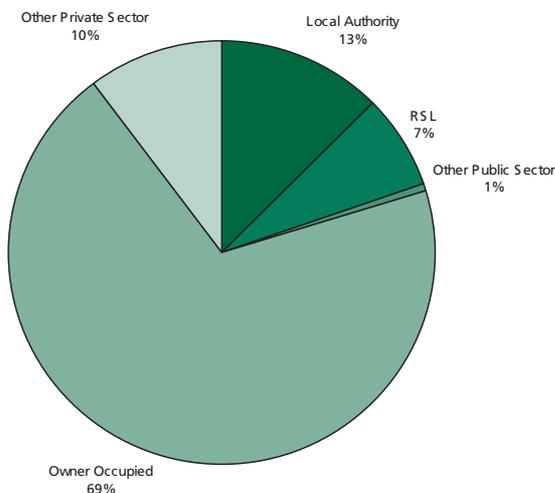
3. Four fifths of households in England and Wales live in the private sector, whether renting or owning their own home.

¹ Page 55, ODPM Annual Report, 2003

² Page 8, *Quality and Choice: A Decent Home for All*, DETR, April 2000

³ Q627, Keith Hill MP

Dwelling stock by tenure, England at April 2002



Source: Local Authority Housing Investment Programme returns

We welcome the Government’s broad aim to improve standards in private sector housing.

4. The *Housing Bill–Consultation on Draft Legislation* was published on 31 March 2003. The Committee sent out a press notice calling for evidence on the draft Bill on 7 April 2003. In response we received 54 written submissions. We took oral evidence from 30 organisations and individuals, including the Opposition spokesmen, across five evidence sessions culminating in evidence from the Minister of State for Housing and Planning, Keith Hill MP. We appointed Dave Beach and John Bryson as our advisers and are grateful to them and all those who gave evidence to the Committee. We also wish to thank the House of Commons Library and Scrutiny Unit for their assistance. **We were pleased to hear from the Minister that the Government takes the Committee’s scrutiny of the draft Bill seriously and look forward to our recommendations being incorporated into the final version of the Bill.** Many important matters in the Bill will be dealt with through secondary legislation, rather than on the face of the Bill. **We welcome the Minister’s commitment that for the dozen most important pieces of secondary legislation, a detailed guidance note will be available when the final version of the Bill comes before the House.**

5. The draft Bill is in seven Parts:

- I Housing conditions;
- II Licensing of Houses in Multiple Occupation (HMOs);
- III Selective licensing of other residential accommodation;
- IV Additional control provisions in relation to residential accommodation;
- V Home information packs;

VI Other provisions about housing; and

VII Supplementary and final provisions.

Our report considers the draft Bill in this order.

6. Overall, witnesses have commented that the draft Bill contains a number of useful measures but that the Government has not used the opportunity to create a significant, strategic piece of legislation. For example, London Borough of Newham commented

“We feel an opportunity has been missed by this Bill to radically reshape the framework for the regulation and control of quality and safety in housing. A more sustainable approach for the future would introduce the general principle of specific responsibilities and rights for owners, landlords and occupiers of properties to comply with minimum standards across all tenures.”⁴

7. Similarly the piecemeal approach to increasing regulation of the private rented sector caused Lord Best of the Joseph Rowntree Foundation to comment

“This Bill is dancing around on the edges.”⁵

He added

“It [the Bill] is certainly worth having but it is a relatively light touch. We could be a little more energetic.”⁶

8. In addition, Jacky Peacock of the Brent Private Tenants’ Rights Group stressed the need to go beyond the measures in the draft Bill to look at ways to enhance the rights of tenants and to professionalise the role of the private sector landlord

“This is an opportunity to transform that whole [the private rented] sector and let it play a real part in sustaining communities instead of just the rump end always having to be hit over the head with a rolling pin.”⁷

9. Because the draft Bill tinkers at the edges, it is very complicated. The Local Government Association commented

“As in all things there is a general consensus of opinion of where we want to go with the legislation but very complex, very detailed primary legislation, once it is set in stone, once it has become an Act, is awfully difficult to unpick.”⁸

10. Mr Brown of the National HMO Network said that there would be scope for simplification

“We have got in the first part of the Bill improvement notices and prohibition orders and a lot of it is very similar when you read the clauses. I think some of this could be

⁴ DHB45

⁵ Q522, Lord Best

⁶ Q527, Lord Best

⁷ Q90, Brent Private Tenants’ Rights Group

⁸ Q487, Local Government Association

condensed rather than separating it all out. Also, we have got three different licensing schemes in there: the mandatory, discretionary and the selective licensing, and again I feel that a lot of that could be condensed together because a lot of the clauses are very similar. I think there are ways of condensing it a bit to make it easier to read.”

11. The Bill has taken a piecemeal rather than strategic approach to improving the housing stock and the operation of the owner occupied and private rented sectors. This has resulted in a very complex piece of draft legislation. Some complexity is inevitable in a piece of legislation of this nature but we received evidence that the same objectives could be achieved in a shorter, more tightly drafted Bill.

2 Housing Health and Safety Rating System (Part 1)

The new rating system

12. The existing housing fitness standard was introduced by the Local Government and Housing Act 1989 which inserted a new Section 604 in the Housing Act 1985. The requirements constitute the minimum deemed necessary for a dwelling house (including a house in multiple occupation) to be fit for human habitation. Research published by the Building Research Establishment in 1995 showed that the four most important health and safety hazards in housing are related directly to matters not currently covered by the fitness standard. These are poor energy efficiency, radon gas, poor internal arrangement and fire safety.⁹ In 1998 the Government began to consult on changes to the existing fitness standard with proposals to replace it with a rating system.¹⁰

13. The new Housing Health and Safety Rating System (HHSRS) proposed by the Government as a result takes a risk based approach to assessing hazards. The HHSRS assessment is based on the risk to the potential occupant who is most vulnerable to that risk. For example, stairs constitute a greater risk to the elderly, so for assessing hazards relating to stairs they are considered the most vulnerable group.¹¹ The hazards are those associated with or arising from:

Cold	Falls	Fire	Hot surfaces
Damp/mould growth	Carbon monoxide	Radiation	Electrical
Noise	Lead	Asbestos	Intruders
Crowding and space	Explosions	Domestic hygiene	Food safety
Personal hygiene	Sanitation/drainage	Contaminated water	Structural failure
Inadequate lighting	Uncombusted fuel gas	Entrapment	Poor ergonomics

Source: *Factsheet 2: The Health and Safety Rating System, ODPM, 2003*

14. As the Chartered Institute of Environmental Health said in its submission to ODPM on the draft Bill

“There is a wide range of opinion among environmental health professionals on the HHSRS, with some opposed to its introduction altogether.”

Whilst opinions may differ across the environmental health profession on the principle, much of the evidence received by the Committee which has referred to the HHSRS has raised concerns about aspects of its implementation.¹² ODPM’s own evaluation of the first

⁹ *Building Regulation & Health and Building Regulation & Safety*, Building Research Establishment, 1995

¹⁰ *Housing Fitness Standard: A Consultation Paper*, DETR, 1998

¹¹ *Factsheet 2: The Health and Safety Rating System*, ODPM, 2003

¹² For example, Chartered Institute of Environmental Health (DHB14), Local Government Association (Q460) and National Housing federation (DHB36)

version of the new system reported “considerable reservations” by practitioners about the system as they experienced it.¹³ **We are concerned that after five years of development and consultation there remain ‘considerable reservations’ amongst practitioners about the implementation and enforcement of the new system.** Some of the particular concerns are considered in greater detail below.

Detailed concerns

Guidance

15. Clause 2 of the Bill “introduces the new standards for assessing housing conditions.”¹⁴ The method for calculating the seriousness of hazards will be set out in secondary legislation. DETR published Version 1 of the guidance to the HHSRS in July 2000¹⁵ and councils were encouraged to use the new system to undertake inspections, alongside the existing fitness standard, in order to gain experience in its use and to contribute to its development. The Government recently published an evaluation of the implementation of Version 1 of the guidance. The evaluation found

“90% of authorities have some knowledge of the system, but fewer than 30% have ‘hands on’ experience of using the system other than in training courses. The extent of use of the system by local authorities was rather less than expected. Experience of using the system in the field appeared to be quite limited—very few authorities had carried out more than a very small number of surveys in houses.”¹⁶

16. A new version of the guidance—Version 2—is to be published “by the end of 2003.”¹⁷ Numerous witnesses have described the difficulty in commenting on the draft Bill in the absence of Version 2. The Chartered Institute of Housing commented

“It is not possible to provide full, meaningful comment on how the HHSRS will work in practice, because a number of reports have not yet been made available. These include Version 2 of the technical guidance and the enforcement guidance.”¹⁸

It was not clear from the Department’s oral evidence whether Version 2 would be largely unchanged or whether it would incorporate some of the concerns arising from the evaluation of Version 1.¹⁹ In addition, three important documents—the evaluation of Version 1,²⁰ the application of HHSRS to houses in multiple occupation (HMOs)²¹ and the statistical evidence²² were only published late in the consultation period. The enforcement

¹³ Executive Summary, *Evaluation of the Housing Health and Safety Rating System (Version 1)*, Housing Research Summary 185, ODPM, 2003

¹⁴ Page 176, *Housing Bill: Consultation on Draft Legislation*

¹⁵ *Housing Health and Safety Rating System: The Guidance (Version 1)*, DETR, 2000

¹⁶ Executive Summary, *Evaluation of Version of the Housing Health and Safety Rating System*

¹⁷ Page 12, *Housing Bill: Consultation on Draft Legislation*

¹⁸ RRD33

¹⁹ Q635, Mr Carey, ODPM and Q643, Keith Hill MP

²⁰ *Evaluation of Version 1 of the Housing Health and Safety Rating System: Final Report*, ODPM, May 2003

²¹ *The Application of the Housing Health and Safety Rating System in Houses of Multiple Occupation*, ODPM, May 2003

²² *Statistical Evidence to Support the Housing Health and Safety Rating System*, ODPM, May 2003

guidance is still awaited. **It is disappointing that the Government has consulted on the draft Bill in the absence of Version 2 of the guidance on the Housing Health and Safety Rating System. Other important documents have only just been published or are still awaited. Witnesses are being asked to comment on a system and Parliament may subsequently be asked to approve its introduction without sight of the details about how the system is to be implemented.**

Enforcement

17. Under the new rating system, officers will be required to assign a numerical score to each of the 24 hazards in accordance with the risk it presents. The risk is defined as follows:

Risk = probability of an occurrence causing major harm x severity of likely harms caused²³

ODPM's evaluation reported significant concerns amongst local authorities about assigning specific scores to each hazard and the extent to which they might be expected to justify such scores during enforcement procedures

“The key concern raised about HHSRS relates to enforcement. Local authorities had concerns that inconsistency in scoring may undermine their case in an enforcement situation. Local authorities lacked confidence in their hazard scores—they were uneasy about the degree of judgement involved in deciding on a score. Authorities and bodies representing property owners had not expected that there would be a need for this element of judgement. There had been an expectation that the statistical evidence would provide the ‘right’ answer for that hazard.”²⁴

18. The research concluded that

“There would be considerable merit in asking the local authority Environmental Health Officer (EHO) to select a range of a probability of an occurrence, rather than a specific number, and the broader the ranges adopted, the greater comfort the EHO is likely to feel in the decision they make. We recommend that the guidance should have limited focus on numeric scores in the enforcement process and instead focus on the particular circumstances that lead the EHO to consider that particular features pose a threat to the health and safety of residents and others.”²⁵

19. The Chartered Institute of Environmental Health added

“The research that underpins the rating system in respect of the dose-response relationship of some of the parameters contained in the HHSRS is not extensive and could therefore give rise to legal challenge. Moreover, the application of current knowledge about certain associations between housing and health at the level of the individual dwelling is sometimes difficult to establish, particularly in respect of

²³ Executive Summary, *Evaluation of Version of the Housing Health and Safety Rating System*

²⁴ Executive Summary, *Evaluation of Version of the Housing Health and Safety Rating System*

²⁵ Executive Summary, *Evaluation of Version of the Housing Health and Safety Rating System*

health stressors that manifest themselves as chronic conditions. Even though the HHSRS does not aim to calculate actual risk but rather to rank relative risk this will nevertheless present opportunities for legal challenge and the CIEH believes the guidance must specifically address this issue.”²⁶

Officers implementing the HHSRS have been uneasy about assigning a specific score to an individual hazard because of the level of judgement involved. Research commissioned by ODPM has suggested that officers should instead assign a range of probabilities. There remains a question about how this would then link into the enforcement process, in particular how it could withstand legal challenge. The Government needs to address this issue before returning to Parliament with the final version of the Bill.

Decent homes and disrepair

The Public Service Agreement target

20. The Government’s objective of a decent home for everyone is enshrined in a Public Service Agreement (PSA) target to

“By 2010, bring all social housing into decent condition with most of this improvement taking place in deprived areas, and increase the proportion of private housing in decent condition occupied by vulnerable groups.”²⁷

The Committee will be carrying out an inquiry into *Decent Homes* in the autumn of 2003 and will announce its terms of reference in due course.

21. In order to monitor progress against this target, a definition of ‘decent’ has been developed. A decent home is one that:

- i. Meets the fitness standard;
- ii. Is in a reasonable state of repair;
- iii. Has reasonably modern facilities and services; and
- iv. Provides a reasonable degree of thermal comfort.²⁸

The first element is likely to be revised as and when the HHSRS replaces the current fitness standard.²⁹

22. The Department told us that as a result of the change in definition, approximately 400,000 additional homes would be classified as non-decent (a 6% increase in the total number of non-decent homes from the current 7 million). The Government’s target is to reduce the number of non-decent homes (to zero in the social housing sector by 2010). The

²⁶ *Draft Housing Bill-Consultation Document on Legislation: CIEH Response to the ODPM*, CIEH 2003

²⁷ Page 12, ODPM Annual Report, 2003

²⁸ *A Decent Home: The Definition and Guidance for Measurement*, DTLR, July 2001

²⁹ Q375, Norman Parkinson

Minister told us that no additional funding would be made available to local authorities who are charged with delivering the decent homes target.³⁰

Disrepair

23. The second element of the decent homes standard is that properties are in a reasonable state of repair. One of the biggest criticisms of the first Part of the new draft Bill is that it will repeal a number of existing pieces of legislation, amongst them, those that deal with disrepair. The memorandum from the National HMO Network stated

“There is concern over the proposed repeal of section 190 of the Housing Act 1985 which covers substantial disrepair and material comfort. This will remove an enforcement tool for tackling disrepair that is of concern to the tenants. Many disrepair matters will not be covered by the rating system. Dealing with disrepair and the overall improvement of houses is a fundamental plank of Housing Renewal Policy. Tackling disrepair can prevent houses from falling into major disrepair and becoming unsafe. Disrepair is also an element of the Decent Homes Standard.”³¹

We recommend that Section 190 of the 1985 Housing Act which covers substantial disrepair and material discomfort should not be repealed but should be amended to take account of the HHSRS.

Fast and pre-emptive action

24. Recent case law has resulted in councils being unable to take emergency action to deal with a housing defect under the Environmental Protection Act 1990 unless it is directly damaging to health, as opposed to safety. The new rating system does not address this problem—there is no provision for emergency action to be taken where an occupier is exposed to serious hazards in the short term. The Chartered Institute of Environmental Health argued

“The CIEH continues to believe that there is a need for an expedited procedure to deal with life threatening hazards. Enforcement to serious hazards should not be restricted, neither should an appeals procedure allow the responsible person to delay compliance for over a year. For such emergency works appeal rights should be the same as those that already exist under the Section 80 of the Environmental Protection Act (1990).”³²

We recommend that the Government amends the draft legislation to include the Chartered Institute of Environmental Health’s proposals for emergency procedures to deal with Category 1 hazards that present an immediate risk to the occupier.

³⁰ Q635 and Q639, Keith Hill MP

³¹ DHB1, Mr Carey, ODPM

³² *Draft Housing Bill-Consultation Document on Legislation: CIEH Response to the ODPM, CIEH 2003*

Costs

25. The new rating system is undoubtedly complex. The National Housing Federation warned

“The proposed Housing Health and Safety Rating System (HHSRS) scoring system may be too complex involving over 20 possible hazards that have to be assessed in relation to their danger to different vulnerable groups that may occupy the dwelling.”³³

26. The Chartered Institute of Environmental Health warned that the officers who will be implementing the system have not yet received sufficient training—only 10% of officers have received training.³⁴ Norman Parkinson of Kings College London warned that as the new system is difficult to explain to professionals, it will be even harder to explain to landlords and owner occupiers.³⁵ Others observe that the existing fitness standard has also been “source of confusion.”³⁶

27. In the Regulatory Impact Assessment, the Government argues that the costs of running the new system are not expected to be any higher than the existing fitness system. However, it notes that in their responses to its consultation document, local housing authorities were concerned that this might not be the case as inspections are taking longer.³⁷ ODPM advised us that it has no firm estimates of the costs of administering the new system

“We have no firm estimates. This is something we will continue to discuss with the local authorities. We will of course discuss with them their views that administration costs would be higher under HHSRS—other than initial start-up costs.”³⁸

The Government needs to ensure that sufficient funding is made available for the start-up costs associated with HHSRS, particularly training for officers. Before the final Bill is introduced the Government should satisfy itself that the benefits arising from the new system outweigh any additional costs—both in the set-up phase and on an ongoing basis.

Clearance

28. Clause 56 of the draft Bill amends Section 289 of the Housing Act 1985—the definition of a clearance area. The clause varies the application of the existing power by only allowing a clearance area to be declared if there is one or more Category 1 hazard (the highest risk hazards identified by the HHSRS) in each dwelling. The Local Government Association said

³³ DHB36

³⁴ Q385, Chartered Institute of Environmental Health

³⁵ Q360, Norman Parkinson

³⁶ *Monitoring the New Fitness Standard*, Department of the Environment, 1993

³⁷ Page 219, *Housing Bill: Consultation on Draft Legislation*

³⁸ DHB55

“There are concerns, particularly amongst low demand pathfinder authorities, regarding the effect that the HHSRS will have upon the usage of housing clearance powers. Clearance will inevitably have to be a significant feature of the Pathfinders’ proposals if market re-structuring is to be achieved. Until now local authorities have generally been able to use Section 289 Housing Act 1985 to regenerate designated areas of private sector housing because there have been high levels of unfitness, and the cost of remedying it has been high. The proposal within clause 56 of the Bill, which will amend Section 289, is expected to seriously limit its future use for area regeneration.”³⁹

29. David Shiner of Sandwell MBC told the Committee that the loss of this power would be critically important to the low demand pathfinders.⁴⁰ He has recommended that Clause 56 be amended so that health hazards are only one of the reasons for declaring a clearance area, thereby broadening the power so that it can be used in a range of circumstances. He has suggested that alternative reasons for clearance should be specified in secondary legislation.⁴¹ **Hazards identified by the Housing Health and Safety Rating System should not be the only reasons to declare a clearance area. The Bill should recognise the range of circumstances, such as housing market renewal, where clearance is necessary.**

30. The *Planning and Compulsory Purchase Bill* includes proposals to enable regeneration objectives to be fulfilled through clearance actions. However, as the Bill has been recommitted to Standing Committee and carried forward it is not clear if and when its provisions will pass into statute. In addition, the use of this alternative depends on local authorities making a compelling case that clearance is necessary for the “well being” of residents. We heard concerns that this has not been defined adequately.⁴² **Pathfinder authorities need guidance on how any clearance powers introduced through the planning system can be used in low-demand areas, in particular in relation to “well-being” and they should be closely consulted in the drafting of the guidance.**

Duty to report on the condition of housing and duty to inspect

31. The draft Bill proposes the repeal of Section 606 of the Housing Act 1985.⁴³ This section requires an officer to report unfitness to the local authority and provides for a Justice of the Peace or Parish Council to complain in writing to the officer regarding unfitness. This provides the officer with some protection and independence (similar to inspectors under the Health & Safety at Work Act) and ensures that all unfit properties are explicitly brought to the attention of the local authority. Such provisions help to counter any pressure on officers not to act, for example, where grants funds are limited or where there would be a re-housing obligation. The ability to complain to a Justice of the Peace also provides an important protection for a council’s own tenants. The Chartered Institute of Environmental Health commented that Section 606 should not be repealed.⁴⁴ We

³⁹ DHB24

⁴⁰ Q169, David Shiner, Sandwell MBC

⁴¹ DHB54

⁴² Q170, David Shiner, Sandwell MBC

⁴³ Page 15, *Draft Housing Bill—Consultation on draft legislation*

⁴⁴ *Draft Housing Bill—Consultation Document on Legislation: CIEH Response to the ODPM, CIEH 2003*

endorse the recommendation of the Chartered Institute of Environmental Health that the Government should not proceed with its proposed repeal of Section 606 of the 1985 Housing Act which makes provisions for the reporting of unfitness. It has also been argued that councils should be given a duty to investigate housing complaints, as happens under the current fitness standard.⁴⁵ **The Bill should include a positive duty on local authorities to investigate housing complaints.**

Overcrowding

32. Clauses 123-128 amend existing legislation on overcrowding in HMOs. Oona King MP's memorandum noted the effects of overcrowding on the health, welfare, education and employment prospects of occupiers.⁴⁶ Yet as we heard from Shelter the problems caused by overcrowding outside of HMOs cannot be identified by the HHSRS

“The housing health and safety rating system will only help in cases where overcrowding is so severe that it causes a serious hazard to the occupants. That is not the case with much overcrowding ... If you took, for example, a family which is so overcrowded that the children have nowhere to do their homework or are forced to play out on the streets because there is nowhere to play in the flat, that is not itself going to create a serious hazard. It is going to create huge emotional and developmental difficulties for those children and it is going to militate against other government objectives such as trying to improve basic standards of education. What we are looking for is another mechanism to pick up that sort of impact of overcrowding which lies short of a serious, immediate hazard.”⁴⁷

We recommend that the Government take forward Shelter's recommendation that the Bill be used to modernise the current statutory overcrowding standards.

