

Housing and Regeneration Act 2008 Briefing Paper

Context

The Housing and Regeneration Bill¹ was published on 16 November 2007 building upon the Kate Barker Review of Housing Supply² in 2004 and the Homes for the Future Housing Green Paper³ of 2007 which both called for a step change in the scale of delivery to reflect the needs of the economy. The Bill was also informed by the findings of the Cave Review⁴ and consultations on Tenant Empowerment⁵, Delivering Housing and Regeneration⁶ and the Future of the Code for Sustainable Homes⁷.

After considerable debate and numerous amendments the Housing and Regeneration Act⁸ received royal assent on 22 July 2008. The Act aims to support the delivery of an additional 240,000 new homes per year by 2016, meeting the current and future housing needs of the population through the most important shift in the housing policy and delivery landscape in years. The Act creates the Homes and Communities Agency a new investment agency for housing, and the Tenants Services Authority a new regulator of social housing as well as other provisions designed to support the delivery of housing.

The new Act comes at a time of great economic uncertainty and a very transitional time in housing policy. It must therefore be seen in context of some of the parallel processes taking place nationally, regionally and locally. These include:

- New Local Performance Framework and emerging CAA framework
- New LAAs in place, and flexibilities in funding
- Emerging MAAs
- Local government review and the move to a single regional strategy
- Communities in Control White Paper⁹
- Transforming places, changing lives: a framework for regeneration¹⁰ with a focus on targeted economic regeneration
- New delivery vehicles, such as local housing companies and joint ventures
- The credit crunch

Part One: Housing and Regeneration

The Act creates the Homes and Communities Agency (HCA) by bringing together English Partnerships (EP) the investment functions of the Housing Corporation (HC) and some delivery functions of CLG. The Urban Regeneration Agency and Commission for New Towns (currently part of EP) will be abolished. The Chief Executive designate of the HCA, Sir Bob Kerlake, aims to have the agency up and running in December 2008. Its objectives will be to:

- Improve the supply and quality of housing;
- Secure the regeneration or development of land or infrastructure;
- Support the creation, regeneration or development of communities and their continued well-being; and
- Contribute to sustainable development and good design.

Funding

The HCA, with the consent of the Secretary of State, will give financial assistance through grants, loans, guarantees or indemnities, investments or incurring expenditure for regeneration and development. The borrowing level of the HCA must not exceed £2,300m and only the Secretary of State can order an amendment to this; to a maximum of £3,000m; this is the same as the current Housing Corporation limit.

Regional Funding Advice: guidance on preparing advice¹¹ (RFA) published in July 2008, provides further clarity on funding arrangements. The RFA confirms that funding from the regional housing pot going into HCA will include:-

- Housing Corporation investment funding
- English Partnerships funding
- Housing & regeneration funding from CLG - local authority decent homes, housing market renewal pathfinder, growth funds, Thames gateway, but **not** private sector funding. Concerns have been raised about the decision to exclude private sector funding as renewal is such a high priority for the north. There will be a review of the Special Delivery Organisations that the HCA funds. In terms of HMRP funding it is expected that the HCA will make announcements on future funding following further advice from government offices and the Audit Commission

Powers

The HCA has the power to survey, value and acquire land for regeneration or development; and the power to purchase land compulsorily. The HCA inherits the power to build new houses from the former Commission for New Towns. The HCA also has the power to be designated the local planning authority. It will be deemed appropriate for the HCA to become the local planning authority when it is likely to improve the effectiveness of the local planning authority, or when planning for large developments or those that cross local authority boundaries. Where a designation order is given a statement of local involvement must be published by HCA and kept under review. The Act also gives power to the HCA to establish new settlements, for example Eco-towns.

The HCA has powers to provide or enable provision of a range of community benefits including encouragement, or provision of, new businesses and employment services. This could include providing local employment, ensuring safe and attractive environments, crime and ASB reduction measures and services for transport, health, recreation etc. Amendments which have been welcomed include the definition of a community land trust and the responsibility for the HCA to make sure housing developments are well designed to meet the needs of older and disabled people.

