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CLauses 100 and 101 agreed to.
Schedule 12 agreed to.
Clauses 102 to 107 agreed to.
Schedule 13 agreed to, with an amendment.
Clauses 108 to 121 agreed to.
Adjourned till Thursday 3 March at half-past Nine o’clock.
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not later than

Saturday 5 March 2011

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The Committee consisted of the following Members:

**Chairs:** †MR DAVID AMESS, HUGH BAYLEY

† Alexander, Heidi (Lewisham East) (Lab)
† Barwell, Gavin (Croydon Central) (Con)
† Bruce, Fiona (Congleton) (Con)
† Cairns, Alun (Vale of Glamorgan) (Con)
† Clark, Greg (Minister of State, Department for Communities and Local Government)
† Dakin, Nic (Scunthorpe) (Lab)
† Dromey, Jack (Birmingham, Erdington) (Lab)
† Elliott, Julie (Sunderland Central) (Lab)
† Gilbert, Stephen (St Austell and Newquay) (LD)
† Howell, John (Henley) (Con)
† Keeley, Barbara (Worsley and Eccles South) (Lab)
† Lewis, Brandon (Great Yarmouth) (Con)
† McDonagh, Siobhain (Mitcham and Morden) (Lab)
† Mearns, Ian (Gateshead) (Lab)
† Morris, James (Halesowen and Rowley Regis) (Con)
† Neill, Robert (Parliamentary Under-Secretary of State for Communities and Local Government)
† Ollerenshaw, Eric (Lancaster and Fleetwood) (Con)
† Raynsford, Mr Nick (Greenwich and Woolwich) (Lab)
† Reynolds, Jonathan (Stalybridge and Hyde) (Lab/Co-op)
† Seabeck, Alison (Plymouth, Moor View) (Lab)
† Simpson, David (Upper Bann) (DUP)
† Smith, Henry (Crawley) (Con)
† Stewart, Iain (Milton Keynes South) (Con)
† Stunell, Andrew (Parliamentary Under-Secretary of State for Communities and Local Government)
† Ward, Mr David (Bradford East) (LD)
† Wiggin, Bill (North Herefordshire) (Con)

Sarah Davies, Committee Clerk

† attended the Committee
Public Bill Committee

Tuesday 1 March 2011

(Afternoon)

[Mr David Amess in the Chair]

Localism Bill

4 pm

Bill Wiggin (North Herefordshire) (Con): On a point of order, Mr Amess. One of the doors is locked and people cannot get in the room. Can we open the door?

The Chair: The sitting will be suspended as we do not seem to have a Doorkeeper.

4.1 pm

Sitting suspended.

4.3 pm

On resuming—

The Chair: We now have a Doorkeeper. I think that there was a misunderstanding, but we obviously could not have started without a Doorkeeper because there might have been a Division. I thank the Government Whip for his advice.

Clause 100

Financial assistance in relation to neighbourhood planning

Question (this day) again proposed. That the clause stand part of the Bill.

The Minister of State, Department for Communities and Local Government (Greg Clark): It is good to see you back in the Chair, Mr Amess. It is disappointing not to see the hon. Member for Lewisham East in the room because I am going to respond to her speech. I will do so in her absence, however, and she might want to read the record.

The hon. Lady asked whether particular officers of her authority would feel able to respond to the pressures on planning that might arise in the future. One of our proposed changes, which is out to consultation, is that planning authorities should be able to recover the full costs of their service in a way that they cannot at the moment. It ought not to be the case that a planning authority cannot afford to put in the necessary work to consider planning applications because of the resources available.

This is a good opportunity to address the points that the hon. Member for Birmingham, Erdington made about Planning Aid. When drawing up the neighbourhood planning provisions, I insisted that we make support available to communities and local authorities to ensure that people could avail themselves of the rights that are available. The Committee has had various discussions about how the capacity for communities to put together neighbourhood plans will no doubt differ from place to place, although where there will be differences is not entirely predictable. The hon. Gentleman mentioned Castle Vale in his constituency several times, and I know from visiting it that it is a remarkable place with strong capacity and a tradition of strong community leadership. Nevertheless, there will be other parts of the country that should benefit from the approach.

In what was clearly a difficult public spending round for the comprehensive spending review settlement, we have been able to secure £5.5 million to support the early stages of the new neighbourhood planning system. We have made sure that £2.5 million over four years will go specifically to the Planning Advisory Service so that local authorities can develop their skills and knowledge, and build up the expertise that is necessary to be able to operate at the optimal level of capacity. We have also provided—I was very keen to do this—approximately £3 million of funding a year so that neighbourhoods themselves have access to independent advice. I am proud that we have managed to secure more than £5 million of funding for support, and that is over and above the new burdens funding that automatically flows from the costs arising on local authorities and others. At a time when it is apparent that there was great pressure on programmes, it is an achievement that we have been able to secure such important funding.

The question is what to do with the money and how to allocate it. The intention of the Bill, as I think all Members know by now, is to try to move our system towards a plan-making basis where communities have the chance to express their aspirations in plans, rather than relying, as we have to date, on what is in effect the development control process, which often involves arguing with lawyers—it is certainly a litigious process—about particular planning applications. Our approach explicitly reflects the policy intent of the Bill: we should use money to provide communities with the chance to build up their capacity to develop plans, including neighbourhood plans.

On the issue of allocation, it seems to me that there is no monopoly on wisdom. Different groups of experts and different bodies throughout the country, especially national ones, will be able to give advice to communities. I felt that to have a single body as the only source of advice to communities on neighbourhood planning would be wrong and inconsistent with the type of approach that we have taken elsewhere in the Bill on community rights, for example, under which we have enabled other bodies to express an interest in providing a service.

For that reason, we have invited applications for the fund. I have been advised that Planning Aid England is one of the applicants. This is a big opportunity, not just for Planning Aid—obviously I cannot prejudice the determination of its application—but for other organisations that have, for the first time, the chance to come together and prepare a means of supporting communities in producing plans. I can tell the Committee that we have had 37 applications for funding under this programme from organisations up and the down the country. As one might expect, we are going through a rigorous selection process, including shortlisting and then further assessment of their applications. One question that we particularly want to assess is what added value can be brought by different types of organisations. We want to bring experience of different types of communities...
to make sure that there is available for communities to choose—and it will be their choice—a sufficient range of organisations so that they feel that they have the adviser and the support that best fits their needs and circumstances.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): I appreciate the detail that the Minister is giving us and I understand that he cannot pre-empt the outcome, but will he say a little more about the precise criteria that the Government will use to select the successful bidders?

Greg Clark: The criteria were set out in the letter, which unfortunately I do not have with me. That has been communicated publicly, and bidders will be rigorously judged against those criteria. We indicated in that letter that we would like a small number of organisations—more than one—to be funded so that there is a degree of choice and a range of approaches.

I understand the role that Planning Aid has played over the years to help our communities. There is an opportunity here that I understand it has applied for, although for obvious reasons I cannot prejudice the proper application of the criteria. I hope that what I have said gives some context against which the decision can be taken.

Inspiration has reached me about the selection criteria, which are in the prospectus that has been published and is widely available. The key considerations that have been suggested for applications are that advice, assistance and guidance should be made available in respect of as many areas in England as is practical and that communities should have a choice of the provider of assistance, advice and guidance. There are various other things about which I will not detain the Committee with too much detail concerning the track record of the organisation and the breadth of its experience. One would expect such conditions to be applied.

I hope that I have helped the Committee to understand the background to the decisions that relate particularly to this clause, which gives the Secretary of State the ability to provide funding to organisations to support neighbourhoods.

Jack Dromey (Birmingham, Erdington) (Lab): I have two points. First, our concern is that looking at the totality of support on the one hand, and the funding within local authorities for planning departments on the other, we will see less overall, although much more is demanded of planning departments and also those who assist communities in the development of neighbourhood plans. For all the reasons that we have rehearsed this morning, we are worried that a problem of capacity might get in the way of communities' ability to take advantage of the opportunities that are now open to them. To that end, we will monitor the situation carefully as it unfolds, as I hope that Government will. The Select Committee on Communities and Local Government might also want to keep the matter under review.

Secondly, we have no problem with the notion of a diversity of provision of advice to communities and local authorities. We want to place on record, however, our regret that the arrangements that have successfully pertained for some years with Planning Aid have been dismantled in such a way. Although we accept that those involved will be able to make an application, the fragmentation at the next stage will not be helpful. Planning Aid is an excellent organisation with a tried and tested record. The key thing now is to keep experience under careful review as it unfolds. I stress again that we do not want any community to lack support, advice and capacity if it wants to take advantage of the opportunity to draw up a neighbourhood plan.

4.15 pm

Greg Clark: I agree with the hon. Gentleman's points about the importance of ensuring that capacity is available. However, he is a little too pessimistic when it comes to local authorities. As I said earlier—I see that the hon. Member for Lewisham East is now in the room—we have freed up an opportunity for local authorities to recover the cost of the work that they undertake on planning matters. If they avail themselves of this opportunity and there is an increase in their planning work load, they will be able to recover the costs of that in a way that they cannot at the moment because the fees are capped. I repeat that we have made a commitment to monitor the burdens on local authorities that arise from some of the additional provisions in the Bill and to fund those new burdens. There is no reason why local authorities should feel disadvantaged.

On neighbourhoods, we are establishing the fund. We drafted the clause as we did because it is currently not possible for the Secretary of State to provide grants directly to neighbourhoods in such a way. The direct provision of funding for that capacity represents a progressive step. It was clearly significant that we secured the level of funding that we did. However difficult a time this is for the employees of Planning Aid, I dare say that they expected a difficult funding settlement. Moreover, if they looked at the direction of the proposed policies of the two parties that formed the coalition, it was clear that neighbourhood planning would be an important theme, so I think—and hope—that they have prepared for the increased emphasis that we are putting on neighbourhood planning. However, as I say, that will be a matter for Planning Aid's application, which has now been submitted and will be considered very rigorously.

Question put and agreed to.

Clause 100 accordingly ordered to stand part of the Bill.

Clause 101

Consequential amendments

Jack Dromey: I beg to move amendment 235, in clause 101, page 71, line 34, at end insert—

“(2) In section 123 (Disposal of Land by Principal Councils) of the Local Government Act 1972 delete subsection (2).”.

This important amendment would introduce much-needed flexibility, with a caveat that I will mention at the end of my remarks. The amendment would give councils greater freedom to dispose of their land for the price and purposes of their choosing. Section 123(2) of the Local Government Act 1972 imposes a duty on local authorities to obtain best consideration for the disposal of land. The statutory duty to obtain best consideration is often cited as a reason why local authority land cannot be disposed of to community groups or for affordable housing use.
Although there are consent procedures to obtain permission, the statutory restriction creates a culture in which immediate financial considerations are thought to outweigh other social, environmental and economic interests. Repealing the duty would allow local authorities to dispose of and treat their assets more freely, and would be consistent with the aims of localism. Such a policy would effectively reinforce what I hope will be the impact of the forthcoming community right to reclaim land, and would enable a step change in the transfer of surplus public sector land for affordable housing and other sustainable development.

In my conclusion, I shall mention the caveat. When it comes to public assets, of course it is right to ensure that local authorities proceed in the public interest and with due prudence. We do not for one moment believe that, for example, fire sales of local authority assets by authorities that are strapped for cash are appropriate. However, conversely, we should have flexibility, so that valuable social, environmental and housing initiatives can be proceeded with and are driven by the public interest and the community. We hope that the Government will agree to that.

Greg Clark: I have great sympathy with the thrust of the hon. Gentleman’s amendment. As he says, it is consistent with the direction of our reforms to give more power and discretion to local authorities, rather than requiring the Secretary of State always to intervene. My reaction to the amendment, however, is that I am not sure that the proposal is a matter for the Bill.

First, such applications are made relatively rarely in practice. I am told that in recent years an average of just seven applications a year have been made to the Secretary of State. I have made one or two such decisions in the name of the Secretary of State, and they have always been pretty straightforward, so it is not a huge burden. Secondly, I am advised that it is not necessary to change primary legislation to effect such a change; there is enough flexibility in existing legislation, and it can be done administratively by amending the general disposal consent.

