



HOUSE OF LORDS

Library Note

Localism Bill (HL Bill 71 of 2010–12)

This Library Note provides information on the Localism Bill which is due for second reading in the House of Lords on 7 June 2011. The Note is intended to be read in conjunction with the House of Commons Library Research Papers *Localism Bill: Local Government and Community Empowerment* (11 January 2011, [RP 11/02](#)), *Localism Bill: Planning and Housing* (11 January 2011, [RP 11/03](#)) and *Localism Bill: Committee Stage Report* (12 April 2011, [RP 11/32](#)), which provide background information and summarise proceedings in the Commons at second reading and committee stage. This Note summarises proceedings at the Bill's final stages in the Commons.

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27 May 2011
LLN 2011/019

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1. Introduction

The Localism Bill was introduced in the House of Commons on 13 December 2010. It received its second reading on 17 January 2011. Opening the debate, Eric Pickles, the Secretary of State for Communities and Local Government, summarised the Bill's purpose:

The Bill will reverse the centralist creep of decades and replace it with local control. It is a triumph for democracy over bureaucracy. It will fundamentally shake up the balance of power in this country, revitalising local democracy and putting power back where it belongs, in the hands of the people. For years, Ministers sat in their Departments hoarding power like misers. Occasionally, grudgingly and with deep resentment, they might have loosened their grip on the reins of power, only to tighten it almost immediately. Uniquely, they managed to fulfil the wildest dreams of both Sir Humphrey Appleby and Mr Joseph Stalin. That strangled the life out of local government, so councils can barely get themselves a cup of tea without asking permission. It forced a central blueprint on everything from local public services to housing and planning, regardless of what local people want or need. It left councillors hamstrung, front-line public servants frustrated and residents out in the cold.

(HC *Hansard*, 17 January 2011, [col 558](#))

The Bill contains provisions for local government and community empowerment, planning, housing and the governance of London. The Bill is divided into two volumes. Volume I contains the clauses. Volume II contains the Schedules to the Bill. As introduced to the House of Commons, the Bill contained 184 pages of clauses and 247 pages of Schedules. During two days of report stage, a number of amendments were debated in the House of Commons. There were several divisions and a number of New Clauses and amendments were agreed to and added to the Bill (see Box 1). The Bill was then passed at third reading. This Note provides details of the debates on the Bill during report and third reading in the House of Commons. These are described in the sections below. The Bill as introduced to the House of Lords now amounts to 202 pages of clauses and 256 pages of Schedules.

The House of Commons Library has produced three papers covering the background to the Bill and its passage through the Commons up to and including committee stage: *Localism Bill: Local Government and Community Empowerment* (11 January 2011, [RP 11/02](#)), *Localism Bill: Planning and Housing* (11 January 2011, [RP 11/03](#)) and *Localism Bill: Committee Stage Report* (12 April 2011, [RP 11/32](#)).

The full transcript of the debates that took place on the first day of report stage on 17 May 2011 and on the second day of report stage (and third reading) on 18 May 2011 can be found on the [Hansard](#) pages of the Parliament website. The Bill as introduced in the Lords and accompanying Explanatory Notes may be viewed online: [HL Bill 71 of 2010–12](#) and [HL Bill 71—EN](#).

Box 1: New Clauses and Amendments agreed at report stage in the Commons

New Clauses: 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22

New Schedule: 2

Amendments: 44–98, 99–131, 132–143, 144–150, 151–184, 185–190, 191–204, 205–212, 213–220, 221–298

2. Report Stage Day 1: Local Government, Community Empowerment and Planning

Greg Clark, Minister of State at the Department for Communities and Local Government (DLCG), opened proceedings by moving a revised programme motion for the Bill. In so doing he asked the House to “recognise that the large number of Government amendments is testimony to some of my commitments in Committee to reflect seriously on the points that were made and to come back to the House in a constructive way” (HC *Hansard*, 17 May 2011, [col 196](#)). Barbara Keeley, speaking for the Opposition, said that the time available for the report stage was inadequate as “the Government have tabled 234 new clauses and amendments, which is more than the number of clauses in the original Bill” (*ibid*, [col 197](#)).

2.1 General Power of Competence

Following debate at committee stage, the Government brought forward New Clause 12 to meet concerns about the Bill’s provisions to provide local authorities with a general power of competence. This power would allow local authorities to do anything that an individual generally may do, other than that which is specifically prohibited.

At committee there was unease about the powers invested in the Secretary of State under clause 5. Introducing the New Clause, Andrew Stunell, Parliamentary Under-Secretary of State at the DLCG, told the House of Commons that there was “a broad consensus about the general power of competence, with the concerns that were expressed being about the scope of the powers and the role of the Secretary of State” (*ibid*, [col 205](#)). He explained how the Government sought to address those concerns:

New Clause 12 and its related amendments impose conditions on the use of the delegated powers in clause 5(1) in relation to the general power of competence. Clause 5(1) sets out a power for the Secretary of State to remove or to change statutory provisions that prevent or restrict the use of the general power of competence. We have termed this the barrier-buster power.

Amendment 64 is the equivalent provision for the general power of competence for fire and rescue authorities in England and Wales. The amendment imposes conditions on the use of the delegated powers in new section 5C(1) of the Fire and Rescue Services Act 2004, which is inserted by clause 8. New section 5C(1) sets out a power for the appropriate national authority—Welsh Ministers for the devolved matters relating to Wales, but otherwise the Secretary of State—to remove or to change statutory provisions that prevent or restrict the use of the general power for fire and rescue authorities.

Concerns were expressed about the scope of the delegated power at clause 5(1)—the barrier buster—and the equivalent powers in relation to fire and rescue authorities. The Government reflected on those concerns and decided to introduce specific preconditions as to the use of the barrier-buster power and the limitations on its scope. These include a proportionality test and a requirement to achieve a fair balance between the public interest and the interests of any person adversely affected by an order. In addition to the current requirements that the Secretary of State has to satisfy—in particular, that he must think that a provision prevents or restricts the use of the general power and must consult on his proposals—subsection (1) now provides that he must also consider the conditions set out in subsection (2), in relation to the general power, and in section 5C(1) in relation to the fire provision to have been satisfied in relation to the proposals.

The new conditions that the clause introduces ensure that the use of the provision is proportionate to the policy objective intended, that there is a fair balance between the public interest and the interests of any person adversely affected, that there is no removal of any necessary protection, that no person will be prevented from continuing to exercise any right or freedom that they might reasonably expect to exercise, and that any provision is not of constitutional significance.

(*ibid*, [cols 206–7](#))

The Opposition remained unconvinced by the New Clause and spoke to amendments 36 and 37. Barbara Keeley outlined the Opposition's stance:

As I said on second reading, the Secretary of State's power under clause 5(1) and (2) is chilling, because it would allow him to 'amend, repeal, revoke or disapply' any statutory provision. The Government can keep calling that barrier-busting, but it will still end up being the same swingeing power. The difficulty for those who are opposed to it is that it would leave local councils and the people who use their services at the mercy of the ideology of the current Government and Secretary of State. I know from the debates that we had in Committee that some of the Ministers were opposed to giving Secretaries of State such a level of power in previous local government Bills, and spoke against it. Perhaps they would like to think about why they have had such a change of heart.

(*ibid*, [col 211](#))

She went on to criticise the Government's use of language in describing local government duties as 'burdens' and said that the Government remained too vague on what would remain a protected duty of local authorities. She noted that so far the Government had only hinted that libraries, child protection and allotments would be protected. She said that the Opposition's amendments would extend that protection of duties:

The list of legislation that we propose in amendment 37 for protection from those new powers may not be perfect—I am sure people can find fault with it—but it is vital to get a clear steer from Ministers that they do not intend to continue to see important council duties as burdens. Does the Secretary of State agree that the Homelessness Act 2002, which is on our proposed list, creates a vital duty for councils to have a strategy for tackling homelessness, or does he agree with Hammersmith and Fulham council, which has asked for that duty to be scrapped? Hammersmith and Fulham also wants to scrap the rough sleeper strategy, and wants not to assess the sufficiency of locally available child care. It wants no requirements on its youth service. Do Ministers believe that Hammersmith and Fulham should be able to shed those duties? That is the key question.

