

Consultation Response The housing bill

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The new Housing Bill, announced in the Queen's Speech, includes measures to discourage Right to Buy abuses and a licensing system for houses in multiple occupation.

Summary

The Queen's Speech announced that a Housing Bill will be introduced in the forthcoming Parliamentary Session. It is expected that this will be based on the Government's recent response to the ODPM select committee's report on the draft Housing Bill published earlier this year. In addition to measures to reform the house buying process, the Bill is therefore likely to include:

- A licensing scheme for houses in multiple occupation (HMOs)
- Selective licensing of private landlords in areas of low demand
- The new Housing Health and Safety Rating System to replace the fitness standard
- Reforms to the Right to Buy to prevent abuse of the scheme
- Rights of succession for unmarried partners including same-sex couples

Shelter welcomes these measures, particularly those to introduce a licensing scheme for HMOs. However, we hope that Ministers will be persuaded to add the following measures during the Bill's passage through Parliament:

- The statutory regulation of tenants' deposits and other fees, including a national Tenancy Deposit Scheme with independent arbitration when disputes occur
- A wider HMO licensing scheme covering all properties posing a significant risk to the health and safety of occupants.
- An updated definition of statutory overcrowding
- A requirement that all private landlords meet minimum management standards

Background

Much of the Bill will focus on the private rented sector (PRS). The PRS is home to 2.2 million households in England. At just 10 per cent of the country's housing stock, this makes it the smallest PRS in the western world. At a time when the shortage of affordable housing has reached crisis levels in many parts of the country, the sector could make a much greater contribution to meeting housing need by increasing the availability of affordable accommodation for key workers and providing decent homes for those on low incomes.

According to the English House Condition Survey, 31 per cent of private tenants live in poor conditions. Shelter therefore strongly supports the measures aimed at improving

standards in the sector, particularly those targeted at HMOs. However, we hope the Bill's publication will provide an opportunity to broaden out the debate to look at how these measures can be harnessed to a wider strategy to modernise the sector that includes the fiscal reforms needed to increase supply, as recommended in the report last year of an independent commission established by Shelter with the support of the Joseph Rowntree Foundation.¹

Licensing Houses in Multiple Occupation

Shelter has long campaigned for legislation to improve health and safety in HMOs, and so we welcome the introduction of a national licensing scheme. Over 1.5 million people live in HMOs. Many of them are vulnerable young people living independently for the first time. The conditions they live in are often unhealthy and sometimes dangerous. Twenty per cent of HMOs are in a poor condition, requiring urgent remedial works,² and adults living in bedsits are six times more likely to die in a fire than those living in comparable single-occupancy houses.³ There are no universally applied standards for fire safety or amenities, and because most occupants have little or no security of tenure, they stand every chance of losing their home if they ask their landlord to undertake repairs or improve safety.

The new definition of an HMO, outlining the circumstances in which a person is to be regarded as 'occupying' a house, and the circumstances in which persons occupying a house are to be regarded as forming a 'single household', will help ensure that the health and safety of a greater number of tenants can be more readily safeguarded. The obligation for landlords to obtain a licence for larger HMOs will give environmental health officers a much better chance of uncovering those with defects and ensuring that they are brought up to a satisfactory condition. It should also help guarantee proper management standards, and give tenants greater confidence to raise concerns when standards are not maintained.

One of Shelter's key concerns about HMO licensing is that tenants are not made homeless as a result of landlords withdrawing from the market or being refused a licence. Measures to regulate landlords must take account of the risk that, in response, landlords may choose to end a tenancy or stop letting altogether. At present, the Bill contains no measures to help tenants in this situation. This should be remedied by requiring local authorities to have robust policies in place for securing accommodation and providing advice and assistance to tenants at risk of homelessness in these circumstances.