I undertake to reflect on alternative ways of addressing the issue, which has merit. This is a slightly separate matter from the others that are being considered in the Bill, but I hope that the hon. Gentleman will accept the spirit in which I have responded.

Jack Dromey: Again, I thank the Minister for his constructive response. It is accepted that the existing arrangements are rarely used. Therein lies part of the problem, in a sense. We agree in principle that the amendment has a noble objective, and there is flexibility in existing legislation to facilitate the change, so we welcome the Minister’s assurance that before Report he will look at how we can take the matter forward, including promoting the availability of the notion to local authorities and communities. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 101 ordered to stand part of the Bill.

Schedule 12 agreed to.
Jack Dromey: Such local initiatives are welcome, but previously, organisations such as CABE with good track records of advice, assistance and support worked strategically with Government and local authorities. Where a reorganisation of the kind that I described has taken place, the legitimate question that must be asked is whether the Government can be sure that the objective of high-quality design continues to be central to the planning process. I know that my right hon. Friend the Member for Greenwich and Woolwich will go into further detail on the subject, and I hope that the Government will hear what I think is a good argument.

Amendment 152 ties in with our earlier helpful debate on the “town centre first” policy. I do not intend to tread the same ground that we trod earlier, but I would just say that it was absolutely apparent from our debate in Committee and from the Westminster Hall debate held before Christmas that Members of Parliament from all parties are committed to ensuring that we have thriving town centres.

Amendment 152 seeks to strengthen the clause by placing a statutory duty on developers to consult before applying for planning position. Developers carrying out pre-application consultation must provide an independent examination of the economic and social impact of the proposed development. The scope of such an examination will be agreed by the developers and the local planning authority before the consultation.

The duty to consult is an important and positive innovation in planning law. The key to its success is ensuring that communities are provided with the objective information that they need to make decisions, including information on the potential impact on town centres. The amendment will ensure that a meaningful assessment is made of the impact of developments such as out-of-town shopping centres on the local economy and the social fabric of the community. I stress in the spirit of localism that the amendment would not impose the scope of the examination—that is for the local planning authority to decide—but it does empower local planning authorities to assess what is best for their locality. I hope that the Government will feel that they can support the amendment.

Mr Raynsford: As my hon. Friend highlighted, amendment 189, which I tabled, is concerned with design review and seeks specifically to encourage developers entering pre-application consultation discussions with a local authority to have regard to the views of design review panels. I will explain the logic behind the amendment in a moment, but I should reiterate at the outset that, as I said at the beginning of our proceedings, I am an honorary fellow of the Royal Institute of British Architects; I say that only because it is responsible for promoting amendment 189.

4.30 pm

We are all conscious of the importance of good design. I do not intend to go into too much history, but as the Member of Parliament for Greenwich I cannot but make the point that areas that have some of the finest historical buildings in our country are immensely proud of them, and we know the value that good design has given to our society over the ages. Periods that have generated buildings of wonderful quality are looked back on as high points in our country’s history.

Poor-quality design has the obverse effect. People feel cynical. People feel that developers are simply trying to put buildings up to make money, without any regard to the impact on the environment and the area in which the buildings will sit. In some cases, it leads to outright opposition and hostility to development; communities do not want to have buildings or developments that they regard as tawdry, poor quality and badly designed imposed on them.

There is an absolute common interest across the Committee in trying to promote good-quality design, but I am not so naive as to believe that good design is something on which there is automatic agreement. There is always a degree of subjectivity. If I might go on a slight historical journey, we now regard many Victorian buildings as being absolutely magnificent—some of the finest buildings in our capital city. St Pancras station is one example, yet it was nearly demolished, because there was a period when views were hostile to the Gothic revival, and there was a willingness to demolish such buildings. I do not pretend that the amendment is an absolute panacea and that there will always be consensus. I do contend, however, that buildings of quality enhance our environment, and it is in our interests to ensure that we try to promote good-quality design.

The previous Government were concerned with that issue, and did a lot to promote good-quality design. We commissioned a report from Lord Rogers, entitled “Towards a Strong Urban Renaissance”, which highlighted many of the practices that are now taken for granted and which should help to promote high-quality design in new developments. We also established CABE. It is a mistake on the part of the current Government greatly to reduce CABE’s funding and to force it into a merger with the Design Council. That merger may well have some beneficial consequences, but forced mergers with organisations facing financial difficulties are not easy. In the case of CABE, one of the risks is the potential loss of design review, which was one of the methods that it adopted to try to promote good-quality design. I will come in a moment to the point that the hon. Member for Crawley made about the role of local design review, as opposed to a central organisation, but I will say, in tribute to CABE, that it helped to promote the concept of taking the design review process much more seriously and encouraging local authorities to adopt it as part of the process of considering planning applications.

Of course, good design is more than just development control, as the Minister highlighted earlier, and the design process should feed into the whole development procedure from the outset. Design is about more than the quality of individual buildings. It is often about the landscape, the environment, the relationship between buildings and how the whole urban fabric works. We should not limit our attention to the quality of individual design. The design review process is able to make a positive contribution, both helping to improve the quality of individual buildings and leading to a greater understanding of the importance of good design in fashioning the future of our built environment.

Design review is an established method of providing informed and critical advice to schemes working towards securing planning approval. It consists of a panel of multidisciplinary professionals, providing constructive
appraisal of a proposed scheme or development. It is left by the Royal Institute of British Architects to be most successful when carried out at the early, conceptual stage of design, preferably at the pre-planning stage. Panels operate across England at national, regional and local level, and they help councillors, planners, clients and designers to improve design quality and better meet the needs of their communities and customers. It is a tried and tested method of promoting good design, and a cost-effective and efficient way to improve quality. At its best, design review considers more than the single building as an object—it considers how the building works with the existing and future fabrics surrounding it. That is important for communities, as it takes into account how a development will contribute to the functionality of an area, and not simply the appearance of the area.

Design review can be a powerful tool for improving new developments, and the amendment is designed to support that process and give design review greater weight in the planning system. If that were achieved, developers would have more confidence that applications would not be arbitrarily turned down on design grounds, and there would be an opportunity to consider, together with professionals who had an understanding of the issue, how a design might be altered to meet any objections. In every way, that seems to be a positive contribution to improving the design process.

The hon. Member for Crawley referred to local panels. If he looks at my amendment, he will see that that is precisely what it proposes. It does not propose an overarching national quango, but that advice given by a local design panel be taken into account as part of the pre-application process. It goes on to define a local design review panel as “a panel appointed by the local planning authority to examine and advise on the design of the proposed development.” I hope the hon. Gentleman will recognise that my amendment is absolutely in keeping with his objective and can advantage good design in the planning process. While I think we share the same ambitions, however, I do not agree with the method outlined by Opposition Members. On amendment 152, we share the admiration for the Association of Convenience Stores. It rightly wants us to make a commitment to recognise the important role that stores play in our communities. However, the proposal to require, as part of this pre-application scrutiny, developers to undertake an independent examination of the proposed development, to be presented to the local planning authority and to as many persons as specified, introduces a new stage into the planning process.

The intention behind the clause is to get applicants to consult directly with the affected communities. By interposing a new independent examination, the amendment would do something very different. It is not clear who would carry out the independent examination or at what stage it would appear. At a time when all Committee members—certainly Front Benchers—are calling attention to the delays in the current planning system that act as a deterrent to investors and to economic activity, the introduction of a requirement for an independent examination and report would have the opposite of the desired effect. It would make proper economic regeneration less likely; rather than more likely, I am happy to restate a commitment I have made before: the importance of town centres will continue to be reflected in planning policy. Amendment 152 would entrench a different stage in the planning process for matters of economic activity, and that would be the wrong approach for the Bill.

Amendment 189 was tabled by the right hon. Member for Greenwich and Woolwich. I want to advantage good design, and I share his view and that of others believe that the Minister is listening in positive mode today, and I am sure that he is listening in positive mode to this point.

I would like to pick up on the point made by my hon. Friend the Member for Birmingham, Erdington. Town centres are important places in the life stream of our communities. I noted that the Association of Convenience Stores supported my hon. Friend’s amendment. It represents the independent sector, which is an important part of small business, and it needs support in the way that we put the infrastructure of localism in place. I hope that the Minister will take on board the points that have been raised.

Greg Clark: I always listen in a positive fashion to contributions made by the right hon. Member for Greenwich and Woolwich and the hon. Members for Birmingham, Erdington and for Scunthorpe, but I shall disappoint all three of them by not accepting the amendment. That is not because the intention behind them is not shared, but because such a method of delivering that aspiration would not be likely to succeed and, for reasons I shall come on to, might make things worse.

Design and contribution to the economy are at the heart of what we are aiming at. On design, the right hon. Member for Greenwich and Woolwich might know that I have invited discussions with RIBA to see how we can advantage good design in the planning process. After the many hours that we have spent scrutinising the Bill, if there is one outcome that we would all want to see, it is that the built environment is better than it otherwise would be, and that it is beautiful and functional for people to live in.

While I think we share the same ambitions, however, I do not agree with the method outlined by Opposition Members. On amendment 152, we share the admiration for the Association of Convenience Stores. It rightly wants us to make a commitment to recognise the important role that stores play in our communities. However, the proposal to require, as part of this pre-application scrutiny, developers to undertake an independent examination of the proposed development, to be presented to the local planning authority and to as many persons as specified, introduces a new stage into the planning process.

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Amendment 189 was tabled by the right hon. Member for Greenwich and Woolwich. I want to advantage good design, and I share his view and that of others
about design review panels. They can have a positive effect on the outcome of the processes that local authorities go through. However, the previous Government did not introduce such a requirement in all their different planning Bills—I dare say they did so advisedly—and my concern is that the one way to turn something that can be appreciated and make a positive addition to scrutiny into something that is resented and imposed on people is to make it mandatory and a burden that people reluctantly have to deal with. To succeed, the initiative has to be something that authorities such as the one to which my hon. Friend the Member for Crawley referred take up willingly and voluntarily. It has to enjoy the volition and good will of the community. I would like to see more of that. Imposing the proposal as a requirement would almost instantly result in it losing its positive connotations and becoming resented.

Mr Raynsford: The right hon. Gentleman rightly makes the point that he wants this to be voluntary rather than obligatory. I put it to him that this is a different context. It was voluntary under the previous Government, because CABE was in place as a large and powerful body that was feared and listened to by developers. If developers felt that their scheme was likely to attract a negative CABE report, they were usually willing to explore alternatives. Given the scaling down of CABE’s capacity under the present Government, there will not be such influence. In such circumstances, there needs to be an additional impetus if we are to avoid developers simply saying, “We can avoid that. We can ignore that. We can get away with the scheme we are putting forward and not push up design quality.”

Greg Clark: The solution that the right hon. Gentleman advocates would not mitigate what he regards as the potential for reduced adherence to good practice in design. I want to advantage good design. As members of the Committee know, the consultation to invite suggestions as to what should be in the new national planning policy framework closed just yesterday. That framework seems to be a place in which good design ought to be advantaged, and applicants ought to know that if they submit a high-quality design, they are more likely to obtain planning permission than if they do not. I understand that representations and suggestions were made in the consultation as to how that might be achieved. This is unfinished business, but this is not the right place in the Bill to deal with it—this whole aspect is about developers consulting the local community. In any case, making something mandatory and therefore likely to be resented is the wrong approach.

4.45 pm

Jack Dromey: I shall confine my remarks to the high street issue. I do not accept the Minister’s point that amendment 152 would introduce unnecessary delay or additional bureaucracy. After all, we are talking about pre-application consultation and, crucially, the community having high-quality information that it can rely on to inform the consultative process. Such information is key to the integrity of a consultative process.

There are some examples of where that has happened already, but, in looking to the future, given the very welcome undertaking that the Committee will address the “high street first” policy in the context of the national planning policy framework, we shall return to the issue around making a success of consultative processes, including pre-consultation processes. I shall therefore withdraw the amendment.