(*ibid*, [col 213](#))

The Minister, Andrew Stunell, responded to these amendments, saying the Opposition had misunderstood the power:

Amendment 36 would amend the definition of a statutory provision by excluding from that definition a long list of statutes, which is set out in amendment 37. That appears to have been prompted by various strands of work that are being undertaken to gather information about local authority duties. This appears to be an attempt to make a point about front-line duties and the desirability of many

things that local authorities have to do. Indeed, that is what the hon. Member for Worsley and Eccles South (Barbara Keeley) set out on her website as being her intention. She has fairly given me notice that she “will be pressing ministers in the Commons debate... to be clear about which other vital council services can be protected.” I am happy to tell the hon. Lady that the general power is not designed as a means to do away with duties that Parliament has imposed on local authorities. The general power does not oblige local authorities to act in a particular way; it is not the same thing as a duty imposed by legislation. It will give local authorities real freedom to innovate and act in the interests of their communities. The Opposition seem to have developed a misunderstanding about the scope of clause 5(1). It provides the Secretary of State with powers to remove or change statutory provisions that prevent or restrict the use of the general power. That restriction or limitation is one that bites on the general power by virtue of clause 2. The provision is about removing barriers to the legal capacity of authorities to act innovatively and in the best interests of their communities. It is not aimed at removing duties, nor is it, nor could it be, a general-purpose tool to remove any legislation that places a burden on local authorities.

(*ibid*, [cols 206–8](#))

New Clause 12 was agreed to without division. The House divided on amendment 37, which was defeated by 303 votes to 225.

2.2 Standards and Conduct

The Bill contains provisions to abolish the standards regime overseen by the Standards Board for England, including the Model Code of Conduct. This would devolve responsibility for conduct at the local level. Following debate at committee stage, the Government returned with amendments regarding transparency in local authority codes of conduct:

When the Committee discussed the standards of behaviour required of councillors, we discussed whether a local authority should have to publicise that it has a code of conduct. My hon. Friend the Member for Bradford East (Mr Ward) made a powerful speech on the difference between may and must. I think that was one of the Committee’s high spots. Although we consider it right that a local authority can choose whether to adopt a code of conduct for its members, it must be under a duty to disclose whether it has done so and whether it has revised or abolished its code. That duty will ensure that local people are made aware when their local authority adopts, changes or withdraws its code, while leaving it for authorities to decide how best to publicise and deal with these matters.

(*ibid*, [cols 208–9](#))

Andrew Percy (Conservative) supported the changes (*ibid*, [col 227](#)) though Nick Raynsford (Labour) contended that there were still weaknesses in the Government’s proposals (*ibid*, [cols 226–7](#)). He argued that “at a time when we are all concerned about standards in public life, whether at national or local government level, it is extraordinary that they should produce a half-baked proposal which has not been thought through, which allows loopholes and anomalies to exist, and which—most seriously—undermines the substantial progress that has been made in recent years in improving those standards” (*ibid*, [col 227](#)). Earlier he put it to the Minister that “abolishing the requirement for a code of conduct in every local authority in the country is a serious, retrograde step, of which the Government should be profoundly ashamed” (*ibid*, [col 209](#)). Mr Stunell in reply said that “the important point is that the decision a local authority takes should be

transparent, so that the local electorate are aware of it and the local authority are accountable to them. We have accepted the point that my hon. Friend the Member for Bradford East put to the Committee, and Government amendments 130 and 131 deal with that” (*ibid*, [col 209](#)).

The amendments were agreed to without division.

2.3 Pay Transparency

The Labour frontbench tabled New Clauses 27 and 28 to the Government’s plans on transparency of pay in local authorities. The Bill contains provisions requiring authorities to approve and publish an annual senior pay policy statement. Barbara Keeley explained the Opposition’s motives:

Our proposals aim to introduce pay transparency much more fully than the Government plan. We want to shine a light on top pay and low pay, and I welcome the Minister’s sympathy for that. However, the Opposition also want to develop the recommendations in the Hutton review on pay. Ministers said that they would reflect on that review, and I hope they take that seriously. All hon. Members agree that there has been some excessive growth in senior roles in the public sector, but there are also myths about public sector pay. The Local Government Association estimates that of 1.7 million employees in mainstream local government jobs, 60 percent earn less than £18,000 a year. According to the LGA, more than 400,000 council workers earn less than the living wage, including more than 250,000 who earn less than £6.50 an hour.

(*ibid*, [col 214](#))

She added that the Opposition supported ideas contained in the Hutton report which advocated standards of pay for low-paid workers of local government contractors. She said implementation of the proposals “would help to ensure that executive pay does not spiral up, that low pay is challenged, and that people can be confident that their local council is spending their money fairly and wisely” (*ibid*, [col 215](#)). Heidi Alexander (Labour) supported the amendments (*ibid*, [cols 224–5](#)), whilst Andrew Percy (Conservative) said he was opposed.

Responding for the Government, Andrew Stunell was sympathetic, “particularly the potential for linking lower pay with senior pay, and we will consider the best way to take that forward”. He added that “if necessary, we will return to it in the other place” but struck a note of caution:

... we will remain mindful of the level of burden placed on authorities and ensure that pay decisions remain ones for the appropriate local employer to take and are not dictated by us... Councils, the voluntary sector and businesses, especially small firms, have called on the Government to remove unnecessary burdens and break down barriers in local authority contracting, not increase them. That does not prevent a local authority from developing a local policy to ensure that bodies with which it contracts are open about their rates of pay as a matter of contract. That should remain an issue for local decision making, not central determination.

(*ibid*, [cols 210–11](#))

2.4 Fire and Rescue Authorities

The Government brought forward amendments to its plans to provide Fire and Rescue Authorities with a power of general competence. Andrew Stunell explained their purpose:

We debated fire and rescue authorities in Committee, and our amendments 92 and 93 are a response to the concerns that the Opposition raised and feedback that we have received from industry partners. They relate to authorities' powers to charge for attending persistently malfunctioning or wrongly installed automatic fire alarms. It is not in dispute that there should be such a provision for non-domestic premises, but the point was made that domestic premises would also be caught by that power, and probably wrongly so. The amendments simply remove that option from fire and rescue authorities.

(*ibid*, [cols 210–11](#))

The amendments were agreed to without division.

2.5 EU Fines

The Bill contains provisions to introduce a power to recover from local and public authorities all, or part of, a European Union infraction fine for non compliance with EU law. In their contributions to the debate Graham Jones and Kelvin Hopkins (both Labour) referred to a Local Government Association briefing (*ibid*, [cols 218–19](#)). The LGA had described the clauses as “unfair, unworkable, dangerous and unconstitutional” (LGA, [‘Localism Bill—Commons Report Stage—LG Association Briefing’](#), 17 May 2011).

For the Government Andrew Stunell contended that “we will ensure that any process to pass on an EU fine is fair, reasonable and proportionate, and we will consult on that”. He said that the Government “will pass on a fine only if an authority has clearly caused or contributed to causing it, and has the power to remedy the situation and can afford to pay. That is set out in New Clauses 13 and 14 and in Government amendments 132 to 143. The measure is not about Ministers reclaiming every penny; it is about giving a strong encouragement not to incur fines in the first place. Local authorities must not be able to assume that if they make a mistake and are in the wrong, the UK taxpayer will pay their bill for them” (HC *Hansard*, 17 May 2011, [col 210](#)).

New Clauses 13 and 14, and amendments 132 to 143, were agreed to without division.

2.6 Elected Mayors

The Bill allows the existing local authority leadership in 12 specified English cities to be automatically converted into ‘shadow’ mayors ahead of a referendum on introducing it as a permanent arrangement. The start date would be specified by Order made by the Secretary of State but the previous leadership model would be reinstated should the referendum return a ‘no’ result.

