

# DCH Briefing


## Housing and Regeneration Bill

### Second Reading 27 Nov 2007




Tenants, trade unions, councillors and MPs say:

# 'FOURTH OPTION' for COUNCIL HOUSING



1. Enable local authorities to improve all existing council homes and estates;
2. Allow local authorities to start a new council house building programme;
3. Ensure that local authorities have sufficient revenue to maintain all council homes in future years;
4. Detailed proposals and a clearly defined timetable for implementation;
5. An immediate moratorium on any further transfers, PFI or ALMOs, demolition schemes or sale of council land and properties, until the new options have been formulated, to give tenants real choice.



# Defend Council Housing



# Introduction by Austin Mitchell, MP

The new Housing & Regeneration Bill includes a means tested eligibility clause for 'low cost rented housing' and re-introduces something akin to the discredited 'Tenants Choice' ballots brought in by the Tories to promote their Housing Action Trusts (HATs) in the late 1980s.

Instead of a halt to robbing money out of council Housing Revenue Accounts Ministers are proposing to break up the national HRA, without adequate funding either for those who leave or those who stay behind. The damaging battle between government and councils and councils and tenants over privatising homes will go on – and get messier.

Discrimination against councils continues. Profit making landlords (as well as RSLs) can apply for Social Housing Grant. But councils cannot unless they set up arms length companies. Why?

The government's own Impact Assessment predicts that councils will only be able to build 2,500 new homes a year (as against 300). This hardly reflects the impact Gordon Brown intended when he told my union's conference 'I cannot promise to implement the fourth option on council housing today... but what I will tell you is that councils will be allowed to build homes again.' (Guardian Unlimited, 18 June).

Councils are being cajoled and bribed to put public land into public/private partnerships (Local Housing Companies) that will build private – not council – housing. A proportion may have the now obligatory 'affordable' label. That doesn't mean people can afford them!

It falls a long way short of the warm words for council housing we heard over the summer from Ministers, would-be Deputy Leaders of the Labour Party and the Prime Minister himself.

We desperately need more homes but quality housing – not rabbit hutches; secure homes protected against eviction; and affordable.

The private sector can't deliver. They never have before – why should they now?



So government must invest in first class council housing.

The obsession with home ownership is not the solution. Only 15% of those accessing public subsidies were from the priority groups of council or RSL tenants. Indeed 'Housing associations have handed back tens of millions of pounds to the government's housing agency after its flagship scheme to help first-time buyers proved unpopular and expensive' (Inside Housing 14 September 2007).

Housing professionals agree that paying rent and mortgage payments as well as repairs is not an economic option.

People should be allowed to buy a home but government must direct public subsidies to invest in a strong public (council) housing sector for those who don't want to or can't afford to buy. That's the only realistic solution for those in temporary accommodation, facing chronic overcrowding and for young adults trying to move out from under their parents' feet.

Our long running campaign for the 'Fourth Option' demonstrates the strong support for investment in first class council housing. Three Labour conferences have backed the demand and Ministers only avoided a fourth consecutive defeat in September by scrapping votes at the conference!

Against us are those who clearly want to get rid of council housing. The Smith Institute proposed means testing and time-limited tenancies. This is nonsense.

Of course council housing now includes more older people, single parents, people with disabilities or mental health problems because scarcity forced councils to narrow their allocations policies. Most new tenancies are allocated to only those in priority need. Longstanding tenants who used to work are now pensioners.

As Professor John Hills showed, in 1979 '20% of the richest tenth lived in social housing' (Ends and Means, LSE, Feb 2007). The new Scottish Housing Green Paper points out 'In 1981, the profile of social landlords' tenants matched quite

closely the profile of households in society generally in terms of their size, composition and social and economic characteristics'.

There's strong demand for council housing today. 'All over the country, ROOF found the most desirable homes are social and rented. And the people queuing up to be council tenants are not all poverty stricken and with multiple other problems.' (Roof magazine, Shelter, May/June 2007).

Council housing waiting lists stand at more than 1.6 million households but almost half the applicants are not considered to be in 'priority need'. They are the butchers, bakers, teachers and nurses who want a new first class secure council home with lower rents and an accountable landlord. Only investment in council housing can satisfy this need and, in the process, make the estates the 'mixed communities' they used to be.

Nothing in the bill stops government continuing to siphon money from tenants' rents and capital receipts. There should be. This would enable councils to fund the repairs and improvements needed to existing council homes and estates, respect the choice of tenants across the UK who have opted to remain with the council.

So the 200 authorities who have decided to retain their stock, those with ALMOs and those yet to decide face an uncertain future. That's not on.