Mr Raynsford: Before my hon. Friend withdraws his amendment, may I respond briefly to the Minister’s point? He argued that amendment 189 would impose an unreasonably burdensome duty and said that there were other ways of achieving the objective. May I remind him that the clause I propose amending is one that sets out the Government’s view of the obligations on developers to carry out pre-application consultation? That clause, which is directive, states:

“A person subject to the duty imposed by subsection (1) must, in complying with that subsection, have regard to the advice (if any) given by the local planning authority about local good practice.”

It includes a prescriptive obligation.

My amendment would simply add the obligation to have regard to the view of a local design review panel, if there is one—it does not say that there must be one. It simply refers to the advice of such a panel and builds on the Government’s wording. I therefore do not accept the Minister’s argument that it is unduly prescriptive.

Jack Dromey: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 102 ordered to stand part of the Bill.

Clause 103

RETROSPECTIVE PLANNING PERMISSION

Question proposed, That the clause stand part of the Bill.

Stephen Gilbert (St Austell and Newquay) (LD): I do not want to detain the Committee for very long. My comments will be slightly technical, but I would like the ministerial team to consider and provide feedback on an important issue.

I understand the purpose of the clause. As the Government are concerned about delays in the enforcement of planning control, they wish to ensure that those who seek retrospective planning permission for unauthorised development do not have the opportunity to delay enforcement by running concurrent—or indeed consecutive—planning and enforcement notice appeals. That is a worthy aim, as I am sure that Members on both sides of the Committee will agree, especially those who have seen how developers use the system to frustrate the local planning committee and avoid enforcement action.

The clause will insert proposed new section 70C into the Town and Country Planning Act 1990, which will give local planning authorities the power to decline to determine planning applications if the giving of planning permission involves granting planning permission in respect of the whole or any part of the matter specified in the enforcement notice that constituted a breach of planning control. The clause also amends section 174 of the 1990 Act by inserting proposed new subsections (2A) and (2B), as well as amending section 177 to remove the
deemed application provisions unless an applicant specifies that he requires planning permission for the development set out in the enforcement notice. I think that the clause gives rise to the danger of unintended consequences, so I beg the Committee's indulgence as I explain why.

As I understand it, if the provisions become law, the local planning authority would be able to use the powers under proposed new subsection (2A) of section 174 of the 1990 Act to issue an enforcement notice within a certain period—usually about six weeks, although it can be up to six months—after receiving a planning application for retrospective permission, and then use the power of proposed new section 70C to refuse to determine the application. The applicant would not be able to appeal against the enforcement notice on ground (a), given the strict wording of the provisions, and would be restricted to making an appeal on ground (g) or perhaps on grounds (b) to (f), but would not be able to challenge the planning merits of the proposed development. That is the crux of the matter, because it would result in there being no determination of the planning merits under section 78 or proposed new subsection (2A) of section 174. I am curious as to whether that is what the Department and Ministers intend. I realise that this is a highly technical matter and that Ministers might wish for urgent inspiration or want to take advice and answer the point later.

We all know that retrospective planning applications are a common feature of development control. For instance, house owners may erect a fence adjacent to a road or build a structure on their property without realising that planning permission is required. At present, local authorities know that if they serve an enforcement notice, it automatically triggers a deemed planning application for that development, so they may invite home owners to submit applications for retrospective planning permission rather than issue enforcement notices. They often deal with the matter by imposing conditions or alterations rather than having the matter go straight to appeal.

That is a proven and established method of development control. Crucially, it allows the planning merits of the development in question to be considered and dealt with in an efficient, fair and cost-effective way, without exposing the householder to appeals and possible prosecution. That saves local planning authorities huge sums in costs that they would otherwise incur by having to take cases to appeal.

I am more than happy to be proved wrong, but I understand that the effect of the clause would be that if a home owner realised his error and put in a planning application, the local planning authority would have the power—merely by issuing an enforcement notice—to prevent the planning merits of the development being determined. As a consequence, the householder would be required to remove the fence or structure without any determination whatsoever of whether that structure or fence was in keeping with the planning merits that the local authority was seeking to uphold. Indeed, although this is probably a worst case scenario, the householder could be subject to criminal prosecution for breach of the enforcement notice—again, without ever having had the planning merits of what he had done being properly considered.

Under section 189B of the 1990 Act, local planning authorities have the power to seek injunctions to restrain a breach of planning control, or a perceived breach, instead of issuing an enforcement notice. Under the Bill, members of the public could be subjected to High Court injunctions without any right to a determination of the planning merits of what they wish to achieve. In most cases, the best way to defend claims under section 189B would be for the householder to show that he had sought retrospective planning permission and that the planning application had a realistic chance of success. Given the proposals in the Bill, however, such a course would not be open to a householder, save perhaps with the agreement of the local planning authority that it would not exercise its new powers.

If the Bill is passed in its current form, to defend a claim for an injunction, the householder will have to persuade the court that the local planning authority should serve an enforcement notice before seeking an injunction, thus giving them the opportunity to appeal and to have their case determined on its planning merits. However, there would be absolutely no guarantee that that argument would be successful. In the event that the court was persuaded by such an argument, it would lead to yet further delay and expense, all of which, I am sure, is contrary to what the Government wish to achieve under the clause.

I humbly suggest that the provisions should be altered to ensure that the power cannot be exercised when the result would be that no planning determination would be made either under section 78 or under section 174 of the 1990 Act in respect of the matters specified in the enforcement notice. That would be in line with the Government’s aim that an applicant should not have the opportunity to delay enforcement by running concurrent or consecutive planning and enforcement notice appeals. However, it would safeguard the right that the planning merits in regard to a breach of planning control would be determined before a householder could be exposed to possible criminal prosecutions and further injunctions.

Another unintended consequence of the clause will be to stop the planning merits being re-argued on an enforcement notice when things had changed. As the clause is drafted, the decision of a local planning authority to decline to determine an application under proposed new section 70C could be taken to judicial review if it failed to take account of the fact that circumstances had materially changed—planning is often a movable feast. However, if a planning appeal had been determined and dismissed and the local planning authority chose to issue an enforcement notice, there would be no option to have the planning merits considered, even if there had been a material change in circumstances. There could be no judicial review of the inability to seek permission under ground (a) in an appeal against an enforcement notice.

That issue could arise if a new policy—a development plan or a national policy—came into force, or if a material consideration had changed substantially, such as if a family bought a property that was the subject of a recent refusal of planning permission but significant personal circumstances, such as a sick child with special needs, might require the planning merits to be looked at again under an application for adaptive measures. Another example would be if planning permission had been refused on technical grounds that were capable of resolution,
such as the lack of a flood risk assessment, an environmental survey or an appropriate section 106 agreement. The clause would prevent such matters from being reconsidered once an enforcement notice was issued, but I do not think that that is what the Government are trying to achieve.

In practice, I suspect that when faced with such an issue, a planning inspector would lengthen the compliance period to more than two years to ensure that the appropriate planning merits could be heard at a later stage. Unfortunately, that is a Kafkaesque approach, but it would be an effect of the changes. If the clause is passed without looking at this issue again, there is a real risk that we will take away important rights and safeguards that have been inherent in our planning system. Furthermore, it likely to give rise to confusion, yet more contentious litigation and the possibility of a challenge to its compatibility with the European convention on human rights.

The combined effect of the proposed changes to section 177 will be to take away the deemed application protection and to require the applicant to specify that he wishes to have planning merits for the development determined when he appeals or he loses his right. The safeguard of the Planning Inspectorate reminding the applicant of that right when he is asked to pay a fee will go. All that is unlikely to cause a problem to the professionally represented client, but it could cause a severe problem to a householder trying to represent himself in the system.

I apologise to colleagues for the fact that my speech has been very technical, but I ask the Ministers to take some advice on these provisions and their interplay, and to see whether there are unintended consequences that can be avoided at a later stage.

5 pm

Ian Mearns (Gateshead) (Lab): In view of the fact that the chapter on enforcement deals quite extensively with amendments to the Town and Country Planning Act 1990, have Ministers given any thought to beefing up sections 215 and 216 of that Act? I am sure that they know exactly what those sections do. In essence, they give local authorities the power to intervene and serve notice upon owners of ill-maintained, neglected or badly damaged buildings that are causing a detriment to the amenity of surrounding buildings and properties. It is extremely useful legislation for local authorities on behalf of the public they serve, but it is often frustrating, given the length of time it takes them to enforce such actions against property owners.

Siobhain McDonagh (Mitcham and Morden) (Lab): On section 215 notices, does my hon. Friend agree that the problem is not just the length of time taken, but the lack of teeth that the notices have in the face of recalcitrance by large property owners?

Ian Mearns: I agree. In many cases, the serving of the notice in itself can elicit some action by an owner to tidy up a building, but where the law is well known and the use of the law is well practised by those who are in the know, unfortunately, the outcome is often as my hon. Friend describes. It is also a matter of some regret that public bodies are often the worst offenders. Land owned by Network Rail and often that owned by the British Rail residuary body is exempt from these provisions, and that land also contains some of the most badly maintained civil engineering infrastructure, which becomes a blight on the urban landscape through which the railway passes. I am delighted that the main east coast railway line runs through my constituency, but along it there is a range of very badly maintained pieces of civil engineering. Although I welcome many of the provisions in the 1990 Act, will the Minister consider giving local authorities extra powers in that respect?

Siobhain McDonagh: I thank my hon. Friend. Friend for referring to section 215, which was the subject of a recent Adjournment debate that I secured on behalf of my constituents to which the Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst responded. A major property owner, Criterion Capital, owns a large number of properties around central London, including the Trocadero at Piccadilly circus. Unfortunately for me and my constituents, it also owns the Brown and Root tower which stands outside Colliers Wood tube station. Anyone who lives in south London will know that tower. On various TV programmes, it has been voted the most hated building in London and the third most hated building in the country. It is a big black tower in the middle of a south London suburb. It has been empty for several years. Its safety condition is quite appalling and the application of a section 215 notice has made it worse, as green netting has been hung up on two sides of the building to prevent falling masonry. Although it now might be slightly safer for people passing, it looks considerably worse.

The owner of that property is particularly litigious and well connected, and it stands against residents who rail against it and a local authority that, with the best will in the world, is terrified of the litigious nature of the company. As my hon. Friend the Member for Gateshead suggested, we have got short-term improvements by issuing section 215 notices. We have managed to have boarding put up around the half-demolished, multi-storey car park at the rear of the building, preventing people from getting access to the masonry around the place, which could be used as missiles in all sorts of fights. We have also managed to get the grass cut at the front. Ultimately, there is no sanction for the council or local residents to force that landlord to be a good neighbour. It does that in my constituency, in Brixton, in Dulwich and in Streatham—it is a blight to south-west London. Somehow, somebody should have the power to do something about it.

The Parliamentary Under-Secretary of State for Communities and Local Government (Robert Neill): I am grateful to hon. Members for their well-informed and erudite contributions, which take me back to the heady days when I had just been called to the Bar and had a temporary job as a planning lawyer at the old Department of the Environment when it was still in Marsham street towers. I do not know whether it was that or the issues that my hon. Friend the Member for St Austell and Newquay raises that led me to conclude that criminal practice was rather more straightforward and edifying. However, this is a serious point, and I will attempt to deal with it.
I hope to reassure my hon. Friend first and then I will come to the other points. The proposal is not intended to restrict the rights of those who are genuinely seeking retrospective permission. We accept that applications for retrospective planning permission are a legitimate part of the planning system. Sometimes, they are necessary, because we are all aware of a person who in good faith genuinely made an error and carried out a development without realising that permission was needed. The obvious example is the person who extends a house and goes beyond permitted development rights. They should have had planning permission, and they apply for retrospective permission to regularise the situation. I do not think anyone has a problem with that.