Barbara Keeley, for the Opposition, spoke to their amendments 39 to 41, which would “remove the power of the Secretary of State... to direct or order the imposition of shadow mayors”. She said:

That is one of the most controversial measures in the Bill, and it represents the Government at their most centralising. The Government want to order a local authority to cease its existing form of governance and begin to operate a mayor

and cabinet executive. Ministers spent months denying that they intended to try to impose shadow mayors.

(*ibid*, [col 215](#))

David Ward (Liberal Democrat) said he supported amendment 41 saying that it “deals with something that symbolises everything that is wrong with the Bill”. He said it amounted to centralism not localism (*ibid*, [col 222](#)).

The House divided on amendment 41, which was defeated by 293 votes to 218.

A number of further amendments to the arrangements for elected mayors were also discussed. John Stevenson (Conservative) spoke to his amendments 2 and 3. These would amend how local mayors were elected. He explained:

At present, mayors are elected under the supplementary vote system, which is retained in the Bill. Effectively it is a form of the alternative vote. My amendment 2 would change that so that future elections are done under first past the post. That would provide a consistent approach to elections. Varying the voting system creates confusion and a lack of certainty for the average voter.

(*ibid*, [col 217](#))

The House divided on amendment 2, which was defeated by 279 votes to 29.

Phillip Davies (Conservative) spoke to his own amendment 15. This would reduce the number of councillors in areas with elected mayors:

My amendment 15 proposes that there should be a two-thirds reduction in the number of councillors in local authority areas that have an elected mayor. There are already far too many local councillors; Bradford has 90, for example. The US Senate has only 100 people in it, for goodness' sake. Why do we need 90 councillors in Bradford? If we are to have an elected mayor as well, why on earth should we have an additional layer of bureaucracy, more expense and more levels of local politicians?

(*ibid*, [col 221](#))

Martin Vickers (Conservative) spoke to his amendment to reduce the threshold for local people to petition for a local mayor to 2.5 percent from 5 percent (*ibid*, [col 228](#)) and Zac Goldsmith (Conservative) advocated his New Clause 10, which made provision for the recall of councillors:

My New Clause would allow for “25 percent or more of the... voters in the constituency of an elected local government member” to petition for and trigger a recall election. I think that that strikes the right balance between preventing vexatious recall attempts and empowering local people to hold their elected councillors to account. The New Clause would greatly empower local people and would keep councillors on their toes.

(*ibid*, [cols 225–6](#))

The amendment was defeated without a division.

2.7 Planning

Greg Clark, the Minister of State, introduced the debate on amendments to the planning clauses of the Bill. He outlined the thrust of the Government's approach in the Bill which was "to remove some of that top-down imposition and provide greater opportunities for communities to have their say". He observed that "when developments take place in communities, there is inadequate provision for infrastructure and inadequate attention to accommodating the development that takes place". He then outlined some of the "headline measures" included in the Bill:

... it replaces the regional arrangements that have been in place for some years and introduces instead a duty to co-operate that brings local authorities together in a more natural way. Rather than giving an administrative solution to some of the problems, it allows people to collaborate, discuss and come to resolutions of larger than local issues. It strengthens the requirements for pre-application scrutiny, introduces neighbourhood planning, abolishes the Infrastructure Planning Commission and returns powers ultimately to Ministers through a major infrastructure planning unit.

(*ibid*, [col 261](#))

In response Jack Dromey, for the Opposition, criticised the amount of changes the Government now sought, adding that "the sum total of the changes proposed is confusion, chaos and nothing short of a car crash". He argued that since taking power "the Government have moved at breakneck speed to demolish the planning system and to rebuild it within a matter of months. The demolition is nearly complete, with the end of sensible regional strategic planning, including the folly of the abolition of the regional development agencies and their replacement with local economic partnerships with no powers and no money—all because the Secretary of State gets out the clove of garlic and the cross at the very mention of 'regional'" (*ibid*, [col 276](#)).

2.8 Duty to Cooperate

The Bill introduces a duty to cooperate to ensure coordination above local planning authorities. The Government envisage an ongoing, constructive dialogue on planning matters. The duty will apply to local authorities and other public bodies involved in plan making. Bringing forward Government amendments 144 to 158, Greg Clark said the "duty to co-operate will be significantly strengthened by the amendments that we, as promised, have brought forward". He explained:

They are modelled closely on what we said was appropriate in Committee and what the Royal Town Planning Institute has proposed. As the professional planning body, it was the organisation that worked most closely on this, but a wide range of other outside bodies were involved, including the Wildlife and Countryside Link coalition, which includes the WWF, the Royal Society for the Protection of Birds and the Town and Country Planning Association. In particular, we have taken up their suggestions, which were echoed in some of the amendments tabled by the Opposition in Committee, to make clearer the application to cross-boundary issues and to the marine planning system, which needs to be addressed.

(*ibid*, [col 262](#))

He argued that the "combined effect has been to create a much stronger duty to co-operate that covers all authorities and a proposed list of prescribed bodies that

themselves would be subject to that duty, because planning matters clearly concern not only local authorities, but other public bodies". Among those included would be bodies such as the Environment Agency, Natural England, the Mayor of London and the Highways Agency (*ibid*, [col 263](#)).

The amendments also provided an enabling power that requires all bodies subject to the duty to cooperate "to have regard to the activities of other bodies when preparing plans that may not have a public character". He stated that the scope of the duty to cooperate was maximum engagement and "there must be active engagement to maximise the effectiveness of all relevant development plan documents". In reference to the Planning Inspectorate, he added that the "crucial test of the duty to co-operate is the soundness of the plan. If the Inspector finds that the duty has not been complied with, the plan will be unsound and cannot be adopted. Therefore, there is an absolute safeguard that this is not just a voluntary activity, but that it is absolutely at the heart of plan making, and rightly so, because the strategic level is very important to emphasise" (*ibid*, [col 263](#)).

For the Opposition, Jack Dromey argued there was a weakness in the amendments. He said that "the Government's amendments do not specify what is meant by co-operation. It will be extremely difficult for any inspector to assess definitively whether there has been adequate co-operation... In short, the Government's proposed duty to co-operate remains essentially voluntary, does not specify a unified product in terms of plan or strategy, does not specify the issues to be dealt with, and does not create an effective boundary to shape the extent of co-operation. It is certainly true that the proposal in general is a step in the right direction, but this measure simply will not work" (*ibid*, [col 278](#)).

Mr Dromey then spoke to his party's own amendments 293 to 299:

The duty we propose places sustainable development as a core objective of this co-operation, specifies the scope of the co-operation required, specifies a minimum number of issues to be the subject of co-operation including climate, housing, biodiversity and transport, and is based on a spatial area and not neighbouring authorities only, because that does not work for the most strategic planning issues. Our proposed duty also places a statutory requirement on local authorities to prepare a joint strategy that addresses a number of specified strategic issues. This duty will not repair the damage the Government are intent on inflicting on the planning system, but it may salvage something from the wreckage.

(*ibid*, [cols 277–8](#))

Government amendments 144 to 150 and 151 to 184 were agreed to without division. Opposition amendment 298 was put to division but was defeated by 313 votes to 212.

2.9 Sustainable Development

Joan Walley (Labour) tabled New Clause 6, which proposed writing into the Bill that the purpose of planning was achieving sustainable development. Jack Dromey, for the Opposition, said the need to achieve sustainable development "has never been greater". He argued that "it is also absolutely vital that the adoption of short-term measures to drive economic growth and the abolition of important Government advisers such as the Sustainable Development Commission do not lead us into making decisions that are unsuitable for the country in the long term. Somewhere in the planning system consideration must be given to how the actions we take now will have an impact on future generations. In short, the Government need to be clear about the purpose of

planning sustainable development” (*ibid*, [col 279](#)). Annette Brooke (Liberal Democrat) supported the Opposition’s stance saying “we need a definition of sustainable development in the context of the Bill and I share some of the concerns about how we can get the right balance between the pursuit of economic growth and making sure that economic growth is sustainable” (*ibid*, [cols 281–2](#)).