Tenants, the trade union movement, councillors and MPs across all parties as well as increasing number of housing professionals and academics support the call for the 'Fourth Option'. This bill is an opportunity for government to meet their expectations. Government must take it.

**Austin Mitchell MP**  
**chair House of Commons Council**  
**Housing group**

● Get tenants and trade unionists to back our amendments to the Bill (see page 8)

● Ask your MP to sign our new early day motion in Parliament (November 22) and support the Bill amendments too



### **EDM 368 Investment in Council Housing**

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"That this House welcomes the Government's new commitment to tackle housing needs; believes that this must include a first-class council housing sector providing secure tenancies, with lower rents and charges and a landlord whom tenants can hold to account as an alternative to ownership and the private housing market and that to achieve this Government must introduce changes to local authority housing finance to enable all local authorities to bring their existing homes up to modern standards, start a new council house building programme and maintain existing and new council housing as first-class housing in years to come; and actively opposes both the stigmatisation of council housing as housing of last resort and proposals to means test or time limit secure tenancies so that local authorities can respect the choice of existing tenants who want to keep the council as their landlord and get their homes and estates improved, house the wide range of people on council housing waiting lists and so return council estates to the mixed communities they were before shortage distorted allocations policies and concentrated deprivation."

# DCH 'Briefing Housing and Regeneration Bill Second Reading 27 Nov 2007

## **Summary of government proposals**

1. The Bill establishes a new quango (the Homes and Communities Agency) to oversee the supply of new housing; and the creation of a new regulator for 'social housing' to be called OFTENANT.
2. Our main initial concerns are proposals to:
  - Introduce means testing to 'low cost rented housing'
  - Discriminate against councils building new homes while offering public money to profit-making companies with little protection for either tenants or taxpayers
  - Transfer key responsibilities from elected Ministers and government departments to an unaccountable regulator
  - Give the regulator powers to determine criteria for allocating accommodation, terms of tenancies and levels of rent
  - Break up the national Housing Revenue Account without long-term guarantees for funding council housing
  - Enable predatory landlords (similar to 'Tenants Choice' under HATs in 1988) to 'persuade' tenants to ballot to transfer their homes and estates

## **Analysis**

### **Means-Testing, Profit and Deregulation**

#### **Key Proposals**

3. The Bill creates the Office for Tenants and Social Landlords (OFTENANT) - a new regulator which will take over the Housing Corporation's regulatory functions for Registered Social Landlords. Councils are specifically excluded from the Bill but over the next two years, an advisory panel is to assess how councils can be included.
4. It provides a new definition of 'low cost' housing.

"68 Low cost rental Accommodation is low cost rental accommodation if-  
(a) it is made available for rent, (b) the rent is below the market rate, and... (c) the accommo-

...dation is made available in accordance with rules for eligibility designed to ensure that it is occupied by people who cannot afford to buy or rent at market rate."

5. OFTENANT will have the right to set, and enforce, standards on:

"(a) the nature of the housing demands to be addressed, (b) the extent to which demand is to be supplied, (c) criteria for allocating accommodation, (d) terms of tenancies, (e) levels of rent (and the rules may, in particular, include provision for minimum or maximum levels of rent or levels of increase or decrease of rent), (f) maintenance, (g) procedures for addressing complaints by tenants against landlords, (h) methods for consulting and informing tenants, (i) methods of enabling tenants to influence or control the management of their accommodation and environment, (j) anti-social behaviour, (k) landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated, and (l) estate management." (section 173)

6. Profit-making companies will be allowed for the first time to register as social landlords under a lighter burden of regulation.

## **Issues**

7. A new definition of 'social housing' is set out in the Bill which is intended to subsume council housing with housing association rented housing under the term 'low cost rental accommodation'. Means-testing according to income is included in this definition. This is exactly what the Smith Institute (Rethinking Social Housing, 2006) and others have been demanding, but goes against the fundamental founding principles of council housing that were based upon local authorities providing first class, well designed and well built housing for all sections of society - not housing of 'last resort' for those who could not afford anything 'better'. Professor John Hills reported that in 1979 "20% of the richest tenth lived in social housing" (page 45, Ends and Means, Feb 2007). This proposal would formalise the tendency in recent years for council estates to concentrate deprivation and add to the further stigmatisation of council housing when tenants - and government supposedly - want to promote council housing as a tenure of

“On average in 2007-08 the notional operating surpluses of HRA dwellings equated to 26% of the notional rental income. The average guideline rent was £3,137. So the average dwelling was producing a notional operating surplus of £816.”  
(‘Housing and Regeneration Bill: Impact Assessment’, page 57)

choice. In addition there are concerns that 'below market rent' (which could be £1 a week below!) should be used as a standard for affordability.