⁴⁵ Q31, Mr Dick, L.B Newham

⁴⁶ DHB13

⁴⁷ Q505, Shelter

3 Licensing Houses in Multiple Occupation and Selective Licensing of Private Landlords (Parts 2–4)

The private rented sector

33. 10% of households in England live in the private rented sector. This is a very low proportion compared to most other developed countries. The condition and quality of management in the sector is relatively poor

“Proportionately more private rented homes are in poor condition than in the other housing sectors. Ownership is highly fragmented: most landlords rent out only one or very few homes, and have little chance to become expert property managers. Many turn to letting agents for help but agents’ standards of confidence and probity vary greatly.”⁴⁸

34. The draft Bill introduces three licensing schemes to parts of the private rented sector:

- i. Mandatory licensing of larger HMOs;
- ii. Discretionary powers to councils to licence smaller HMOs; and
- iii. Selective licensing of landlords in low demand areas.

We were not convinced by landlords’ arguments that voluntary accreditation schemes would be sufficient to improve standards in the private rented sector. We remain concerned that such voluntary schemes will fail to capture the worst landlords. The smallest and most inexperienced landlords will continue to be unaware of such voluntary schemes.

35. Our report considers the provisions of the proposed licensing schemes in greater detail below. Looking in general at the proposals in sections 2-4 of the draft Bill, witnesses have argued that the Government could have done more to promote positive standards and good management practice across the private rented sector.

Fit and proper person

36. The HMO and selective licensing proposals both contain provisions that under such licensing schemes, the landlord (or his or her managing agent) is required to demonstrate that he or she is a ‘fit and proper person’ (Clauses 70 and 91). When deciding whether a person is ‘fit and proper’ local authorities are to consider whether:

“The evidence is tending to show that the person concerned, or any person associated or formerly associated with him (whether on a personal, work or other basis), has—

⁴⁸ Page 44, *Quality and Choice: A Decent Home for All*

- (a) Committed any offence involving fraud or other dishonesty, or violence or drugs;
- (b) Practiced unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or
- (c) Contravened any provision of the law relating to housing or of landlord and tenant law.”⁴⁹

37. A range of witnesses have argued that this definition is too negative. The Residential Landlords Association said

“The whole tone of the Bill unfortunately is rather negative. There is nothing positive about, there is nothing that gives encouragement to landlords.”⁵⁰

Brent Private Tenants’ Rights Group, which represents tenants, argued,

“In order to switch the focus away from bricks and mortar in favour of professional management, more thought should be given to the definition of a fit and proper person to manage tenants’ homes.”

The Group recommended basic training and a test in housing management and / or membership of the Independent Housing Ombudsman’s scheme.⁵¹

38. The Independent Housing Ombudsman, Dr Biles, agreed that the Bill should be used to require private sector landlords to join his scheme

“If the Bill said that private sector landlords must be members of the Housing Ombudsman scheme, that would open the access, as I have said earlier, to all private sector tenants, to be able to bring their complaints and disputes to me. The outcome of those disputes or those processes or the complaint investigation is - where there is substance to the complaint - a feedback into the system of improving not just quality of life and amenity for those tenants but also management practices for landlords. The kind of things that we deal with every year, the main area of complaint, for instance, is repair but we deal, also, with nuisance and annoyance, allocations, discrimination but clearly we make an input and a contribution to good and improved management practice by landlords.”⁵²

We recommend that the draft bill be amended to include membership of the Independent Housing Ombudsman scheme as a requirement for landlord licensing.

39. The specific definition of a fit and proper person in the draft Bill is very widely drawn, which has led to a number of concerns:

- i. it does not refer to unspent convictions;

⁴⁹ Clause 72(2), Draft Housing Bill

⁵⁰ Q149, Residential Landlords Association

⁵¹ DHB21

⁵² Q39, Independent Housing Ombudsman

- ii. people will be considered to be unfit on the basis of ‘evidence tending to show’; and
- iii. landlords will be judged on the behaviour of a very wide range of associates, including former work colleagues.⁵³

We recommend that the definition of ‘fit and proper’ person be redrafted so that it refers to relevant, unspent convictions of the applicant for a licence.

40. Shelter and the Joseph Rowntree Foundation (JRF) established an independent commission on the future of the private rented sector, which involved representatives of landlords and tenants alongside other experts and reported last year. The commission and the policy forum which has subsequently been established promotes an approach to the management of the private rented sector based on ‘carrots and sticks.’ Under such an approach all landlords would be expected to pass a test to display an understanding of landlord and tenant law and the standards expected of them. In return the forum proposes that landlords should then be able to offset management costs against tax.⁵⁴ **We recommend that the Government takes forward the ‘carrot and stick’ proposals put forward by the Joseph Rowntree Foundation and others, whereby all landlords are expected to demonstrate competence in housing management in return for being able to offset some management costs against tax liability. This could help to achieve the aim of professionalising the sector.**

Anti-social behaviour

41. The Government’s proposals for licensing include the potential for licenses to include conditions on tenants’ (and their visitors) behaviour (Clauses 65 and 86). Our predecessor Committee’s inquiry into *Empty Homes* received evidence that councils and housing associations have recently become far stricter in relation to anti-social behaviour by tenants, resulting in more evictions and increasing numbers of the worst behaved tenants being concentrated in the private rented sector.⁵⁵ **We welcome the provisions on anti-social behaviour in the licensing schemes as a means of levelling the playing field between the private and social rented sectors.**

42. It is vital that these new responsibilities for private landlords are accompanied by appropriate support. The Chartered Institute of Housing and the Local Government Association stressed that eviction should be a last resort in cases of anti-social behaviour.⁵⁶ **Local authorities and other public agencies, such as the police and primary care trusts, have a range of tools which can be used to tackle anti-social behaviour. It is important that these agencies provide the ‘support and guidance’ to private landlords referred to in the Government’s consultation document on selective licensing.⁵⁷ As we recommended in our *Empty Homes* inquiry, local authorities should ensure that landlord licensing schemes link into local agencies such as the police and youth**

⁵³ DHB07

⁵⁴ DHB44

⁵⁵ Paragraph 73, *Empty Homes* HC 240-I, Sixth Report, Transport, Local Government and the Regions Committee 2001/02

⁵⁶ Qq466-471, Chartered Institute of Housing and Local Government Association

⁵⁷ Paragraph 42, *Selective Licensing of Private Landlords: A Consultation Paper*, DTLR, 2001

offending teams, who can provide the appropriate response to anti-social behaviour problems.⁵⁸

Introductory tenancies

43. The Home Office White Paper, *Respect and Responsibility—Taking a Stand Against Anti-Social Behaviour* said that measures would be introduced to enable social landlords to extend the initial 12 month period of introductory, starter or probationary tenancies by a further period of 6 months where there are continuing concerns about behaviour.⁵⁹ Such measures were not included in the *Anti-Social Behaviour Bill*. The Ministerial Foreword to the draft Housing Bill states that a proposal to give local authorities this power will be introduced⁶⁰ although the draft Bill did not contain a clause introducing such a measure. In oral evidence the Minister suggested that such powers might be included in the final Bill.⁶¹ **We welcome the Government’s proposal to extend the period of introductory tenancies by a further period of six months where there are concerns about behaviour. We recommend that the option to extend twice is included.**

Link between licensing and the HHSRS

44. Clauses 65(3) and 86(3) state that the provisions of a licence may “impose conditions relating to the condition of the house or its contents or the amenities.” Yet the draft Bill goes on to prohibit the inclusion of conditions requiring a landlord to take action on a category 1 or 2 hazard, as identified by the HHSRS (Clauses 65(4) and 86(5)). The Chartered Institute of Environmental Health said

“It is not understood why references to category 1 or 2 hazards cannot be included in the licensing conditions (section 86(5)). This would seem to be an obvious requirement, given the Governments intention to repeal section 604 of the Housing Act 1985 (as amended).”⁶²

There is insufficient linkage between Part 1 (the rating system) and Parts 2 and 3 (licensing) in the draft Bill. It is not clear why the Government should prohibit local housing authorities from making conditions about Category 1 and 2 hazards in licensing. Instead, it should be provided that a landlord’s property cannot be licensed if it contains a Category 1 hazard.

Duty of care on landlords

45. The London Borough of Newham argued that placing a duty of care on landlords could simplify many of the licensing and enforcement provisions in the draft Bill

“The current legislative proposals largely describe a complicated framework of reactive interventions by local authorities. This engenders an adversarial rather than

⁵⁸ Paragraph 77, *Empty Homes*

⁵⁹ Page 60, *Respect and Responsibility, Taking a Stance Against Anti-social Behaviour*, Home Office, 2003

⁶⁰ Page 5, *Housing Bill—Consultation on Draft Legislation*

⁶¹ Q627, Keith Hill MP

⁶² *Draft Housing Bill—Consultation Document on Legislation: CIEH Response to the ODPM*

a more sustainable approach involving a duty of care or responsibility in law on owners and landlords to maintain their properties to certain standards and conditions.”⁶³

Shelter added

“As originally proposed in the Government’s consultation on HMO licensing,⁶⁴ we also believe that the licensee of an HMO should be placed under a general duty of care to ensure the health and safety of the occupiers. This duty could be modelled along the lines of the duty of care under health and safety legislation. It would not be an onerous duty, but would be an important preventative measure, particularly in ensuring standards in smaller HMOs in those areas where the local authority chooses not to exercise its discretion to require smaller HMOs to be licensed.”⁶⁵

We recommend that landlords should be given a duty of care to maintain their properties to certain standards and conditions to protect the health and safety of occupiers. The Government should consider how the enforcement regime can be framed to give effect to such a duty.

Licensing of Houses in Multiple Occupation

46. Houses in Multiple Occupation contain some of the worst conditions and house some of the most vulnerable people. Shelter’s evidence describes the sector

“Over 1.5 million people live in HMOs in England and Wales, more than half of whom are under the age of 30. Many are vulnerable young people living independently for the first time. The conditions they live in are often unhealthy and sometimes dangerous - adults living in bedsits are six times more likely to die in a fire than those living in comparable single-occupancy houses. The 1996 English House Condition Survey showed that 20 per cent of HMOs are in a poor condition, requiring urgent remedial works.”⁶⁶

The introduction of licensing of HMOs was a manifesto commitment by the Labour Party in the 1997 and 2001 General Elections. In 1999 the Government published a consultation document on HMO licensing.⁶⁷ Part 2 of the draft Bill sets out the Government’s proposals.

Definition of HMO

47. An HMO is currently defined as a house (or flat) that is occupied by persons who do not form a single household. This basic definition is tenure-neutral and is contained in Part XI of the Housing Act 1985. Case law has determined that this definition applies to a wide range of premises, including houses converted into flats, bedsit-type accommodation,

⁶³ DHB 45

⁶⁴ Licensing Houses in Multiple Occupation: England, DETR, 1999

⁶⁵ DHB20

⁶⁶ DHB20

⁶⁷ *Licensing of Houses in Multiple Occupation: England, Consultation Paper*, DETR 1999

purpose-built hostels and hotels used to accommodate homeless households. However, there have been enforcement difficulties arising from the interpretation of the term “household”. A house occupied by a large group of students has been held to be a house occupied by a single household and not an HMO.

48. The 1999 consultation paper proposed a new definition, based on that used in Scotland

“Houses which are occupied by persons who are not all members either of the same family or of one or other of two families.”⁶⁸

Respondents to the consultation registered “strong support (47%) for the Government proposal for a broad definition of HMO with specific exemption from licensing.”⁶⁹

49. In the draft Bill the Government has chosen not to use this broad definition and instead has proposed a detailed definition spanning Clauses 164-170 of the Bill. The Explanatory notes summarise this definition

“Essentially this is a house, hostel, self-contained flat or relevant building which is occupied by persons who do not form a single household and where there is a degree of sharing of the facilities.”⁷⁰

The Bill goes on to define a ‘household’ (including provision to further define it by regulation) and sets out exemptions from the definition of HMOs (e.g. registered social landlords and educational establishments).

50. Many witnesses were concerned by this new definition:

- It is “extremely complex and easy to misinterpret”;⁷¹
- It will exclude accommodation where there is no sharing of amenities (yet some HMOs where dwellings each contain their own amenities, constitute as high a risk as those in which amenities are shared, especially in relation to fire);⁷²
- Exemptions for HMOs managed by educational establishments and occupied only by persons whose purpose is to undertake a full-time course of further or higher education fail to recognise the risks facing students;⁷³
- It is naïve to assume that all HMOs managed by social landlords are low risk—to include them would create a more level playing field between sectors;⁷⁴ and
- Three times as many respondents to the Government’s consultation on licensing HMOs were against exemptions for educational establishments and registered social landlords as were in favour.⁷⁵

⁶⁸ Page 18, *Licensing of Houses in Multiple Occupation: England, Consultation Paper*

⁶⁹ Page 26, *Housing Bill: Consultation on Draft Legislation*

⁷⁰ Page 207, *Housing Bill: Consultation on Draft Legislation*

⁷¹ DHB10

⁷² DHB14

⁷³ DHB39

⁷⁴ Qq78-82, National HMO Network, National Union of Students, Brent Private Tenants’ Rights Group

51. Witnesses are concerned that the definition of Houses in Multiple Occupation is too complicated and cumbersome. We recommend that the Government should return to the definition of an HMO proposed in its 1999 consultation paper. We do not see why educational establishments and registered social landlords should be exempted. If a broad definition of HMO were adopted, certain categories or types of HMO could then be exempted from specific HMO-related controls, such as HMO licensing, as and if necessary.

Scope of mandatory licensing

52. The draft Bill (Clause 61) proposes that mandatory licensing be extended to HMOs of three storeys and above in which at least five people live. Witnesses have argued that this excludes a number of high risk properties, for example large two storey hostels, from licensing⁷⁶ and fails to acknowledge the range of factors which cause risks in HMOs, including those identified by the Department's own commissioned research:

“Research for the Department by Entec Ltd⁷⁷ identified several factors, in addition to the number of occupants, which influence the risk from fire in HMOs. These include: the number of storeys—HMOs of three or more pose a significantly higher risk; the nature of the occupancy—HMOs housing dependant or vulnerable persons pose a higher risk than those housing the able bodied and the cognisant; the quality of management in the HMO; and a number of factors relating to the internal design of the HMO, such as the degree of self-containment of the units of the accommodation, and the number of escape routes and their fire rating.”⁷⁸

In its 1999 consultation on licensing HMOs, the Government said that it was “not convinced” that properties occupied by three or four people should be exempted from licensing.⁷⁹ Using this narrow scope can also increase the vulnerability to legal challenge, for example—what constitutes a storey? **We are not convinced that mandatory licensing of HMOs should be limited to properties of three or more storeys with five or more residents. The Government's evidence suggests that high risks in HMOs are caused by a range of factors—the number of storeys and the number of occupants are only two amongst many.**

Discretionary licensing

53. The draft Bill also includes provisions for additional, discretionary licensing powers for local authorities with respect to HMOs (Clause 62)

“A local housing authority can make an additional licensing scheme which may apply to HMOs (other than those that are exempt from licensing or subject to

⁷⁵ ODPM, B/P06

⁷⁶ DHB10

⁷⁷ *Fire Risk in Houses in Multiple Occupation: Research Report*, DETR, 1998

⁷⁸ Page 11, *Licensing of Houses in Multiple Occupation: England, Consultation Paper*

⁷⁹ Page 18, *Licensing of Houses in Multiple Occupation: England, Consultation Paper*

mandatory licensing) in its area, or any part of it. The additional licensing scheme may apply to such categories of HMOs, as the LHA considers appropriate.”⁸⁰

54. The Government’s 1999 consultation paper identified various deficiencies in relation to current HMO controls. In particular, it said that the existing control regime is “largely based on discretionary powers of local authorities. As a result the level of enforcement activity and standards applied have varied significantly around the country.”⁸¹ It set out key aims of any future licensing regime, including a statement in the Ministerial foreword to the effect that “HMO licensing should be effectively and consistently enforced by local authorities, setting clear standards proportionate to risk.”⁸² **The Government’s two tier approach to licensing Houses in Multiple Occupation (mandatory licensing of larger properties and discretionary powers to councils to license smaller properties) does not meet its aim of having a consistent approach to HMOs across the country.**

Transition

55. The Government estimates that its preferred option (limited mandatory licensing) would lead to 120,000 HMOs being subject to mandatory licensing. It proposes ‘passporting’ HMOs that are already part of an existing voluntary licensing scheme into the new mandatory licensing system without a fee (approximately 30,000 properties). The Government estimates that the total set-up cost will be approximately £13 million. The Chartered Institute of Environmental Health commented

“Local authorities with large numbers of HMOs in their areas will inevitably take some considerable time to complete the first stage of the licensing process with current resources. The CIEH urges the government to make available resources in the form of a Supplementary Credit Allocation for which local authorities can bid for “pump priming” funding to deal with the initial licensing of their HMOs.”⁸³

The Government confirmed that these costs would be reflected in the local government finance settlement.⁸⁴ **We welcome the Government’s commitment that the cost of establishing HMO licensing will be reflected in the grant settlement to local government.**

Selective licensing of landlords

56. Part 3 of the Bill introduces selective licensing of private landlords in low demand areas. As we heard from Mr Newey of the Royal Institution of Chartered Surveyors this will in fact miss out some of the areas with the biggest problems

“Actually, in areas of low housing demand tenants can vote with their feet because there will be alternative accommodation, and therefore we feel that this should be

⁸⁰ Draft Housing Bill, *Fact Sheet No. 3*, ODPM, 2003

⁸¹ Page 7, *Licensing of Houses in Multiple Occupation: England, Consultation Paper*

⁸² Page 3, *Licensing of Houses in Multiple Occupation: England, Consultation Paper*

⁸³ DHB14

⁸⁴ Qq661-662, Keith Hill MP

amended to cover areas with high demand and a high percentage of tenants in receipt of housing benefit, and then we would support selective licensing.”⁸⁵

He continued

“We have been considering this, that is, whether selective licensing of landlords in low demand areas achieves what we want to achieve as a solution. The problem is probably more associated with (a) the quality of management and (b) areas where tenants have no choice.”⁸⁶

57. Our predecessor Committee’s report into *Empty Homes* considered the Government’s proposals for selective licensing and concluded

“The Government’s proposals for the licensing of private landlords do not go far enough. Across the country some of the poorest tenants are living in some of the worst quality private rented accommodation. The Government should give all local authorities the discretion to license those private landlords whose tenants are in receipt of housing benefit. Only properties which are fit for habitation should receive a licence.”⁸⁷

It would be better and simpler for all councils to have a discretionary power to license private landlords, enabling them to take account of local housing markets and housing strategies.