Scope of the Mandatory Licensing

We also believe that there is a strong case for expanding the scope of the mandatory scheme to include all HMOs of either three or more storeys or four or more occupants, rather than just those with three or more storeys and five or more occupants. The

evidence shows that the risk of injury or death as a result of fire increases significantly in properties of three or more storeys. In 1997, DETR research found that 52 per cent of HMO fire deaths occurred in buildings three or more storeys high, even though only 16.5 per cent of households at that time lived in such buildings.⁴ The risk to life is greater still when fire death rates in HMOs over three storeys are compared with similar single-occupancy houses. A tenant living in a bedsit house of three or more storeys is almost 17 times more likely to be killed in a fire than an adult living in a similar single-occupancy house. These findings clearly justify requiring landlords to obtain a licence for all HMOs with three or more storeys.

After reviewing the evidence, the ODPM select committee concluded that "the mandatory licensing (regime) should not be limited to properties of three or more storeys with five or more occupants". The Government, however, is "not currently persuaded that it is necessary to require mandatory licensing more widely than to properties of three or more storeys and five or more people".⁵ Ministers argue that local authorities will be given discretionary powers to require smaller HMOs to be licensed where they cause a particular problem. While Shelter recognises that some local authorities will look to implement this discretionary power, we are concerned that many others will ignore this opportunity, leaving thousands of HMO tenants no better off than they are currently.

Recommendation: Local authorities must be required to have robust policies in place to help tenants at risk of homelessness as a result of HMO licensing

Recommendation: The mandatory licensing regime should cover all HMOs of three or more storeys or four or more occupants.

Selective Licensing of Private Landlords

Shelter recognises the importance of addressing the factors behind neighbourhood decline. We therefore support the introduction of discretionary powers to allow local authorities to introduce a licensing regime for private landlords in areas of low demand and other areas where standards in the PRS need to be raised. In particular, we welcome measures to ensure that landlords in these areas are 'fit and proper' persons, so that those who fail to meet the test of management competence, for example as a result of having been found guilty of harassing or unlawfully evicting tenants, are excluded from holding a licence. As with licensing for HMOs, however, it is vital that tenants are not made homeless as a result of landlords withdrawing from the market or being refused a licence. Robust policies for securing accommodation for those who may be displaced are therefore again essential.

Recommendation: Local authorities must be required to have robust policies in place to help tenants at risk of homelessness as a result of selective licensing

Housing Health & Safety Rating System (HHSRS)

Shelter supports the replacement of the Housing Fitness Standard with the HHSRS, and a rigorous new enforcement regime. We are pleased that Ministers have given a commitment to address some of the other concerns expressed by the select committee, particularly about the complexity of the hazard scores used in the initial assessments, reporting unfit dwellings, and the need to give local authorities powers to tackle hazards that pose an immediate risk to the occupier. However, we believe that a set of absolute minimum standards for physical conditions in HMOs, particularly minimum requirements on fire safety, should be included. We also share the select committee's concerns that removing section 190 of the Housing Act 1985 will remove a useful enforcement tool for tackling substantial disrepair and material discomfort in the PRS.

Recommendation: The HHSRS should include absolute minimum standards for physical conditions in HMOs

Recommendation: We agree with the select committee that section 190 should not be repealed, but should be amended to take account of the HHSRS

Modernising the Right to Buy

In the two decades since it was introduced, around 1.5 million sitting tenants have exercised their Right to Buy. Although, the majority of these tenants have benefited from the scheme, it is also clear that, alongside the failure to invest in new affordable housing, the Right to Buy has been a major factor in the declining number of lettings becoming available to those in housing need. In London, for example, the annual number of lettings has fallen to just 35,000 - a third below the level of 1996/97. This loss of lettings is simply unsustainable.

Shelter therefore supported the recent reduction in the maximum Right to Buy discount in 41 local authorities in London and the South East. This will reduce the number of lettings lost in these areas, and we believe there is a strong case to reduce the discount in other areas experiencing similarly high levels of homelessness and unaffordable property values. At the same time, additional reforms are needed to discourage the activities of property companies abusing the Right to Buy and help retain lettings. The draft Bill extended both the qualification and discount repayment periods, and in its recent response to the select committee report the Government agreed to consider the following further reforms:

- Suspending the Right to Buy in areas designated for demolition as part of a regeneration scheme
- Giving local authorities a 'first refusal' option to buy back properties if the owner wishes to resell within the first ten years after exercising their Right to Buy

- Requiring that a purchase involving a deferred re-sale under-lease agreement will automatically trigger the discount repayment provisions

The select committee also proposed that the Right to Buy be brought into line with the Right to Acquire available to housing association tenants, particularly in terms of the level of discount and exemptions on sales in rural areas. The recent report of the Government's Home Ownership Task Force made similar recommendations, and also suggested a move towards a simplified low cost home ownership programme focussed on loans and equity bonds.

