On the 14 February 2010, the new government’s Minister for Housing and Local Government (The Rt Hon Grant Shapps) announced the publication of the Framework for the Government’s Affordable Homes Programme for 2011-15. This Programme concerns affordable rent, affordable home ownership, empty homes, traveller pitch ownership, homelessness and mortgage rescue. A total of £1.8 billion has been made available for affordable rent and affordable home ownership with a further £410 million for mortgage rescue, empty homes, homelessness and traveller pitch funding. This paper concerns a key aspect of this programme, affordable rent. The policy behind this new level of rent, called the ‘affordable rent policy’ was introduced in April 2011. The majority of the new homes built will be made available as “Affordable Rent” with some for affordable home ownership, supported housing and in some circumstances, social rent, which concerns properties made available for those on a low income or vulnerable for various reasons, e.g., mental illness and disability. Affordable rent properties will also concern old build. Funding has largely been diverted from funding homes at current social rent levels and transferred to ‘Affordable Rent’ properties but these properties will only affect new tenancies. A key element of this programme is that landlords of such properties may charge a much higher rent than what is presently charged, although it will still below market rent. Consequently, this has implications for the purposes of both planning and housing law, as the definition of affordable housing has been revised to include this new concept called ‘Affordable Rent’.

This paper will therefore consider in broad terms what this refers to as well as its relationship with the new proposed planning system set out in proposed legislation, the Localism Bill. This paper will also briefly consider the added effect of reductions in housing allowances, which are funds to assist the payment of rent, and further reductions in legal aid, that is government funded legal advice and representation in the provision and maintenance of housing. It will then consider criticisms of the new regime and show that there are many concerns about the negative impact on the poor and vulnerable of the combined effect of these legal and policy changes.

Affordable Housing

We normally understand the notion of affordable housing as the capacity to pay for an adequate standard of housing and still able to afford the necessities of life. However, the notion of ‘affordable rent’ introduced by the new policy changes in practice what is ‘affordable housing’ for planning and housing law purposes. The latter notion was introduced by the Framework for the Government’s Affordable Homes Programme for 2011-15. It is published jointly by the Minister’s Housing and Local Government Department and the Homes and Communities Agency (HCA). The HCA plays a key role on the delivery of the Affordable Homes Programme. Part 1 of the Housing and Regeneration Act 2008 (the Act) established the HCA setting out the main objects and powers to deliver new and affordable homes and invest in regeneration.

The HCA is a national regeneration agency which took over the functions of the English Partnerships (the Urban Regeneration Agency and the Commission for the New Towns, both of which are abolished by the Act) and the functions of the Housing Corporation relating to investment in affordable housing. It is intended to be similar to a one stop shop for the delivery of national housing and regeneration programmes. The role of the HCA is with a view to meeting the present and future needs of people living in England. Its role is stated in section 2 of the Act as including: improving the supply and quality of housing in England securing the regeneration or development of land or infrastructure in England supporting in other ways the creation, regeneration or development of communities in England or their continued well-being.

The HCA has a general power to promote these objects, but the Act also sets out specific powers, including the following.

s. 5 – the provision - or facilitation of the provision – of housing or other land, by way of acquisition, construction, conversion, improvement or repair.

s. 6 – the regeneration or development of land, or bringing about its more effective use, or facilitating the same

s. 7 – the provision - or facilitation of the provision - of infrastructure by way of acquisition, construction, conversion, improvement or repair.

s. 8 – carrying out building and other operations (including converting or demolishing buildings)

s. 9 – the acquisition of land - or new rights in land - by agreement or, if so authorised by the Secretary of State, compulsorily.

THE HCA and SOCIAL HOUSING

‘Affordable Rent’ falls within the definition of social housing in section 68 of the Housing and Regeneration Act 2008 (and, in particular, the definition of low cost rental accommodation in section 69 of that Act). Affordable Rent properties will therefore be subject to regulation by the Homes and Communities Agency - where they are provided by a Registered Provider. But firstly what is social housing? In general terms social housing include both Council (local authority owned) owned and housing associations housing (“registered social landlords”) which is rented at below market (“affordable”) rents to people who society decides to be most in need of such housing. In strictly legal terms, the 2008 Act defines it as “low cost accommodation”. The Act introduced two types of social housing:

s. 69 concerns low cost rental accommodation. This is rented accommodation that is available for rent below market rent and made available to those whose needs are not adequately provided for by commercial markets, e.g., vulnerable persons such as disabled or the mentally ill

s. 70 concerns low cost home ownership accommodation. Two conditions must be met.