As my hon. Friend the Member for St Austell and Newquay rightly divines, the objective in the clause is to tighten up the rules where an abuse takes place—precisely the point that he referred to—with either the tandem or consecutive use of retrospective applications and appeals against enforcement notices. The provision is intended to apply to all classes of development. We have all seen examples; I have seen one in my constituency, where a development was built not in accordance with the plans and caused significant detriment.

The sort of people who do that are ruthless and determined, and money is involved. The local authority is often frustrated because that method is used to spin out the length of time. Sometimes, it can be a deterrent to local authorities to taking enforcement action in the interests of the broader community. That is important, but I recognise that safeguards for applicants are needed, because by its nature any planning regime involves an interference with property rights. It is right for people to have the ability to seek permission under those circumstances. That is why we seek to limit more effectively, with the proposed new section in the 1990 Act, the use of retrospective permission, so that it is genuinely focused on the honest mistake.

The Secretary of State used the phrase that the intention should be to protect the gormless but deter the greedy. I might put it a little more kindly and say to protect the innocent or the not terribly well informed, and to deter the unscrupulous. That is a cockney version, as opposed to the Secretary of State’s Yorkshire version. Against that background, perhaps I can reassure my hon. Friend that proposed new section 70C would only apply if a retrospective planning application were served after the enforcement notice. It would prevent that tandem approach.

My hon. Friend rightly refers to the situation of someone being honest about an error, getting in touch with the planning authority and the case being resolved amicably by imposing conditions, or something of that kind. It is inconceivable that enforcement action would be taken in such circumstances. That would only happen if, having been enforced against, the developer came along and sought to spin out the process by submitting a retrospective application that was intended to bite. I am grateful to my hon. Friend for raising that matter carefully.

On non-determination, the clause does not contain a requirement for the local planning authority to decline to determine; it will have a discretion to do so. In turn, such a discretion must be exercised rationally and in accordance with the normal public law principles, which would provide a safeguard if there were a wilful and perverse refusal to determine by the local authority. I hope that hon. Members will understand the thinking behind the clause.

I am also grateful to the hon. Members for Gateshead and for Mitcham and Morden for the points that they have made. I enjoyed keeping the hon. Lady and perhaps one other person company into the late hours dealing with the tower in Colliers Wood. I understand their points. Perhaps we can reflect on them, and I am happy to discuss the issues further with the hon. Gentleman to see whether there is an appropriate way forward. The Government’s instinct has been that, properly used, the powers should be adequate, but I take on board the points that they have made, and I understand the hon. Lady’s experience of her local authority. If there is a sensible formulation to improve the matter, we will be prepared to look at it. This part of the Bill may not necessarily be the best vehicle to achieve that objective, however.

I shall look carefully at the infrastructure in Gateshead and at the east coast main line, when I visit the Local Government Association’s fire conference next week. I am sure that the hon. Member for Gateshead will point out to me the bits that I should be carefully keeping an eye on, so that I can say that I have seen a practical treatise in the consequences. With that promise and in that spirit, I hope that hon. Members will accept the clause.

Question put and agreed to.

Clause 103 accordingly ordered to stand part of the Bill.

Clause 104 ordered to stand part of the Bill.

Clause 105

Planning Offences: Time Limits and Penalties

Question proposed, That the clause stand part of the Bill.

Jack Dromey: We welcome many of the changes on enforcement. However, a number of concerns about the proposed time-limited immunity for planning enforcement have been expressed to us by a range of organisations. Historically—let alone what might happen in future as a consequence of the 28% cuts to local authority budgets over the next four years—enforcement has tended to be underfunded in local authorities. Detecting breaches can therefore take time.

The clause’s time-limited immunity provision could be regarded as legitimising actions as long as they remain undetected for a certain period of time. We would therefore welcome clarification from the Government. Does the time-limited immunity for enforcement regarding advertisements in proposed new subsection (7) not weaken current controls?

Finally, we all believe that proper approval should be given. In certain circumstances, that approval is circumvented, which we do not want to encourage by default, so we would welcome clarification from the Ministers.
5.15 pm

Robert Neill: Again, I am grateful to the hon. Gentleman for raising the point. The clause seeks to strengthen and rationalise our position, in particular against an abuse that, although not common, is serious when it occurs—the deliberate concealment of breaches of planning law. We have heard about two well-publicised examples: the case of the person who received permission for an agricultural barn but equipped it as a house inside, and the issue of straw bales. Here we seek to deal with time limits and penalties.

Most enforcement offences, such as failing to comply with an enforcement notice or a stop notice, already carry maximum penalties in the courts—£20,000 in a magistrates court or an unlimited fine on indictment, as the hon. Member for Birmingham, Erdington will know. Some offences that are only triable summarily carry lesser penalties. The Government’s intention in the clause is to ensure that failing to comply with a breach of a condition notice attracts what we think is a requisite and appropriate level of penalty, hence the proposal to raise it from a level 3 fine to a level 4 fine.

The hon. Gentleman’s second point relates to how we are seeking to make it easier for local planning authorities to bring prosecutions. Sometimes there is difficulty in establishing with clarity when an offence was committed. That is the reason why we are adopting the time limit of six months. That is the normal time limit for bringing prosecutions in a magistrates court, so there is no departure from the normal procedures that apply to a traffic offence or any other summary-only procedure in a magistrates court; it is simply an alignment. We are seeking to make the process easier, because the exact date upon which an offence was committed may not be apparent for some time. Many such offences are termed immediate offences, and we want to avoid a situation where someone may escape prosecution for damaging behaviour by that technicality. That is the idea behind the provision, and I think it will assist the hon. Gentleman.

Question put and agreed to.

Clause 105 accordingly ordered to stand part of the Bill.

Clause 106 ordered to stand part of the Bill.

Clause 107

Abolition of Infrastructure Planning Commission

Question proposed, That the clause stand part of the Bill.

Jack Dromey: Infrastructure planning is extraordinarily important at both the local and national levels of Government. At the local level, crucially, it includes schools, hospitals and public transportation. At the national level, it concerns energy, such as new-build nuclear power stations, roads and railways, and intellectual capital. Efficient and quality infrastructure planning is a key component of national growth. The adequate provision of high-quality infrastructure should be seen as an important priority at all levels of government.

The Infrastructure Planning Commission was introduced in 2008 under the Town and Country Planning Act 1990 and began receiving its first applications in March 2009. As I have said previously, I was involved in some of the discussions leading up to the establishment of the IPC, not least because of the difficult debate about how we could achieve a new generation of new-build nuclear power stations, avoiding some of the absurd delays inherent in the planning system as it was.

Under the Bill the Government propose to abolish the IPC and pass decision-making power regarding major infrastructure projects back to Ministers via the new infrastructure planning unit. Evidence shows that the abolition of the IPC has raised a great deal of concern and uncertainty with developers and local authorities. If we listen to the voice of the private sector organisations, such as the CBI, the Federation of Small Businesses and the British Chambers of Commerce, all have expressed in varying ways their dismay at the decision.

Do the Government accept that subjecting final decisions on major infrastructure projects to the approval of the Secretary of State poses the threat of politicising the wrong kind of infrastructure planning and creating unnecessary delay? Infrastructure is too important to be subject to the wrong sort of political agendas, short-termism, populism and no regard to the best long-term interests of the country. The public interest and the best long-term interests must be the priority.

Infrastructure should be an issue that transcends all political parties. We hope there will be consensus about that, including here in Committee. To that end, on important infrastructure development, let me be the first to declare my solidarity with the Secretary of State for Transport in nobly pressing ahead with High Speed 2, determined as he is to face down “southern comfort nimbyism” in favour of something that will be good news for the country, particularly the development of the Midlands and the great regions of the north. I wish him well.

Mr Raynsford: I hear my hon. Friend’s remarks with interest. Will he tell us whether he thinks the Secretary of State for Transport will have greater luck in pursuing his route for High Speed 2 than his predecessor had with the original proposed route for the Channel tunnel rail link?

Jack Dromey: The Secretary of State is bound to encounter some well-heeled opposition to his plans. Indeed, yesterday I did the programme “The Politics Show” and most unusually, Kelvin MacKenzie and I were agreeing on that very issue—a prime example of the representation of the shires saying, “Not in our back yard; not in our county. You can find another route”. If anyone can work out how to get from London to Birmingham and onwards to the great regions of the north without going through somewhere in the south, perhaps they could get in contact with the Secretary of State for Transport.

The abolition of a commission that has only been up and running since last March adds considerable uncertainty to a system that planners, developers and public authorities have only recently learnt to come to terms with. That is not helpful at a time when major infrastructure projects are of vital importance to the nation as a whole. Typically, major infrastructure projects are highly technical. Crucially, they need a long-term vision and, as I have described it, one that is in the best long-term interests of the general public and the country.
[Jack Dromey]

To that end, the IPC was established as a body of people with precisely that technical knowledge and a sound understanding of infrastructure planning. Most importantly, it is an independent body able objectively to make decisions in the best long-term interests of the country and the public, in accordance with a clear framework laid down by Parliament. However, as the Federation of Small Businesses warns, “The reversion of the decisions to Ministers risk the politicisation of the process”. That politicisation poses a huge threat to what was regarded as a strength—individually planned infrastructure planning.

Roger Culcheth, the Federation of Small Businesses’ local government policy chairman, said that the politicisation of infrastructure planning will lead to a “weakening of the position under what was regarded as a very new but useful commission”. Under the proposed system, major infrastructure projects face potentially significant delays, and considerable uncertainty surrounds the time lines for development consent decisions, with people in the major infrastructure field believing that at least three months’ further delay will inevitably be built in.

Among the establishments and locations concerned, Gatwick airport, which is particularly affected by major infrastructure policy, has called the Government’s proposals, “disappointing.” Similarly, Birmingham chamber of commerce has called the abolition of the IPC, “a blow to business” and “a huge disappointment, reintroducing delay into nationally significant major infrastructure.” Those organisations have made direct representations to the Government. How do the Government respond and, crucially, how can they guarantee that the decision will not lead to further delays in the planning system?

Finally, the current arrangements are clear about the processes, the criteria and the time that will be taken, so can the Minister put his hand on his heart and guarantee that the proposed arrangements will not lead to further and unnecessary delay?

Nic Dakin: We are at a point when UK plc badly needs investment of the sort represented by large infrastructure projects, and it is deeply worrying that we should completely reverse an arrangement that is just bedding down. This is a time when it is best to let things move forward sensibly, so that there is confidence and certainty for people out there. It is not surprising that the private sector has expressed with almost one voice its concerns about the scrapping of the Infrastructure Planning Commission, because at this time the uncertainty that that presents is not welcome.

I fully support the thrust of the Bill, with powers being taken from the Secretary of State and national politicians and moved down to the ground to allow the grass roots to deliver, but it worries me that power over infrastructure decisions will be taken from an independent body and given to the Secretary of State. That power is best left independent, because that is in tune with the grass roots and with the thrust of the Bill. There is a danger of decisions being politicised, which often leads to prevarication and delay—the last thing we need at the moment, or in the future.

Greg Clark: I am delighted to have the opportunity to address these issues. I completely agree that the provision of a fast-track, dependable process for consenting national infrastructure is of prime importance. Our reforms to the Infrastructure Planning Commission are designed to improve it rather than to introduce delays. We will increase its dependability and, if we can, increase the speed of decision making, and I can certainly, hand on heart, give the hon. Member for Birmingham, Erdington the assurance that he asks for on that.

The essential problem with the arrangements the Labour party introduced late in its term of office is that they lack democratic accountability—all accountability—and that view is widely shared across the House. The Chairman of the Communities and Local Government Committee was one of the principal voices warning against the lack of legitimacy, and the hon. Member for North Durham (Mr Jones) has made some strong interventions on the issue. It is not acceptable for major decisions affecting our communities and our country to be taken by a person or group of people with no accountability to Parliament, Ministers or the people in this country. That cannot be right. A degree of ultimate accountability for important decisions is needed.