The Government’s proposals to extend licensing beyond low demand areas

58. Clause 82 sets out the areas that will be eligible for selective licensing. Clause 82(2) defines this as areas in or at risk of becoming low demand. In addition, Clause 82(5) allows the Secretary of State to specify by regulations other situations where the power can be used

“A local housing authority may designate the area of its district or an area in its district as subject to selective licensing if it considers that such conditions as may be specified in an order made by the relevant Minister for the purposes of this subsection are satisfied.”

The Explanatory Notes state

“Clause 82 provides that an LHA may designate an area as subject to the licensing of private landlords if the area is one of low housing demand or is likely to become an area of low housing demand, if the designation will contribute to the improvement of social or economic conditions in the area. In addition, regulations made by the Minister can specify other criteria for imposing a licensing requirement in selected

⁸⁵ Q382

⁸⁶ Q395

⁸⁷ Paragraph 36, *Empty Homes*

areas such as those which suffer from a high incidence of anti-social behaviour in the private rented sector. The LHA must consult before making a designation.”⁸⁸

59. The Local Government Association commented

“We are especially pleased by the additional potential to apply selective licensing in areas other than low demand, where the local authority puts compelling reasons forward. The behaviour of bad landlords is not restricted to low demand communities. In areas where demand outstrips supply tenants can be particularly exposed to bad practices. Anti-social behaviour and landlord harassment can, and does, occur anywhere. It is not an exclusive feature of low demand neighbourhoods. However, the LGA is concerned that the ability for local authorities outside of low demand areas to selectively licence private rented accommodation is not sufficiently explicit in the Bill. The ‘conditions’ for selective licensing are contained in 82(2) where only reference to low demand areas is made. Opportunities for authorities other than those in low demand areas to selectively licence is contained separate to this in 82(5) and appears to be quite vague. The explanatory notes only refer to anti-social behaviour as a reason for taking such action but problematic landlords can cause other problems in high demand areas.”⁸⁹

60. The LGA has sought legal advice on this and has been advised that the wording in the Bill would be better termed as

“A local housing authority may designate the area of its district or an area in its district as subject to selective licensing if it considers that either the conditions in subsection (2) or conditions specified in an order pursuant to subsection (5) are satisfied.”⁹⁰

We recommend that Clause 82(5), which deals with the designation of areas for selective licensing, be re-worded to avoid ambiguity about its application.

61. The Department advised us that selective licensing outside low demand areas would be limited to dealing with anti-social behaviour. This contrasts with the approach likely to be taken by the National Assembly for Wales which plans to use the power more widely.⁹¹ The Chartered Institute of Housing explained the advantage of a wider power

“We consider that there may be other specific circumstances in which licensing might be helpful in improving areas that are in decline, but where the housing is not necessarily in low demand. For example, some parts of inner London could benefit from licensing schemes that form part of a wider strategy for improvement. Licensing might also be helpful in areas where large numbers of students live or for former local authority estates where investment in social housing can be undermined because of high levels of privately let former right to buy properties. We therefore

⁸⁸ Page 191, *Housing Bill Consultation on Draft Legislation*

⁸⁹ DHB24

⁹⁰ DHB24

⁹¹ Q686, Mr Carey, ODPM

suggest that the actual conditions set out in section 82 are changed to include a wider range of areas.”⁹²

62. In addition, the London Borough of Newham explained how licensing private landlords could be an integral part of a wider strategy to improve standards in the private rented sector and to work in partnership with the landlords to use private rented properties to meet housing need

“Most of the worst property in the borough is in the private sector. We believe that a licensing scheme, if it was a national licensing scheme, would give us the kinds of tools that we need to enter into real partnership with the private sector to bring the properties up to the standard that we require. For us, the private sector plays a very major role in helping meet immense housing demand. We live in an area where there is great housing demand and without the private sector the council would never be able to meet its obligations under other parts of the housing legislation. We see licensing as a way of bringing in the investment and making sure that the money we invest in that sector, and it does run into the millions, is adequately harnessed in partnership with that sector to bring the properties to the standard that we require.”⁹³

There are a range of local housing market conditions in which councils may want to introduce licensing of landlords. If the Government is not prepared to give councils an unfettered discretionary power to license private landlords, it should ensure that the scope to use licensing outside of low demand areas is widely drawn, as is happening in Wales.

Secretary of State approval

63. Both discretionary licensing of smaller HMOs and selective licensing schemes will have to be approved by Ministers before they can be introduced (Clauses 63 and 83). Gateshead Council commented

“It is important that Councils can respond rapidly to changing conditions in their areas. Our experience has shown that areas can deteriorate rapidly, often within a few months. The requirement to seek confirmation from the Secretary of State, followed by a three-month lead-in period, will unnecessarily delay the implementation of any schemes. It is our opinion that local authorities should be able to implement licensing without Secretary of State confirmation.”⁹⁴

The requirement for councils to obtain the Secretary of State’s approval before introducing discretionary licensing for HMOs or selective licensing is unnecessary. Local housing authorities know best what measures are appropriate in their local housing markets.

⁹² DHB33

⁹³ Q4, Mr Faizi, L.B. Newham

⁹⁴ DHB05

Sanctions

64. The Bill includes a number of sanctions in relation to licensing:

- a £20,000 fine for an unlicensed person having control of or managing an HMO (Clause 66 and 87);
- no rent is payable on an unlicensed, licensable house (Clauses 67 and 88); and
- interim and final management orders, whereby the council takes over the management of a house (Part 4).

65. Witnesses, such as the Chartered Institute of Housing, have called for an enforcement regime based on a spectrum of intervention, starting with fines and moving on through management orders.⁹⁵ They say that the way the Bill has been drafted leaves it unclear how the sanctions interrelate, e.g. whether they can be applied in a staged way. The Institute argued

“In regard to licensing (both HMO and selective), we suggest that enforcement should be a process with a series of sanctions that bite at different points, and each of which gives the landlord an opportunity to comply with the licensing requirements. As it is currently drafted, the Bill misses out useful stages of the process. The Bill needs to make it clear what this process is and how the different elements interrelate. Management orders should be a little used, final sanction.”⁹⁶

66. A useful additional mechanism would be a staged approach to fines, based on the rentable value of the property. For example fines could be structured to take account of a landlord’s profit margin. Receipts from fines could even be used to compensate tenants for poor conditions. The Chartered Institute of Housing suggested

“We have suggested that a more positive way might be to say to the landlord, ‘You need to accept a lower amount of rent rather than the full amount of rent’ linked to a clearly defined action plan for moving the situation from the negative, where it is, to the positive, so you will see an incentive for the landlord to improve their situation rather than just absolutely no rent at all where the biggest problem is likely to be the tenant being evicted.”⁹⁷

Sanctions for non-compliance with licensing should operate in a clear, staged way with sanctions of increasing severity applied at different points, each of which gives the landlord the opportunity and incentive to comply.

No rent payable

67. Many witnesses expressed concerns that the ‘no rent payable’ clauses would in fact penalise tenants more than landlords and that tenants claiming housing benefit in particular would be vulnerable to eviction. The Local Government Association explained

⁹⁵ Q474, Chartered Institute of Housing

⁹⁶ DHB33

⁹⁷ Q474, Chartered Institute of Housing

“We can understand why the link between non-licensing and rent has been made but we do feel that puts the tenants in a very difficult position. Most tenants now have very little security of tenure and to put them in a position where they are not paying rent may lead some rogue landlords to evict them and find somebody else to come into the property.”⁹⁸

The Brent Private Tenants’ Rights Group added

“Shorthold tenants will have no more power to refuse to pay the rent than they have power to exercise any other housing right. However, for housing benefit claimants, the situation is tragic, because their benefit will cease, and they will lose their homes at the earliest opportunity.”⁹⁹

68. The Government told us that tenants will not be evicted from unlicensed licensable properties where no rent is paid because the local council will intervene through an interim or final management order and take over the management of the property.¹⁰⁰ We are concerned that this overestimates council’s capacity to intervene, particularly given the track record of the little used Control Orders, which the new management orders replace.¹⁰¹

69. We are concerned that the ‘no rent payable’ provisions could have adverse consequences for tenants, potentially leading to their eviction. If the Government plans to retain these provisions, the final version of the Bill must include adequate safeguards so that tenants cannot be evicted because their landlord is unlicensed.

Compulsory leasing orders

70. Our predecessor Committee’s report into *Empty Homes* recommended that the Government introduce compulsory leasing orders to allow local authorities to take over the management of empty properties.¹⁰² In response, the Government has recently launched a consultation on the introduction of such a scheme.¹⁰³ Both the Chartered Institute of Housing¹⁰⁴ and the Local Government Association argued that the Bill should be used to introduce such a measure. The LGA said

“The LGA would encourage ODPM to make the links between Interim Management Orders and Compulsory Leasing. We would like to see Compulsory Leasing introduced in the Bill in tandem with Interim Management Orders.”¹⁰⁵

We recommend that the Bill introduces Compulsory Leasing Orders to allow local authorities to take over the management of empty properties.

⁹⁸ Q473, Local Government Association

⁹⁹ DHB21

¹⁰⁰ Q695, Mr Daniels, ODPM

¹⁰¹ Q405, Chartered Institute of Environmental Health

¹⁰² Paragraph 24, *Empty Homes*

¹⁰³ *Empty Homes: Temporary Management, Lasting Solutions*, ODPM, 2003

¹⁰⁴ Q481, Chartered Institute of Housing

¹⁰⁵ DHB24

4 Home Information Packs (Part 5)

Background

71. The introduction of Home Information Packs, or Sellers' Packs as they were previously known, was a Labour Party manifesto commitment in both the 1997 and 2001 general elections. In 1998, the Government published a consultation paper proposing the introduction of a Sellers' Pack with the aim of reducing the average time between agreement and completion of residential property sales.¹⁰⁶ Subsequently, the Government's Homes Bill 2000-2001 also included this measure, but its progress was halted by the General Election of 2001.¹⁰⁷ The Home Information Pack, as proposed in the Draft Housing Bill is virtually identical to the earlier concept of a Sellers' Pack, the only important difference being that enforcement of the Home Information Pack is to be through civil rather than criminal remedies.¹⁰⁸

Rationale

72. Research has suggested that although cheap, the process of selling and buying a residential property in England and Wales is inefficient and unsatisfactory for the consumer due to the process being slow, and the failure rates being high.¹⁰⁹ The key objectives of the Home Information Pack are

“To reduce the high rate of transaction failure by making the process more certain and speeding up the critical part of the process between offer acceptance and exchange of contracts.”¹¹⁰

73. Under the Draft Bill proposals

- a) A vendor of any residential property, or an estate agent acting on behalf of the vendor, would be legally required to compile a Home Information Pack on the property prior to advertising it for sale.¹¹¹
- b) The exact form and content of the documents to be included in the Home Information Pack will be specified in regulations.¹¹² The Government is currently running a separate consultation on the contents of the Pack.¹¹³ These are, however, likely to include:
 - Local authority search
 - The title deeds to the property,

¹⁰⁶ DETR: The Key to Easier Home Buying and Selling—A Consultation Paper, 1998

¹⁰⁷ Housing Bill—Consultation on draft legislation, CM5793, 2003, p174

¹⁰⁸ Housing Bill—Consultation on draft legislation, CM5793, 2003, p174

¹⁰⁹ HoC Library SN/SP/1913 p3

¹¹⁰ Housing Bill—Consultation on draft legislation, CM5793, 2003, p251

¹¹¹ Housing Bill—Consultation on draft legislation, CM5793, 2003, clauses 134, 135, and 137

¹¹² Housing Bill—Consultation on draft legislation, CM5793, 2003, Clause 144 and 145

¹¹³ Contents of the Home Information Pack: A Consultation Paper, ODPM, 2003

- Land Registry Office copy entries where the property is registered,
- Draft contract, and
- Home Condition report completed by a certified inspector.¹¹⁴

74. Many of our witnesses applauded the objectives of the Pack, but thought that too many problems remained. For example, the Royal Institution of Chartered Surveyors (RICS) stated that

“We feel in principle that it is a good idea and there are lots of goods points to it, but we feel that there will be a lot of costs involved, a lot of time of involved, and we feel that more work is needed in some areas at least to understand what will be going on and there are practical disadvantages as well [...] It will not take away the problems of chains or gazumping...”¹¹⁵

75. The National Association of Estate Agents agreed

“The HIP's proposal has the right intention but does need further amendment to have the best results for the UK public.”¹¹⁶

Furthermore, the Council of Mortgage Lenders reminded us that a compulsory Home Information Pack would constitute

“A very strong piece of market intervention.”¹¹⁷

They were also concerned about loose ends

“Our concern essentially is that there are still too many detailed items that have not been properly addressed.”¹¹⁸

76. The Consumers' Association also recognised that there are problems, but they believed they could be sorted out and they supported the principle of Home Information Packs very strongly

“We very much support the proposed introduction of the home information pack. The current system is slow, uncertain, confusing and serves the interests of neither buyer nor seller. [...] We think that we need a cultural change in this country to lead consumers to make the right choice for them, based on an informed decision. This is why we believe firmly that the home information pack must be in place from day one of the marketing of a property because if there is going to be a cultural change in that we start making the biggest decision of our lives financially on a sound judgment we need the information in our hands as we do it.”¹¹⁹

¹¹⁴ Housing Bill—Consultation on draft legislation, CM5793, 2003, p202

¹¹⁵ Q409 and Q411, Royal Institution of Chartered Surveyors (RICS).

¹¹⁶ Q253, National Association of Estate Agents.

¹¹⁷ Q199, Council of Mortgage Lenders.

¹¹⁸ Q205, Council of Mortgage Lenders.

¹¹⁹ Q287–Q288, The Consumers' Association.

77. In the course of taking evidence, the Committee has learnt of a wide range of specific concerns from stakeholders in the industry, partly concerning issues that simply are not addressed by the Bill in its current form, and partly concerning implementation of the Pack as currently drafted. Below, we will consider each of the following key issues and problems in greater detail:

- a) The need for a Home Information Pack and its effects on the housing market;
- b) The shelf life of Home Information Packs;
- c) The particular effect of the Pack in low demand / low value areas;
- d) The potential to delay costs or defer the production of the Pack;
- e) Issues relating to the Home Condition report;
- f) Environmental searches;
- g) Enforcement;
- h) The Licensing of estate agents; and
- i) Other issues for speeding up the process.

78. It is now more than two years since the Government first introduced the Sellers' Pack in the Homes Bill, and the ODPM has carried out research and consultations on this subject for some five years. Therefore, we are concerned that even advocates of the scheme have identified a range of serious problems which remain to be ironed out.

The need for a Home Information Pack, and potential effects of a pack on the housing market

Adequacy and validity of research and pilot trials

79. The proposals for a compulsory Home Information Pack as contained in the Draft Housing Bill have been shaped by the findings of international comparisons, a public consultation in 1998, as well as one small pilot study in Bristol in 1999-2000.¹²⁰

80. Numerous memoranda and witnesses told the Committee that the research and pilot testing establishing the effects, positive as well as negative, on the Housing Market of introducing a compulsory Home Information Pack were woefully inadequate and warned against introducing the Pack without further research and amendments to the current proposals. The pilot project in Bristol was criticised for a very small sample size: only 61 sales went through to exchange with the Pack over a six month period.¹²¹ Another criticism of the Bristol trial was the fact that the Packs were voluntary and provided to vendors free of charge, thus calling into question whether the results can be transposed to a compulsory scheme costing vendors some £665 per sale.

81. The National Association of Estate Agents argued that

¹²⁰ DETR: The Key to Easier Home Buying and Selling: A Consultation Paper, 1998

¹²¹ DHB25, p 6; DHB19, para 3.34

“In truth, nobody can really say what real impact this will have on the UK until it is properly trialed and tested. If it is to come in we believe it should happen on a regional roll-out basis so you can assess what impact it is having. The problem at the moment is there is a large amount based on a relatively insignificant pilot scheme which is only based on 60 sales compared to the United Kingdom average of 1.2 million sales. In our view, it does not really reflect what happens in the market place.”¹²²

82. Although research and official pilot-testing has indeed been very limited, it is worth noting the very valuable insights provided by several voluntary Sellers’ Pack initiatives run by independent estate agents and surveyors. One example is a project run by Chamberlains Estate Agents & Chartered Surveyors in Devon.¹²³ Another is a project run by Maria Coleman in Bristol, who told the Committee that she had produced more than 700 Packs over six years.¹²⁴ However, valuable in informing the debate, private voluntary projects like these cannot make up for a lack of strategic and controlled pilot testing across different types of housing markets, for example low demand / low value as well as high value areas, rural as well as urban areas.

83. The Government has relied heavily on international comparisons, and cites in particular experiences from Denmark and New South Wales, Australia where Sellers’ Packs are compulsory.¹²⁵ In giving evidence to the Committee, the Minister, Keith Hill emphasized that in those markets, something comparable to the Home Information Pack had “speed[ed] up the process very considerably,” and he sought to reassure the Committee that the UK housing market is indeed comparable with those in Denmark and New South Wales.¹²⁶

84. Commenting on the evidence from abroad, quoted by the Government in support of the Home Information Pack, the Council of Mortgage Lenders argued that such foreign examples could not be readily applied to the UK. Furthermore the legislation in those countries (Denmark and New South Wales) is not exactly identical to that proposed in the Draft Housing Bill,¹²⁷ and

“They are much less complex markets for a start, much smaller chains, much less demand pressure in those markets than the UK. The UK does have a particularly complex housing market.”¹²⁸

Michael Mortimer of Cormac Business Solutions provided a more detailed analysis of the differences between the housing Markets in England and Wales and those in Denmark and New South Wales, arguing that fundamental differences in the nature of the housing stock, the license regime for estate agents and the legal liability of the seller in relation to the

¹²² Q257, National Association of Estate Agents.

¹²³ DHB03 and DHB03(a)

¹²⁴ Q325, Mrs Coleman

¹²⁵ Housing Bill—Consultation on draft legislation, CM5793, 2003, p266

¹²⁶ Q704–Q705, Keith Hill, Minister of State.

¹²⁷ Q210, Council of Mortgage Lenders

¹²⁸ Q211, Council of Mortgage Lenders

buyer make it problematic to transpose their experience of the Sellers' Pack to the UK market.¹²⁹

Housing market supply

85. With regard to the potential effect of the Home Information Pack on supply in the housing market, the Government concedes that “there is no way of knowing in advance” what will happen. However, the Government cites the experiences from Denmark and New South Wales as well as survey results published by Countrywide Assured Group Plc as support for the view that supply in the housing market will remain largely unaffected by the introduction of a Home Information Pack.¹³⁰

86. However, some of our witnesses were deeply sceptical about this point, arguing that the up-front costs of producing the Home Information Pack may dissuade speculative sellers from putting their properties on the market.¹³¹ The National Association of Estate Agents quote research by Friends Provident Estate Agent Group which concluded that the introduction of compulsory Home Information Packs would lead to a 30% drop in the number of properties marketed.¹³² Mr Mortimer of Cormac Business Solutions argued that

“Surely further consideration of any Home Information Pack legislation should be halted until a detailed Regulatory Assessment has been completed to include detailed research on its actual effect on the housing market, which is a vital component of the British economy.”¹³³

87. However, the Consumers Association questioned the validity of this argument

“The industry keep on saying that all these speculative sales go on but they then say only 30 per cent of speculative sales actually go through to completion. That means 70 per cent do not and that means that there are lots of consumers out there looking at homes where the seller has no intention of selling. If the £500 for a home information pack puts these people off they are not genuinely interested in selling and that means consumers are not going to be disappointed.”¹³⁴

The need for the Home Information Pack

88. Linked to the concerns over insufficient research and pilot testing to establish the effects of the Home Information Pack, some witnesses argued that the Government has failed to take into consideration developments in the sector since the Sellers' Pack was first proposed. The Council of Mortgage Lenders argued that

“Other things are happening in the market place that may also achieve those objectives. There was a huge amount of technological and market development

¹²⁹ DHB25, p 6.