The accommodation must be occupied or made available for occupation under shared ownership arrangements, equity percentage arrangements or shared ownership trusts; and the accommodation must be made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

Under s. 31, where the HCA acquires, constructs or converts housing or land for use as social housing or disposes of housing or land or provides infrastructure or financial assistance on condition that it is used to provide such accommodation, it must ensure that a “relevant provider of low cost rental accommodation” is the landlord of the accommodation once it is available for rent, meaning a “registered provider of social housing”, a local housing authority, a county council or a person controlled by a local housing authority or county council.

The HCA can give financial assistance s.19 with the consent of the Secretary of State to anyone and in any form, in particular by way of grants, loans, guarantee or indemnity, investment, or incurring expenditure for the benefit of the person assisted. This is a significant power.

This financial assistance can be given on the condition that it is provided for social housing. It is then referred to as “social housing assistance” (s.32). Sections 32 and 33 contain controls over social housing assistance, which may have to be repaid in circumstances specified by the HCA.

However the HCA’s capacity to fulfill its stated goals under the Act is being eroded. A review of the role of the HCA as part of the government’s ongoing Spending Review process is intended to reduce its running costs by half over two years, with a saving of over £100m by 2014-15. Instead the HCA is being transformed by the government

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6  See Schedule 6 of the 2008 Act and The Housing and Regeneration Act 2008 (Consequentialist Provisions) Order 2008 http://www.legislation.gov.uk/ukssi/2008/3002/contents/made accessed 30 June 2011. The legislation abolished the Urban Regeneration Agency, the Commission for New Towns, English Partnerships and the Housing Corporation and, since September 2008, there has been a gradual transfer of the functions of these bodies to the new Homes and Communities Agency. This SI is part of that process and serves to update various Acts of Parliament so as to remove references to these now defunct bodies and replace them with references to the HCA.

7  Ibid.
into a smaller enabling body working for local communities according to their priorities. This transformation is part of the Affordable Housing Programme and to make quangos more accountable to the public and cut their running costs.

Despite this reduction in support for the HCA the Minister stated that:

The Affordable Homes Programme is designed to support the delivery of up to 150,000 new affordable homes through a mixture of new investment

(some £4.5bn over the next four years) and greater flexibility for social housing providers to make the best use of existing and future assets. The new Affordable

Rent model, which will be the principal element of the Programme, will make public subsidy go further while also enabling local authorities and providers to target support where it is most needed.8

So what is an affordable home has changed to comply with the Affordable Rent model. In practice, the new “affordable rent policy” in practice effectively changes what we currently understand by social housing under the Act (which administers the HCA) because it will involve charging a higher rent than at present.

**What is Affordable Rent?**

The ‘Affordable Rent model’ referred to in the Affordable Homes Programme replaces the current capital grant supply subsidy for social housing with a revenue subsidy. The majority of the homes built will be made available as affordable rent with some for affordable home ownership, supported housing and in some circumstances, social rent. It also applies to old build properties. It concerns a definition of affordable rent that gives registered landlords the flexibility to offer fixed term tenancies to new tenants at up to a maximum of 80% of gross market rent and allocated in the same way as social housing is at present.

The London section of the new government housing programme document (pp.46-49) sets out the government’s approach:

Providers will be expected to deliver a range of rents across their development proposals from homes let at target rents up to a maximum of 80% of the market rent. In order to maximise the number of new homes, it is expected that most will be let at, or close to, the 80% limit.9

It adds that “there will be circumstances where rents may need to be set at lower levels,” and that these “may include areas where market rents are exceptionally high.” Yet London Councils had previously identified a number of potential problems with this approach. One important concern is that the measures could create a “significant mismatch” between the new homes generated for “affordable” rent and the demand for them.

An Affordable Rent, set at up to 80 percent of the gross market rent, should take account of the service charge for a property. What this means in practice is that such landlords can offer fixed-term tenancies at up to 80 per cent of local market rent: that is, tenants can pay rent of up to 80 per cent of the gross market rent in the area.