5.30 pm

The hon. Member for Birmingham, Erdington has a history in this field from his work in the nuclear industry on the trade union side. For 18 months before the election, I was the shadow Energy Secretary and I spent a lot of time with the energy companies that formed the first wave of prime users of the provisions. We took great care to ensure that the changes that we made not only would not introduce a scintilla of doubt about the continuity of the arrangements, but would remove one of the most significant risks to the necessary projects covered by the regime, including nuclear power stations—the threat of judicial review, a significant risk due to the lack of democratic accountability in the arrangements. National planning statements that are merely presented to the House rather than being ratified by Parliament, and appointed decision makers who have no reference to any democratic mandate, create a significant risk that decisions ostensibly taken by the IPC will be dragged through the courts for many years.

I think that we made some progress on satisfying people that it would be beneficial to root such important decisions in clear democratic accountability, which gives them greater standing before the courts than decisions taken, perhaps inappropriately, by administrative bodies. That is absolutely the direction of our reforms.

Ian Mearns: I could not help thinking of an analogy. The same argument could be used regarding the Monetary Policy Committee. Following the logic of everything that the Minister just said about the planning context, we could look at the economic management of the country and say, “There’s no accountability to Parliament. The Monetary Policy Committee is off doing its own thing; it’s completely independent.” However, I think we all accept that there is a rationale for having the committee in that form. It is analogous. We must think about how to manage such things, because there is a real danger. Once infrastructure planning becomes tainted by the political process, the planning of important projects that are absolutely in the national interest could stagnate.
Greg Clark: I do not believe that the measures will introduce such politicisation. That issue was clearly flagged in both parties’ manifestos when we were in opposition, and the Government has stated on great lengths of the importance of democratic accountability in the arrangements. If hon. Members look at our reforms and how we have translated them into practice, they will see that the best elements of the system that was introduced—I agree with the previous Government that it was necessary to introduce a new regime—maintain and build on that fast-track process, including by creating a dedicated unit to scrutinise the decisions taken there, subject to the same timetables.

The two principal reforms are, first, that the national planning statement will be ratified by Parliament to give it the standing that we think it requires; and, secondly, that the ultimate decision will be taken within the same time frame or sooner by the relevant Secretary of State, rather than by someone unelected. We are absolutely clear about that.

In terms of business commentators on the matter, if hon. Members look to the leading firms in the energy sector, which are the most likely to make use of the provisions the most quickly, they will find, as I have said in conversations with them, that we have been careful to ensure that there is no possibility of delay in such crucial projects. The arrangements that we have put in place will introduce a change that I hope will be permanent; I hope that we will have settled on the right model for our major energy and infrastructure projects. There will be a dedicated unit and projects will operate to strict time frames. As now, it will be necessary to put in the information in advance, so that proposals can be considered in the round, and the Secretary of State will take a decision subject to the existing timetables or faster. If we can squeeze some time out, consistent with due process, we would like the process to be even quicker, but at the very least it will be subject to the same timetable as the one that currently prevails.

The system will give applicants confidence that an appropriate degree of expertise will be considering their case. There will be enough continuity with the existing arrangements to ensure that no skills are lost. The new system will not only correct a matter of principle—the democratic flaw—but in so doing it will give greater certainty in the courts to the decisions that will result from this important set of arrangements.

Jack Dromey: The history of planning as it relates to major infrastructure projects is, sadly, one where time and again politicisation of the wrong kind has been the enemy of sensible, long-term decision making. I remember more than 20 years ago the chairman of Electricité de France, when he was here in England, talking about the process in France. Representatives of the British nuclear industry asked him, “Why is it that in your country from inception to coming on stream typically takes five to seven years, when in our country it typically takes between 12 and 14 years? Do you not have problems with your planning process?” The typically Napoleonic response, referring to “les intérêts de l’état”, was, “If you drain the marsh, do you consult the frogs?” I am not sure that we would quite do so down that path in Britain, because public acceptability is important in the planning process generally and in infrastructure planning in particular.

On limiting legal challenge, it is optimistic to suggest that the Secretary of State, who has been known to be subject to legal challenge, is less likely to be subject to legal challenge than the IPC.

Certainty for investors is of the highest importance, because typically it is not possible to engage the private sector to make major and long-term commitments regarding infrastructure projects, particularly major ones, unless there is a degree of certainty. A key element of that is timetables. If the Minister’s assurance to the House means that under the proposed arrangements there will be no delays, or at the very least the same time frame will be observed, that is a welcome statement.

Mr Raynsford: I feel that three things need to be said in response to the Minister’s remarks. It is simply not true that the previous system lacked democratic accountability. The system provided for that democratic accountability at the earlier stage, when the national policy statements were prepared. We can have an argument about whether the statements should be approved by Parliament or simply presented to Parliament, but there was a clear understanding that at that point, when the policy was being framed, the accountable body should be the Minister and Parliament should certainly have to approve that document.

There was an element of democratic accountability. The problem with the Government’s configuration is that it puts that at the end of the process and, as the Minister knows only too well, that is an inevitable recipe for delay. How will a Secretary of State take through an unpopular recommendation—say, to build a new airport—when there is a huge body of his own supporters saying, “No, no, no! Don’t do it.”?

We heard what the CBI had to say in the evidence session. It was extremely nervous that this was going to be a recipe for delay. I asked the CBI’s witness whether she knew of any instance in which the Secretary of State had taken a decision within three months, and she did not know of any at all. I asked that question rather carefully, having prepared the ground. I am well aware that there has been no instance in which a Secretary of State has taken a decision within that time frame.

The Minister’s bland assurance that decisions will be just as quick as under the IPC is worthless. Let me tell him why—it will be painful for him to hear. Judicial review. He accused me of chutzpah in an earlier sitting. With his record of already having had one of his decisions overturned on judicial review, it is probably not a very good example to take; none the less, let me put it to him. If there is the slightest element of doubt on the part of his officials that the Secretary of State could be subject to judicial review for overturning a decision coming from the body that replaces the IPC, those officials will insist on that decision being checked, checked again and lawyer-proofed to ensure that that does not happen. That takes time. The IPC, or its replacement body, will have already gone through that same process: it will have looked at the issue, consulted the lawyers and tried to ensure that its decision was not subject to judicial review, and the whole thing will happen again. When there are a number of baying Members of Parliament who do not like the policy and who are pressing the Minister in a series of private meetings and saying, “Don’t do this,” there is enormous scope for procedural process failures that would lead to judicial review.
The Government are introducing a very risky policy. A sensible way forward was to accept the previous framework, require the national policy statement to be approved by Parliament as the democratic accountability at the start of the process, and then respect the procedure for the IPC to determine the outcome in line with that democratically agreed policy. That would have given us a fast-track procedure, certainty about infrastructure provision and taken out the really serious risk, which I am afraid to say that the Minister has built into the system, of further delay and the risk of judicial review.

**Greg Clark:** I shall respond briefly. As the hon. Member for Birmingham, Erdington has raised the matter, I shall have to say that we are very clear about the contrast between different systems. We believe that we should consult the frogs. That is fundamental to the way in which we approach things. People should have a chance to have their say, and we do this deliberately.

To reply to the arguments made by the right hon. Member for Greenwich and Woolwich, the key requirement is that there are statutory time lines. This is not something that can sit on the desk of the Secretary of State for as long as he wants to have it there. We are subjecting Ministers to the same time frame that governs appointees to the IPC. We are doing that deliberately to provide that certainty, and we are looking into the possibility of advancing that. That is the right approach.

I invite Members to talk to the energy companies that have some major live applications. Those companies will, I think, talk about how we have listened very carefully to them through our consultation papers and how we have made our proposals reflect the issues they have stressed. One of the leading companies, EDF, is prepared to make the investment that everyone in this Committee sees is necessary for our country in the future.

**Nic Dakin:** The energy companies that I have spoken to during the past few months are very anxious about the changes. That is what they consistently tell me, but I am heartened by some of the things that the Minister has said. Is he giving a commitment that the new processes will be as speedy as the processes in the IPC are intended to be? If they are not as speedy and as effective, can he give us a commitment that the Government will review them?

5.45 pm

**Greg Clark:** I can give that commitment.

**Jack Dromey:** For the record, I too have spoken to various energy companies. They are extremely nervous about what is being proposed. In our view, the wrong approach has been taken, but in those circumstances, we need to give them maximum reassurance. The reassurance just sought from the Minister will be very welcome indeed, especially to the energy companies.

**Greg Clark:** I am absolutely determined that the provisions establish the primacy of the timetable. That is the approach that we are taking to subject ourselves to the same disciplines. I undertake that we will look for ways to advance those time frames, if possible, but in no circumstances will we countenance a situation in which it will take longer than under the previous system.

Question put and agreed to.

Clause 107 accordingly ordered to stand part of the Bill.

**Schedule 13**

**Infrastructure Planning Commission: Transfer of Functions to Secretary of State**

**Jack Dromey:** I beg to move amendment 239, in schedule 13, page 319, line 20, at end insert—

3A (1) Section 22 (Highways) is amended as follows.

(2) For subsection (2)(b) substitute—

“(b) the highway, when constructed, is expected to have a length of more than 10 kilometres.”.

(3) For subsection (3)(a) to (c) substitute—

“(a) the part of the highway to be improved is wholly in England,

(b) the Secretary of State is the highway authority for the highway, and

(c) the length of the part of the highway to be improved is greater than 10 kilometres.”.

(4) For subsection (4)(a) to (c) substitute—

“(a) the part of the highway to be altered is wholly in England,

(b) the Secretary of State is the highway authority for the highway, and

(c) the length of the part of the highway to be altered is greater than 10 kilometres.”.

The Chair: With this it will be convenient to discuss amendment 240, in schedule 13, page 319, line 20, at end insert—

3B (1) Section 25 (Railways) is amended as follows.

(2) For subsection (1)(c) substitute—

“(c) the length of the railway once constructed will be greater than 10 kilometres.”.

(3) For subsection (2)(c) substitute—

“(c) the length of the railway once constructed will be greater than 10 kilometres.”.

(4) In subsection (7), remove the definition of “permitted development.”.

**Jack Dromey:** The threshold for most types of projects considered nationally significant is a clear numerical figure, but that is not currently the case for highway and railway projects. Although the thresholds can be amended by statutory instrument, the Bill at least provides an opportunity to discuss the issue. The threshold of 10 km in length is proposed simply to initiate that debate. In the interests of simplifying the process, I would welcome the Government’s consideration on whether numerical figures should be applied to highway and railway projects.

**Greg Clark:** I was curious about the hon. Gentleman’s amendments, because they seem to go against the discussion that we have just had about being very clear that certain types of developments and proposals fall clearly into the category by which they will be looked at by the
future major infrastructure unit. The essential point about transport networks is that they are networks. A development may be small in terms of its geographic and spatial coverage, but may have crucial importance to the working of the network as a whole.

Whether it is for the highways or railways network, we think it is right that it should be possible to have the same degree of dependable, fast-track consideration for something that may be small in physical development terms, but may be of crucial importance to the functioning of the whole network, be it the motorway or railway network. It is right to give the opportunity, which is extended by the major infrastructural planning regimes, to cover everything to do with those major network developments.

**Jack Dromey:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Jack Dromey:** I beg to move amendment 246, in schedule 13, page 320, line 35, at end insert—

'(a) in paragraph (b) after “complies”, insert “substantially”,

(b) after paragraph (e) after “complied”, insert “substantially”.

**The Chair:** With this it will be convenient to discuss the following: amendment 242, in schedule 13, page 326, line 2, at end insert—

'(2A) In subsection (3) (deadline for making report to the Secretary of State) omit “deadline for”.

Amendment 243, in schedule 13, page 327, leave out line 25 and insert—

'(b) for “the start day” substitute “the day on which the Secretary of State receives a report on the application under section 74(2)(b) or 83(1)(b).”.

Amendment 167, in schedule 13, page 327, line 30, leave out ‘(8)’ and insert ‘(9)’.

Amendment 244, in schedule 13, page 327, line 33, after ‘must’, insert ‘(a)’.

Amendment 245, in schedule 13, page 327, line 35, at end insert—

'(b) notify each interested party of what has been done

and the reasons for doing it.’.