The HCA must ensure a relevant provider of social housing is the landlord of any low cost rental housing either provided directly by the HCA or through financial assistance, land disposal or infrastructure provision. The HCA will have the power to reduce, suspend, cancel or require repayment of financial assistance given on condition that social housing is provided. The HCA may also be required to supply information on accommodation that is to be provided directly or indirectly as social housing, the type of social housing and the impact of it being social housing.

Consortium viewpoint

The creation of the HCA is a very positive step forward towards the development of a range of integrated housing and regeneration programmes aimed at tackling deprivation through the provision of physical improvements and infrastructure to support economic development and connect homes to jobs. The HCA will base its regeneration approach on the Government's regeneration framework - Transforming

Places; Changing Lives. This will ensure decisions on regeneration are made as locally as possible, and that access to jobs is a key decider in the location of new social housing. This is critically important to the north whose ambition it is to respond to economic challenges partly through the quality of its housing offer – that is creating the right quantity and quality of homes as well as creating places where people want to live and work.

The northern regions have all called for the HCA to be fully integrated with the emerging regional and local structures, and be seen as part of, not separate, to them. It is hoped that the HCA will establish a clear and joined up relationship with the Regional Assemblies and the Regional Development Agencies (RDA's) as the transition towards the development of a single integrated regional strategy by the RDA's takes place. This should ensure that regional level strategy continues to identify investment priorities for the northern regions. There should also be clear regional accountability e.g. sign off of investment plans and scrutiny arrangements by local leaders. Early signs are that the HCA intends to work regionally and locally in partnership:

“The HCA has committed to working on a regional basis and to making investment decisions on the basis of a series of ‘single conversations’ with local areas on their housing and regeneration ambitions, in the context of an overall investment strategy for the region” (Regional Funding Advice: guidance on preparing advice July 2008).

Sir Bob Kerslake is quoted: *“As a national organisation that works locally the HCA will help deliver the ambitions of local areas within the context of supporting national programmes for growth and renewal. In addition the agency’s flexibility and strong regional structure will ensure it is local governments best delivery partner”*.

But what happens next? Announcements are being made on the appointment of the HCA regional directors and regional road shows are being held around the north in coming weeks. The detail of how the new agency will work in practice will then be outlined and debated. On this more practical level the regions are calling for a more flexible outcomes focussed approach e.g. exploring the principles and realities of recyclable equity stake holdings to facilitate land purchasing or site remediation. The regions want support to forge new and strong partnerships e.g. by co-ordinating the input of key agencies across the public and private sectors as well as across sub-regions, alongside support to develop innovative tools and approaches and the sharing of best practice around e.g. getting the best out of brown field land, widening the range of public sector land available for development, new approaches to securing land use such as options and leasing, and support for new models of delivery such as asset backed vehicles.

Part 2: Regulation of Social Housing

The Act abolishes the Housing Corporation and creates a new independent regulator for social housing – the Tenant Services Authority (TSA) also known as the Office for Tenants and Social Landlords. The Chief Executive designate of the TSA, Peter Marsh, hopes to establish the new regulator as early as December 2008. A ‘national conversation’ with tenants and housing providers on how the regulator’s new powers should be used will be followed by formal consultation in summer 2009. The Northern Housing Consortium will be running a series of northern events on the ‘national conversation’ so members will get one of the first opportunities to influence the new organisations agenda. The new powers will then begin from autumn 2009.

The objectives of the TSA are to:

- Support well-managed and quality social housing;
- Give choice and protection to tenants or potential tenants;

- Ensure tenants have the opportunity to be involved in its management;
- Ensure providers of social housing perform their functions efficiently, effectively, economically, are financially viable and properly managed;
- Encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas;
- Encourage investment in social housing;
- Guard against the misuse of public funds;
- Regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable; and
- Set standards for social landlords.

The Act abolishes the concept of a 'Registered Social Landlord' giving rise to a new term - 'Registered Provider'. The TSA will keep a register of providers under two categories – non-profit making and profit making. It is generally expected that social housing landlords will be subject to more stringent regulation and will not be permitted to adopt a profit making status. An amendment to the original Bill allows registered providers to operate outside England paving the way for expansion in other parts of the UK or abroad. In another welcome amendment to the original Bill, secondary legislation will add ALMO's and local authorities to the remit of the TSA from April 2010 (a role now carried out by CLG).