¹³⁰ Housing Bill—Consultation on draft legislation, CM5793, 2003, p257

¹³¹ Q206, Council of Mortgage Lenders; DHB22, SPLINTA,

¹³² DHB19, p 11.

¹³³ DHB25, p 7.

¹³⁴ Q290 The Consumers' Association.

around the house buying and selling process going on. We are not saying it is unnecessary, we are saying those market developments are also things that should be taken into account.”¹³⁵

89. The National Association of Estate Agents went further

“There is also the argument that by the time this is implemented, to a certain degree the pack will be unnecessary because there has not been any real research into the advances that technology and IT are now making. By then people might well be able to produce information virtually same day/next day and therefore it makes the pack unnecessary.”¹³⁶

90. The Consumers’ Association, on the other hand, see the Home Information Pack as complementary to, and reinforcing of, those other developments under way in the house buying process

“We see these dovetailing with the home information pack because for us the importance of the home information pack is the consumer having access to information about the property they want to buy. Also, if you are selling and you get your home condition report and you see that there are lots of faults that can be rectified, you can actually do some repairs yourselves or hire someone.”¹³⁷

Regional roll-out

91. The National Association of Estate Agents proposed to us that because there are so many unknown potential effects of introducing compulsory Home Information Packs

“If it is to come in we believe it should happen on a regional roll-out basis so you can assess what impact it is having.”¹³⁸

92. However, this proposal was opposed by the Government¹³⁹ and by the Royal Institution of Chartered Surveyors who pointed out that

“It would be a mistake to consider perhaps transitional provisions [...] my concern is chains are put together by people buying in and out of an area and one chain does not respect one regional location, and to get the benefits from the review of the home buying process all parties need to be linked into the home information packs.”¹⁴⁰

93. The Home Information Pack would create a better informed housing market, giving buyers a sounder basis on which to make offers. This is to be welcomed. However, it is unclear to what extent the Pack will serve the Government’s objective of speeding up the process of residential property sales, and of reducing the proportion of sales falling through. It is also unclear what effect the Pack would have on the supply

¹³⁵ Q199, Council of Mortgage Lenders.

¹³⁶ Q259, National Association of Estate Agents

¹³⁷ Q293, Consumers’ Association

¹³⁸ Q257, National Association of Estate Agents.

¹³⁹ Q725, Mr Woodward, ODPM.

¹⁴⁰ Q414–Q415, Royal Institution of Chartered Surveyors.

and hence prices in the housing market. We recommend that the Pack should be introduced nationally only when further research and extensive pilot-testing has been carried out in different parts of the country. It is essential to establish the extent to which the Pack may have adverse effects in different types of markets. At this stage, we cannot recommend that Home Information Packs are made compulsory.

Shelf life of home information packs

94. Some stakeholders are concerned about the “shelf life” of the Packs. Certain elements of the Pack, primarily local authority searches and the Home Condition Report, are time sensitive, and this may present a problem in a slow market.¹⁴¹ The National Association of Estate Agents (NAEA) says that

“Under the current Government proposals the pack will have a very short shelf-life, as there is to be no compulsion on sellers to keep the pack up-to-date. Sellers will incur further and repeated costs to refresh the pack and keep information up-to-date, given that no responsible estate agent, surveyor or lawyer would recommend that a purchaser rely on outdated information. This problem will be even more acute in areas, which experience a slower/depressed market”¹⁴²

95. On the basis of these concerns, the NAEA proposes that

“What we feel should happen is if the pack is implemented that it should be ordered once a property is put to the market place. If the home condition report is deemed necessary that should be ordered at the point where there is an offer or an interest in the property and perhaps a lock-out agreement at that point so the buyer and seller are relieved of the stress, they know that they are buying and they are selling to that party. Then at that point a fresh home condition report will be produced rather than one that was produced maybe 18 months ago or earlier.”¹⁴³

96. Other witnesses, however, did not believe time-sensitivity to be an insurmountable obstacle, arguing that if the Home Condition Report was clearly dated, it would not necessarily need renewal even several months down the line. The Royal Institution of Chartered Surveyors argued that

“The majority of properties transact within a reasonable timeframe. If we say the average property transacts within 13 weeks we feel that the HCR would be sufficiently robust to be relied upon for that period of time. Having said that, there are of course properties that take some months to sell, perhaps in low demand, low value areas, and in those cases we believe *caveat emptor* is the right thing. It would be cumbersome to update the home condition report as we go through. In the real world not a lot tends to happen to a property. There are certain defects that tend to accelerate but essentially we will be proposing that it will be “buyer beware: here are the facts relating to the property at the date the home condition report is prepared”. That is much better than we have now and buyers can decide whether they want that

¹⁴¹ Q263, National Association of Estate Agents.

¹⁴² DHB19, para 3.1.

¹⁴³ Q256, National Association of Estate Agents.

information updated should it take them five, six or seven months to sell the property.”¹⁴⁴

97. The Consumers’ Association held a very similar view, pointing out that the report can be structured and written in such a way that potential buyers are made clearly aware of any defects and repairs required, but they also emphasise the importance of educating consumers about how to read Packs

“We feel it is essential that the packs are written in such a way that their time sensitivity is obvious. They must be clearly dated. Also, the way of prioritising repair work should be a good guide to potential buyers as to what the position will be six months on. For instance, if at the date of the inspection something was a grade three problem needing urgent repair work, then six months on, if that has not been done, the buyer will know that is now extremely urgent. A grade two problem which six months ago was a mid-term problem could well be urgent now. We think that the pack will still be useful. We think to accompany this there must be a high level of education of consumers as to the implications of those delays so that they can interpret the pack in a meaningful way and understand their other options and so can opt to have an expert inspection of a particular area of concern or approach the seller and estate agent about having an updated home inspection carried out. We feel that where a pack is very out-of-date there are options to get around that.”¹⁴⁵

98. Maria Coleman who runs a voluntary Sellers’ Pack scheme in Bristol points out that Packs are in principle out of date on day two. However, she explained how she gets round this problem without incurring great costs or problems for the vendor or buyer:

“The way we have tackled it is we have said to our surveyor, “Will you please give us a scale of fees of how much you are going to charge us and on every single fee add £10 or £15 because you may have to reinspect one in four or one in five and we do not want to have to go back either to our vendor or the purchaser. So would you please add that to your fees and understand that you will have to go back and reinspect and update your report.” The report stays the same but an addendum is put on the back. The report is never changed, it is just updated.”¹⁴⁶

99. It is important that the Pack is available from the point of marketing a property, but the Government needs to address the issue of shelf-life of the Packs. Norms need to be established governing what components of the Pack will need renewing, when, and at what cost. In order to cater for markets where sales take months, sometimes years, we would recommend that Packs are only required to be renewed when a serious buyer is found.

Omissions

100. The Home Information Pack will not contain everything that the purchaser of a property needs to know. As described above, the survey can only really reflect the exact

¹⁴⁴ Q423, Royal Institution of Chartered Surveyors

¹⁴⁵ Q301, Consumers’ Association

¹⁴⁶ Q337, Mrs Coleman.

condition of the house on the day upon which it was carried out and other important matters, for example information about local schools—their quality and their catchment areas will not be included other factors such as availability of cable and/or broadband connections are also useful to consider before purchase. The Consumers Association stressed the importance of the pack in ensuring that buyers are better informed¹⁴⁷ but even with the pack the process of home purchasing will continue to be underpinned by *caveat emptor* (let the buyer beware). **We recommend that the Pack includes a checklist of the key matters not included in its contents of which the purchaser should be aware and should be encouraged to ask questions about.**

Low value / low demand areas

101. The Government estimates that approximately “1 million homes are affected by low demand and abandonment, spread across 120 local authorities in the North and Midlands.”¹⁴⁸ It is estimated that some 2% of all residential property sales in England and Wales in 2001 (26,408 properties) were made for less than £20,000, and half of these properties sold for less than £15,000. 0.3% of properties sold went for £10,000 or less.¹⁴⁹

102. Our predecessor Committee examined this problem in its report into *Empty Homes*. We heard how the reasons for low demand varied significantly from place to place. In some places the labour market has collapsed; in others old terraced houses have lost their appeal because of the massive construction of relatively cheap new housing; in other places, older properties are just worn out and do not lend themselves to renovation; highly publicised problems with anti-social behaviour are the root cause elsewhere; whilst in yet other places the legacy of local industry has led to structural problems, for example as a result of mining subsidence or salt extraction.¹⁵⁰ **Where houses are known to have structural problems resulting from the industrial past of the area, the industrial company or any successor body should meet any exceptional costs arising from the preparation of the Pack.**

103. In areas where homes are being sold at less than £10,000, the cost of a pack (the Government currently estimates £550)¹⁵¹ represents over 5% of the price of the property—a completely disproportionate cost when compared to other areas where the price of the pack would represent 0.003% of a £200,000 home. Recognising the difficulties of introducing the Pack in low demand areas, the Government has published a separate consultation on Home Information Packs in such areas.¹⁵² The Consultation Paper proposed five options:

- a) allow the market an opportunity to find a solution to the problem;

¹⁴⁷ Q288, Ms Harrison, Consumers’ Association

¹⁴⁸ ODPM: The Home Information Pack in Low Demand and Low Value Areas (2003): A Consultation Paper, p 11. Consult also ODPM: Sustainable Communities: Building for the Future (2003).

¹⁴⁹ ODPM: The Home Information Pack in Low Demand and Low Value Areas (2003): A Consultation Paper, p 11.

¹⁵⁰ The Sixth Report of the Transport, Local Government and the Regions Select Committee: *Empty Homes*; HC 240 of session 2001-2002

¹⁵¹ Q713, Keith Hill MP

¹⁵² ODPM: The Home Information Pack in Low Demand and Low Value Areas (2003): A Consultation Paper.

- b) allow exemptions from the duties based on the price at which the property is marketed for sale;
- c) allow exemptions from the duties based on areas that can be defined as low value low demand areas;
- d) allow exemptions from the duties in respect of parts of the Home Information Pack (e.g. allow marketing without the Home Condition Report)
- e) Encourage or require local authorities (or other bodies) to use existing powers (or create new ones) to provide financial assistance to sellers of low value properties—either directly in the form of a grant or loan, or in the form of services such as free searches and/or home condition report.¹⁵³

104. None of the evidence to the Committee supported the third option because of concerns that this would result in areas of market weakness being formally designated—‘red-lined.’ Such red-lining would result in a number of problems:

- a) Within the designated ‘low demand area’ there may be some streets or properties where values have remained high—designating the area as low demand could destroy the market for such properties;
- b) Most people felt that designating such areas would be another blow to confidence in already weak markets;¹⁵⁴ and
- c) The mortgage lenders previously told us that such designations would be a clear signal to them that such areas are ‘high risk’ thereby undermining the ability of people to get a mortgage on properties there.¹⁵⁵ (In evidence to this inquiry the Council of Mortgage Lenders told us that it is working with the Government to promote a more positive role for lenders in low demand areas).¹⁵⁶

105. The option of local councils providing a subsidy to vendors to cover the cost of the pack (the option preferred by the National Association of Estate Agents)¹⁵⁷ does not seem feasible if it is operated across the board—lots of taxpayers’ money could be spent to no purpose. However in specific areas there may be circumstances where subsidised packs could be a useful tool for the low demand pathfinders, alongside other measures, to help recreate a functional housing market.

106. Many of our witnesses have proposed that the best option would be to ‘leave it to the market;’¹⁵⁸ but we remain concerned that Packs will simply be unaffordable where house prices are very low. **We recommend that the Government pursues an approach to Home Information Packs in low demand areas based on house price rather than designated**

¹⁵³ The Home Information Pack in Low Demand Low Value Areas: A Consultation Paper (2003), p 14.

¹⁵⁴ Q184, Mr Shiner, Sandwell MBC; Q272, MS Westby, National Association of Estate Agents (NAEA); Q425, Mr Creffield, Royal Institution of Chartered Surveyors (RICS); Q426, Mr Griffiths, Chartered Institute of Environmental Health (CIEH)

¹⁵⁵ Q375, *Empty Homes*

¹⁵⁶ Q240, Council of Mortgage Lenders

¹⁵⁷ Q273 Ms Westby, National Association of Estate Agents (NAEA)

¹⁵⁸ P54, para107: Q187, Mr Shiner, Sandwell MBC; Q425, Mr Creffield, Royal Institution of Chartered Surveyors (RICS).

areas—this will help all vendors whose house prices are low and will ensure that pockets of buoyancy in otherwise weak markets will not be stigmatised. Homes valued at less than £30,000 should be exempt from the Home Information Pack obligation. This should be reviewed after two years of operation with an aim of reducing the price at which exemptions take place.

107. Both in low demand and other areas properties in very poor condition are sold for redevelopment. The Government is keen to encourage the re-use of such properties with its target to increase the use of brownfield land for house building.¹⁵⁹ Where properties are being sold for the express purpose of redevelopment or conversion, there is little point in having a Home Information Pack. **We recommend that where houses have planning permission for redevelopment or conversion they should be exempted from the Home Information Pack.**

Deferral of costs or delaying the Pack

Delaying the production of the Home Information Pack

108. Two distinct solutions were proposed by witnesses in response to the three problems discussed above, namely the potentially negative impact of Packs on supply to the market, the time sensitivity of the Packs, and not least the disproportionate impact in low value / low demand areas. Firstly, some witnesses thought it would be better to produce the Pack at a later stage in the process, either within the first two weeks after advertising the property, or when a serious buyer comes on the scene. On the issue of reduced supply to the market caused by the hesitations of speculative sellers, the Council of Mortgage Lenders suggested that

“There may well be a method of addressing that problem which is to require that the home information pack is available 14 days after the first day of marketing so the advantages of bringing the information together very quickly and at a very early stage in the process would be addressed whilst allowing speculative properties to be brought to the market as well.”¹⁶⁰

109. The NAEA went further, suggesting that Packs should only be produced once a serious potential buyer is found:

”Our suggestion is if you deem a home condition report a necessary part of the pack that it should be instructed and inspected at the point of offer with a lock out clause so people know for a five or ten day period they are buying that house.”¹⁶¹

110. However, the Consumers’ Association oppose this solution because, in their view, it would defeat part of the purpose of introducing the Pack in the first place. When questioned about the possibility of delaying production of time sensitive elements of the Pack they said

¹⁵⁹ Page 100, Annual Report, ODPM, 2003.

¹⁶⁰ Q206, Council of Mortgage Lenders.

¹⁶¹ Q264, National Association of Estate Agents.

“We feel this will not give consumers the benefit that they will have if the information is there at the point of viewing and at the point at which they make the offer because it is purely shifting the delay back to where it is now in the process. That means that there is no net benefit from bringing in the system because there will still be a delay in getting a survey carried out and if the findings of that survey are not favourable then the sale will fall through. We really feel that in the majority of cases it will work for the benefit of the consumer to have that information at the point of sale.”¹⁶²

111. When giving oral evidence to the Committee, Mr Woodward of the ODPM expressed a similar view, rebutting the NAEA proposal to delay the production of the Pack

“I think the problem with that proposal is that what it does in effect is to perpetuate part of the problems of the existing system where key information to the seller as well as the prospective buyer is not available up-front. In that scenario the property would be put on the market at a price without testing that price against a condition report. Also, what is an interested buyer? At what stage does the buyer become interested? Presumably after some discussions, after visiting the property. The problem is that if the Home Information Pack is not available at that point, at that initial stage, inevitably negotiations will go ahead on the basis of very limited information, exactly the problem that we have at the moment, and then it is only later when the Home Information Pack becomes available that the buyer will again look at the offer that he has made, and look at the negotiations that have been had. If the current process is anything to go by there is a prospect then, indeed a likelihood, for re-negotiation and the transaction being put at risk.”¹⁶³

Deferral of payment for the pack

112. Another proposal is to defer payment of the pack until a sale is achieved.¹⁶⁴ In other words, this would mean that agents and professionals involved in the process would have to temporarily accept a delay in reimbursement. When giving evidence to the Committee, the Minister, Keith Hill responded very positively to this proposal.¹⁶⁵

113. The National Association of Estate Agents, however, expressed considerable resistance, and suggested that it would be impossible for the industry to “absorb” the costs of the Home Information Pack without increasing their fees.¹⁶⁶ The Association asked, “What happens [...] if the agent does not achieve a sale and the seller wants to move agent, who owns the pack, who has paid for the pack?” The crucial concern of the NAEA was that

“Some agents are doing it [deferring costs] now, which is fine where there is a rapid, fast-flowing market. In the times where you have taken on a number of properties, again in a period like we had in the early 1990s where it could take up to a couple of years, the cash flow then becomes more of a problem. Will surveyors, will

¹⁶² Q311, Consumers’ Association.

¹⁶³ Q727, Mr Woodward, ODPM

¹⁶⁴ Q327, Mrs Coleman.

¹⁶⁵ Q715, Keith Hill, MP

¹⁶⁶ Q275, National Association of Estate Agents.

conveyancers be willing to sit back and wait for the money to come forward if it is going to take two years? It comes back to what I said earlier, it will only result in the net fee being increased to absorb these additions, which is obviously going to be knocked on to the consumer.”¹⁶⁷

114. However, the deferral of payment has worked well in voluntary Sellers’ Pack schemes. For example, Mrs Coleman, who has run a voluntary Sellers’ Pack scheme in Bristol for several years deferring payment until a sale goes through, argues that

“If you are in the real world, the surveyor agrees that he would defer his costs. When all these large organisations talk about all the problems, with my small little agency I have been able to get a withdrawal insurance so that if a vendor withdraws their house from the market for a genuine reason, death, terminal illness, loss of job, for a £35 insurance premium they do not have to meet any of the abortive costs. So the surveyor and the solicitor and everyone else can always get paid either on completion or withdrawal. We have an insurance of last resort to cover the surveyors and the solicitors in our scheme. So it is out there. If I can get it, if there is a will the larger organisations can get it.”¹⁶⁸

115. Mr Woodward from the ODPM clearly hinted that the Department and the stakeholders in the industry now expects this deferral of payment of costs to be the route chosen

“The industry and those thinking of getting involved in producing Home Information Packs tell us that they fully expect the cost to be met at the end of the transaction. At the moment that is how the estate agent gets paid, through commission at the end of the transaction. The market is telling us that it expects market forces to bring surveyors and conveyancers into line with that in exactly the same way as Maria Coleman explained her operation to you.”¹⁶⁹

116. If the Home Information Pack were made compulsory, it has to be made available at the point when the property is put on the market. We have heard evidence of one voluntary scheme in which fees are deferred to the point of sale. We recommend that the Government considers this option as one means of alleviating some of the problems associated with the Pack.

The Home Condition Report

Quality of the Home Condition Report

117. The Government explains the content and level of thoroughness envisaged for the Home Condition Report as follows

“It is proposed that the home condition report will be based on a mid-range inspection, broadly similar to that for the Royal Institution of Chartered Surveyors’ (RICS) mid-range survey, the Homebuyers Survey and Valuation (HSV). We believe

¹⁶⁷ Q278, National Association of Estate Agents (NAEA)

¹⁶⁸ Q334, Mrs Coleman.