Amendment 238, in schedule 13, page 328, line 14, at end insert—

'(2A) In subsection (1)—

(a) in paragraph (a) after “consent”, insert “which gives effect to the proposals concerned without modification”, and

(b) after paragraph (a) insert—

“(ab) make an order granting development consent which gives effect to those proposals with modification, or”.

Amendment 247, in schedule 13, page 330, line 42, at end insert—

'(1A) The Secretary of State may by order amend subsection (1) to add, amend or remove a category of offence.

(1B) The power conferred by subsection (1A) may be exercised to add a category of offence to subsection (1) only if the category of offence is relevant to a development for which an order granting development consent may be made under this Act.’.

Amendment 241, in clause 117, page 103, line 23, at end insert—

'(2A) For the purposes of discharge, variation and appeal by the local planning authority, unless otherwise specified requirements shall be treated as if they were conditions imposed under Part 3 of the Town and Country Planning Act 1990.’.

**New Clause 16—Ability to waive compliance with procedures**—

'(1) The Planning Act 2008 is amended as follows.

(2) After section 114 insert—

“114A Ability to waive compliance with procedures

(1) The Secretary of State may make rules as to the waiving of requirements that otherwise must be met before an order for development consent is made if compliance with those requirements would be unnecessary, impossible or impracticable.

(2) Rules under this section may authorise the Secretary of State—

(a) to dispense with compliance with requirements of this Act or regulations made under it that would otherwise apply, and

(b) to comply with alternative requirements that would not otherwise apply, in any case where he considers it appropriate to do so.

(3) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

**Jack Dromey:** Major infrastructure decisions will once again be taken by the Secretary of State. These are probing amendments designed to test the Government on whether they are prepared to simplify that process. They will help to speed up the process and reduce the risk of delays occurring as a result of the Government’s decisions, which is an issue we have addressed in an earlier debate. I will explain the purpose of each amendment, and I ask the Government to consider each amendment on its merits.

Amendment 238 seeks to clarify whether draft development consent orders submitted to the IPC/MIPU can be amended as part of the decision on the application. The wording of section 114 of the Planning Act 2008 is causing some anxiety among promoters of infrastructure projects as to whether consent orders can be amended. We would welcome the Government’s clarification. Clearly it would be preferable that this small technical change could be made during the process, which would not change the substantive nature of the application.

Amendment 241 seeks to clarify whether development consent orders can be discharged by local authorities and whether they can be appealed in the same way as conditions attached to planning permissions. That is not clear in section 120 of the Planning Act 2008. It would seem sensible and more efficient to allow a local authority to discharge the requirements. Otherwise, the MIPU could be burdened with unnecessary work that could be better carried out by local authorities. An example of such a requirement might be the landscaping of the site of a new power station, which would be better overseen by a local authority. Amendments 242 and 243 seek to provide clarity about the deadlines for the MIPU and the Secretary of State. These are issues that we referred to earlier, when we discussed the recommendation that the MIPU have a three-month deadline, followed by a three-month deadline for the
Secretary of State. However, the deadlines are calculated by reference to the deadline for the previous stage rather than when the stage is actually completed, so no time is saved if a stage is completed early. The amendments would start time running from the actual completion of the previous stage in each case. In light of what has been said earlier, I hope that the Government will welcome these amendments.

Amendments 244 and 245 seek to increase the incentives to ensure that decision making is carried out on time. The Bill removes the requirement for the Secretary of State to notify all interested parties if the three-month deadline for decision making is to be extended. These amendments would reinstate that requirement, to increase the incentives for decision making to be carried out on time.

Then there is new clause 16. At present, the regime is one-size-fits-all. In other words every project, no matter how large or small, must go through the full process. The new clause is based on the Transport and Works Act 1992 and it would allow the Secretary of State to waive procedural requirements in some cases. Like the other amendments in this group, the new clause will contribute towards fast-tracking of decisions, so that we can deliver the infrastructure that the country needs.

Amendment 246 would relax the acceptance criteria for applications for examination. Some people consider that the application for examination is unduly strict and that it runs the risk of applications being rejected on purely technical grounds when there is no prejudice to any party. Amendment 246 would relax the strict requirements somewhat. The original Planning Act 2008 regime did not allow offences to be included in development consent orders, as concerns had been expressed that decisions were being made by an unelected body. The Bill reintroduces offence-making powers now that the Secretary of State will be making decisions, but only for a fixed list of offences. In the future, it is likely that relevant new offences will be created, or it might become desirable for further existing offences to be included in development consent orders.

Amendment 247 would allow the current fixed list to be amended by order. That might include trespassing on to the line in railway schemes, for example. I hope that the Government will consider the amendments, which seek to ensure that major infrastructure decisions are delivered as quickly and efficiently as possible.

In conclusion, the amendments are technical, and raise some important issues of concern, which have been brought to our attention by developers and investors. They make legitimate points, which should rightly be addressed.

**Greg Clark:** I appreciate the way in which the hon. Gentleman moved the amendment. He has clearly enjoyed some technical advice from experts in the field, and of course we will consider the amendments. We are sympathetic to the direction of some of them. They are technical amendments, which will require us to reflect further on whether they can achieve the intended purposes.

I note with a certain irony that, with amendment 247, the hon. Gentleman is, in effect, urging a Henry VIII power on us. Earlier in the debate, he warned us that there were too many of them. A degree of pragmatism is entering the Opposition party.
phrase used in connection with such matters. Since we have made a commitment to review whether we have reached too frequently and readily for the great king’s inspiration, it would be the wrong approach to take.

Amendment 241 would clarify the power of local planning authorities to discharge requirements imposed by the Planning Act. We think that it is unnecessary, but I am happy to restate for the record that we expect the requirements to be discharged usually by local authorities; we see no change in that. Section 120 of the Planning Act places no restriction on who may discharge the requirements, but it would usually be appropriate for that to be done by the local planning authority.

New clause 16 would insert a new section into the 2008 Act, with the aim of allowing compliance with the requirements of the Act to be waived in certain circumstances. Again, we are not convinced that the new clause is necessary, but we will reflect and consult with the members of the current IPC and expert bodies on whether there is a need for greater flexibility.

I have sympathy with the intent behind the amendments, and some technical changes might be appropriate. We will have the opportunity on Report or more likely, given the technical content of the amendments, in the House of Lords, to accept any changes that are in the amendment, so that we may come back to that subject later.

Jack Dromey: Although the Minister has not responded positively to all the issues raised, on several of them he has recognised the legitimacy of the concerns expressed. We are therefore content to proceed on the basis of there being further dialogue. The Minister will consult, including with members of the existing IPC, and we would welcome his advising us of the outcome of that process. My final point is that there will be some issues that are controversial and deserve debate on Report; others could sensibly be addressed at a later stage in the passage of the Bill, and I agree with the Minister that we can tease out such issues in the House of Lords.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 167, in schedule 13, page 327, line 30, leave out ‘(8)’ and insert ‘(9)’.—(Greg Clark.)

Schedule 13, as amended, agreed to.

Clause 108

TRANSITIONAL PROVISION IN CONNECTION WITH ABOLITION

Jack Dromey: I beg to move amendment 237, in clause 108, page 89, line 16, leave out subsections (1) and (2) and insert—

'(1) Subsection (1A) applies to a proposed application notified to the Commission under section 46 of that Act before the abolition date.

(a) is a member of the Commission, and

(b) is a member of the Panel, or is the single Commissioner, handling an application for an order granting development consent under that Act, is to be treated as being a member of the Panel that under Chapter 2 of Part 6 of that Act, or the appointed person who under Chapter 3 of that Part, is to handle the application on and after the abolition date.'.

At present, the Bill leaves on a case-by-case basis what to do with live applications once it is enacted. It would give more certainty to prospective and actual project plans if we state now that steps already taken have not been wasted and that the same personnel will consider live applications at the IPC abolition date. The amendment would ensure that applications that have already been through the approval process are not required to go back through it. It would provide greater certainty and be welcomed by those who have submitted applications. We hope that the Government will welcome the amendment.

Greg Clark: I endorse the intention behind the amendment, and I am pleased to confirm that the Government intend there to be continuity—there will be no requirement for stages to be repeated. The hon. Gentleman mentioned that the current drafting gives the Secretary of State power to require that.

However, we think that the amendment could actually cause problems. There is a transition from one organisation to another. For example, there will no longer be commissioners, but employees of the MIPU. To require in statute the same person to continue the application when there will be changes to terms and conditions may create an impossibility because the post might have a different name. The amendment could frustrate the hon. Gentleman’s intention, but it is helpful as it allows me to put on the record that the exercise of the Secretary of State’s powers are to ensure complete continuity and that there will be no repetition of stages that have been completed. I hope the hon. Gentleman will withdraw the amendment.

Jack Dromey: Again, the Minister gives a helpful response. Those who have already submitted applications will welcome the complete confidence that there will be no repetition. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 108 ordered to stand part of the Bill.

Clause 109

NATIONAL POLICY STATEMENTS

Jack Dromey: I beg to move amendment 248, in clause 109, page 92, leave out lines 20 to 26.
The Chair: With this it will be convenient to discuss the following: amendment 249, in clause 112, page 96, leave out subsection (3).

Amendment 250, in clause 116, page 99, leave out lines 36 to 40.

Amendment 251, in clause 116, page 100, leave out lines 30 to 34.

Jack Dromey: The current Planning Act regime imposes responsibilities on local authorities that are neighbours—at county or district level—of any local authorities where the project is to be situated. Given that the neighbours can be of either tier, that potentially involves a large number of local authorities, which in some parts of the country could be up to 40. Many of those local authorities might have no interest in the project, given its distance from them. The Bill rectifies that somewhat by removing the requirement to involve district level authorities that are neighbours of a county level host authority. That reduces the number of authorities involved, but it could still involve a large number, some of which might be many miles away. Amendments 248 to 251 would reduce the list to neighbours of a host district level or unitary authority only. That is a technical but important amendment that those involved in infrastructure projects believe would be appropriate. We support that view.

Greg Clark: I have sympathy with the hon. Gentleman’s intention to simplify the matters before the MIPU, but it is worth reflecting on the fact that the purpose of the IPC process and the succession arrangements that we have in mind is to front-load the application and make sure that all the necessary consultation has been done at the beginning of the process, so that anyone who ought to be consulted has been, and their views can be taken into account right at the beginning. The Bill provides for excluding the need to include lower-tier authorities that are at some distance from the application. However, given the range of the upper-tier authorities’ strategic responsibilities—we discussed the duty to co-operate in relation to an earlier part of the Bill—it is safer to require that they should be invited to contribute, even to an application in a neighbouring authority, from the outset. If they are scarcely affected, there will be little requirement on them to contribute much substantive work, but it is right that they should be included in the list of authorities to be covered by the front-loading of the consultation. Notwithstanding the hon. Gentleman’s intention of reducing and rationalising the bodies to be consulted, there is a danger that larger than local aspects may be missed out if upper-tier authorities are not consulted. For that reason, I cannot support the amendment.

Jack Dromey: We had a wide-ranging and helpful debate in an earlier Committee sitting on the general principle of larger than local, and we look forward to the next stage of discussions. The larger than local approach is key if we are to have sensible strategic planning, for all the reasons that the Committee has rehearsed at some length. The issue that arises is the remote as opposed to the involved local. We note what the Minister says. This is a probing amendment, designed to tease out the Government’s thinking. However, we hope that the provision will not create unreasonable difficulties in terms of remote local authorities with little interest in the proposed planning process. We ask that the Minister keep the matter under review and, on that basis, I beg to ask leave to withdraw the amendment. Amendment, by leave, withdrawn.

Clause 109 ordered to stand part of the Bill.

Clauses 110 to 120 ordered to stand part of the Bill.

Clause 121

Allocation of housing accommodation

6.15 pm

Alison Seabeck (Plymouth, Moor View) (Lab): I beg to move amendment 220, in clause 121, page 105, line 38, at end insert—

‘(c) a person, P, normally resident in accommodation held by a person, Q, where Q holds an introductory, assured, or secure tenancy, and where P is in a subsisting relationship with Q.