8. Consultation of tenants. On all policy matters including the setting of standards, the regulator is only required to consult "one or more bodies appearing to it to represent the interests of tenants" (eg section 109(6)) There are issues regarding whether any organisation claiming to represent the interests of tenants is made up of actual tenants, is genuinely independent of government and is democratically accountable to tenants and not merely appointed or dominated by professional consultants, facilitators, etc.

9. Tenant Empowerment. The fundamental objectives of the regulator include "to ensure that tenants of social housing have the opportunity to be involved in its management." (section 86(4)) There is an opportunity to also ensure that tenants are enabled to organise independently for the purposes of holding their landlord to account, and improving their housing services, conditions and amenities. This would require funding by the HCA, Tenant or landlords for independent tenant organisation run by tenants at local level.

10. Democracy. The right to set standards (including rent policy) is to be given to an unelected quango. Council tenants already have many rights and standards set by democratic means and these should not be taken over by an unaccountable body.

11. Transfer of management without consent. Council tenants at present have the right that the management of our homes cannot be transferred without consultation and without the express consent of the Secretary of State, (as in setting up ALMOs). The Bill proposes allowing the regulator to forcibly transfer management or even ownership to another organisation; without any obligation for consulting all tenants, for a ballot of tenants or even for consent by the Secretary of State. There is an opportunity to ensure that tenants are fully involved and consulted on proposals, by insisting on a ballot of tenants before any proposal drawn up by the regulator can be carried out. This would give equal rights to tenants of RSLs as to tenants of

councils.

12. The regulator has virtually complete control over the criteria for registration (section 109), unlike the present system where the Housing Corporation can only register a landlord whose main objects are the provision of housing (Housing Act 1996, part 1). RSLs have been lobbying for some time to be freed from the rule whereby at least 51% of their activities have to be providing social housing - but this is hardly good for tenants.

13. Profit-making landlords. Profit-making RSLs will have much less regulation – they will not be required to provide the same levels of information or to comply with the same standards of financial management; the regulator will have no power over their governance arrangements; and they will be exempt from the safety net that if they get into financial trouble homes must be transferred to another registered provider. (sections 123, 124, 134, 135, 157, 162, 174, 187, 231) It is not clear what kind of tenancies profit-making providers will be required to offer - whether tenants will even have the minimum protection provided by an assured tenancy. As the regulator is to set 'terms of tenancies' it could be that this vital protection for tenants is in the hands of a quango rather than the law.

14. It is outrageous that the government is proposing on the one hand to give social housing grant (public money) to profit making companies with so little protection for either tenants or taxpayers; and on the other refusing to give grant to councils.

## **Funding Existing Council Housing**

### **Key Proposals**

15. The bill enables whole authorities to be excluded from the Housing Revenue Account (HRA) subsidy system, making it possible for councils to become self-financing. The bill as drafted would allow the Secretary of State to make an individual agreement with each council. However the Impact Assessment of the bill sets out the basis on which the government intends to use this clause.

“Government provides grants to bodies for the provision of new affordable housing through bidding programmes. These programmes assess schemes for value for money and calculate the need for additional Government subsidy. Changes to the policies for allocating capital subsidy are not addressed here. Government has opened up bidding this year to local authorities who wish to develop through Arms’ Length Management Organisations (ALMOs) and Special Venture Vehicles (SPVs), but not to local authorities who wish to build within the HRA (i.e. not to those properties which would benefit from the policy proposal covered by this impact assessment.)” (‘Housing and Regeneration Bill: Impact Assessment’, page 56)

## Issues

16. The Impact Assessment of the Bill says that "The principle of self-financing is fiscal neutrality with the current HRA subsidy system... It should be noted that, based on the modelling work done by the six authorities, a settlement at this NPV would not be viable for most councils. This settlement would create an opening debt level within those councils higher than could be supported by their income" (page 44).

This is the first time in which the government has acknowledged that the present national HRA subsidy system will in the long-term leave the majority of councils financially unviable. It adds considerable weight to the case for reforming the whole system made by, amongst others, the Audit Commission 'Financing Council Housing' 2005.

17. There is an opportunity to consider the details which ought to be in any opt-out agreement between the secretary of state and local councils. Councils should not be expected to leave the protection of the national HRA and face the consequent exposure to risk, without adequate funding. Using the same assumptions as are used when calculating the valuation for transfer associations would be equitable and fair and would safeguard a long-term future for council housing.