¹⁶⁹ Q716, Mr Woodward, ODPM

this would strike the right balance between comprehensiveness and cost and is the appropriate level of survey for a mandatory home information pack. On this basis, the home condition report would be less detailed and comprehensive than the RICS' Building Survey (sometimes referred to as a 'full structural survey'), but would be significantly more extensive than a mortgage lender's valuation inspection."¹⁷⁰

118. The Royal Institution of Chartered Surveyors (RICS) questions whether the new Home Inspectors, who will be producing the reports will be sufficiently qualified to ensure the reports' quality

"Whilst the training of new Home Inspectors may equip them with enough knowledge to tackle many 'average' homes there are many defects even in supposedly 'average' properties which those with limited experience would struggle to spot. This applies even more in the case of older or atypical properties..."¹⁷¹

The potential use of Home Condition Reports by lenders

119. The Home Condition Report could conceivably be of a sufficient quality for mortgage lenders to use it as part of their valuation; Home Inspectors could / should be trained be able to carry out valuations. Clearly, if mortgage lenders were able to use Home Condition Reports as part of their valuation, savings might be made at this point in the process.

120. The Government states that

"We believe that mortgage lenders will increasingly make use of the home condition report when assessing the value of the property and in most cases will use this as a reliable guide to condition rather than charge buyers for a separate inspection of the property. Some lenders are already moving away from physical inspections (particularly where the loan to value ratio is low) in favour of credit checks on the borrower backed by 'drive-by' surveys and desk top valuations of properties."¹⁷²

121. In oral evidence, the ODPM reinforced this by saying that "clearly, making that report as useful as possible to lenders is one of the key objectives."¹⁷³ The Royal Institution of Chartered Surveyors back up the ODPM position, and conclude that

"At present mortgage lenders require a mortgage valuation (at a typical cost of £150) before deciding whether to make a loan. [...] Many lenders may conclude that the availability of the HCR coupled with the desktop valuation data that they hold may obviate the need for such valuations in the majority of cases. If this were to be the case then this would partially offset the cost of the HCR as most sellers are also buyers."

122. However, the Council of Mortgage Lenders explained that although there has indeed been an increasing trend towards valuation techniques which do not require on-site inspections, such automated valuation models (AVM) are not likely ever to take up more

¹⁷⁰ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 257.

¹⁷¹ DHB35, p 5.

¹⁷² Housing Bill—Consultation on draft legislation, CM5793, 2003, p 255.

¹⁷³ Q733, Mr Woodward.

than approximately 25% of the market.¹⁷⁴ In other words, on-site valuation will, most likely, still be required for some 75% of sales. They did, however, give some support to the idea that Home Inspectors should be qualified to carry out valuations as part of their inspection for the Home Condition Report

“The key one [issue] for us as lenders is that we require a valuation, and essentially home inspectors will not be trained and competent to provide valuations. [...] From a lender's perspective that [Home Inspectors’ producing valuation] would be ideal. If all home inspectors could produce valuations and if the conflict of interest issue could be overcome, then we could directly access valuations from home inspection reports. That would avoid interfaces with the data bank and change our systems to a much more efficient process from our perspective.”¹⁷⁵

123. However, that idea was, in turn, opposed by the RICS who said that

“The home condition report, it needs to be made clear, is not proposed to include a valuation of the property because it is very difficult to provide a valuation up-front and we feel that could interfere with the proper operation of the market between a buyer and a seller.”¹⁷⁶

Training of Home Inspectors

124. If the Home Information Pack in its current form were to become compulsory, a whole new profession of Home Inspectors would be created. Home Inspectors would carry out the Home Condition Report which is a key element of the Pack. The Government believes that about 7500–8500 Home Inspectors will be required in order to produce Home Condition Reports for all sales in England and Wales,¹⁷⁷ but the RICS suggests that the figure could be as high as 10,000 full-time inspectors.¹⁷⁸

125. The Government propose that qualification as a Home Inspector would require a two-year university course for a person with no experience in the profession, or a one-year Further Education course for anyone with some experience. Qualified Chartered Surveyors would need to undertake a three-day “bridging” course to qualify as Home Inspectors.¹⁷⁹

126. Several witnesses expressed concern about the feasibility of setting up new courses and training thousands of people for the new Home Inspector qualification in time. The Council of Mortgage Lenders told us that: “we are yet to be convinced that an adequate number of home inspectors will be available for 2006 implementation”¹⁸⁰ and added

“My view is that time is absolutely critical. I do not think that it is impossible but I would urge ODPM and all those involved in the implementation of this Bill and the

¹⁷⁴ Q238, Council of Mortgage Lenders.

¹⁷⁵ Q224 and Q225, Council of Mortgage Lenders.

¹⁷⁶ Q422, RICS

¹⁷⁷ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 260.

¹⁷⁸ DHB35

¹⁷⁹ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 260-261.

¹⁸⁰ Q224, Council of Mortgage Lenders

insurance industry, et cetera, that this really needs to be addressed very, very quickly.”¹⁸¹

On the issue of whether sufficient numbers of new Home Inspectors can be recruited, the Minister, Keith Hill told us that

“We have commissioned research on this through the Property Services National Training Organisation. The research involves an in-depth survey of the labour market, which we expect to report at the end of this month, and the findings as they emerge do indicate that there is a substantial pool of labour within the building industry and allied professions and trades on which Home Inspectors can be drawn, so that is really quite reassuring.”¹⁸²

127. Given that individuals from within the building industry will require one years training rather than two, a large transfer of people from within the industry might enable sufficient numbers to be trained within the time available. This could, however, potentially create problems elsewhere in the industry.¹⁸³

Insurance for Home Inspectors

128. The issue of insurance for Home Inspectors raises considerable concerns among many stakeholders across the industry. The Consumers’ Association explained why insurance for Home Inspectors is so vital

“There must be professional indemnity insurance for home inspectors. [...]we think it needs to be underpinned by a very robust redress scheme. There is going to be joint liability, because it will be the vendor and the buyer who will be impacted upon if there is a problem with the home condition report and that is why we need this scheme in place, to make fair and sound judgments.”¹⁸⁴

129. The RICS pointed out that: “one of the most difficult issues is ensuring that those carrying out Home Inspections are backed by insurance. The problem is that professional indemnity insurance is currently in crisis with premiums going through the roof.”¹⁸⁵ The Council of Mortgage Lenders backed up this point

“Here you are recruiting a large number of people new to the market where it is not at all clear that indemnity insurance can be provided. One of our concerns from our point of view as lenders, let alone from the consumers' point of view is, without that back-up it will make it very difficult for this market to work.”¹⁸⁶

130. The Government recognises that indemnity insurance for Home Inspectors is important: further research is apparently under way to establish what would be the best

¹⁸¹ Q239, Council of Mortgage Lenders

¹⁸² Q730, Keith Hill MP

¹⁸³ Q735, Keith Hill MP

¹⁸⁴ Q312, the Consumers’ Association

¹⁸⁵ DHB35, p 3.

¹⁸⁶ Q235, Council of Mortgage Lenders

form of insurance.¹⁸⁷ However, unlike our witnesses, the Government appears not to expect major problems in this area

“Although indemnity insurance premiums are rising steeply, our advice suggests that the home condition report, with surveyors liable for negligence to both the buyer and the seller, is, in itself, unlikely to result in any significant increase in the cost of this cover.”¹⁸⁸

131. There is concern about the feasibility of recruiting and training sufficient numbers of Home Inspectors, and of ensuring that they are able to gain adequate insurance before making the Pack compulsory. **The Government must work with interested parties to ensure that the pack is made compulsory only once sufficient numbers of inspectors are trained. We would expect by the time of the second reading of the Bill that the Government will have fully investigated and published information on the difficulties of underwriting insurance for home inspectors, and will have decided whether it thinks it will be necessary to underwrite the cost for the first few years.**

Liability to the purchaser

132. Under the current home buying and selling regime the purchaser of a property commissions a surveyor who acts on the purchaser’s behalf. Under the new proposals the cost of the survey and the contractual relationship to the Inspector transfers to the vendor. This could potentially complicate matters for a purchaser who has bought a property and then finds that there is a problem with the information contained in the survey. The Minister told us that under the Contract Rights of Third Parties act, a contractual obligation would be directly created between the Inspector and the purchaser so that the purchaser would be able to take legal action directly against the inspector.¹⁸⁹ **We remain concerned that particularly in the early years of the Pack, purchasers may be reluctant to trust a report that they have not commissioned.**

Energy efficiency

133. In partial response to the requirements of EU Directive 2002/91/EC on the energy efficiency performance of buildings, it is the Government’s intention that the Home Condition Report will contain

“An energy report including an energy rating calculated in accordance with the Government’s Standard Assessment Procedure for Energy Rating of Dwellings (the SAP rating), to enable consumers to understand how energy efficient the property is and to make comparisons between homes. The SAP rating depends on such matters as the thermal efficiency of the building fabric and the type of heating system and its controls. The energy report would also provide information on energy efficiency measures that would reduce fuel costs, increase comfort and also help the

¹⁸⁷ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 262.

¹⁸⁸ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 262.

¹⁸⁹ Qq736-737, Keith Hill MP

environment, and a potential SAP rating that the property could achieve if those measures were carried out.”¹⁹⁰

134. The inclusion of an Energy Report has been warmly welcomed by the Energy Saving Trust, the Association for the Conservation of Energy, and National Energy Action who appreciated the proposal from both an environmental, and a ‘fuel poverty’ perspective.¹⁹¹ Satellite imaging of heat loss by homes is now available for much of the UK.¹⁹² The Association for the Conservation of Energy was also concerned to include

“Energy efficiency advice (e.g. in terms of energy and monetary savings and ‘pay-back’ periods etc)–in order to increase the effective installation of energy efficiency measures. The experience of the very effective Energy Efficiency Advice Centres (as highlighted by the National Audit Office) shows the importance of such advice in increasing the installation of measures.”¹⁹³

135. The Royal Institution of Chartered Surveyors (RICS), raised two practical issues of concern to them. It suggested that resources should be made available to develop a new and faster version of the Standard Assessment Procedure.¹⁹⁴ A second, and related concern to RICS was that

“The energy efficiency report relies on the use of SAP software but such software does not work for all stock. Large and non-standard properties would therefore be rejected. We estimate that the SAP technology would encompass around 85% of the stock.”¹⁹⁵

136. We welcome the inclusion of energy efficiency ratings in the Home Information Pack, and also recommend that where satellite imaging is available it should be provided in the pack.

Environmental searches

137. The Government has proposed that the Home Information Pack should include an environmental search, and is currently consulting on the content of such an environmental search report. The Report is meant to provide information on issues such as flood risk, “the location of nearby waste sites, and local industrial processes and discharges.”¹⁹⁶ Whilst this is a very positive development in principle, we have heard concerns relating to two distinct areas:

- a) the quality and lack of property specificity of the proposed Environment Agency search; and

¹⁹⁰ Contents of the Home Information Pack: A Consultation Paper, ODPM, 2003, p 31

¹⁹¹ DHB15, DHB11, DHB06

¹⁹² see for example landmap.ac.uk

¹⁹³ DHB11

¹⁹⁴ Q424, RICS

¹⁹⁵ DHB35, p 4.

¹⁹⁶ Contents of the Home Information Pack: A Consultation Paper, ODPM, 2003, p 18

- b) the possibility that the Environment Agency could have a monopoly on providing such searches.

Content of the search

138. Some witnesses were concerned that in practice, such searches might cause more unnecessary alarm than benefit. As the RICS explained

“Environmental searches at the moment tend not to be property specific. When you see the environmental searches that come through from conveyancers they merely state, let’s say, that there was planning consent for extraction of minerals in this area that could have an impact but these might have been past uses of land that are adjoining and it might have been industrial use 50 years ago, and it does not say whether the property is contaminated. That is the big problem because the conveyancer gets that piece of information, forwards it to the lender and forwards it to the valuer and they are not qualified to be able to give advice on that. It is generic information. If an environmental report is to be provided it must be property specific and give appropriate advice. If that can be done that would be supported.”¹⁹⁷

139. RICS provided an example which has proved highly pertinent in recent years, and which affects large numbers of properties: “We are aware of many, many individual properties that may lie in a flood plain area but would never be flooded because of local topography, so unless we address specific property issues we fear that that information being made available to the public could blight certain properties.”¹⁹⁸

140. Several memoranda to the Committee suggested that the proposed Environment Agency report would be inadequate in terms of depth, breadth, and ease of interpretation for the buyer. Sitescope Ltd, for example, said that the Environment Agency Report contains a great deal of information of little relevance to home buyers, whilst missing out crucial components such as reliable information on potential land contamination.¹⁹⁹ Furthermore, Nick Lightbody pointed out that the Environment Agency report is difficult to interpret, and thus is of little help in determining whether there is any cause for concern.²⁰⁰

141. The Government has stated that “the range of questions to be included in the Environment Agency reports is being further developed”, and that the version included in the consultation is only “the current draft.”²⁰¹ It is also acknowledged in the consultation paper that “The Environment Agency is conscious of the need to ensure that meaningful information is made available to home buyers and their advisers on which to base their decisions.”²⁰²

¹⁹⁷ Q427, Royal Institution of Chartered Surveyors (RICS).

¹⁹⁸ Q428, Royal Institution of Chartered Surveyors (RICS).

¹⁹⁹ DHB16, p 4. See also DHB26, p 10.

²⁰⁰ DHB26, p 10.

²⁰¹ Contents of the Home Information Pack: A Consultation Paper, ODPM, 2003, p 18

²⁰² Contents of the Home Information Pack: A Consultation Paper, ODPM, 2003, p 19

142. We welcome the inclusion of environmental searches in the proposed Home Information Pack. Such searches need to be property specific and in a format which buyers can easily interpret.

Role of the Environment Agency

143. Under the current proposals the environmental search would be produced by the Environment Agency. We have received memoranda from a number of companies who argue that the apparent monopoly of the Environment Agency of all environmental searches could “destroy an existing commercial, competitive market that is already delivering innovative services at prices below those proposed by the Environment Agency.”²⁰³ In its evidence to us, the ODPM acknowledged the number of submissions that it had received from private companies offering environmental searches and said it remains to be decided who will undertake such searches

Enforcement

144. The Bill charges local authority Weights and Measures Departments (who act through Trading Standards Officers)²⁰⁴ with the role of enforcement of the Home Information Pack,²⁰⁵ the Government estimates that the total extra cost to local authorities across England and Wales will amount to “£1.44 million per annum, or around 1/2 an additional person per local authority. The cost of any additional workload for the courts and tribunals is likely to be negligible.”²⁰⁶ When giving oral evidence, the ODPM indicated that they were looking at the possibility of providing extra funding for the training and recruitment costs of Trading Standards Officers.²⁰⁷

145. Some witnesses expressed concerns that Trading Standards Departments might not have the legal and financial resources, or staff trained to requisite standard to enforce the Packs thoroughly and consistently. RICS said:

“We are concerned about the ability of Trading Standards Officers to enforce the new rules. Frankly, will they understand the complexity of the market issues and the way the new system will operate? Clearly, training will help a good deal but it will be a very big job—a possible 2 million cases per annum, 12 000 estate agents offices and as many as 5 million buyers and sellers. Against this background, it is unlikely that Trading Standards Officers will be able to take a very pro-active approach but will need to rely instead on incidents being reported to them.”²⁰⁸

“... We want to ensure, at least, that there are sufficient numbers of trading standards officers [...] to enforce it. There is no point in introducing any legislation or regulation which cannot be enforced and is not seen to be enforced and not seen to be working well. So, yes, that is an area of concern. [...] It is a question of how

²⁰³ DHB16, p 3.

²⁰⁴ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 202, para 243.

²⁰⁵ Housing Bill—Consultation on draft legislation, CM5793, 2003, clause 146

²⁰⁶ Housing Bill—Consultation on draft legislation, CM5793, 2003, p 264.

²⁰⁷ Q744 and Q745, Mr Woodward, ODPM

²⁰⁸ DHB35, p 5

they are trained, how they understand the system and how it might work in practice, because if there is not a deterrent for abuse then abuse will continue and it will come into disrepute.”²⁰⁹

146. The Local Government Association as well as the Chartered Institute of Environmental Health were concerned at the weakness of the power of authorised officers

“There does not appear to be any obligation on the seller to provide a copy of the pack to an authorised officer, who will probably be a trading standards officer, so in the absence of that requirement it seems to me that the enforcement regime is weak and would need to be looked at. Similarly, although the enforcement authority has up to six months to request production of a copy of the document, there is no obligation on the seller to keep a copy of that document available for that length of time. [...] we would want to amend the provisions to enable an authorised officer to demand to see a copy of the pack, and in the absence of that I do not think the system will work properly.”²¹⁰

147. Adding to such concerns, the LGA questioned the value for money aspect of the Pack: “The resource implications of enforcement are unlikely, in our view, to yield sufficient results to constitute good value for money.”²¹¹

148. There must be sufficient human and financial resources to provide effective enforcement of the legal requirement to have a Home Information Pack. Additional central funding may be necessary.

Licensing of estate agents

149. Most of our witnesses favoured the licensing of estate agents. Some believe that this should happen irrespective of the Home Information Pack;²¹² whilst others saw licensing as a necessary consequence of the introduction of Home Information Packs. For example, the RICS argued that

“We need to talk about licensing for estate agents as well, and that is one area we are very much in favour of because we feel this is likely to place a huge great burden on estate agents, not least from a practical point of view in terms of the storage of information, the holding of information, the interpretation of information, training of staff, which could have an impact on the cost of running their practices and commissions, fees, et cetera.”²¹³

150. The Council of Mortgage Lenders also pointed to the anomaly that: “when you look at all the other people involved in the chain, most of the people are qualified, monitored and

²⁰⁹ Q416 and Q417, Royal Institution of Chartered Surveyors (RICS).

²¹⁰ Q417 and Q419, Chartered Institute of Environmental Health (CIEH)

²¹¹ DHB24, p 4. Local Government Association

²¹² Q217, Council of Mortgage Lenders; Q298, Consumers' Association.

²¹³ Q420, Royal Institution of Chartered Surveyors (RICS)

regulated in a variety of different ways. The estate agent who is central to the chain is one of the few parties that are not.”²¹⁴

151. Estate agents themselves also appear to favour licensing, and point out that the National Association of Estate Agents is trying to introduce minimum standards already

“On the issue of minimum standards we as an association have already launched and introduced a technical award which has been recognised as a minimum standard and this is something we are striving for all our members to undertake. If this then leads to licensing this is something we would applaud.”²¹⁵

152. The ODPM indicated to us that they see this subject as the responsibility of the Department of Trade and Industry, and that in any case, the issue was unlikely to be considered before the publication of an investigation of Estate Agency by the Office of Fair Trading, due in the autumn.²¹⁶

153. Given the role of estate agents in implementing the Pack, we recommend the Government should take powers in the Bill to license estate agents, which can be implemented if it becomes necessary.

Speeding up the process

154. As we heard from the ODPM home purchasers can be extremely frustrated by the delays and problems that occur between the moment of putting in an offer on a property and the final exchange of contracts. The Home Information Packs aims to speed up this process by ensuring that some of the information is available when the house goes on the market; but there are a number of other ways in which the process could be speeded up.

The professionals

155. Anecdotal evidence suggests that many purchasers spend a great deal of time in the period between offer and contract chasing those who are acting on their behalf, e.g. solicitors. Greater transparency about the process from those involved could reduce some of this frustration. The Committee heard evidence of one scheme where customers can track the developments in their sale on-line by accessing a web-site. Maria Coleman told us that:

“...we now have on-line tracking between our solicitors and ourselves and the consumer. Our buyers and sellers are given a PIN number so they can access their own file, so they can see at any time of the day or night what is happening.”²¹⁷

156. We recommend that all parties involved in the process of buying and selling houses should also take upon themselves some of the responsibility for making the process quicker and more transparent. In particular, the Committee commends a

²¹⁴ Q221, Council of Mortgage Lenders, (CML).