Powers

The TSA aims to give more choice and protection to tenants and a stronger voice over how their homes are managed. It is expected that this will be implemented through day to day powers to set core standards. These standards will be supplemented by a code of practice, accreditation schemes for managers, monitoring of performance and information gathering. The TSA will have to consult lenders and other bodies before setting new standards so it is likely to take some time before we know what these new codes of practice will require of landlords.

The TSA will also have the power to control constitutional changes e.g. mergers and restructures, and to carry out inspections (although this power will be implemented by the Audit Commission).

The TSA will inherit new intervention powers e.g. penalties, compensations, enforcement notices, and a new power to put management functions out to tender and to direct amalgamations as well as transfers of engagements. In an amendment to the original Bill these powers will be reserved for serious cases of mismanagement. Similarly the power to enforce landlords to pay compensation to tenants for bad service is less extensive than in the original Bill.

The schedule 1 regime (part of the Housing Act 1996) which controlled payments and benefits to staff and board members is not a feature of the new Act. Instead a code of practice is to be developed although details have not yet been published.

Consortium Viewpoint

The Consortium welcomed Peter Marsh's first speech as Chief Executive of the TSA which sent out a very positive and clear message that tenants, and tenant involvement, will be at the heart of the new regulatory regime. It was entirely appropriate that this speech was made at the TPAS annual conference on 1st August to an audience of leading tenants and staff involved in tenant involvement. The emphasis on 'ensuring the continued viability of a thriving housing sector' is also welcomed. The early signs are that the new regulator will ask tough questions. In the same speech Peter Marsh said that the regulator should act as a 'thought leader' on housing issues, and said that the agency should be free to 'ask questions that the

government finds difficult to ask'. But the Consortium does agree with those calling for the new regulator to act in the role of 'referee rather than as a provider of rescue systems' to require the sector to become more proactive in improving performance and delivering excellent service to tenants. Peter Marsh is quoted:

'There has been a fear about what the regulator might do. I intend to make sure that fear is well-founded in due course.' 'I'm not a fan of light-touch approaches. What I am a fan of is proportionate approaches. I will be telling [Sir] Bob Kerlake two things about providers. I will be telling him whether they are capable in terms of financial strength. And, fundamentally, I will also be making judgments about whether service delivery is good enough.'

It is noteworthy that Peter Marsh links financial viability with the quality of service delivery indicating that the TSA, through regulation and assessment, will have a role to play in assisting the HCA with investment decisions.

The Consortium supports the move to include ALMOs and local authority providers, thus providing one regulator and one system of regulation for the sector. This was one of Professor Martin Cave's key recommendations and if "every tenant matters" the type of landlord organisation should not be a factor. With that in mind, we will also watch developments as to how "profit-making registered providers" (private landlords/ private developers?) are to be included in the new regulatory framework.

Part 3: Other Provisions in the Act

Part 3 of the Act sets out wide ranging provisions, some of the most significant are briefly outlined below.

Self financing local authorities

The Act will allow local authorities to opt out of the Housing Revenue Account (HRA) subsidy arrangements where agreement is reached with CLG. This contracting out agreement will allow local authorities to invest in new homes and keep the proceeds from rents, thereby enabling longer term planning of housing finances and a greater incentive to improve performance. The implications of opting out are to be fully explored through six pilot authorities (Sheffield and Darlington in the north). A government review could then see the subsidy system radically shaken up. The Act also allows Local Authorities to create Local Housing Companies (LHCs) as special purpose vehicles to provide housing, and enabling the accounting of these to fall outside of the HRA. The Northern Housing Consortium welcomes the development of LHCs. We are aware of a number of members who are exploring this model of delivery and would be keen to hear from members as they address issues around the role, remit, size and capacity of the LHC e.g. is it just housing or part of a wider economic regeneration delivery vehicle.

Sustainability Certificates

The Act makes rating against the Code for Sustainable Homes mandatory for new homes and introduces the requirement for sellers of new build residential property to supply the purchaser with a sustainability certificate before the sale is agreed. The certificate relates to the sustainability of materials used in the construction of the property, services, fittings and equipment provided in the property and other aspects of the design and construction of the property. The assessment of the sustainability of a residential property is to be carried out by an authorised assessor.