Addressing these concerns, Greg Clark told the House that the Government “will bring out a draft national planning policy framework in July, which will have sustainable development at its heart. It will set out what we mean by sustainable development” (*ibid*, [col 264](#)). Joan Walley pressed the Minister “whether he agrees that there is no substitute for writing sustainable development into legislation?” (*ibid*, [col 265](#)). Greg Clark replied that “we have stated clearly that we are very comfortable with the classic definition of sustainable development, which will be prominent—in fact, it could not be more prominent—in the planning policy framework”. He added that he would expect to see the previous Government’s principles of sustainable development—living within environmental means, ensuring a strong, healthy and just society, achieving a sustainable economy, promoting good governance and using sound science responsibly—in the strategy, but said:

The challenge from New Clause 2 [tabled by Annette Brooke]—to require sustainable development to be put forward after a period—also carries an important virtue. The national planning policy framework will be subject to consultation, and it is quite right that we should give people the chance to see our definition—I have given a pretty broad steer as to what it will be—and to comment on it, rather than simply capturing something in the Bill now.

(*ibid*, [col 265](#))

2.10 Neighbourhood Plans

Mr Clark spoke about the Bill’s proposals for neighbourhood planning. He opened his comments by summarising the thinking that had taken place:

We asked a series of questions about neighbourhood planning. First, is it right for neighbourhoods below the local authority level to be able to promote a vision of their future? We agreed that it was. This is easily available to areas that have parish councils or town councils: a standing democratic body is available, so it is easy to give it such powers. The next question is whether areas that do not have parish councils or town councils should be excluded from the ability to have a neighbourhood plan. There is an argument that they can apply for parish status, so we can provide a little bait to attract them towards doing that. Those on both Front Benches reflected on this and agreed that if some parts of the country decided that they did not want a standing parish council or town council but nevertheless wanted a neighbourhood plan, they should not be denied that.

He went on to mention the Bill’s provisions for neighbourhood forums and how the Government had sought to reflect this thinking in their amendments:

How can we bring together people in those places in an acceptable way to discuss these matters? In the Bill, that question turns on neighbourhood forums. We agreed to increase, through amendments, the minimum number of members of a neighbourhood forum from three—the number at which it was rather unfeasibly set—to 21. Landlords across the country can now count on at least 21 customers being in their snug to discuss neighbourhood plans rather than the minimum of three. The hon. Member for Birmingham, Erdington argued strongly

that we should increase the number. We have gone a little beyond the number that he suggested, and that is absolutely right. Government amendment 160 makes that clear.

(*ibid*, [col 267](#))

He added that amendment 160 also provided for businesses to be involved in neighbourhood planning, noting the role business plays in local communities. Pressed by Annette Brooke (Liberal Democrat) about the balance between residents and business on a forum, Mr Clark said “We do not want to be too prescriptive in the rules for neighbourhood forums, because we want as many people to participate as possible” (*ibid*, [col 268](#)).

Mr Clark then spoke to Government amendments 171 and 172 which addressed funding the development of neighbourhood plans. He said the “amendments give the Secretary of State the power to arrange for payments to be made in support of neighbourhood planning, or for services such as training to be provided” (*ibid*, [col 269](#)).

Responding for the Opposition, Jack Dromey welcomed the amendments on numbers saying that “there is no longer the prospect of three men or three women in the Dog and Duck constituting themselves as a neighbourhood forum”. He added though that “on our other proposals to ensure democratic accountability no concessions have been made. The Government clearly see no need to ensure that such forums are accountable, and so 35 percent of the country will be covered by democratic bodies—parish councils, which, at their best, are admirable institutions—while the remaining 65 percent will be represented by forums with no democratic legitimacy and no accountability. We want communities to have a greater say in planning and to have a say over their local area, but forums should be democratically accountable and involve at least one local councillor. It is simply wrong to downgrade democracy” (*ibid*, [cols 279–80](#)).

Other amendments in this group were also discussed. Nick Dakin (Labour) spoke to amendments 11 and 12 about the right to be heard and equalities in the forums. He said that “it is very important that individuals and groups have the right to be heard in neighbourhood planning” (*ibid*, [col 286](#)). Earlier Mr Clark had told the House that “amendment 12 is unnecessary because the Bill already allows prescribed steps to be taken in the examination of a neighbourhood plan, including the consideration of questions about participation”. He suggested the Government “will carefully consider whether an equalities impact assessment is appropriate” (*ibid*, [cols 269–70](#)).

With regard to Government policy on town centres, Mr Clark said that this would remain part of the national planning policy. He added that this would “be clear in the new national planning policy framework” (*ibid*, [col 270](#)). This was welcomed by the Labour frontbench but Jack Dromey said the Government should go further with a ‘town centre first’ approach, as outlined in his amendment:

New Clause 29 would require a local planning authority to include a retail diversity scheme within its local development framework. Crucially, the scheme would be developed through a consultation process with the local community, with the voices of local people and of local retailers heard. The New Clause establishes a vital goal: the promotion of retail diversity, striking the right balance between large and small businesses and, in particular, focusing on establishing and growing small and specialist retail businesses... The New Clause is not anti-supermarket but we must ensure that the supermarkets do not succeed at the

expense of the high street. We must harness their power to better the community as a whole.

(*ibid*, [col 280](#))

Simon Kirby (Conservative) also proposed New Clause 5. This would provide a delegated power to the Secretary of State to change any planning legislation in the way of local authorities carrying out statutory duties (*ibid*, [cols 282–3](#)).

New Clause 29 was defeated at division, 308 votes to 224. New Clauses 16 to 18 regarding provision of advice and assistance in relation to land of community value were added to the Bill without division.

2.11 Planning and Local Finance

Greg Clark moved New Clause 15 to the Bill. He said the New Clause makes “clear that local finance matters that are relevant to planning considerations can be taken into account”. He assured the House that it “does not change the law in any way, and it is not some stealthy way in which to introduce a new basis for planning policy. Everyone knows that section 106 payments that are material in planning matters can be taken into consideration”. He said that the “New Clause reflects the fact that the introduction of the community infrastructure levy, and, potentially, other rebates to the local community, as I like to call them, can be used for planning purposes. It is important to be clear, lest there is any doubt on the part of local authorities, that such rebates, just like under section 106, can be made when they are relevant to planning considerations” (*ibid*, [col 270](#)).

Nick Raynsford (Labour) challenged the Minister on this, pointing out that the “Minister implies that there is no change in policy as a result of New Clause 15, but may I remind him that until three months ago, his Department’s stance was that financial matters could not be regarded as material considerations?” (*ibid*, [col 270](#)). Mr Clark replied that “the right hon. Gentleman should be reassured that the measure is not a fundamental threat. Rather, it is an incidental measure for clarification” (*ibid*, [col 271](#)). Following another intervention from Mr Raynsford and then from Simon Hughes (Liberal Democrat), the Minister reiterated:

New Clause 15 clarifies that it is reasonable for a planning authority to take such funds into account if they are to be used in connection with the planning application. On the use to which the funds are put, I know that in Committee my right hon. Friend and the Opposition Front-Bench team considered whether the provision could be drawn more widely to include affordable housing. It has not been possible to draw up a definitive amendment in time for Report, but I am sympathetic to those concerns, so we will introduce further suggestions in the Lords.

(*ibid*, [col 272](#))

For the Opposition, Jack Dromey insisted that the New Clause did make changes to the law. He said: “the Government’s intention under New Clause 15, which would give financial payments a privileged status—first among equals—as no other issue, such as housing or climate change, is specifically identified in the primary legislation as material” (*ibid*, [col 279](#)). Annette Brooke also challenged the Minister on this point. She asked: “If bringing financial considerations into the Bill is not going to make any difference, why include the measure? I am afraid that I have not got my head around that and I am very

concerned that we do not have time to discuss this in depth and understand the impact of the change” (*ibid*, [col 281](#)).

New Clause 15 was added to the Bill following a division, 297 votes to 232.