²¹⁵ Q268, National Association of Estate Agents (NAEA)

²¹⁶ Q746, Mr Woodward, ODPM.

²¹⁷ Q349, Mrs Coleman

scheme enabling consumers to view the progress of their sale/purchase on-line and recommends its adoption by estate agents and solicitors as standard practice.

Local searches

157. Local Authorities are responsible for producing land searches to be included in the Pack. Witnesses expressed concern that most local authorities were very slow in producing local authority searches, and this could delay the compilation of Packs. The ODPM acknowledged this concern, but remains positive that the National Land Information Searches system will be fully operational across local authorities ahead of implementation of the Pack.²¹⁸ It was also argued that, although the technology is in place at the central level in the form of the National Land Information Searches (NLIS), local authorities themselves are not investing in the necessary technology at anything like the required rate.²¹⁹ The Council of Mortgage Lenders told us

“Local authorities need to invest heavily in the technology that will allow them to interact with something called the National Land Information Service, which is a method by which the provision of local authority searches is automated from the actual register within the local authority all the way through to the conveyancer’s office and therefore the obtaining of a local authority search moves from taking a matter of days or weeks to taking a matter of hours. [...] out of 375 local authorities in England and Wales, I believe only 42 at the moment have fully invested in the technology required to undertake this. To my knowledge, there has been only one since last July which has moved into the realms of having the full technology implemented within their organisation.”²²⁰

158. RICS expressed “extreme” concern at the slowness of Local Authorities in getting the technology in place,²²¹ and argued that at least 80% of local authorities need to be at the highest level of readiness for the NLIS system (level 3).²²² When asked whether this problem might be resolved by creating differentiating fees depending on the speed of searches, Mr Creffield from RICS responded

“I think that would be an incentive for a local authority to invest and they could make their business plans, as any other business would, to decide whether to put IT in to deliver those reports [...] electronically.”²²³

159. The rapid provision of local authority search information in electronic form is vital to the success of the Home Information Pack. We recommend the introduction of a system of financial incentives for local authorities to invest in providing on-line searches, including the potential for differential fees to be charged by councils.

²¹⁸ Q753, Keith Hill MP

²¹⁹ Q199, Council of Mortgage Lenders.

²²⁰ Q203 and Q204, Mr Solomon, Council of Mortgage Lenders (CML).

²²¹ Q431, Royal Institution of Chartered Surveyors (RICS),

²²² Q432, Royal Institution of Chartered Surveyors (RICS),

²²³ Q433, Royal Institution of Chartered Surveyors (RICS),

5 Right to Buy (Part 6)

Background

160. The right for council tenants in England and Wales to buy their home was introduced in 1980, and is now enshrined in Part V of the 1985 Housing Act.²²⁴ Since 1980, 2.2 million homes have been sold under the scheme.²²⁵ In buying their homes, tenants have been offered a discount on the market price of the property, ranging from 32% to 60% for houses, and 44% to 70% for flats. Such discounts are subject to maximum levels dependent on region, and the level of discount is dependent on the length of the tenancy in the property.²²⁶

161. A range of problems and concerns has surfaced, particularly in the context of rapidly rising house prices in recent years. There is considerable evidence that the Right to Buy (RTB) is being abused for profit in some areas. This includes the letting of newly purchased dwellings for profit, often with the involvement of an ‘incentive company’. Such companies often lease the property for the first three years, after which point the property passes over from the former council tenant to the company. This is done in order to circumvent the requirement to pay back the rebate granted by the Council if a property is re-sold within three years of the Right to Buy having been exercised. As our predecessor Committee heard during its *Empty Homes* inquiry, another form of abuse is where tenants in regeneration areas exploit RTB by buying the property, and making a profit when the council then has to buy it back in order to renovate it.²²⁷

162. With effect from 27 March 2003, the Government introduced regulations limiting available discounts to £16,000 in 41 areas of high housing demand. Six of the local authorities covered applied for exemptions from this regulation, only two of them successfully.²²⁸

The Bill

163. The Draft Housing Bill proposes further changes to the Right to Buy, effectively making the following four key changes to the current scheme:²²⁹

- a) The minimum period of tenancy required to qualify for the right to buy is to be extended from two to five years;
- b) The period during which a re-sale triggers the right for the Council to demand repayment of some or all of the discount is extended from three to five years;
- c) The discretion of landlords to waive repayment is clarified; and

²²⁴ ODPM: Draft Housing Bill: Consultation on Legislation: Factsheet 8: Right to Buy

²²⁵ HoC Library SN/SP/1983

²²⁶ HoC Library SN/SP/1983, p 2

²²⁷ The Sixth Report of the Transport, Local Government and the Regions Select Committee: *Empty Homes*, para 34; HC 240 of session 2001-2002

²²⁸ HoC Library SN/SP/1983, p 14-16

²²⁹ Housing Bill—Consultation on draft legislation, CM5793, 2003, Clauses 153-156

- d) The method of calculation of the repayment following a re-sale is changed from the current flat rate to a percentage of the resale value of the property.

164. Virtually all our witnesses welcomed the changes to Right to Buy enshrined in the Draft Housing Bill, and many took the view that the bill should go further in a range of areas. Thus, whilst both the Citizens Advice Bureaux²³⁰ and Mr Shiner from the Sandwell MBC Pathfinder,²³¹ were pleased with the reform, Mr Faizi from Newham Council stated that

“We welcome the extension of the five year period. We do think we could go a bit further”²³²

The same view was put forward by Shelter²³³

“The Bill is a good start. Extending the five year discount repayment period is a decent start and one would hope it will stop people cashing in quite so quickly on the discount. In practice, whether that will stop some of these firms abusing the system in the way that you have described, I somehow doubt.”²³⁴

We welcome reforms to the Right to Buy, limiting the scope for abuse and profiteering. In particular, we commend the extension of the qualification period as well as the discount repayment period to five years each, as well as the change to the method of calculating discount repayment.

Other proposals for reforming Right to Buy

Alignment of Right to Buy and Right to Acquire

165. The Local Government Association has proposed that the Right to Buy should be aligned with the Right to Acquire for Housing Association tenants. The Right to Acquire applies to secure and assured tenants of “registered social landlords,” and involves a discount of between £9,000 and £16,000, depending on the area.²³⁵ In other words, the Right to Acquire differs from the Right to Buy not only by the ceiling on discounts being considerably lower, but also by the fact that the discounts depend on the area. The Local Government Association is particularly keen that the Right to Acquire discount ceiling should be applied under Right to Buy across the country as a whole, rather than the recent change in 41 authorities only. This would have the virtue of simplicity, transparency and equality. It is also easily understood.”²³⁶

²³⁰ Q66, Ms Perchard, Citizens Advice Bureaux.

²³¹ Q192, Mr Shiner, Sandwell MBC

²³² Q33, Mr Faizi, Newham Council

²³³ Q491, Mr Sampson, Shelter.

²³⁴ Q492, Mr Sampson, Shelter

²³⁵ The Housing Corporation web-site: <http://www.housingcorp.gov.uk/yourhome/rta.htm> ; The Right to Acquire, however, only applies to properties that “have been built or purchased by a registered social landlord, funded on or after 1 April 1997 through social housing grant provided by the Housing Corporation or a local authority.”

²³⁶ DHB24, p 4.

166. Another benefit of aligning Right to Buy with Right to Acquire, was the fact that with Right to Acquire, the receipts from sales are recycled *within the locality*.²³⁷ This is not the case with Right to Buy, where receipts are collected centrally and redistributed to local authorities.²³⁸ The LGA stated

“We prefer the Right to Acquire because the discount level is not so high, it is more related to regional prices, and also because it excludes rural communities with under 3,000 properties. We would like that to be done immediately.”²³⁹

167. A final argument in favour of aligning the Right to Buy and the Right to Acquire arises from the general

“Move towards the single social tenure and the move towards increased comparability between housing association and council tenants, at some stage this issue has got to be tackled.”²⁴⁰

On grounds of consistency and fairness as well as to preserve social housing stock, we recommend that the Government explores the option of bringing Right to Buy regime to bring it into line with the Right to Acquire regime.

168. If the differentiation between Right to Buy and Right to Acquire is retained, we recommend that the discount available to tenants exercising their Right to Buy should be universal, and that it should be brought into line with the Right to Acquire discount as well as with the level of discount available in the 41 Local Authorities where exemptions were imposed earlier this year.

Curbing sub-letting

169. Stakeholders were in near universal agreement that the Housing Bill should be amended to include measures to curb the sub-letting of properties acquired under the Right to Buy scheme for the same length of time as the period where re-sale is penalised, i.e. five years under the current draft proposals. Witnesses have tended to use the phrase “sub-letting” in this context, although in fact the owners of Right to Buy properties are simply “letting” them on to third parties.

170. The objectives of curbs on sub-letting are two-fold. Firstly, sub-letting is seen as a loophole for getting round the penalties on a quick re-sale. In some parts of the country, there are reports of companies systematically seeking to exploit this loophole.²⁴¹ This is viewed by most witnesses as a form of profiteering on a par with re-sales of Right-to-Buy properties with the aim of making large profits. Newham Council experiences sub-letting as a serious problem

“One of the areas where we think we could go a bit further - specifically a big problem for us - is the activity of subletting and rogue buyers on behalf of tenants

²³⁷ Q458, Ms Taylor, LGA.

²³⁸ Q457, Ms Taylor, LGA.

²³⁹ Q441, Ms Taylor, LGA

²⁴⁰ Q441, Ms Taylor, LGA

²⁴¹ See for example DHB13, p 2.

where we have had a number of cases of organisations who have offered money to people to purchase the Right to Buy and then given them a couple of years to live there and then they would hand over the properties to them. There are all sorts of different schemes going around and we think there needs to be some legislation to deter those schemes and stop people from taking them up.”²⁴²

“We would say that it is a loophole that anyone could use instead of selling the property. Subletting is quite a well-used form of abuse used by companies [...] We would say that that loophole needs to be somehow tightened up in the legislation as well as for purchasing properties during the discount period.”²⁴³

171. In the past, the problem of sub-letting has been confined to the South-East, particularly London, where rents on the private market tend to be very high. However, Cllr Mole from Gateshead told the Committee that his Council now also experiences this type of abuse.²⁴⁴ This point was backed up by Cllr Kemp from the LGA

“We are extremely concerned because this is even beginning to happen in northern cities (it used to be a London and South East phenomenon) that companies are suggesting that people exercise the Right to Buy and offering immediate tenancies so they can move out and make a profit out of their property.”²⁴⁵

172. The second objective is to create and preserve sustainable communities, something which is seen to be more problematic when former Council properties become privately let in significant numbers. It is argued that there is less stability in such environments. Indeed, the Local Government Association pointed out that

“The problem is not subletting per se because if someone buys a house then ultimately they have the right to do what they want with it. [...] That [sub-letting] increases instability in areas where we are trying to encourage stability so a wider crackdown on the abuse of the system by people who wish to profit from it is what is required there.”²⁴⁶

173. Mr Shiner from the Sandwell MBC Pathfinder agreed and added an extra dimension by pointing out that problems sometimes arise because ex-council properties are sub-let to “problem tenants.”²⁴⁷ The RICS also referred to issues of anti-social behaviour and problem tenants, in particular the issue of evicted tenants coming back to estates through private rental of Right to Buy properties.²⁴⁸

174. As the LGA summed up the argument

“The original aims of Right to Buy [...] were to promote sustainable communities and to help people who were long-standing tenants to own their own homes, and a

²⁴² Q33, Mr Faizi, Newham Council

²⁴³ Q442, Ms Simpson, Chartered Institute of Housing, CIH.

²⁴⁴ Q34, Cllr Mole, Gateshead Council

²⁴⁵ Q442, Cllr Kemp, The LGA.

²⁴⁶ Q442, Cllr Kemp, the LGA.

²⁴⁷ Q192, Mr Shiner, Sandwell MBC

²⁴⁸ Q437, Mr Newey, Royal Institution of Chartered Surveyors (RICS)

lot of that has been undermined by some of these activities. We do not want to stop Right to Buy but we do want to see changes to it to go back to the original ethos.”²⁴⁹

175. We are disappointed that the Bill does not go further on Right to Buy. We think it is particularly important that measures restricting the practice of sub-letting Right to Buy properties (except in cases where the purchaser has died) be included in the Bill. We recommend that sub-letting should be outlawed within the discount repayment period, i.e. five years.

Suspensions of Right to Buy in regeneration areas

176. Some witnesses proposed that the Right to Buy should be suspended in areas designated for regeneration or demolition.²⁵⁰ Mr Faizi of Newham Council explained how some tenants there were taking the opportunity to cash in on regeneration and demolition schemes

“One of the [...] areas of concern to us is specifically in regeneration areas where we are in the process of trying to demolish a block because we are regenerating somewhere. We have had a number of instances where once the plans have been made public people have put in the Right to Buy [applications].”²⁵¹

We recommend that Local Authorities be granted the powers to suspend the Right to Buy as soon as an area is designated for regeneration, or when individual dwellings or blocks are condemned for demolition.

Advice on home ownership and its consequences

177. Several witnesses emphasised the vital importance of comprehensive and high-quality advice for council tenants considering exercising their Right to Buy. The need for advice falls into two categories, firstly advice on financial matters

“Tenants considering buying need more specialised advice, particularly financial advice, so that they are not taken advantage of by lenders who perhaps have their eye on obtaining access to the property after a fairly short period or getting a good deal. That is the main thing that we have highlighted in our evidence, that tenants moving from being tenants to being owners for a long time have needed better advice to get a good financial deal.”²⁵²

178. Secondly, witnesses stressed that advice to tenants on home ownership, and all that it entails in practical and financial terms, needs to be improved. It was emphasised by some that Local Councils should be taking this upon themselves. For example, Mr Shiner from the Sandwell MBC Pathfinder agreed with the Local Government Association in arguing that

²⁴⁹ Q441, Ms Taylor, The Local Government Association, LGA.

²⁵⁰ DHB36, p 6, National Housing Federation; DHB24, p 3. (LGA); Q192, Mr Shiner, Sandwell MBC

²⁵¹ Q33, Mr Faizi, Newham Council.

²⁵² Q66, Ms Perchard, Citizens’ Advice Bureaux.

“Local authorities should have a duty to provide advice to people who might be considering exercising the right to buy on home maintenance and some of the financial implications and house condition issues which go with being an owner-occupier. That is a problem area at the moment.”²⁵³

Mrs Perchard from the Citizens’ Advice Bureaux spoke with some scepticism about the possibility of such advice being provided without a statutory requirement to do so

“Without a statutory duty often these things do not get done, do they, and it is not being done at the moment?”²⁵⁴

179. In response to the suggestion that Councils are sometimes perceived as trying to put tenants off pursuing their Right to Buy because it is not really in their interest, Cllr Kemp emphasised the need to provide balanced information in order to avoid later regrets

“In some cases we should give the down side of the deal because one of the problems we are picking up on our council estates and in areas like former HHAs and GIAs is that people bought at the very top of their ability to buy and now have no money left to provide the damp proof course or the roof or the windows because no-one ever explained the down side. I do not think any council should be up-beat and rah-rah for the sale of council housing, it should make sure people understand the obligations as well as the benefits of council housing and if that delays things a little then I think that is worth having because we are meeting a lot of misery from owner-occupiers who wished they had never exercised their right.”²⁵⁵

180. There is a very delicate balance to be struck between providing full, appropriate, and balanced information to tenants contemplating taking up their Right to Buy on the one hand, whilst not being seen to simply talk down the scheme in order to preserve Council stock on the other. Given the perceived conflict of interests of Councils, we do not believe that it is appropriate for Councils to provide the information themselves, but it is nonetheless a vital task for which Councils must take responsibility. **We recommend placing a legal duty on local authorities to provide tenants with access to third party advice on the implications of home ownership including repairing obligations. If introduced, the Home Information Pack should also be applied to Right to Buy purchases.**

Limitations on named party on deeds

181. The LGA has brought our attention to a form of abuse which, whilst only affecting a relatively small number of people, tends to have deeply traumatic consequences for those involved. The abuse entails elderly tenants being ‘convinced’ to exercise their Right to Buy, allowing the names of family members to go on to the deeds of the property. Ms Taylor explained what happens

²⁵³ Q193, Mr Shiner, Sandwell MBC Pathfinder.

²⁵⁴ Q68, Ms Perchard, Citizens’ Advice Bureaux.

²⁵⁵ Q444, Cllr Kemp, Local Government Association

“On the question of elderly tenants who have bought perhaps with money from their family, we have uncovered some really quite distressing cases, not huge numbers, quite small numbers, but in terms of the effect on the ex-tenants really quite horrific in one or two cases, and it also has an impact for the local authority because the local authority has had to, on occasions, rehouse those tenants because they are homeless, although legally the authority would not have a duty under the homelessness legislation but simply because the circumstances have been so distressing that their health has been in jeopardy as a result. So we would really like to have some mechanism to stop that happening.”²⁵⁶

182. The Chartered Institute of Housing, (CIH), supports the LGA in asking for this loophole to be closed, and Ms Elkington from the Institute emphasised that

“In my own authority in the last three years I can think of more than a handful of cases where it is evident that the Right to Buy was exercised purely and simply for financial gain by unscrupulous relatives.”²⁵⁷

We recommend that statutory restrictions should be introduced as to who can be a named party on the deeds or mortgage under Right to Buy. We acknowledge that the number of cases of this type of abuse is small, but when it occurs it affects primarily the elderly, and it leads to great distress. We believe this legal loophole can be closed with relative ease.

Investment in social housing stock

183. Witnesses emphasised the importance of investment in Social Housing in areas where the loss of stock has been unsustainable. According to Shelter: “Plainly, bearing down on the Right to Buy would not by itself solve the under-provision of affordable housing, particularly in the south of the country.”²⁵⁸ Shelter has calculated, for example, that at the current rate of loss of stock in London and the South East, by 2005/06, there will be 4000 fewer lettings in the area than at present.²⁵⁹ **Our Affordable Housing Report recommended reforms to Right To Buy but these need to be seen alongside wider issues about investment in the social housing stock and routes into shared ownership.**

Right for Councils to buy back ‘Right to Buy’ properties.

184. Some witnesses also emphasised that it would be helpful for Councils to be able to buy back properties sold through Right to Buy in the event that they come up for re-sale. The National Housing Federation proposed that former landlords should have a first-refusal right for up to ten years.²⁶⁰ According to the LGA

²⁵⁶ Q449, Ms Taylor, Local Government Association

²⁵⁷ Q449, Ms Elkington, Chartered Institute of Housing

²⁵⁸ Q495, Mr Sampson, Shelter.

²⁵⁹ DHB20, p 5.

²⁶⁰ DHB36, p 6, National Housing Federation

“This would allow authorities in high demand areas to have the option to buy back a property, at full market value, for use of affordable housing or keyworker provision.”²⁶¹

We recommend that Councils should have first refusal to buy back, at market prices, properties acquired through Right to Buy if they come on the market within ten years following the Right to Buy being exercised.

Strategic Flexibility for Local Authorities

185. A number of witnesses called for a greater degree of strategic flexibility for local authorities in relation to Right to Buy. Shelter, for example, argued that

“I think this is part of a general desire on our part to see the local authority involving itself in a much more strategic way with the private market within its local market. We would very much like to see a duty on the local authority to take a strategic view of the provision of private housing as well as public housing...”²⁶²

186. Whilst Cllr Kemp from the Local Government Association explained one of the key reasons for the need for such flexibility

“Quite clearly, people from London and the South East are starting from very different places from people in the north but we want to get to the same place. We want to get communities and neighbourhoods demographically balanced and therefore sustainable but the mechanisms must be different to reach there because of the points we are starting from. I [...] recognise the need to come out with a common outcome but that does not mean to say the mechanisms we must use from council to council are identical.”²⁶³

187. One particular form of flexibility was emphasised by many witnesses, namely the need for Local Authorities to be able to suspend the Right to Buy for specific areas, or for specific types of properties in particularly short supply. The RICS held the view that

“We feel there is a strong argument that local authorities should have the ability, perhaps through their local housing strategy, to suspend the Right to Buy for a period to be reviewed in certain parts of their locality, whether it is an inner city area where there is not enough affordable housing, or whether it is in a rural community.”²⁶⁴

188. The Chartered Institute of Housing made a similar proposal, but also acknowledged the potential Human Rights implications of such exemptions, and that arrangements would have to be put in place to compensate those tenants who found themselves renting properties exempted from the Right to Buy

²⁶¹ DHB24, p 5.