(d) a person, P, normally resident in accommodation held by a person, Q, where Q holds an introductory, assured or secure tenancy and where, P has acted as a carer for Q for a period of not less than one year, or

(c) a person, P, normally resident in accommodation, for a period not less than one year, held by a person, Q, where Q holds an introductory, assured or secure tenancy and where P is the sibling of Q.’.

The Chair: With this it will be convenient to discuss the following: amendment 221, in clause 121, page 105, line 41, after ‘(b)’, insert ‘(c) or (d) or (e)’.

Amendment 222, in clause 121, page 106, leave out lines 4 and 5 and insert—

‘(c) that person applies for accommodation under Part 6.’

Alison Seabeck: I am pleased to be serving under your chairmanship this afternoon, Mr Amess. These are the first Opposition amendments to the housing part of the Bill, about which we have significant concerns. I suspect that there will be less consensus than there has been thus far. That may be down to the fact that my hon. Friend the Member for Birmingham, Erdington is such a charming chap and extraordinarily persuasive. The Minister is obviously extremely amenable, but we may not find quite the same level of agreement.

Social housing is an integral part of the housing mix in this country. It provides secure and affordable accommodation for low-income families, for pensioners and for people who are unable to work or who cannot find a job and are vulnerable. Historically, it has been a safety net ensuring that the most disadvantaged in our community, as well as those in housing need for a very broad range of reasons, retained the human right to a roof over their head. Housing is a human right that was upheld by the Supreme Court in a ruling on Manchester City Council v. Pinnock, and more recently in the case of Hounslow LBC v. Powell, in which the judges who heard the appeal talked about “respecting a person’s home”.

Most importantly, social housing—I would prefer not to label it in that way—forms an essential part of many communities. They are homes, sometimes occupied by successive generations of the same family, which make up communities. Communities come in all shapes and sizes, but even those that may be seen by the outside world as difficult areas have a sense of strong community.
For example, there is a major regeneration under way in Swilly, or North Prospect, in my constituency. The residents want a strong say in how their community is shaped and they want to continue living there. A large number of those residents have lived there all their lives—through good times and bad, in employment and out of it.

The most recent statistics from the Department for Communities and Local Government show that 17% of households in England live in social rented housing; for pensioner households, the figure rises to more than a fifth. About a quarter of ethnic minority households live in social housing. The median household income in 2007-08 in social housing was just £10,900 a year. Those living in social housing are not in a land of milk and honey, as is sometimes suggested. Many are vulnerable, many are poor and any changes to the social housing system need to be approached carefully and with sensitivity.

If only the Government had taken such an approach. The Government did not approach their desire for change by producing a draft Bill, or by fully consulting prior to the publication of this Bill. They launched a consultation on their proposals on how social housing was allocated, managed and financed on 22 November, in the pre-Christmas period—with the closing date just eight weeks later, on the Bill’s Second Reading. The consultation ran in parallel with the Bill at a time when most people would not be considering responding to consultations. It was rushed, like so much of what we are being asked to consider. This rushed, slap-dash approach to reforming something so critical to people’s well-being is an affront to the normal procedures that we would expect Ministers to adhere to in the pursuit of good government.

We would expect a consultation to last 12 weeks. That is the normal run of things, but the Government set aside only eight weeks. They were concerned more with sticking to their delayed legislative programme than with ensuring the best possible response from the public, stakeholders and tenants. As it is, the Government have embarked on the most radical reforms to social housing in history, with the media observing that the cumulative effect of the reforms is, as Inside Housing put it, “the death of social housing”.

We know that the proposals in the Bill did not feature in manifestos; they were either opposed or denied by the Conservatives and Liberal Democrats. The Minister repeatedly put his name to early-day motions in the previous Parliament on matters which now fall within his portfolio. We want to understand at which point he changed his mind on the importance of security of tenure and affordability. Was it before or after he was allocated, managed and financed on 22 November, prior to the publication of this Bill. They launched a draft Bill, or by fully consulting the relevant people’s names were on a tenancy, because no changes to the social housing system need to be approached carefully and with sensitivity.

“The death of social housing”.

We would expect a consultation to last 12 weeks. That is the normal run of things, but the Government set aside only eight weeks. They were concerned more with sticking to their delayed legislative programme than with ensuring the best possible response from the public, stakeholders and tenants. As it is, the Government have embarked on the most radical reforms to social housing in history, with the media observing that the cumulative effect of the reforms is, as Inside Housing put it, “the death of social housing”.

We know that the proposals in the Bill did not feature in manifestos; they were either opposed or denied by the Conservatives and Liberal Democrats. The Minister repeatedly put his name to early-day motions in the previous Parliament on matters which now fall within his portfolio. We want to understand at which point he changed his mind on the importance of security of tenure and affordability. Was it before or after he was appointed to a position within a Government led by a Tory Prime Minister?

We seek to amend the Government’s proposals in order to increase protections, defend the long-held rights of those in social housing and those who expect to move into social housing, and provide safeguards for homeless families within the framework of the Bill.

Clause 121 and related clauses effectively establish two waiting lists. Will they support tenants who wish to move and make space in the sector for those who need a new home, as the Government clearly believe, or will they, like a jigsaw puzzle with an extra piece, simply move the problem around the board? As one piece is replaced, another pops up. Unfortunately, the pieces that keep popping up are the poorest and most vulnerable in our society. The Minister must explain whether this is really just smoke and mirrors.

I cannot understand why, before drafting the Bill, the Government did not try to understand waiting lists properly; who is on them, how many are on them—owing to duplication, there is a lot of confusion about the precise number—why they are on the list and what their aspirations and expectations are. We know from research on the impact of choice-based lettings that the number of people on lists rose by 79% over four years in authorities operating the new system, while in other areas the number rose by only 40%. Such inexplicable outcomes must be considered when new allocations policy is being developed.

To change allocations policies without a proper review of how they operate is extraordinary, but I am afraid that it is par for the course for this Government. Some local authorities have done detailed work on their lists and have, as a result, cut the numbers by ensuring that tenants have good advice and are given pathways to alternatives. Can the Minister explain why waiting list registrations vary so enormously around the country? Why does Sheffield alone contribute 97,000 to the total—more than the figure for the whole of Wales in 2009? If he does not know, that will reinforce our case that the clause and this area of the Bill have been produced without a full understanding of the beast that they seek to change.

We all support the idea of local authorities undertaking a detailed assessment of their list and housing needs in their area—during debate on the planning section of the Bill, the importance of understanding housing need was discussed—and an awful lot of work by the Chartered Institute of Housing and other organisations supports that position. The last Labour Government favoured a housing options approach, which enabled housing departments better to understand applicants’ circumstances and needs.

Hard-pressed housing departments will find it difficult to do such work effectively now, particularly given the introduction of affordable rents, flexible tenancies and the need to know whether a tenant’s income has increased, which will obviously be required as part of ongoing assessment due to the cuts to local government. With that in mind, I support the amendments.

Amendment 220 is designed to ensure that the rights of people already living in social housing are protected. The Government have said time and again that existing tenants’ rights will not be changed. We must ensure that they are held to that promise, not least because it appears less convincing when we read the small print. However, we believe that in order properly to protect people living in social housing, the Government must go further than protecting those whose names appear on the tenancy agreement; as we all know from our constituency surgeries, life is much more complicated than that. People and relationships do not fit neatly into compartments. We need flexibility and an extension of the criteria to ensure that the allocations policy meets a wider range of needs.

In the past, it was not necessary to ensure that all the relevant people’s names were on a tenancy, because no loss of rights was involved if, for example, cohabitation
The current drafting of the Bill will prevent tenants from using the allocation scheme—or, indeed, outside it. Able to seek a transfer through their local authority would guarantee that social housing tenants would be in the Bill.

Thirdly, there are many instances where siblings cohabit in social housing and only one of them is named on the tenancy. We want both siblings to be equally protected from any changes to tenancy rights. Why is it fair for one sibling to benefit from a social tenancy while the other may well have to pay a new affordable rent if for some reason the relationship falls apart and they fall out? These things do happen. Amendment 221 is consequential and arises from amendment 220, so I shall not spend time on that. These changes are fair and reflect the realities of many social housing households. They give credibility to the Government’s promise that the rights of existing social tenants will not be abridged by the reforms.

Amendment 222 comes with the full support of the National Housing Federation. It is designed to secure flexibility for local housing authorities, housing associations and their tenants in boosting mobility. The amendment would guarantee that social housing tenants would be able to seek a transfer through their local authority allocation scheme—or, indeed, outside it.

The current drafting of the Bill will prevent tenants with reasonable preference from transferring outside the allocation scheme and from using the allocation scheme. The Chartered Institute of Housing has also expressed concern about the running of these dual lists and would prefer there to be some reform of the existing framework. It would be helpful if the Minister explained the logic behind the clause. I am not clear about the Government’s reasoning on the matter or why they are pursuing such a course. It is clearly not a route that the housing associations want to go down, and I am sure that they did make representations to the Minister.

Will the Minister talk us through his thinking? Why has he chosen to go against the wishes of the sector and what benefit will the measure bring to tenants?

The Parliamentary Under-Secretary of State for Communities and Local Government (Andrew Stunell): It is good to be back under your chairmanship this evening, Mr Amess. The hon. Lady promised that this sitting would not be quite as consensual as the previous one, and it has certainly started off in that spirit.

May I just deal with the adequacy or otherwise of the consultation? I draw her attention to the fact that there were practically a record number consultee responses, as is reported fully in the summary of responses to the consultation that we published earlier this week. The subject is certainly important and I am not at all surprised that housing providers and many others found plenty of things to say and sufficient time to say them. We have taken careful stock of those responses in what we have supplied to the Committee in the final chapter—chapter 8—of the summary of responses, which sets out the Government’s response to the information that we have received.

I say to the hon. Lady that social rented housing is a vital resource that is definitely in short supply. It is trying to make the most effective use of a very scarce commodity that has led the Government to introduce the proposals in this section of the Bill. In 1997, 4.386 million homes were available for social rent in the housing association and local authority sector; when the coalition Government took over last year, 3.966 million such homes were available in that sector. The number of socially rented homes available had fallen in that 13-year period by 420,000.

Mr Raynsford: The hon. Gentleman is talking numbers, without talking quality. Will he now tell the Committee about the condition of that social housing stock in 1997, what proportion of those properties were substandard, unfit for human habitation or otherwise defective, and how many of them have been improved in the intervening period?

Andrew Stunell: Quite a lot have been improved, but there are still more than 300,000 that are unimproved. As for eliminating the problem of homes below a decent-homes level, the right hon. Gentleman did not succeed with that objective either.

Siobhain McDonagh: Will the Minister give way?

Andrew Stunell: I will give way in a moment.

The hon. Member for Plymouth, Moor View was right about the absence of consensus. I am simply making the point that what is a valuable resource is in short supply and we need to make sure that it is used
properly. About 230,000 of the homes that we do have are officially overcrowded and in breach of the overcrowding standard. More than 400,000 homes are under-occupied to the extent of more than one spare bedroom.

The hon. Lady asked me when I changed my views. I did not change my views at all. I want to bring to the attention of the Committee one of many cases since I have served as an MP. During the past couple months, I have seen a lady in my constituency who lives in a two-bedroom council house with her partner and three teenage children of both sexes. It is an increasing unsatisfactory situation, with three teenagers sharing a bedroom in the two-bedroom house. They urgently need to find larger accommodation, but they have little chance of achieving sufficient priority to do so at the present moment. The hon. Lady might wonder what that has to do with anything. Well, on the same estate are many three-bedroom houses occupied by elderly widows whose families have grown up and left the area.

Let us take the argument a little further. When my constituent has the opportunity for a new tenancy, it is right and sensible for the housing authority to consider giving her a 10-year tenancy. In 10 years’ time, her youngest teenager will be in her 20s, and it will be the right moment to re-appraise whether the larger house into which that family had moved was still required by them. We are discussing an enabling provision. Nothing is compelling housing authorities to change their existing practice if they choose not to do so.