18. Allowing councils to opt-out of the Housing Revenue Account, whether for new properties or for the whole of their stock is problematic in comparison with reforming the whole HRA. The government is aware that allowing some councils to leave the HRA is likely to have an adverse effect on those left in; the making of ad-hoc agreements over a period of time will make it more difficult to ensure fair treatment.

19. It is positive that the government has recognised that councils need to be able to retain 100% of rental income in order for new build to be financially viable (see next section). This principle needs to be applied to existing homes to enable councils to manage and maintain them to sustainable levels. Allowances for management and maintenance need to be funded at 100% of need, as defined by the Building Research Establishment (‘Estimation of the need to

spend on maintenance and management in the Local Authority housing stock’, June 2003)

## **Building New Council Housing**

### Key Proposals

20. The same part of the bill enables particular properties to be excluded from the Housing Revenue Account (HRA) subsidy system. This will exempt councils from including new-build homes in the subsidy system and therefore allow them to keep all the rents.

21. However, although legally they are now allowed to, the government is explicitly refusing to make Social Housing Grant available to councils unless they set up ALMOs or Special Purpose Vehicles. It is estimated that councils will be able to build only 2,500 homes a year (compared to 300 at present) with the change to the subsidy system but without access to Social Housing Grant. (Impact Assessment, page 58)

### Issues

22. Councils wanting to build new homes will be given a false choice. Either they will have to set up a separate company (ALMOs or special purpose vehicles) to build the homes - in which case they will be entitled to grant. Or they can build real council housing - secure, affordable, public housing directly managed by an accountable local authority, with secure tenancies - but must bear all the cost themselves. This is pure discrimination. There is no financial reason for it as the borrowing of ALMOs and SPVs is public 'on-balance-sheet' borrowing. It is a return to the dogmatic insistence on separation of functions which has been shown to mean nothing but a loss of accountability.

## **Homes and Communities Agency**

### Key Proposals

22. The Bill establishes a new quango, the Homes and Communities Agency (HCA). The HCA will merge the grant-giving function of the Housing Corporation with English Partnerships.

23. It is likely that decisions over the funding of

“The fact that local authorities are free to determine themselves tenant opinion (including how, when and if any ballot is conducted)... has brought the system into disrepute.” (‘Housing and Regeneration Bill: Impact Assessment’, page 134)

Decent Homes for councils is to be transferred from the Department of Communities and Local Government to the Homes and Communities Agency.

### Issues

24. Although it is not explicit in the Bill, the government has said that the Homes and Communities Agency will take over a lot of the decision-making on councils' Decent Homes programmes ([www.communities.gov.uk/news/corporate/pioneeringagency](http://www.communities.gov.uk/news/corporate/pioneeringagency)) This is likely to mean decisions on the allocation of money for ALMOs, PFI credits and gap funding for stock transfer. The government's Impact Assessment for the bill talks explicitly about the HCA having a role in the 'regeneration' and 'upgrading' of existing housing (p33). Moving decisions of this kind from the government to a quango means a loss of accountability.

## **Fair and Balanced Debate**

### Key Proposals

25. The bill gives for the first time a new statutory right to a ballot for stock transfer but this is accompanied by a draconian restriction on tenants' right to protest at an undemocratic ballot.

26. The bill includes the right for tenant groups to force their council landlord to carry out a ballot on transfer.

### Issues

27. The bill makes it mandatory to hold a ballot on any stock transfer proposal and states that the Secretary of State must have regard to the ballot; but does not specify in what sense the outcome should influence his/her decision - for example, what the proportion of tenants voting Yes must be to result in approval for the transfer; what effect the turnout for the ballot should have on the decision.

28. Tenants' right to protest at an undemocratic ballot is to be reduced. Tenants will only have 28 days to put in objections to the Secretary of State, and any objections after that period will be disregarded. Since tenants do not have the resources which councils and landlords have this

will place a well-nigh impossible burden on tenants which will effectively stifle democratic protest and opposition, and will encourage councils and landlords to be even less democratic than they are at present.

29. There is an opportunity to ensure that the principles of a fair and balanced debate as suggested by the House of Commons Council Housing Group are adhered to in stock transfer consultations. This would actually have a positive effect on the disgraced reputation of the ballot process.

30. This legislation will make tenants vulnerable to predatory landlords looking to cherry-pick estates in areas where land carries a high value. The bill reintroduces the 'Tenants Choice' agenda around Housing Action Trusts (HATs) in 1988. Tenants will be offered improvements to win support for building private housing on their community facilities and green spaces. What safeguards need to be in place to ensure that tenants have genuinely initiated a proposal for a change in landlord, and that this was not first proposed to the tenant group by a prospective new landlord or other interested party (eg consultants)? What safeguards need to be in place to ensure that tenant groups making these requests are democratically accountable to and representative of all tenants in the area to be affected?