The Act highlights the requirement of a **tenant ballot** prior to stock transfer. A local authority is required to assist tenants by providing information and arranging the ballot and there is now an extension of regulations to make local authorities co-

operate with tenant management organisations requesting transfer to a registered provider.

The Act gives social landlords power to create a new type of tenancy – a **Family Intervention Tenancy** to families who have been, or could be, subject to a possession order on the grounds of serious anti-social behavior. Entry to this type of tenancy is voluntary and the tenancy can be made secure, giving landlords greater leverage to tackle ASB without resulting in homeless application.

The Act abolishes the legal technicality whereby tenants who breach the terms of a suspended possession order become **'tolerated trespassers'** and creates a new 'replacement tenancy' for existing tolerated trespassers. In future possession orders, the tenancy will continue until a warrant for possession is executed.

The Act provides for amendments to **service charges** legislation requiring landlords to give greater information to tenants and gives more powers to the District Valuer in **Right to Buy** applications. Tenants with a possession order against them can now be prevented from acquiring the Right to Buy.

The Act makes amendments to improve the rights of **Gypsy and Traveller** residents of local authority sites to the same standards of those on private sites, and occupants of other residential caravan sites. This will result in the need for a court judgement to terminate pitch agreements and the right of family members living with the tenant to succeed the tenancy on their death. The Act also gives responsibility to the local authority to make certain repairs and maintain common areas on sites. Changes will also be implemented to improve the way that housing services are provided, including creating a level playing field for members of the armed forces applying for local authority housing under the homelessness route and having a local connection.

Conclusion

The Housing & Regeneration Act sets out the new rules of the housing landscape but as we have outlined throughout this paper this is a very transitional time and the detail of how the new agencies will be set up, how they will work in practice with regions and what impact they will have is still very much uncertain. There is an opportunity of course to help shape these arrangements and input into the debate.

Next steps

The NHC is running a series of **northern policy workshops** on the Housing & Regeneration Act on 21 October 2008 (Community Gateway, Preston), 22 October 2008 (Wakefield and District Housing, Castleford) and 23 October 2008 (Gentoo, Sunderland).

The NHC will also be running a series of **northern consultation events** to tie in with the 'national conversation' on the TSA. These events will provide members with one of the first opportunities to influence the agenda of the new organisation.

Further details of the above events will be available soon.

The 5th **Northern Housing Summit** at York Racecourse on 18-19 November 2008 will seek to make sense of all these developments and to give delegates a clear understanding of how market challenges will affect their organisation, whilst providing new ideas on how to take advantage of the opportunities available. Key note speakers include Peter Marsh, Chief Executive of the TSA.

To view the Northern Housing Summit flyer click on the link:

http://www.northern-consortium.org.uk/assets/eventspdf/summit_e-flyer.html

To book a delegate place visit our website via the link below:

<http://www.northern-consortium.org.uk/Page/Events/NHS2008.aspx>

Briefing prepared by:

Sarah Taylor, Policy & Practice Development Manager

Sarah.taylor@northern-consortium.org.uk

0191 5661029

Anna Milner, Research Manager

Anna.milner@northern-consortium.org.uk

0191 5661013

August 2008

Links

¹ <http://www.communities.gov.uk/housing/strategiesandreviews/housingandregenerationbill/>

² http://www.hm-treasury.gov.uk/consultations_and_legislation/barker/consult_barker_index.cfm

³ <http://www.communities.gov.uk/publications/housing/homesforfuture>

⁴ <http://www.communities.gov.uk/publications/housing/everytenantmatters>

⁵ <http://www.communities.gov.uk/publications/housing/tenantempowerment>

⁶ <http://www.communities.gov.uk/publications/housing/deliveringhousingregeneration>

⁷ <http://www.communities.gov.uk/publications/planningandbuilding/sustainablehomes>

⁸ http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080017_en.pdf

⁹ <http://www.communities.gov.uk/communities/communityempowerment/communitiesincontrol/>

¹⁰ <http://www.communities.gov.uk/publications/citiesandregions/transformingplaces>

¹¹ http://www.hm-treasury.gov.uk/consultations_and_legislation/devolving_decision_making/regional_funding_advice.cfm