Recommendation: Shelter strongly supports the inclusion of further measures designed to tackle abuse of the Right to Buy and retain local authority housing lettings in areas of high demand, including rural communities

Additional Measures

The Housing Bill is the first major housing-related legislation to be brought before Parliament since 1997, and it provides an opportunity to address several other issues.

'Fit and Proper' Landlords

Selective licensing introduces the concept of 'fit and proper' landlords (see above). The aim is to ensure that landlords meet minimum management standards. Those who do not, will be excluded from letting. This is designed to tackle the problems of low demand and neighbourhood decline caused by irresponsible landlords and anti-social tenants. It is clear, however, that neglectful landlords are not confined to unstable neighbourhoods - they are just as likely to be operating in high demand and relatively cohesive areas. Although their activities may not be contributing to neighbourhood decline, they may be causing localised problems and are certainly delivering a poor service to tenants.

Shelter believes it is inconsistent not to require landlords in high demand areas to meet the same standards of management competency as those in areas of low demand. Furthermore, as consumers, all tenants should be entitled to a decent standard of service from their landlord. This is especially important because, the sector is often used to house vulnerable people who have little choice or alternative housing options. We therefore believe that the Government should require all landlords to meet minimum management standards.

We are conscious of the need not to over-regulate private landlords. However, we believe a national scheme based on a statutorily approved code of management practice would strike an effective balance between regulation and higher standards. This should be combined with stronger powers to encourage a more strategic approach from local authorities to improving the sector.

This kind of approach was a key recommendation of the Independent Commission on Standards and Supply in the Private Rented Sector,⁶ and is supported by a wide range of interest groups, including a number of organisations representing landlords. The select committee backed a similar 'carrot and stick' approach, recommending that landlords who demonstrate competence in housing management are allowed to offset some additional management costs against their tax liability.

Recommendation: The Bill should be used to ensure that all landlords meet minimum management standards and to encourage local authorities to develop a more strategic approach to the PRS

Tenancy Deposit Scheme

Research has shown that that 70 per cent of the 2.2 million tenants in the private rented sector have paid their landlord a rent deposit. Although most tenancies end without dispute, around one in five households say that part or all of the deposit from their most recent tenancy was unreasonably withheld. The only way for tenants to recover their money if it has been unfairly withheld is to bring proceedings in the county court. Most are so intimidated by the prospect of pursuing legal action, they simply choose to cut their losses. For many of the poorest, however, the loss of their deposit is such a barrier to a new tenancy that they end up homeless.

Shelter has always argued that statutory regulation is the only way to ensure that deposits are dealt with fairly. A third party should hold the money, and disputes should be subject to independent adjudication. A pilot Tenancy Deposit Scheme set up in 2000 proved that this kind of scheme can work. Unfortunately, because it was only voluntary, very few private landlords joined. This poor take-up leaves legislation as the only way forward. The Housing Bill provides the perfect opportunity. The select committee called for the inclusion of a Tenancy Deposit Scheme in the Bill, and almost 200 MPs have signed an Early Day Motion backing its inclusion.

The ODPM initially claimed that the costs of adjudicating disputes would be too high. However, the Government's own consultation paper on this issue showed that the costs are likely to be considerably less than the £19 million suggested by Ministers. These costs can be more than adequately met from the interest accruing on deposits held. In its recent response to the committee, the Government suggested this issue is best addressed alongside the Law Commission's recent proposals to reform tenancy law. Shelter disagrees. A Bill to implement the Law Commission's proposals may be several years away, and up to 127,000 tenants will continue to be ripped-off every year it is delayed. Tenants deserve a better deal than this, and so we hope Ministers will change their minds and include a Tenancy Deposit Scheme in the Bill.