The full text of the bill, and government's explanatory notes, can be found at:  
<http://services.parliament.uk/bills/2007-08/housingandregeneration.html>

The Impact Assessment for the Bill can be found at:  
<http://www.communities.gov.uk/publications/housing/handrbill>

Defend Council Housing 23 November 2007

# DCH 'Briefing: Housing and Regeneration Bill Second Reading 27 Nov 2007



## Suggested amendments

### Means-testing, profit and deregulation

Prevent stigmatisation and maintain universal access by removing the means test eligibility element to 'low cost rented housing'.

Delete clauses which exempt profit-making companies from the various regulatory protections for tenants and taxpayers.

Keep key political decisions such as allocating accommodation, terms of tenancies and levels of rent with elected politicians.

Require that tenants receive financial support to organise independently for the purposes of holding their landlord to account, and improving their housing services, conditions and amenities (section 86(4)).

### Funding Existing Council Housing

Require that local authorities retain all rental income and capital receipts from council housing to be specifically used to manage, maintain, improve existing or build new council homes. Any surplus to be pooled centrally to be redistributed to authorities bidding for extra funding.

Require the Secretary of State to fund local authority housing Management & Maintenance Allowances at 100% of need (as defined by the Building Research Establishment, Estimation of the need to spend on maintenance and management in the Local Authority housing stock, June 2003).

Require the Treasury to take over historic debt where tenants have expressed a clear choice to remain with the council to provide a 'level playing field' with debt write-off on transfer to other landlords.

Require that councils considering opting out of the national HRA are able to demonstrate that their HRA balance sheet is positive over the 30 years business plan.

### Building New Council Housing

Prevent discrimination against local authorities by ensuring that receipt of Social Housing Grant is not conditional on setting up arms-length companies.

Ensure that all new homes – including those built by ALMOs and SPVs – give tenants 'secure' tenancies.

### Homes & Communities Agency

Require that full consultation takes place with tenants when allocating Decent Homes funding and that tenants' wishes as expressed in prior ballots/consultations take precedence.

### Fair and balanced debate

Require that the principles of a fair and balanced debate as defined by the House of Commons Council Housing Group are adhered to when landlords consult their tenants. This should include resources to ensure that both sides of the argument are clearly put and a formal timescale for the consultation including the start and end date of the ballot.

Provide safeguards to prevent predatory landlords from exploiting the proposed new right of tenants to demand a ballot to ensure that this right is only exercised where there is a genuine demand from a majority of tenants and not instigated by outside parties..

## The Money's There...

Here are just some of the ways government can find money to fund improvements to existing council housing and build new council homes:

- "Britain's buy-to-let investors and second-home owners were handed a potential £4 billion tax boost in last week's prebudget report" (Times 14/10/07).
- Stock transfer has seen council homes almost given away to new landlords. However the income received still adds up and has produced £5.86 billion 'Total Transfer Price' which should be reinvested (UK Housing Review 2005/2006).
- "The Treasury has benefited from billions of pounds a year in additional revenue fol-

lowing the abolition of mortgage tax relief and other policy changes relating to housing: the abolition of mortgage interest tax relief (MITR)... has boosted tax receipts by £30 billion, plus a further £3 billion each year; receipts from the Right-to-Buy sales of council housing that have yielded around £45 billion - only a quarter has been recycled into improving public housing; ... Stamp Duty on property sales... which last year brought in £6.5 billion" (Joseph Rowntree Foundation 01/12/05).

- Between 1994 and 2003 council tenants paid £24 billion more in our rent than councils were allowed to spend on the management,

maintenance and major repair of our homes (PQ Answer 0435 0436 06/07).

- Council rents are set to rise via 'rent convergence' but "Tenants face paying an 'extra tax' because the council housing finance regime is likely to go billions of pounds into surplus... rental increases will dramatically outstrip the amount of money councils will need to manage and maintain their homes" (Inside Housing, 16/11/07).
- The savings on the extra housing benefit bill caused both by transferring homes into the RSL sector and needlessly raising council

rents to the same level to make transfer more attractive.

- "Public spending on bricks and mortar subsidy for council housing [fell] from £5.6 billion in 1980/81 to just £0.2 billion in 2002/03... Over the same period of time total expenditure on housing benefit rose from £2.7 billion in 1980/81 to £8.6 billion in 2002/03" (UK Review 2005/2006).
- £3.6 billion is on offer to pay for housing PFI.

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4. Detailed proposals and a clearly defined timetable for implementation;
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Logos: COMMUNICATION WORKERS UNION, GMB, PCS, RMT, UNISON, unite