2.12 Betting Shops

David Lammy (Labour) spoke to his New Clauses 30 and 31, which would make changes to the planning category of betting shops. He argued that “the gambling industry and bookmakers in particular are flouting the gambling rules; they are opening up right across London and it is unacceptable. That is not to say that we want to condemn gambling—I like to gamble—but it is to say that when it comes to diversity on the high street, local communities and local authorities should have the planning powers to say, ‘Enough is enough’, ‘No, thank you’, and ‘No more’. That is why I think, and I am supported by London councils on this, that betting shops should be in a *sui generis* class of their own in the same way that casinos and amusement arcades are” (*ibid*, [col 282](#)).

For the Government, Greg Clark said that the Government opposed the amendments but would look at the issue further: “We announced in the Budget a review of how use class orders, relating to a change in use, are handled in the planning system. I will ensure that a specific part of that review deals with the very real issue in the right hon. Gentleman’s constituency, and we will look at what can be done to make progress in that regard (*ibid*, [col 275](#)).

Phillip Davies (Conservative) argued though that what Mr Lammy overlooked was that betting shops met the demand there was for them. He argued: “the fact that these betting shops have not closed down indicates that their constituents want to use them, which makes them viable (*ibid*, [cols 284–5](#)). He then spoke to his own New Clause 7, which proposed a power for all 600 local authorities to decide whether to allow the licensing of casinos in their areas.

New Clause 31 was defeated at division, 316 votes to 221.

3. Report Stage Day 2: Governance of London and Housing

Robert Neill, Parliamentary Under-Secretary of State, Department of Communities and Local Government, opened the second day of report stage on the Bill. Debate started with part 7 of the Bill, which relates to governance in Greater London, and part 3, which relates largely to business rate matters (HC *Hansard*, 18 May 2011, [col 368](#)).

3.1. London: New Functions

Mr Neill spoke to New Clause 20, “which will amend the Greater London Authority Act 1999 and require the Greater London authority to undertake certain specified activities for a commercial purpose through a taxable body”. He explained that it “relates to the transfer of a large number of functions of the Housing Corporation in London to the Mayor, to the movement of the London Development Agency into the GLA’s main body and to the establishment of mayoral development corporations in London. All of those potentially involve commercial activity, so we have to get the tax treatment right” (*ibid*, [col 368](#)).

He went on to expand on why these amendments were necessary:

As a local authority, it would normally have tax-exempt status, but some of those activities are not of a local authority nature but more of a commercial nature and so have to be properly taxable. There is a long-established tax principle in that regard to ensure a level playing field between the public and private sectors in relation to commercial activities. That is particularly important in this case because the GLA will inherit, as a consequence of our devolution measures, a significant portfolio of land interests, some of which operate on a commercial basis and are subject to corporation tax and capital gains tax. It is not a new state of affairs. Section 157 of the 1999 Act made light provision in relation to the activities of Transport for London. That is the background to what we are doing.

(*ibid*, [col 368](#))

Moving onto a related issue Mr Neill told the House the Government’s New Clause 21 “introduces new Schedule 2, which will neutralise certain tax consequences—the other side of the coin—that might otherwise arise from the transfer of various property, rights and liabilities from the Office for Tenants and Social Landlords, the Homes and Communities Agency and the London Development Agency to other public bodies. There is a measure to enable the Treasury to make similar tax provisions for future mayoral development corporations. As we know, one is proposed, and we will come to that in a moment, but the provision will technically permit others to be set up and, therefore, embrace properly, within a legal framework, all those related activities” (*ibid*, [col 369](#)).

New Clauses 20 and 21, and new Schedule 2, were later added to the Bill.

3.2 London: Mayoral Development Corporation and Accountability

The Bill contains provisions for the London Mayor to create development corporations (MDCs). On this issue, Robert Neill spoke to amendments 212 and 213. He explained that at previous debates “Members generally accepted as desirable both the idea that the Mayor of London should have the power to establish a mayoral development corporation, and the current Mayor’s intention to establish such a corporation broadly relating to the Olympic park in east London”. He added that the “provision is more widely cast than that, for good reasons, and it will permit the establishment of other mayoral

development corporations. None is envisaged by the current Mayor and I am not conscious of any envisaged by potential Mayors, either, but it would be on the books for the future” (*ibid*, [col 369](#)). Simon Hughes said he supported the policy. He said: “The proposals in this group are about further transfers of power to the Mayor. As a veteran of both the legislation to abolish the Greater London council, which I opposed, and the legislation to set up the Greater London authority, which I supported, I believe that more powers should be given to London government from central Government” (*ibid*, [col 381](#)).

The amendments introduced by the Government contained the “means of holding the Mayor to account for mayoral development corporation proposals” (*ibid*, [col 369](#)). The Minister informed the House that:

The Government have reflected on the matter, and we take the view that it probably is appropriate and sensible to include a check and balance in the system, but we conclude that, because the Mayor of London is a strategic authority and charged with the economic development policy and oversight for London, the check and balance should not be through any one London borough or group of London boroughs, as they have their own important role, are in any event the statutory consultees on these matters and would have the opportunity to put their views forward anyway.

It is more appropriate if the check and balance mirrors other checks and balances in the GLA’s governance scheme, so that the London assembly, which is democratically elected and represents all Londoners, is able to veto a proposal for a mayoral development corporation by a two-thirds qualified majority vote.

(*ibid*, [col 370](#))

He dismissed the idea of introducing a local authority veto:

There is a difficulty with giving a veto to an individual London borough, because the borough’s interests are very properly not required to be strategic in the same way as those of the Mayor and of the assembly. Often they are, in fairness, and I do not mean to diminish the importance of the London boroughs. As the hon. Lady knows, I spent 16 years as a London borough councillor before spending eight years on the London assembly. That may indicate precocious sadness on my part, but that is a different matter. Both bodies fulfil very important functions, but they are different functions, and, if we are rightly going to put a check and balance on the Mayor’s exercise of his strategic role, we must do so through the assembly—the elected strategic check and balance. The boroughs have an important role in this because the Mayor is required to consult them, among other bodies, and they therefore have a powerful tool in being able to raise their concerns and to lobby their borough elected representative on the assembly to ensure that their case and their voice is heard.

(*ibid*, [col 371](#))

Gavin Barwell (Conservative) agreed. He noted that “the problem is that, if just one local authority were involved, that local authority would essentially be given a veto. There might be good public policy reasons for the Mayor wanting to pursue a development corporation solution in a particular area”. He added that, despite feeling there was still room for improvement, “the Government have adopted the right model in the Bill” (*ibid*, [col 378](#)).

Simon Hughes asked whether there would “be any changes in the planning processes in those areas that took democratic control away from the elected councillors?” (*ibid*, [cols 371–2](#)). Robert Neill replied that “the likelihood, it is fair to say, is that they would, because part of the objective of a development corporation generally is to bring the development function and the planning function for a particular area together to speed up development”. Simon Hughes followed with a further question about whether future corporations would require the Mayor to have the agreement of the local authority or authorities in question if they had a different view. Mr Neill replied:

In theory, a Mayor could seek to disregard a local authority’s views, but in practice we reckon that the New Clause makes that unachievable. There are two reasons for that. First, the Mayor will have to consult the local authorities, which will have registered their objection. As with any public law decision, he has to behave in a way that is rational and reasonable within the terms of the *Associated Provincial Picture Houses v Wednesbury Corporation* case. Secondly, because of the electoral arrangements in London, the local authority would be well placed to ensure that a blocking majority was created in the assembly to prevent the policy from going through. There is a theoretical possibility that the Mayor would be able to create the sort of rogue corporation that one might be concerned about, but in reality it is pretty much inconceivable.

(*ibid*, [cols 371–2](#))

Nick Raynsford argued that this scenario was “not just a theoretical possibility”, to which the Minister replied: “the Government have trusted the elected representatives of London and said that the assembly, through qualified majority voting, may exercise the veto” (*ibid*, [cols 372–3](#)).