²⁶² Q494, Mr Sampson, Shelter

²⁶³ Q446, Cllr Kemp, Local Government Association

²⁶⁴ Q437, Mr Newey, Royal Institution of Chartered Surveyors

“We would like local authorities to have permission to exempt certain properties from the Right to Buy, perhaps certain types of properties or properties in some areas, and we believe that in the interests of human rights (and we understand there could be a problem with taking away the Right to Buy) we could use a cash sum instead. That would be given to the tenant if they wished to purchase another property on the market in effect. [...] we do not want to take away from tenants rights that are due to them.”²⁶⁵

We recommend that Local Authorities should be granted greater flexibility in adjusting the Right to Buy to local circumstances. This would allow local authorities to exempt certain properties from Right to Buy in areas of overwhelming housing demand.

Other extensions

189. The Local Government Association made two further proposals for changes to the Right to Buy, which we found interesting. The Committee did not have sufficient time to pursue these in our oral evidence sessions, but we believe they merit serious consideration by the ODPM. These proposals are:

- a) Exclusion in rural areas with populations under 3000. “This is in line with Right to Acquire.”²⁶⁶
- b) Equity sharing arrangements to be offered in addition to RTB. “Tenants could build up credits that could be used to either buy their own home or as a portable discount.”²⁶⁷

We recommend that the Government seriously consider extending the Bill with regard to exclusions in rural areas as well as equity sharing arrangements.

²⁶⁵ Q447 and Q448, Ms Simpson, Chartered Institute of Housing

²⁶⁶ DHB24, p 4

²⁶⁷ DHB24, p 4

6 Other matters

190. Witnesses have suggested that a number of additional matters could be included within the scope of the Bill. Whilst not wishing to create an epic piece of legislation, the Minister acknowledged that the final version of the Bill is likely to be longer than the current draft.²⁶⁸ We have set out below matters which we think should be included in this Bill. We also consider further outstanding matters where additional legislation or other actions are required.

191. We welcome the Leader of the House's support for pre-legislative scrutiny. He told us that the scope of the Bill is a matter for negotiation between the Department and the Leader of the House. **We welcome the Leader of the House's commitment that the Government will look favourably at recommendations that propose "sensible amendments [to] and tidying up" the clauses already contained in the Bill and we hope that the Government will look with sympathy at recommendations on a number of items which lead to short clauses for additional inclusion in the Bill.**²⁶⁹

Additional matters for inclusion in this Bill

192. The Government has said that two matters, a tenancy deposit scheme and the amendment of the law on succession to tenancies for same-sex relationships will be the subject of later legislation. Witnesses argue that proposals for such matters are 'ready to go,' fit with other elements of this Bill and need not be delayed by lengthy consultations on wider issues pending the introduction of other legislation at some point in the future.

Tenancy Deposit Scheme

193. Significant numbers of witnesses argues that the draft Bill should be used to introduce a statutory tenancy deposit scheme.²⁷⁰ Adrian Davies, the Manager of the Citizen's Advice Bureau in Brighton and Hove explained the problem with deposits

"In the city of Brighton and Hove we have the highest proportion of rented accommodation in the country. What we find is that there are almost two types of market in existence. There is a market which has good quality accommodation with reputable landlords, good tenancy conditions, and very rarely do the landlords or tenants bring problems to us. What we find is that those people who can afford less expensive accommodation are more likely to be at risk of losing their deposit from a rogue landlord or agency or, quite often, an agency just washing their hands of the issue, saying, "That is not our problem. We refer you to the landlord", and then the tenant having to find out who the landlord is and how to get hold of the landlord. What we are finding is that people are giving in and not going to court because of the barriers in terms of fees and the chance of losing, and often borrowing money to get deposits for new accommodation, and so people are getting struck twice. They are

²⁶⁸ Q813, Keith Hill MP

²⁶⁹ Qq814-823, Peter Hain MP

²⁷⁰ For example the Law Society, DHB40, the National Rent Deposit Forum (DHB37) and the Chartered Institute of Housing (DHB33)

getting struck by the fact that they cannot get their deposit back, which makes it harder for them to get new accommodation, and the other barrier that exists is the need in a city like Brighton and Hove to have a reference from a landlord, so they do not want to upset their landlord.”²⁷¹

194. Shelter explained the scale of the problem

“Research has shown that that 70 per cent of the 2.2 million tenants in the private rented sector have paid their landlord a rent deposit at the start of their tenancy. The average deposit is around £510, and it is therefore estimated that landlords currently hold a total of around £790 million in deposit monies. This money is currently completely unregulated. Although most tenancies end without dispute, around 20 per cent of households say that part or all of the deposit from their most recent tenancy was unreasonably withheld.”²⁷²

195. Citizens’ Advice commented that, “Both the timing and the content of this Bill make it highly appropriate for taking forward this issue.”²⁷³

- i. **Timing**—the voluntary scheme operated by the Independent Housing Ombudsman is coming to an end. With the closure of that scheme experience and momentum will be lost. The introduction of a new statutory initiative now would enable the voluntary pilot to become the statutory scheme with a minimum of fuss;²⁷⁴ and
- ii. **Content**—the draft Housing Bill “is a major piece of legislation setting out to improvement management standards in the private sector, admittedly on a selective basis in respect of some types of property in some areas. In our book non-returnable deposits are one of the key problems that people bring to us about the private sector.”²⁷⁵

196. In February 2002, the then Housing Minister Lord Falconer noted that slow take-up to the voluntary pilot scheme suggested that there was a “strong case for legislation on tenancy deposits”²⁷⁶ On 16 June 2003 (the first day of our oral scrutiny of the draft Bill), ODPM Ministers said in a written statement that “the Government are committed to addressing the case for legislation” on tenancy deposits alongside Law Commission proposals for a single tenancy, i.e. not in this draft Housing Bill. One of the reasons given in the written statement for not taking more rapid action is that the costs of the scheme will be £19 million bringing estimated benefits of £20 million.²⁷⁷ Shelter questioned this analysis

²⁷¹ Q49, Mr Davies, Citizens’ Advice

²⁷² DHB20

²⁷³ DHB04

²⁷⁴ Q111, Brent Private Tenants’ Rights Group and National Union of Students

²⁷⁵ Q52, Citizens’ Advice

²⁷⁶ *Tenancy Money: Probity and Protection*, ODPM, 2002

²⁷⁷ Column 2:WS, 16 June 2003

“They say that the value of the money saved would be £20 million but it would cost £19 million for such a scheme to be administered. The first figure we entirely agree with but the notion that a scheme would cost £19 million seems extraordinary. It seems to have been arrived at by government assuming that every single case where there is a deposit returned will lead into a dispute costing £150. That is not true. We have statutory schemes abroad—New Zealand is an obvious example—and only two or three *per cent* of the cases actually produce disputes.”²⁷⁸

In addition, the Government’s consultation document on tenancy deposits added that alongside the benefits to tenants, £31.6 million could be raised by holding tenants’ deposits on deposit.²⁷⁹ **We recommend that a tenancy deposit scheme be introduced in this Housing Bill.**

Succession to tenancies

197. The National Housing Federation’s memorandum stated

“Although further consultation is needed before any general review of tenancy law, we believe it is urgent to amend the law on succession to tenancies to remove the current discrimination against same-sex relationships.”

It continued

“The current law of succession to regulated tenancies, secure tenancies, and assured tenancies, contained respectively in the Rent Act 1977 and the Housing Acts 1985 and 1988, contains provisions that discriminate against same-sex couples compared with heterosexual couples and, in the case of secure tenancies, further discriminate between married and unmarried couples. We do not believe these provisions have any place in modern housing law. The Court of Appeal has already acted against them in *Ghaidan v Godin-Mendoza* (2002), a Rent Act case. We have advised our members that they should assume the *Ghaidan* decision applies equally to secure and assured tenancies but it is far from certain that this is correct. We suggest that the Housing Bill should take the opportunity to put the matter beyond doubt.”²⁸⁰

This Housing Bill should be used to amend the law on succession to tenancies to remove the current discrimination against single sex relationships and unmarried couples in the case of secure tenancies.

Additional matters to be taken forward by ODPM

Further legislation

198. We received evidence on a number of important areas for action that have been included in the scope of the draft Housing Bill but where further legislation is required.

²⁷⁸ Q510, Shelter

²⁷⁹ *Tenancy Money: Probity and Protection*.

²⁸⁰ DHB36

Park homes

199. The 1983 Mobile Homes Act sets out the legislation for the management of park homes. We received evidence from the All Party Parliamentary Group for the Welfare of Park Home Residents, who identified a number of problems with the current legislation and called for improved standards, both of physical conditions and management.²⁸¹ As Hilton Dawson MP told us, the Government has accepted the need in principle for changes to be made,

“Let us go through what the government have actually said in the response to the work of the Park Homes Working Party. ‘The government accepts in principle that there would be benefits to be gained by requiring all authorities to be under a duty to attach, monitor and enforce conditions to licences. The government accepts in principle that a licensee should be a fit and proper person. The government accepts in principle that protection against harassment ought to be on a par with that available to private rented tenants. The government’s initial view is that the current maximum fine for the breach of a site licence appears low in comparison.’”²⁸²

The Government should commit to introducing a new piece of legislation on park homes within the next two years.

Gypsies and travellers

200. We received evidence from a number of gypsy and traveller groups calling for a new duty to be placed on councils to provide accommodation for travellers.²⁸³ The duty on local authorities to provide such sites, established by the Caravan Sites Act, 1968 was repealed by the Criminal Justice and Public Order Act, 1994. This has increased the number of travellers living on unauthorised sites, causing problems both for travellers and the settled community.²⁸⁴ The Local Government Association agreed that re-introducing a duty on councils is the best way to encourage provision

“The LGA believes that site provision can only really be improved in the longer-term by re-instating a statutory duty on local authorities to ‘make’ or ‘facilitate’ provision supported by a central subsidy. Capital funding should be extended to include the revenue costs of ongoing maintenance and management of sites. We believe this is fundamental to helping to tackle resistance from settled communities and to overcoming political barriers to provision. Local authorities face a range of competing service delivery pressures and unless there is a statutory duty supported by adequate funding it is unlikely that site provision and wider service provision for travelling communities will be developed as a priority area of work for both financial and political reasons.”²⁸⁵

²⁸¹ Qq530-533, Lord Graham and Hilton Dawson MP

²⁸² Q536, Hilton Dawson MP

²⁸³ Qq544-563

²⁸⁴ DHB 24(b)

²⁸⁵ DHB 24(b)

We recommend that a statutory duty on local authorities to ‘make’ or ‘facilitate’ the provision of sites for gypsies and travellers is introduced as soon as possible, again within the next two years.

Single tenancy

201. The Law Commission has been consulting on proposals for a common tenancy agreement across tenures and will be publishing its proposals in a draft Bill in the autumn. This will then be the subject of significant consultation.²⁸⁶ Shelter suggested that it would be unlikely to become law during the current Parliament.²⁸⁷ **We look forward to the introduction of the draft Bill to create a single tenancy.**

Ground rents

202. Landowners who have leased their ground for development levy rent charges known as ground rents or chief rents. The vast majority of rent charges are on properties in the Bristol, Manchester and Wearside areas. The Rent Charges Act 1977 enables some householders who are liable to pay rent charges to redeem them cheaply and easily. However, certain rent charges are excluded from the Act.²⁸⁸ The Department is reviewing the procedures for those who have to pay a rent charge to see if there is greater scope for them to redeem it, i.e. buy it out.²⁸⁹ **We recommend that the Government completes its review of rent charges as soon as possible and takes appropriate action to ensure that people can buy their way out of this prohibitive situation.**

Lifetime homes

203. The Joseph Rowntree Foundation is working to promote ‘lifetime homes.’ The Foundation’s evidence explained

“The “Lifetime Homes” standards were conceived over 10 years ago by a group of experts (including a number of disabled people) who shared concerns that traditional housing design was not “fit for purpose” for most households. The average household will have occupiers who will grow old and less mobile: someone may fall off a ladder; a teenager may break an ankle; disabled friends or grandparents will be invited to stay; and so on. Sixteen universal design standards were conceived with the aim of making new housing safer and more convenient for the majority. These are the Lifetime Homes Standards.”²⁹⁰

204. The Government has taken some commendable action towards the introduction of the lifetime homes standards, with the introduction of an amended Part M of the Building Regulations from 1999. However, as Lord Best told us, more could be done

²⁸⁶ Q789, Keith Hill MP

²⁸⁷ DHB 20(a)

²⁸⁸ HC Deb, Col. 446, 8 July 1997

²⁸⁹ Q811, Mr Carey, ODPM

²⁹⁰ DHB44

“There is to be possibly an ODPM review of this aspect of the building regulations and we would very much like the Select Committee to say, ‘Speed up that review. Have a look at both implementation and any small, extra points that would just make the system better.’”²⁹¹

205. One element of the lifetime homes standard is access to a shower without going up steps or stairs. We received a memorandum from Helen Jackson MP calling for the Government to take action to amend the building regulations and upgrade existing properties to include provision of level access showers.²⁹² The Rowntree Foundation said

“The Lifetime Homes standards recommend that drainage is incorporated at the outset for a possible shower in the future, on the entrance level (usually included in the downstairs WC); this simple measure is not part of the Building Regulations.”²⁹³

We recommend that the Government undertakes a timebound review of the building regulations to consider how they could be further amended to meet the lifetime homes standard. This should, in particular, include level access showers.

Underwriting housing markets

206. Our predecessor Committee’s inquiry into *Empty Homes* recommended

“We recommend that the DTLR, working with the Council of Mortgage Lenders and the Treasury, should undertake a full feasibility study into the financial, community and social costs and benefits of each of the options available for sharing the risk of housing market collapse. A simple solution would be for local authorities in areas of market weakness to underwrite the market with a guarantee to buy back the property at their valuation of it at the point at which the sale took place.”²⁹⁴

207. Professor Brendan Nevin of Sheffield Hallam University told this inquiry

“In theory that is a very good idea. Part of the problem we have with institutional finance with the Pathfinders is lack of guidance about the way we should engage with them. At the moment, the transaction costs for doing that for a Pathfinder would be quite high if they did it individually. It would not be so great if they were doing it as a collection of nine and pooling the risk in insurance terms between them but we would need quite a degree of co-ordination to do that. In the absence of that co-ordination nationally, speaking as somebody who directs a Pathfinder, I would be very reluctant to pursue it and would look at other models to try to stabilise the market.”²⁹⁵

We recommend that central Government should develop an approach to underwriting housing markets which is available across the low demand pathfinders.

²⁹¹ Q518, Lord Best

²⁹² DHB41

²⁹³ DHB44

²⁹⁴ Paragraph 132, *Empty Homes*

²⁹⁵ Q195, Professor Nevin

Regulation of registered social landlords

208. On the same day that the draft Bill was published, the Government also launched a consultation on the regulation of registered social landlords.²⁹⁶ The Minister suggested that these proposals would be reflected in the final Bill.²⁹⁷ One of the proposals within that is to give social housing grant (SHG), which supports the provision of new social housing to private developers (previously it has only been available to registered social landlords, who are subject to regulation by the Housing Corporation). The Chartered Institute of Housing was concerned about this

“A proposal to give SHG to profit making bodies not subject to the code is therefore a significant step, yet the consultation paper is sketchy about the arguments for this and how it will operate.”²⁹⁸

The Institute suggested that the Government’s aims could be achieved differently

“We would share the need to build more houses for a reduced amount of money. I think there are two prongs to the dangers, if you like. One is we think there are probably a whole load of reforms that can be brought into place to make the existing arrangements with registered social landlords more effective, not least planning reforms, some of which have been dealt with elsewhere. Also, something like reducing the total number of RSLs that do development ... If you reduce the number of housing associations who can do development they will all do more development. The other thing that private developers will say is that they produce more standard house types. Again, you could look at that for RSLs. You can achieve the same kind of savings through modernising the RSL development process rather than giving grant to developers ... Our fundamental concern is do not give grant to unregulated organisations, let us try first at improving and modernising the RSL development sector.”²⁹⁹

We recommend that the Government considers way to streamline and improve the effectiveness of registered social landlords before introducing any measures to pay Social Housing Grant to private developers.

²⁹⁶ *Increasing the Effectiveness of Powers to Regulate Social Landlords*, ODPM, 2003

²⁹⁷ Q627, Keith Hill MP

²⁹⁸ DHB33

²⁹⁹ Q482, Chartered Institute of Housing

Conclusions and recommendations

Introduction

1. We welcome the Government's broad aim to improve standards in private sector housing. (Paragraph 3)
2. We were pleased to hear from the Minister that the Government takes the Committee's scrutiny of the draft Bill seriously and look forward to our recommendations being incorporated into the final version of the Bill. (Paragraph 4)
3. We welcome the Minister's commitment that for the dozen most important pieces of secondary legislation, a detailed guidance note will be available when the final version of the Bill comes before the House. (Paragraph 4)
4. The Bill has taken a piecemeal rather than strategic approach to improving the housing stock and the operation of the owner occupied and private rented sectors. This has resulted in a very complex piece of draft legislation. Some complexity is inevitable in a piece of legislation of this nature but we received evidence that the same objectives could be achieved in a shorter, more tightly drafted Bill. (Paragraph 11)

The new rating system

5. We are concerned that after five years of development and consultation there remain 'considerable reservations' amongst practitioners about the implementation and enforcement of the new system. (Paragraph 14)
6. It is disappointing that the Government has consulted on the draft Bill in the absence of Version 2 of the guidance on the Housing Health and Safety Rating System. Other important documents have only just been published or are still awaited. Witnesses are being asked to comment on a system and Parliament may subsequently be asked to approve its introduction without sight of the details about how the system is to be implemented. (Paragraph 16)
7. Officers implementing the HHSRS have been uneasy about assigning a specific score to an individual hazard because of the level of judgement involved. Research commissioned by ODPM has suggested that officers should instead assign a range of probabilities. There remains a question about how this would then link into the enforcement process, in particular how it could withstand legal challenge. The Government needs to address this issue before returning to Parliament with the final version of the Bill. (Paragraph 19)
8. We recommend that Section 190 of the 1985 Housing Act which covers substantial disrepair and material discomfort should not be repealed but should be amended to take account of the HHSRS. (Paragraph 23)
9. We recommend that the Government amends the draft legislation to include the Chartered Institute of Environmental Health's proposals for emergency procedures

to deal with Category 1 hazards that present an immediate risk to the occupier. (Paragraph 24)

10. The Government needs to ensure that sufficient funding is made available for the start-up costs associated with HHSRS, particularly training for officers. Before the final Bill is introduced the Government should satisfy itself that the benefits arising from the new system outweigh any additional costs—both in the set-up phase and on an ongoing basis. (Paragraph 27)
11. Hazards identified by the Housing Health and Safety Rating System should not be the only reasons to declare a clearance area. The Bill should recognise the range of circumstances, such as housing market renewal, where clearance is necessary. (Paragraph 29)
12. Pathfinder authorities need guidance on how any clearance powers introduced through the planning system can be used in low-demand areas, in particular in relation to “well-being” and they should be closely consulted in the drafting of the guidance. (Paragraph 30)
13. We endorse the recommendation of the Chartered Institute of Environmental Health that the Government should not proceed with its proposed repeal of Section 606 of the 1985 Housing Act which makes provisions for the reporting of unfitness. (Paragraph 31)
14. The Bill should include a positive duty on local authorities to investigate housing complaints. (Paragraph 31)
15. We recommend that the Government take forward Shelter’s recommendation that the Bill be used to modernise the current statutory overcrowding standards. (Paragraph 32)