Mr Raynsford: The hon. Gentleman will be aware that the Homes and Communities Agency has issued guidance on how it intends to allocate funds for the national affordable housing programme in future years. Will he now tell the Committee what conditions it intends to impose on those authorities and housing associations that decide not to allocate a substantial proportion of their re-let properties to the new affordable rent regime, which will not be affordable to large numbers of people along the lines that he has been talking about?

Andrew Stunell: The right hon. Gentleman asks me to make the point that it is for local housing authorities to take a decision about what policies they employ for the letting of tenancies in the future. They can take account of advice or information that they receive from anyone, including himself or the Homes and Communities Agency. I say to Opposition Members that this is enabling legislation, and it permits local authorities to do things that many of them wish to do.

I draw the right hon. Gentleman’s attention to the responses that we have received, which show that two thirds of housing authorities would look to use at least some of the flexibilities that we have given them. They have also responded on particular aspects of those flexibilities—on which parts they would prefer to have presented as an open door, and on which parts they feel should still be constrained by legislation. We have responded to that in our feedback on the consultation, setting out what the Government intend to do.

The hon. Member for Plymouth, Moor View, asked me a number of questions, which I will do my best to answer, and I am sure that she will let me know if I miss any of them. I do not accept that the consultation was rushed. I believe that by providing, with no compulsion, a power to local and housing authorities to have flexible tenancies in future, and by ensuring that every existing tenancy is protected—housing authorities cannot vary them, even if they want to—we have set a practical back-stop. When we debated that topic, I inadvertently became a little overheated, but I say to the right hon. Member for Greenwich and Woolwich that the literature that is being circulated implying that the Government intend to take away council tenants’ tenancies is completely wrong and misleading.

Clause 121 takes all social tenants seeking a transfer out of the statutory allocations framework, unless they have a reasonable preference—a priority for social housing. As a result, social tenants will find it easier to move within the social sector, and local authorities can better manage their stock and strike a balance between the needs of existing tenants and those with priority on the waiting list.

Amendment 220 would add to the list of people to whom the allocations legislation will no longer apply. As far as I can see, the intended effect of the amendment is to allow those people to move into another social property without having to queue on the housing waiting list. That is not sensible, and we do not believe that the drafting of the amendment works, either. We are trying to give back to local authorities the power to decide who should and should not qualify to go on the waiting list, and many of the local authorities—including, incidentally, the London borough of Greenwich—that responded to the consultation welcomed the flexibility and said that they would use it. The hon. Member for Plymouth, Moor View, knows that, but if she has not had an opportunity to study the detail of the consultation, I hope that she will do so.

The amendment would restrict the flexibility, because it would allow certain people to get into social housing without having to meet the local authority’s qualification criteria. There does not seem to be any justification for allowing some people to circumvent the rules that determine who should access social housing simply because they live with someone who qualifies. The amendment would also mean that people living with a social housing tenant would be able to jump the housing queue and gain an allocation, ahead of others who could be in much greater housing need or might have been waiting for far longer.

Amendment 221 does not seem to work as drafted, because proposed new subsection (4B) applies only to transferring tenants and would not apply to people who live with a tenant, but who are not tenants themselves. It does not, therefore, achieve the objective that the hon. Lady set out.

Barbara Keeley (Worsley and Eccles South) (Lab): I want to support what my hon. Friend the Member for Plymouth, Moor View, said about live-in carers. The Minister is not paying enough attention to that. It is not like the situation with teenagers. As people become more frail and more vulnerable, they may often need to have a family member move in with them. That is a special consideration. Such people often give up a career and a salary—true, their own lives—to take that on, and the words that the Minister has just used are not appropriate. A carer makes a very big sacrifice, and it is appropriate for that to be considered in some way in the allocation.
Andrew Stunell: I go back to the point that I made at the beginning: the provision will apply to new tenancy arrangements only. If there is a new tenant under the new arrangements, and if a carer proposes moving in with them and that carer wants to register their interests, they can do so. Specifically, if that carer has come from another council home, having surrendered one tenancy and having moved in to help somebody else—I am sure the hon. Lady has many examples of that; I do, too—it is entirely right that there should be a lettings policy that recognises that. It will be in the hands—in the ownership—of the housing authority to be able to say, “Yes, you have surrendered a tenancy, you are doing that caring duty or job, and when and if that caring duty and that tenancy end, we will safeguard where you have come from.”

Ian Mearns: I am terribly sorry, but I am not reassured by the Minister’s line of argument. The Minister and the Front-Bench team should think about this. We do not want to give rise to a perverse disincentive for looking after members of one’s own family. Ultimately, if people are disinclined to look after their own family members because of the implied threat to their livelihood, the cost to the public purse could be an awful lot more, and it could create a much unhappier family situation. The Minister and his team should think about that a bit more.

Andrew Stunell: Let me say a couple of things that may be relevant here. First, the situation that the hon. Gentleman described is, of course, already the case with registered social landlords. We are talking about those who have what have traditionally been called council house tenancies. We need to understand that there are already different situations applying to different sets of tenancies, if we are talking about carers moving in from outside, as opposed to spouses and direct family members. We will return to that in a subsequent clause that looks in more detail at the requirement on local authorities to have a transparent housing allocation policy. I am happy to return to the issue at that point, and to discuss it in more detail then. There is a broader context about the terms, which we are saying housing authorities have to be explicit about when a new tenancy policy is introduced.

I want to reassure Opposition Members that no existing tenant will have their tenancy interfered with in a way that would create the situation that they have described. A tenant would be moving into a tenancy where the situation was already known, so there are no surprises coming to existing tenants as a result of that particular element. I hope that on that basis the hon. Member for Plymouth, Moor View, will agree to withdraw her amendment, but if she does not, I will encourage my hon. Friends to vote against it.

Siobhain McDonagh: May I take the Minister back to his opening comments about his concern that there are fewer social housing tenancies and social housing properties available than there were in 1997? Would that be in part due to the take-up of the right to buy? Not everyone on the Labour Benches will agree with me on this, but I am sure that a significant number of Government Members will: I think that the right to buy was one of the most successful policies, allowing people a foot on the ladder. It gave them a way of having an asset, which nudged their behaviour when it came to work, ensuring that their kids got on, and getting on in future. The reduction is in part due to the right to buy, which I believe was a particularly successful policy.

I am not sure whether the coalition is split on the issue, and whether the Liberals are opposed to the move. My concern about a lot of the clauses on housing is that they do not do so much nudge people as head-butt them in the opposite direction to working, looking after their family and getting their kids to university. We will have opportunities to discuss some of those clauses later on.

Often, it is people who buy their homes or stay for a long time—sometimes when it is not necessarily in their financial interests to do so—who are the anchor in our estates. Those people are families that others look up to, saying, “Gosh, you know, Mr and Mrs Smith down the road have put a new porch on. They are going to work and their kids are doing well. I want to be like them.” The downside of two-year tenancies is that we will move those people out, and there will be no role models or anyone who is getting on, taking a chance or giving an opportunity. I desperately want those people to stay in their communities.

Alison Seabeck: We have heard some passion from Opposition Members, and passion with knowledge from my hon. Friend the Member for Mitcham and Morden and my right hon. Friend the Member for Greenwich and Woolwich, whose history of working in the housing sector before coming to this place is well known. I am sorry if Government Members begrudge him that passion; I certainly do not.

Part of the reason why there was a good turnout—I am pleased that there was, given the short consultation period—is that Opposition Members did everything they could to encourage people such as tenants groups, housing associations and local authorities to participate. We highlighted the importance of contributing to the consultation. Just imagine how many people might have contributed if the consultation had run for 12 weeks instead of just eight.

My hon. Friend the Member for Mitcham and Morden talked about the right to buy, and the fact that a significant proportion of those who left the system did so as a result of the right to buy and, in part, our decision to improve properties and make up the £19-billion backlog in the repairs programme that was left to us by the Conservative Government.

The Minister raised an important issue about over and under-occupation. It is something that we all struggle with. We all know people in our constituencies who are under-occupying, and we also know that there are people who are attached to their houses, having put 30 years or so of commitment into them, repairing and improving them. They are not easy to move. A number of local authorities have historically tried to move people, including by offering incentives, and there are all sorts of things that can be done under the current system. However, unless we have good-quality housing stock to move them to, there is no reason why a lot of them would go. They do not want to move to one-bedroom flats; they want at least two bedrooms, because they know that in six months or a year, they might have a caring need
themselves. I appreciate that the Government are also struggling with the issue, but I do not think that the clause is the way to go.

The Chartered Institute of Housing and others are concerned that the clauses will have unintended consequences because of the way that they are set up, and will damage the good work that has gone into mixing communities. Interestingly, the right to buy was part of that process; as it was taken up, people with different targets and aspirations lifted the area.

Ian Mearns: There is an unfortunate downside to the right to buy. When residents who bought their council houses sold them on to the private rented sector, it led not to a mixture of tenures on council estates, but to a mixture of one type of tenure—private rented and local authority rented properties. In areas where local authority properties have been improved through the decent homes programme, private rented accommodation often stands out like a sore thumb, as it has not been improved to the same standards.

Alison Seabeck: My hon. Friend flags up a matter that we will come to later: the general state of the private rented sector. He is right that that is one of the knock-on effects of the right to buy—perhaps a negative one.

The Minister said that the amendment was not perfectly drafted. I wish that I had access to Government draftsmen and lawyers; it would certainly help, but we are doing our very best. He can be critical, but I think that everyone understands the reasoning behind the amendment. The wording may not be perfect, but the principles are thoroughly laudable.

My hon. Friend the Member for Worsley and Eccles South mentioned the importance of carers. People often move in with an elderly parent, perhaps from the private rented sector. They could live there for a considerable time looking after that person. They will not necessarily think, “Oh my God, I’ve got to put my name on the tenancy,” or “I’ve got to set up a joint tenancy,” because they are busy caring. Then the parent dies, and they discover that they should have done that, and find that they have no entitlement. A number of people in my constituency have approached me with concerns about some of the Government’s proposals on caring, but they themselves have problems and are in need of support. Those people will not always understand their rights in such circumstances. That is why we want this protection in the Bill.

We appreciate the need for flexibility, and we understand what the waiting lists mean in fact, rather than simply from making assumptions, as the Government do. We believe that there should be transparency in the system. It is important that people should have good access to advice from officers, and free housing advice—things that have been desperately hit by Government cuts. We believe that the proposals will not be to the benefit of social housing, and there is a risk that social housing will become housing of last resort and that, over a long period, ghettoisation will happen. What the Government propose is nothing more than an exercise to close the housing register to certain groups. It will not create more options or free up more homes, and I urge my colleagues to support the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 10, Noes 13.

Division No. 26

AYES
Alexander, Heidi
Dakin, Nic
Dromey, Jack
Elliott, Julie
Keeley, Barbara
McDonagh, Siobhain
Mearns, Ian
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Alison

NOES
Barwell, Gavin
Bruce, Fiona
Cairns, Alun
Clark, rh Greg
Gilbert, Stephen
Howell, John
Morris, James
Neill, Robert
Ollerenshaw, Eric
Smith, Henry
Stewart, Iain
Stunell, Andrew
Wiggin, Bill

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 13, Noes 10.

Division No. 27

AYES
Barwell, Gavin
Bruce, Fiona
Cairns, Alun
Clark, rh Greg
Gilbert, Stephen
Howell, John
Morris, James
Neill, Robert
Ollerenshaw, Eric
Smith, Henry
Stewart, Iain
Stunell, Andrew
Wiggin, Bill

NOES
Alexander, Heidi
Dakin, Nic
Dromey, Jack
Elliott, Julie
Keeley, Barbara
McDonagh, Siobhain
Mearns, Ian
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Alison

Question accordingly agreed to.

Clause 121 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—(Bill Wiggin.)

6.57 pm

Adjourned till Thursday 3 March at half-past Nine o’clock.