For the Opposition, Heidi Alexander spoke to amendment 352, which “would make it a requirement that a local authority in a proposed MDC area must agree to its establishment. If more than one local authority is affected, all must agree”. She explained:

The Bill gives complete power to the Mayor and the Secretary of State. Under Government amendment 213, the support of two thirds of the assembly will be needed for a proposal to move forward. That is not a sufficient assurance. There could be a situation in London in which local people are completely against the setting up of an MDC, councillors and the local authority in the area are completely against the setting up of an MDC, and the GLA constituency member is completely against the setting up of an MDC, and yet if the Mayor wants it to happen, it will happen. I ask hon. Members, what is localist about that?

(*ibid*, [col 376](#))

Barbara Keeley added that their amendment “quite rightly seeks to ensure that where a Mayor seeks to establish a further mayoral development corporation, the majority of the borough councils affected by such a designation would have to agree to it. The Opposition do not believe that this would create any form of impasse. However, it is important that a borough council with only a small representation in the assembly—one that could therefore in no way seek to achieve a two-thirds majority through its assembly representation—should be able to come to agreement with either one or all the other boroughs if another development corporation was designated” (*ibid*, [col 385](#)).

Amendments 205 to 212 and 213 to 220 were agreed to without division. The House divided on Opposition amendment 352, which was defeated by 310 votes to 222.

3.3 Housing and Regeneration Board

Heidi Alexander spoke to Opposition amendment 351, which “proposes the establishment of a new London housing and regeneration board”. She said that with “the winding up of the London Development Agency and the London part of the Homes and Communities Agency, many powers will be transferred to the Mayor of London”. This, she said, “will mean an enhanced role for local authorities in providing, commissioning and funding affordable housing in London”. She argued that “it is vital that local authorities and the London Mayor work together to ensure a joint focus on the delivery of much-needed new affordable homes. My amendment would establish a board within six months of the Bill coming into law, and as I said earlier, at least 50 percent of members of that board would be local authority representatives. That would be a good way of achieving the joint working that London so desperately needs” (*ibid*, [cols 376–7](#)).

For the Government, Robert Neill said “the amendment would prescribe in statute a requirement that the GLA should have a London housing and regeneration board. I cannot go that far because although it is no doubt a sensible thing to have, certainly at the moment, and is something that works well enough with the involvement of the Mayor’s office and the boroughs, we do not think it is consistent with the spirit of localism for us to prescribe, in one particular area, the manner in which the GLA should carry out its activities. Interestingly, that again seems to be a little bit of potential centralism creeping in through the back door. I would prefer to give the Mayor and the boroughs flexibility in determining how to take those issues forward” (*ibid*, [col 375](#)).

Heidi Alexander responded:

The Minister said that the amendment was unnecessarily prescriptive and asked why we should legislate to set up such a board in London. I cannot let that pass, because in other parts of the Bill, that idea has not prevented the Government from being incredibly prescriptive, whether about arrangements to establish a neighbourhood forum or the process for nominating land as a community asset. The Bill is hugely prescriptive in many ways, and I suggest that on a matter as important as regeneration and the provision of affordable housing, perhaps we could have a bit more prescription to ensure that we achieve what we all want in London.

(*ibid*, [col 377](#))

Stewart Jackson (Conservative) noted a consensus in the House “on the need for more affordable housing, better quality housing and aesthetically pleasing housing, and above all for regeneration to consolidate London’s position as the pre-eminent city in Europe”. He said that the evidence of “what was delivered in the dozen or so years of the regional development agencies, when we had a centralised policy, and an over-prescriptive and—one may even say—draconian approach to housing targets” meant that he was “not convinced that instituting a pan-London borough body would achieve the key objectives that we all seek” (*ibid*, [col 384](#)).

3.4 Housing

Andrew Stunell opened debate on amendments to the provisions in the Bill relating to housing. In outlining the Bill’s aims, he summarised some of its provisions, which include:

... giving back to local authorities the freedom to determine who should qualify to go on the housing waiting list; new flexible tenancies in addition to, rather than replacing, secure and assured tenancies for council and registered social landlord

tenants; flexibility to meet the homelessness duty with an offer of accommodation in the private rented sector; and, perhaps most popular of all, replacing the unpopular housing revenue account subsidy with a devolved system of self-financing.

(*ibid*, [col 401](#))

3.5 Flexible Tenancies

Provisions in the Bill would allow councils and social landlords to offer new tenants fixed term agreements. Opening his remarks Mr Stunell said he recognised that these provisions had caused concern. He sought to reassure the House that in “the vast majority of cases in which a social landlord offers a flexible tenancy, we will expect that tenancy to be for at least five years. It will often be appropriate to provide longer—in some instances, lifetime—tenancies. If an elderly lady is offered sheltered accommodation or a bungalow, any sensible landlord will doubtless provide a lifetime tenancy” (*ibid*, [col 403](#)). He added that the Government “are offering social landlords an additional way to let tenancies, and they can choose whether or not to take it up. They can base that decision on any sensible factor, including their administrative convenience. We propose that five years should be the minimum term in normal circumstances. We would expect it to be appropriate to offer less than five years only in very exceptional cases, and we have stated in the Bill a two-year lower limit” (*ibid*, [col 403](#)).

This prompted Nick Raynsford to ask if this were so why five year terms were not stated as the minimum in the Bill (*ibid*, [col 403](#)). This was followed by questions from Andrew Percy. In response to the latter, the Minister explained how the new provisions would operate:

Under the new system, the regulator will set a 10-year standard, the local housing authority will have to develop a housing strategy, and the registered provider will have to publish a tenancy policy. That policy will be drawn up in consultation with tenants, and landlords’ decisions on allocating tenancies will have to be in line with it. A landlord’s decision to end a tenancy will be subject to appeal—that is in the Bill—and if the appeal is unsuccessful and the tenant is not satisfied, possession can only be granted by a court. So such a process can never come as a surprise to a tenant. They will have taken that flexible tenancy knowingly, in advance of moving in. If, at the point when the tenancy is being allocated to them, they do not wish to accept the terms and they think them unreasonable, they can ask for a review of that tenancy before they start. They will be taking up any flexible tenancy knowing that it is flexible and knowing what the procedures will be subsequent to their doing so.

The Government have made it clear that we intend that the tenure standards, which the regulator sets out, will include the guidelines that cover all these matters.

(*ibid*, [col 404](#))

Andy Slaughter (Labour) contended that many local authorities would simply adopt the minimum tenancy and the result would be “the removal of all the security that people, including the elderly and the disabled, have come to depend on” (*ibid*, [col 405](#)). Mr Stunell denied this and stressed the system would be regulated. In response to further scenarios put to him, he added the “tenure standards will set that out, the housing strategy of the local housing authority will reinforce it and the tenancy policy of the provider, if it is not the housing authority itself, will also set it out” (*ibid*, [col 407](#)).

For the Opposition, Alison Seabeck described the Government's proposals for housing as "deeply damaging". She explained that the reforms to social housing tenure:

... will create two classes of tenant in social housing. There will be great uncertainty, because there will be different lengths of tenure and different levels of rent, with little rational relationship between the two. There will be a divide between those who have been fortunate enough to get security of tenure in their social housing, and those who have been made to wait for too long and will be granted a tenancy for as little as two years. Tenants whose financial circumstances improve above an arbitrary level will potentially be told to pack up and move on.

(*ibid*, [cols 413–14](#))

She said that Opposition amendment 271 sought to address the threat in the Bill that would take security of tenure away from existing social tenants (*ibid*, [col 416](#)). On several occasions she said she had been assured by Ministers that secure tenancy rights would not be altered. However, she pointed to the DCLG's framework that "is quite clear" that tenancies will only be secure for those with secure tenancies before 31 March 2012. As a result "tenants with a secure tenancy will lose their security if their family grows and they need to move to a larger home, or if a person wishes to downsize to a smaller home and the only properties available for re-let are offered on a flexible tenancy" (*ibid*, [col 417](#)). Pressed by Simon Hughes on whether she agreed that it would be optional for Councils to withdraw secure tenancies, she said that the truth was that many Councils wanted the proposal introduced as soon as possible (*ibid*, [col 418](#)).