Recommendation: A national statutory Tenancy Deposit Scheme should be included in the Bill

Household Overcrowding

The draft Bill included limited measures to assess and tackle hazards resulting from overcrowding in other types of accommodation under the new HHSRS. However, the hazard score will continue to be used alongside the current statutory overcrowding standards which date back to 1935. These standards are in urgent need of modernisation. As Ministers themselves have pointed out, our understanding of the need for space and privacy has come a long way since then, and yet the legislation remains unchanged.

Half a million households,⁷ including up to 1.4 million children,⁸ are estimated to be overcrowded. Black and minority ethnic households are at least seven times more likely to live in overcrowded conditions than their white counterparts. The effect of overcrowding on the health, education and well-being of families with children can be extremely serious. Respiratory and infectious diseases are highly correlated with overcrowding, and longitudinal studies have shown that overcrowding in early childhood can significantly increase the odds of developing severe ill-health in later life. Despite this evidence, recent governments have focussed little or no attention on the needs of overcrowded households.

We therefore hope that Ministers will take the opportunity afforded by the Bill to address the issue of overcrowding not only through the new HHSRS, but by updating the present statutory definition and strengthening the legislative framework along the lines proposed in Andy Love MP's recent Housing (Overcrowding) Bill.⁹ Despite the select committee's strong support for this proposal Ministers have so far decided to retain the existing outdated definition because the new definition might "lead to increased demand for housing, to the detriment of other people whose living conditions may be worse".¹⁰

Shelter does not agree with this analysis. Families living in conditions, which while overcrowded do not breach the current standards, are nevertheless already on the housing waiting and transfer lists of local authorities across the country. Their individual housing needs and the overall levels of demand will remain unchanged. As the Housing Minister himself recently made clear in answer to a Parliamentary Question, statutorily overcrowded households are only given 'reasonable preference' and not extra priority to the detriment of other people housing need.¹¹

Recommendation: An updated definition of statutory overcrowding should be included in the Bill

Compulsory Leasing of Empty Homes

The select committee recommended that compulsory leasing of empty homes be included within the Bill. Shelter supports compulsory leasing, and we believe that the Housing Bill provides a perfect opportunity to introduce this legislation.

Succession Rights

Shelter agrees with the select committee's recommendation that tenancy rules on succession should be updated, so that unmarried partners and unregistered same sex partners have the same rights as married couples.

Park Homes & Travellers

Shelter supports the select committee's recommendations to improve conditions in park homes and to introduce a statutory duty to facilitate the provision of sites for gypsies and travellers.

Housing Benefit Sanctions

Unconfirmed press reports indicate that the Government does not intend to proceed with its proposals to withdraw housing benefit from those responsible for anti social behaviour. There had been speculation that these proposals might be included in the Housing Bill. Shelter strongly believes that the withdrawal of benefits will almost certainly leave tenants in arrears and in many cases would lead to their eviction and ultimately homelessness, without guaranteeing an improvement in their future conduct. We are therefore strongly opposed to the use of housing benefit sanctions, and we hope these proposals will be dropped.

End Notes:

- 1 Private renting: A new settlement; Shelter & the Joseph Rowntree Foundation; (May 2002)
- 2 English House Condition Survey 1996
- 3 Fire risks in HMOs (DETR 1997)
- 4 ibid
- 5 Response to the Tenth Report of the ODPM Select Committee, The Draft Housing Bill (Nov 2003)
- 6 Private renting: a new settlement, Shelter & Joseph Rowntree Foundation, (May 2002)
- 7 The Survey of English Housing 2000/01
- 8 2001 Census, Office for National Statistics
- 9 Shelter has produced a detailed briefing on the Housing (Overcrowding) Bill
- 10 Response to the Tenth Report of the ODPM Select Committee, The Draft Housing Bill (Nov 2003)
- 11 House of Commons, Official Report, 18 November 2003: Column 807W