The private rented sector

16. We were not convinced by landlords’ arguments that voluntary accreditation schemes would be sufficient to improve standards in the private rented sector. We remain concerned that such voluntary schemes will fail to capture the worst landlords. The smallest and most inexperienced landlords will continue to be unaware of such voluntary schemes. (Paragraph 34)
17. We recommend that the draft bill be amended to include membership of the Independent Housing Ombudsman scheme as a requirement for landlord licensing. (Paragraph 38)
18. We recommend that the definition of ‘fit and proper’ person be redrafted so that it refers to relevant, unspent convictions of the applicant for a licence. (Paragraph 39)
19. We recommend that the Government takes forward the ‘carrot and stick’ proposals put forward by the Joseph Rowntree Foundation and others, whereby all landlords are expected to demonstrate competence in housing management in return for being

able to offset some management costs against tax liability. This could help to achieve the aim of professionalising the sector. (Paragraph 40)

20. We welcome the provisions on anti-social behaviour in the licensing schemes as a means of levelling the playing field between the private and social rented sectors. (Paragraph 41)
21. Local authorities and other public agencies, such as the police and primary care trusts, have a range of tools which can be used to tackle anti-social behaviour. It is important that these agencies provide the ‘support and guidance’ to private landlords referred to in the Government’s consultation document on selective licensing. As we recommended in our Empty Homes inquiry, local authorities should ensure that landlord licensing schemes link into local agencies such as the police and youth offending teams, who can provide the appropriate response to anti-social behaviour problems. (Paragraph 42)
22. We welcome the Government’s proposal to extend the period of introductory tenancies by a further period of six months where there are concerns about behaviour. We recommend that the option to extend twice is included. (Paragraph 43)
23. There is insufficient linkage between Part 1 (the rating system) and Parts 2 and 3 (licensing) in the draft Bill. It is not clear why the Government should prohibit local housing authorities from making conditions about Category 1 and 2 hazards in licensing. Instead, it should be provided that a landlord’s property cannot be licensed if it contains a Category 1 hazard. (Paragraph 44)
24. We recommend that landlords should be given a duty of care to maintain their properties to certain standards and conditions to protect the health and safety of occupiers. The Government should consider how the enforcement regime can be framed to give effect to such a duty. (Paragraph 45)

Licensing of Houses in Multiple Occupation

25. Witnesses are concerned that the definition of Houses in Multiple Occupation is too complicated and cumbersome. We recommend that the Government should return to the definition of an HMO proposed in its 1999 consultation paper. We do not see why educational establishments and registered social landlords should be exempted. If a broad definition of HMO were adopted, certain categories or types of HMO could then be exempted from specific HMO-related controls, such as HMO licensing, as and if necessary. (Paragraph 51)
26. We are not convinced that mandatory licensing of HMOs should be limited to properties of three or more storeys with five or more residents. The Government’s evidence suggests that high risks in HMOs are caused by a range of factors—the number of storeys and the number of occupants are only two amongst many. (Paragraph 52)
27. The Government’s two tier approach to licensing Houses in Multiple Occupation (mandatory licensing of larger properties and discretionary powers to councils to

license smaller properties) does not meet its aim of having a consistent approach to HMOs across the country. (Paragraph 54)

28. We welcome the Government's commitment that the cost of establishing HMO licensing will be reflected in the grant settlement to local government. (Paragraph 55)

Selective Licensing of Landlords

29. It would be better and simpler for all councils to have a discretionary power to license private landlords, enabling them to take account of local housing markets and housing strategies. (Paragraph 57)
30. We recommend that Clause 82(5), which deals with the designation of areas for selective licensing, be re-worded to avoid ambiguity about its application. (Paragraph 60)
31. There are a range of local housing market conditions in which councils may want to introduce licensing of landlords. If the Government is not prepared to give councils an unfettered discretionary power to license private landlords, it should ensure that the scope to use licensing outside of low demand areas is widely drawn, as is happening in Wales. (Paragraph 62)
32. The requirement for councils to obtain the Secretary of State's approval before introducing discretionary licensing for HMOs or selective licensing is unnecessary. Local housing authorities know best what measures are appropriate in their local housing markets. (Paragraph 63)

Sanctions

33. Sanctions for non-compliance with licensing should operate in a clear, staged way with sanctions of increasing severity applied at different points, each of which gives the landlord the opportunity and incentive to comply. (Paragraph 66)
34. We are concerned that the 'no rent payable' provisions could have adverse consequences for tenants, potentially leading to their eviction. If the Government plans to retain these provisions, the final version of the Bill must include adequate safeguards so that tenants cannot be evicted because their landlord is unlicensed. (Paragraph 69)
35. We recommend that the Bill introduces Compulsory Leasing Orders to allow local authorities to take over the management of empty properties. (Paragraph 70)

Home Information Packs

36. It is now more than two years since the Government first introduced the Sellers' Pack in the Homes Bill, and the ODPM has carried out research and consultations on this subject for some five years. Therefore, we are concerned that even advocates of the scheme have identified a range of serious problems which remain to be ironed out. (Paragraph 78)

37. The Home Information Pack would create a better informed housing market, giving buyers a sounder basis on which to make offers. This is to be welcomed. However, it is unclear to what extent the Pack will serve the Government's objective of speeding up the process of residential property sales, and of reducing the proportion of sales falling through. It is also unclear what effect the Pack would have on the supply and hence prices in the housing market. We recommend that the Pack should be introduced nationally only when further research and extensive pilot-testing has been carried out in different parts of the country. It is essential to establish the extent to which the Pack may have adverse effects in different types of markets. At this stage, we cannot recommend that Home Information Packs are made compulsory. (Paragraph 93)
38. It is important that the Pack is available from the point of marketing a property, but the Government needs to address the issue of shelf-life of the Packs. Norms need to be established governing what components of the Pack will need renewing, when, and at what cost. In order to cater for markets where sales take months, sometimes years, we would recommend that Packs are only required to be renewed when a serious buyer is found. (Paragraph 99)
39. We recommend that the Pack includes a checklist of the key matters not included in its contents of which the purchaser should be aware and should be encouraged to ask questions about. (Paragraph 100)
40. Where houses are known to have structural problems resulting from the industrial past of the area, the industrial company or any successor body should meet any exceptional costs arising from the preparation of the Pack. (Paragraph 102)
41. We recommend that the Government pursues an approach to Home Information Packs in low demand areas based on house price rather than designated areas—this will help all vendors whose house prices are low and will ensure that pockets of buoyancy in otherwise weak markets will not be stigmatised. Homes valued at less than £30,000 should be exempt from the Home Information Pack obligation. This should be reviewed after two years of operation with an aim of reducing the price at which exemptions take place. (Paragraph 106)
42. We recommend that where houses have planning permission for redevelopment or conversion they should be exempted from the Home Information Pack. (Paragraph 107)
43. If the Home Information Pack were made compulsory, it has to be made available at the point when the property is put on the market. We have heard evidence of one voluntary scheme in which fees are deferred to the point of sale. We recommend that the Government considers this option as one means of alleviating some of the problems associated with the Pack. (Paragraph 116)

The Home Condition Report

44. The Government must work with interested parties to ensure that the pack is made compulsory only once sufficient numbers of inspectors are trained. We would expect by the time of the second reading of the Bill that the Government will have fully

investigated and published information on the difficulties of underwriting insurance for home inspectors, and will have decided whether it thinks it will be necessary to underwrite the cost for the first few years. (Paragraph 131)

45. We remain concerned that particularly in the early years of the Pack, purchasers may be reluctant to trust a report that they have not commissioned. (Paragraph 132)
46. We welcome the inclusion of energy efficiency ratings in the Home Information Pack, and also recommend that where satellite imaging is available it should be provided in the pack. (Paragraph 136)

Environmental Searches

47. We welcome the inclusion of environmental searches in the proposed Home Information Pack. Such searches need to be property specific and in a format which buyers can easily interpret. (Paragraph 142)

Enforcement

48. There must be sufficient human and financial resources to provide effective enforcement of the legal requirement to have a Home Information Pack. Additional central funding may be necessary. (Paragraph 148)

Licensing of Estate Agents

49. Given the role of estate agents in implementing the Pack, we recommend the Government should take powers in the Bill to license estate agents, which can be implemented if it becomes necessary. (Paragraph 153)

Speeding up the Process

50. We recommend that all parties involved in the process of buying and selling houses should also take upon themselves some of the responsibility for making the process quicker and more transparent. In particular, the Committee commends a scheme enabling consumers to view the progress of their sale/purchase on-line and recommends its adoption by estate agents and solicitors as standard practice. (Paragraph 156)
51. The rapid provision of local authority search information in electronic form is vital to the success of the Home Information Pack. We recommend the introduction of a system of financial incentives for local authorities to invest in providing on-line searches, including the potential for differential fees to be charged by councils. (Paragraph 159)

Right to Buy

52. We welcome reforms to the Right to Buy, limiting the scope for abuse and profiteering. In particular, we commend the extension of the qualification period as

well as the discount repayment period to five years each, as well as the change to the method of calculating discount repayment. (Paragraph 164)

53. On grounds of consistency and fairness as well as to preserve social housing stock, we recommend that the Government explores the option of bringing Right to Buy regime to bring it into line with the Right to Acquire regime. (Paragraph 167)
54. If the differentiation between Right to Buy and Right to Acquire is retained, we recommend that the discount available to tenants exercising their Right to Buy should be universal, and that it should be brought into line with the Right to Acquire discount as well as with the level of discount available in the 41 Local Authorities where exemptions were imposed earlier this year. (Paragraph 168)
55. We are disappointed that the Bill does not go further on Right to Buy. We think it is particularly important that measures restricting the practice of sub-letting Right to Buy properties (except in cases where the purchaser has died) be included in the Bill. We recommend that sub-letting should be outlawed within the discount repayment period, i.e. five years. (Paragraph 175)
56. We recommend that Local Authorities be granted the powers to suspend the Right to Buy as soon as an area is designated for regeneration, or when individual dwellings or blocks are condemned for demolition. (Paragraph 176)
57. We recommend placing a legal duty on local authorities to provide tenants with access to third party advice on the implications of home ownership including repairing obligations. If introduced, the Home Information Pack should also be applied to Right to Buy purchases. (Paragraph 180)
58. We recommend that statutory restrictions should be introduced as to who can be a named party on the deeds or mortgage under Right to Buy. We acknowledge that the number of cases of this type of abuse is small, but when it occurs it affects primarily the elderly, and it leads to great distress. We believe this legal loophole can be closed with relative ease. (Paragraph 182)
59. Our Affordable Housing Report recommended reforms to Right To Buy but these need to be seen alongside wider issues about investment in the social housing stock and routes into shared ownership. (Paragraph 183)
60. We recommend that Councils should have first refusal to buy back, at market prices, properties acquired through Right to Buy if they come on the market within ten years following the Right to Buy being exercised. (Paragraph 184)
61. We recommend that Local Authorities should be granted greater flexibility in adjusting the Right to Buy to local circumstances. This would allow local authorities to exempt certain properties from Right to Buy in areas of overwhelming housing demand. (Paragraph 188)
62. We recommend that the Government seriously consider extending the Bill with regard to exclusions in rural areas as well as equity sharing arrangements. (Paragraph 189)

Other Matters

63. We welcome the Leader of the House's commitment that the Government will look favourably at recommendations that propose "sensible amendments [to] and tidying up" the clauses already contained in the Bill and we hope that the Government will look with sympathy at recommendations on a number of items which lead to short clauses for additional inclusion in the Bill. (Paragraph 191)
64. We recommend that a tenancy deposit scheme be introduced in this Housing Bill. (Paragraph 196)
65. This Housing Bill should be used to amend the law on succession to tenancies to remove the current discrimination against single sex relationships and unmarried couples in the case of secure tenancies. (Paragraph 197)
66. The Government should commit to introducing a new piece of legislation on park homes within the next two years. (Paragraph 199)
67. We recommend that a statutory duty on local authorities to 'make' or 'facilitate' the provision of sites for gypsies and travellers is introduced as soon as possible, again within the next two years. (Paragraph 200)
68. We look forward to the introduction of the draft Bill to create a single tenancy. (Paragraph 201)
69. We recommend that the Government completes its review of rent charges as soon as possible and takes appropriate action to ensure that people can buy their way out of this prohibitive situation. (Paragraph 202)
70. We recommend that the Government undertakes a timebound review of the building regulations to consider how they could be further amended to meet the lifetime homes standard. This should, in particular, include level access showers. (Paragraph 205)
71. We recommend that central Government should develop an approach to underwriting housing markets which is available across the low demand pathfinders. (Paragraph 207)
72. We recommend that the Government considers way to streamline and improve the effectiveness of registered social landlords before introducing any measures to pay Social Housing Grant to private developers. (Paragraph 208)

Formal minutes

Monday 14 July 2003

Members present:

Mr Andrew Bennett, in the Chair

Mr Clive Betts

Mr Bill O'Brien

Mr David Clelland

Dr John Pugh

Mr John Cummings

Mrs Christine Russell

Mr Chris Mole

Mr Gary Streeter

The Committee deliberated.

Draft Report (The Draft Housing Bill), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph – (*The Chairman.*)

Paragraphs 1 to 208 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Tenth Report of the of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House – (*The Chairman.*)

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the provisions of Standing Order No. 134 (Select committee (reports)) be applied to the Report.

[The Committee adjourned.]

Witnesses

Monday 16 June 2003

Councillor Peter Mole, Cabinet Member for Housing, and **Mr John Robinson**, Director, Development & Enterprise, Gateshead Council

Mr Kamal Faizi, Divisional Director, Regeneration & Sustainability, and **Mr Ian Dick**, Environmental Health Services Unit Manager, Newham Council

Ms Teresa Perchard, Head of Social Policy and **Mr Adrian Davies**, Manager, Brighton Citizen's Advice Bureau, Citizen's Advice Bureau

Dr Michael Biles, Ombudsman, Independent Housing Ombudsman

Miss Verity Coyle, Vice-President, Welfare, and **Miss Agnes Gautier**, Research and Policy Officer, National Union of Students (NUS)

Jacky Peacock OBE, Manager, Brent Private Tenants' Rights Group

Mr Peter Brown, Chair, National HMO Network

Mr Mike Stimpson, Chairman, **Mr John Sharpe**, Executive Committee Officer, National Federation of Residential Landlords

Mr Mark Butterworth and **Mr Chris Town**, Members of the RLA Executive Board, Residential Landlords Association

Mr David Shiner, Sandwell Metropolitan Borough Council

Professor Brendan Nevin, Sheffield Hallam University

Tuesday 17 June 2003

Mr Peter Williams, Deputy Director General, **Mr Alex Solomon**, Senior Policy Adviser, and **Mr Peter Markham**, Head of Mortgage Policy and Processes, Halifax, Council of Mortgage Lenders

Mr Melfyn Williams, President and **Ms Julie Westby**, Acting Chief Executive, National Association of Estate Agents

Ms Judy Farrar, Head of Services Research Group, *Which?* Magazine, **Ms Emma Harrison**, Senior Public Affairs Officer, and **Ms Jenni Conti**, Senior Researcher, *Which?* Magazine, Consumers' Association

Mrs Maria Coleman, Estate Agent

Mr Norman Parkinson, King's College, London

Monday 23 June 2003

Mr Michael Newey FRICS, Chairman, Housing Policy Panel, **Mr Jeremy Leaf** FRICS, Acting Chairman, Residential Faculty, **Mr Paul Creffield** FRICS, Chairman of a working group on Home Condition, Royal Institution of Chartered Surveyors (RICS)

Mr Graham Jukes, Chief Executive, **Mr Andrew Griffiths**, Director of Technical Policy and **Mr Jake Mathias**, CIEH member, Chartered Institute of Environmental Health

Councillor Richard Kemp, Acting Chair, Housing Executive, **Ms Gwyneth Taylor**, Programme Manager and **Ms Karin Divall**, LGA Advisor (Brighton and Hove), Local Government Association

Ms Sarah Webb, Director of Policy, **Ms Merron Simpson**, Head of Policy, and **Ms Elaine Elkington**, Director of Housing, London Borough of Hammersmith and Fulham, Chartered Institute of Housing

Mr Adam Sampson, Director, and **Mr Alastair Jackson**, Director of Policy, Shelter

Lord Best, a Member of the House of Lords, Joseph Rowntree Foundation

Lord Graham of Edmonton, a Member of the House of Lords, and **Mr Hilton Dawson**, a Member of the House, All Party Parliamentary Group for the Welfare of Park Home Residents

Mr Charles Smith, Chair, Gypsy Council, **Mr Cliff Codona**, Chair, National Travellers' Association, **Father Joe Browne**, Chair, Irish Travellers' Movement and **Mr Chris Johnson**, Community Law Partnership

Tuesday 24 June 2003

Mr Geoffrey Clifton-Brown, a Member of the House, Shadow Minister for Local Government

Mr Edward Davey, a Member of the House, Liberal Democrat Shadow Spokesman for the Office of the Deputy Prime Minister

Tuesday 8 July 2003

Mr Keith Hill, a Member of the House, Minister of State for Housing and Planning, Office of the Deputy Prime Minister

Mr Phil Carey, Head of Housing, Private Sector Division, **Mr John Daniels**, Head of Branch, Private Sector Division and **Mr David Woodward**, Head of Branch, Private Sector Division, Office of the Deputy Prime Minister

Tuesday 15 July 2003

Rt Hon Peter Hain, a Member of the House, Leader of the House of Commons, Lord Privy Seal and Secretary of State for Wales

List of written evidence

Environment Agency (DHB 43)
Joseph Rowntree Foundation (DHB 44)
London Borough of Newham (DHB 45)
Traveller Law Reform Coalition (DHB 46)
Geoffrey Clifton-Brown MP (DHB 47)
British Property Federation (DHB 48)
Edward Davey MP (DHB 49)
Mr Pete Snell (DHB 50)
All Party Warm Homes Group (DHB 51)
Geoffrey H. L. Berg (DHB 52)
British Gas (DHB 53)
Mr Dave Shiner, Sandwell Metropolitan Borough Council (DHB 54)
Supplementary Memorandum by Chamberlains Estate Agents (DHB 03(a))
Supplementary Memorandum by Citizens Advice (DHB 04(a))
Supplementary Memorandum by Shelter (DHB 20(a))
Supplementary Memorandum by the Local Government Association (LGA) (DHB 24(b))
Supplementary Memorandum by the SPLINTA Campaign (DHB 22(a))
Supplementary Memorandum by Cormac Business Solutions (DHB 25(b))

Reports from the ODPM Committee since 2002

The following reports have been produced by the Committee since the start of the 2002 Parliament. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2002–03

First Report	Local Government Finance: Formula Grant Distribution	HC 164 (<i>CM 5753</i>)
Second Report	Annual Report to the Liaison Committee	HC 288
Third Report	Affordable Housing	HC 77 (<i>CM 3783</i>)
Fourth Report	Planning, Competitiveness and Productivity	HC 114 (<i>CM 5809</i>)
Fifth Report	Departmental Annual Report and Estimates	HC 78 (<i>CM 5841</i>)
Sixth Report	The Evening Economy and the Urban Renaissance: Interim Report [Responding to issue in the Licensing Bill]	HC 541 (<i>HC 750</i>)
Seventh Report	The Effectiveness of Government Regeneration Initiatives	HC 76-I (<i>CM 5865</i>)
Eighth Report	Planning for Sustainable Communities: Sustainable Communities in the South East	HC 77-I
Ninth Report	Reducing Regional Disparities in Prosperity	HC 492-I
Tenth Report	The Draft Housing Bill	HC 751-I