Andrew Percy said he welcomed the Bill but expressed concerns about certain aspects that he wanted to hear more detail about. In particular he wanted to "see more commitment in regard to the proportion [of flexible tenancies] that they [Councils] should offer, and also an absolute guarantee that they will continue to offer secure tenancies". He also mentioned some concerns about succession of tenancy following a death, about the tenancy security of those whose circumstances had changed and about the impact of two year fixed tenancies. Of the latter he said:

If people are constantly moving after short periods of time, they might not look after their houses and gardens. That may sound a bit silly, but the condition of houses and gardens gives an impression of what a community is like. If people feel they have a personal investment in their homes, they will maintain their gardens and do work to their properties; they will have some pride in the house in which they live because they see it as their home.

(*ibid*, [col 424](#))

He added that he feared "particularly where there is high demand and limited stock, some local authorities will make decisions that will mean we end up with a situation where nobody can ever work towards having a secure tenancy. I would not want that at all" (*ibid*, [col 425](#)). Annette Brooke offered support for the idea of a mix of tenancies but expressed concerns about two-year tenancies. This, she added, together with a number of further unanswered questions, would have to be looked at further in the House of Lords (*ibid*, [col 427](#)). Clive Betts (Labour) stated that the tenancy changes would result in people being "dragged out of their homes at the end of a flexible tenancy and told, 'That is no longer your home'. If people resist, they will be dragged in front of the courts and evicted. That is what is going to happen; there is no getting away from that". He said a consequence would be "people who are so desperate for security that they will over-

extend themselves in trying to become owner-occupiers, which could lead to real problems” (*ibid*, [col 428](#)).

Nick Raynsford also criticised the Government’s approach to social housing. Turning to his own amendment 361, he said it aimed to support security by requiring local authorities to provide security of tenure “to the greatest extent possible” (*ibid*, [col 433](#)). Another of his amendments (362) sought to address an incompatibility in the Bill with the European Convention on Human Rights and amendment 363 sought to safeguard housing associations from being reclassified as public bodies. Should they be so he said “they could no longer borrow from the private sector without that counting against public expenditure” (*ibid*, [col 434](#)).

Amendment 13 and amendment 271 were defeated at division, 298 votes to 223 and 294 votes to 227.

3.6 Duties to Homeless Persons

Andrew Stunell went on to address concerns surrounding the Bill’s provisions to allow local authorities to discharge their duties to homeless households by offering accommodation in the private rented sector. He said that the Bill aimed to make matters better and referred to “London, [where] the average stay in temporary accommodation of resettled homeless families before they get a permanent offer of social home accommodation is two years. The impact of that time on schooling, quality of life, health and stress is not acceptable and needs to be tackled”. He reassured the House that “the draft legislation includes a number of safeguards that together provide reassurances that an offer of private accommodation would be made only when it is reasonable to do so and when the accommodation is suitable for the needs of the household” (*ibid*, [col 407](#)).

He added:

Any offer [of private rented accommodation] has to have regard to the health and welfare of the tenant, social impacts and affordability for the tenant. Existing legislation is already clear that any loss of income outside the control of the tenant cannot create intentional homelessness. That would be unintentional homelessness and so the duty to deal with that situation would remain with the local authority. The accommodation has to be suitable, or fit for purpose.

(*ibid*, [col 408](#))

He confirmed that the Government’s intention is that in being housed, people should not have to move around:

The existing legislation requires local housing authorities to locate people within their district so far as reasonably practicable. The homelessness code of guidance sets out all the factors that it is right and appropriate for housing authorities to take into account. Those of us who see real life at constituency level know full well that when those families eventually get their social housing offer, it is seldom in the plum house on the smart estate. It is more likely to be the bottom flat in the hard-to-let block on the least desirable estate in town. I hope we do not have a starry-eyed vision of social housing, when compared with the private rented sector, that blinds us to the essential reality we are trying to tackle, which is that the average stay in temporary accommodation for homeless families in

London is two years. That is unacceptable and this reform puts us on the way to ending it.

(*ibid*, [cols 409–10](#))

For the Opposition, Alison Seabeck described the Bill as “a retrograde step”. She argued that “homeless applicants found to be in priority need and unintentionally homeless will no longer be able to draw on the security and stability of a social home with security of tenure. Instead, they will be placed directly into the private rented sector and if they refuse an offer, for whatever reason, the local authority will no longer have a duty to house them. They would then have almost nowhere to turn for help” (*ibid*, [col 421](#)). She added that with “tenancies in the private rented sector being less stable and of a shorter duration, the risk of recurring homelessness is greater, so the need for stronger statutory protection increases” (*ibid*, [col 421](#)).

Alison Seabeck then spoke to Labour amendments 273, 274, 275, 276 and 360. These, she said, would “extend the period within which the homelessness duty would recur from two years to five years when the applicant was placed in the private rented sector. They would also provide, during that five year period, that a household accepted as homeless should receive ‘reasonable preference’ on their local authority’s housing allocation scheme”. She continued:

Under amendment 269, the duty of local authorities to find temporary accommodation for a period that enables the homeless person to find accommodation themselves would be extended to intentionally and unintentionally homeless people who were not in priority need. It is important to note that this duty to accommodate for long enough to give reasonable opportunities to secure other accommodation is distinct from the main homelessness duty. Extending this provision to those not in priority need would help an individual facing a crisis who might just need some short-term accommodation to get back on their feet. It would give the individual and the authority the opportunity to work towards resolving their homelessness, perhaps outside the social sector, helping to ensure that no one faced a situation with no option but to sleep rough.

(*ibid*, [cols 421–2](#))

Amendment 270, she explained, “would ensure that, whenever possible, any homeless applicant to be placed in the private rented sector is offered somewhere within the borders of their own local authority first” (*ibid*, [col 422](#)).

These amendments were agreed to as part of the grouping of amendments 221 to 298.

3.7 Succession to Secure Tenancies

The Bill removes the statutory right of those other than spouses and partners to succeed to a secure tenancy. Instead local authorities are given a discretionary power to include express succession rights in tenancy agreements. Andrew Stunell spoke to a number of amendments tabled by the Government regarding these provisions. He explained that their purpose was:

... to make technical improvements with regard to flexible tenure and succession, which I would like briefly to outline. Amendments 202 and 203 exclude shared ownership leases from the landlord repairing obligation, in line with established practice and policy.

Amendments 191 to 201 are needed to rectify drafting errors in clauses 134 and 135, which deal with succession rights. They clarify the original intention that where there has not already been a succession, someone who is not a spouse or partner can succeed where there is an express term in the tenancy agreement to allow it.

(*ibid*, [col 401](#))

For the Opposition, Alison Seabeck said that if left unamended clause 134 would not allow unmarried couples or live-in siblings the right of statutory succession. She said that Opposition amendment 277:

... is similar to an amendment debated briefly in Committee at the end of a morning sitting. At the time, the Minister said that clause 134 was part of a cleaning-up exercise, to which I said we would leave things there and consider whether we needed to come back to the issue on Report... Currently, in the absence of a spouse or partner, the close relatives of a secure tenant who have resided in a dwelling as their only or principal home for 12 months prior to the tenant's death also have a right to succeed to the tenancy. Our amendment would extend statutory succession rights beyond spouses and civil partners, to those who have acted as live-in carers for at least one year and siblings who have co-habited for at least one year. Carers contribute an enormous amount to society and to those—almost always close family members—for whom they care.

(*ibid*, [cols 418–19](#))

The Minister pointed out that the Bill also allows “registered landlords the opportunity to have tenancy agreements that allow carers to succeed to a tenancy even if they are not related to the person holding the original tenancy” (*ibid*, [col 419](#)). Alison Seabeck acknowledged that Government amendments 194 to 201 “try to improve the provisions” and welcomed them.

Amendments 191 to 204 and amendments 221 to 298 were agreed to without division.

3.8 Right to Buy Receipts

Andrew Stunell introduced the purpose of the Government's proposed New Clause 19, which would ensure:

... that the Secretary of State may continue to enter into agreements with local authorities to determine that specified new homes be exempt from the requirement that most of the receipts from any sale under the right to buy should be surrendered to central Government. This will help remove obstacles to local authorities investing their own resources in new homes. To be clear, New Clause 19 preserves an existing relaxation in the rule that requires 75 percent of receipts to be paid to the Treasury in certain circumstances.

(*ibid*, [col 401](#))

For the Opposition, Alison Seabeck welcomed New Clause 19, though noted the lack of detail. At the end of the debate New Clause 19 was added to the Bill.

3.9 Other Amendments

3.9.1 ALMOs

Clive Betts (Labour) spoke to New Clause 3 and new Schedule 1 with regard to disestablishing an arms length management organisation (ALMO). For the Government Andrew Stunell had already explained to the House that:

New Clause 3 would oblige all councils with ALMOs to undertake a statutory ballot of their tenants and seek the consent of the Secretary of State before an ALMO can be closed down... For those councils that hold a ballot before establishing an ALMO, it seems reasonable that they should hold a ballot when they are minded to wind up such an organisation. I understand that of the 61 ALMOs that are currently extant, around 30 were formed following such ballots. The principle of 'ballot in, ballot out' does not seem a bad one to hold on to. For those councils that did not hold a ballot, our departmental guidance already stipulates that they should consult widely with tenants before an ALMO is wound up. It does not stipulate what specific format the consultation should take. I have asked my officials to look again at that guidance and the options for strengthening it so that all tenants can be assured of their rights.

(*ibid*, [cols 410–11](#))

Responding, Mr Betts said:

I heard the Minister's comments but I still feel that a ballot is the best way of ensuring that the views of ALMO tenants are really taken into account and that we do not simply have consultations in which the tenants say one thing and the local authority does another, which is already happening. A ballot is the best way forward, but if the Minister is saying that the same process that was used to set up an ALMO should be used to dismantle it, he must firm up the guidance and make it a statutory obligation for local authorities to comply with that. I see him nodding, and that is very good.

(*ibid*, [col 429](#))

3.9.2 Littering

Ian Mearns (Labour) spoke to his New Clause 23. He said that "the Bill should be amended to include a provision to support local authorities in reducing the level of littering from vehicles". This, he argued, was "an excellent opportunity to amend section 87 in part IV of the Environmental Protection Act 1990 to enable local authorities to deal specifically with littering from vehicles. Such an approach would help to reduce the high level of litter, not only at road junctions, roundabouts and exits from service areas, which are difficult to clean up, but in our streets generally". He added that the New Clause "fits with the overall aims of the legislation, and with the specific new powers for local authorities to tackle persistent fly-posting and graffiti". He said that "The introduction of a specific offence where the owner of a vehicle is held responsible for such littering, unless they can prove otherwise, would discourage drivers and their passengers from throwing litter. Such an offence would also provide a further means for local authorities to tackle the growing problems of roadside litter" (*ibid*, [col 426](#)).

3.9.3 Mutual Housing Co-operatives

Annette Brooke (Liberal Democrat) spoke to her New Clause 26. She said the “clause aims to free small fully mutual housing co-operatives from burdensome regulation and significant costs that they cannot and really should not have to shoulder in the same way as private landlords. This would obviously help to provide a more conducive environment for new housing co-operatives and would not cost the Government much money. I know it fits in well with the coalition Government’s agenda for community self help and a mutual approach. That and other innovative schemes will, I hope, emerge from the Bill” (*ibid*, [col 427](#)).

Andrew Stunell said in response that mutual housing co-operatives, “by a quirk of the legislation”, are “caught by the houses in multiple occupation requirement for licensing and, sometimes, planning permission”. He said that his Department had “been lobbied by the Friendly Housing Action campaign group to secure an exemption for fully mutual housing co-operatives, and I am very sympathetic to the campaign, as such organisations were never intended to be caught by the licensing provisions”. He concluded that “We have to be careful to ensure that in granting an exemption we do not inadvertently allow other categories to slip through the loophole, so I am asking for further advice on how we might achieve that” (*ibid*, [cols 411–12](#)).

3.9.4 Housing Complaints

The Opposition amendment 278 proposed to remove clause 153, which would require tenants to seek permission and approval from their elected representatives to complain to the ombudsman about their social landlord. The amendment would allow tenants the right to complain directly, as they can now (*ibid*, [cols 419–20](#)).

The amendment was agreed to without division.

4. Third Reading

Greg Clark, for the Government, closed proceedings on the Bill in the House of Commons at third reading. He thanked all those who had contributed and paid tribute to the 80 hours of scrutiny the Bill had undertaken so far. He summed up the Bill's main features:

To establish a general power of competence for local government, to increase opportunities for members of the public to participate directly in local democracy, especially via referendums, to vest in communities new rights to challenge the way in which services are provided and to own assets of importance to their communities, to reform the planning system to remove the regional tier, to permit neighbourhood planning and to establish a new duty to co-operate at the strategic level. We have clarified the functioning of local democracy in London with a degree of consent, as was pointed out earlier today, and we have introduced new flexibilities into the housing system so as to house people more reliably.

(*ibid*, [col 456](#))

He said that he had aimed to respond positively to constructive debate and hoped the House believed he had done so. In committee, and at report, he said “we have introduced safeguards over the use of the general power of competence and we have strengthened the duty to co-operate. We have substantially improved the provisions on neighbourhood planning to make them more open and more representative and allow them to cross neighbourhood boundaries. Those are some examples of the progress that we have been able to make” (*ibid*, [cols 456–7](#)).

He added that in a centralised system it was necessary, however paradoxical, for the centre to lead on localism. He concluded that:

I believe that we will look back in 10, 20 or 50 years and see today as a turning point. The tide of centralisation has turned, not just because of the Government's decentralising measures, but because communities across the country are demanding change. That change is already under way. The Bill will speed up the process and establish it in law. For its part in that change, I commend the Bill to the House.

(*ibid*, [col 457](#))

For the Opposition, Barbara Keeley lamented the lack of time available to discuss amendment groups, some of which contained 70 New Clauses and amendments. She added that the Opposition remained dissatisfied with a number of areas of the Bill:

We object most strongly to the 142 extra powers that the Secretary of State wants to take to himself, the most toxic of those being the Henry VIII powers in part 5 which we discussed yesterday. Our amendment 37 proposed limits to those powers to amend, repeal, revoke or disapply any statutory provision.

... I strongly urge Ministers to look again at their proposal to impose shadow mayors when the Bill goes to the other place.

On pay transparency, we welcome Ministers indicating that they will look at expanding their proposals to include low pay, but they have not gone far enough.

Fairness and transparency must be applied to the private sector wherever staff are being paid from the public purse. Ministers can be assured, however, that our opposition on a number of other issues not tested in Divisions is as implacable now as it was in Committee.

We reject the Government's proposal to levy EU fines on local councils, which we think will prove unworkable and hope will be thrown out when the Bill is debated in the other place. Ministers have talked about reducing burdens on local councils, but they are creating new duties and financial responsibilities at a time when councils are struggling with the challenge of dealing with the Government's swingeing, front-loaded cuts.

Most importantly, we still have serious concerns and objections to their proposals on planning and on homelessness and social housing tenure.

... there are grave concerns about Government New Clause 15, which allows financial matters to be material consideration in planning applications. This effectively means that planning decisions could be for sale.

Ministers did not listen to our concerns or objections on their proposals on homelessness and tenure reform in social housing, and there was no consensus on these proposals. My hon. Friend the Member for Plymouth, Moor View made it clear that there is much in the Bill's housing proposals with which we cannot agree, from the Government's plans to weaken the homelessness duty to their plans to remove security of tenure, which would act as a brake on aspiration and a barrier to employment. On security of tenure, the Bill will cause instability and insecurity for tenants. We are concerned about the Government taking away the rights of existing tenants. Their proposals to put homeless people straight into the private rented sector could lead to a cycle of evictions and further homelessness. We hope that scrutiny of the Bill in the other place will achieve important changes, including an accreditation scheme for the private rented sector.

(*ibid*, [cols 458–9](#))

The Bill was given a third reading by 300 votes to 216.