The relevant tenancies must be a minimum period of two years, but registered providers will have the flexibility to offer longer tenancies, including tenancies for an indefinite period of time, often called lifetime tenancies. In legal terms the colloquial phrase lifetime tenancies refers to “secure tenancies”. They are not actually for life. Their duration is subject to the tenant not breaching certain conditions, such as persistent non-payment of rent. If the tenant behaves himself the tenancy could last until his death. These tenancies are the most common form of tenancies provided by local councils and housing associations for low income earners and the vulnerable. These secure tenancies are generally set at below market rate.10 The new rent model will not affect the rights tenants have under current secure tenancies.

**Providers of Affordable Rent**

A property will only considered an ‘Affordable Rent’ property where it is linked to an agreement with the Homes and Communities Agency on investment.11 Landlords who want to apply for funding will have to submit a bid covering the duration of the four-year programme, outline how many homes they can provide, and for what tenure, as well as state the expected additional borrowing

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capacity, cross-subsidy and the number and location of rents to be converted.  

Under the Affordable Rent Model, Landlords will be able to offer the new tenancies in return for investment agreements, which will enable them to raise funds to build more affordable housing.

The new “affordable rent” policy concerning social housing (pages 15-19 of the programme document) is central to the government’s wider Housing programme. It provides that ‘Affordable Rent’ properties will only be provided by Registered Providers as part of an agreement on funding made with the government’s HCA. (Registered Providers are those organisations which have entered a contractual arrangement with the HCA Homes to deliver affordable homes.) But Landlords will be expected to implement the new Affordable Rent model if they want to apply for any of the £1.8 billion allocated for new development over the next four years.

Landlord funding applicants will also have to submit information about their finances and demonstrate how their plans meet local needs. Plans must also offer good value for money and show there is a realistic prospect of success. They must also must meet local priorities and attract the support of councils. Funding requests are expected to be for the ‘minimum necessary’ for delivery of the housing project to be viable.

Successful applicants will enter into a four-year framework contract. They will be expected to set rents at 80 per cent of market rent, including service charges. Funding for social rented housing will only be granted in exceptional cases, where the landlord can demonstrate affordable rent would not be viable. Landlords will be required to enter into a separate contract for funding for programmes in London. Applicants will have until 3 May to submit their bids, with the first contracts signed in July.

The Localism Bill

The justification for the government’s new Affordable Homes programme with its key “affordable rent model” seems rather obviously linked with the government public spending cuts programme and the new proposed planning scheme. The new proposed planning scheme in the UK is set out in the Decentralisation and Localism Bill, and

is expected to be passed late 2011. According to this bill the planning system will become decentralised system. This is contrary to the existing system where housing requirements have traditionally been dictated ‘top-down’ with the government setting the national requirements, advised by an independent body, the National Housing and Planning Advice Unit (NHPAU), as well as regional planning bodies, to ensure consistent housing supply targets at the regional level. The NHPAU makes an input into new housing policies in ‘regional spatial strategies’ (RSSs) and the RSS has set housing targets for each local authority district or sub-regional housing market area. The regions have allocated regional housing targets between the local planning authorities. RSSs and ‘local development frameworks’ (LDFs) made a two-tiered planning system. Local planning authorities must develop their own policies for the location of new homes and decide how many will be ‘affordable housing’. The LDF is a folder of documents containing policies and details of the housing required, as well as planning briefs for large or strategic sites. The data for setting affordability housing targets is provided by the Strategic Housing Market Assessments and Strategic Housing Land Availability Assessments.

Organisations such as Local Government Association called for changes to existing financial arrangements between the national and local level. They argue for local authorities to have more powers and finance to generate more housing supply and to tailor developments and related infrastructure to their areas. They have called for the Housing Revenue Account subsidy system to be scrapped and replaced with a more localised system. The think tank Policy Exchange has made suggestions along similar lines. Referring to European evidence it suggests that weak central coordination of planning can result in individual towns and cities competing for development and competition for local development, especially where development directly brings local tax values with it, as in Switzerland, or in regions seeking an economic stimulus, like the German Ruhr area.

The Policy Exchange report found that countries with such systems in place such as Germany were able to combine upward demand pressures with stable house prices and spacious housing. The report proposes using the tax system to incentivise local authorities to support development.

The new government seems to have listened to these and the views of other organisations. The Queen’s speech of the 25 May 2010 set out the Decentralisation and Localism

14 Ibid.
16 Ibid., p.3.
The coalition must be careful that the proposed abolition of regional spatial strategies does not result in missed opportunities to deliver sustainable infrastructure, such as heat, water and waste across local authority borders. Integrated policy to deliver these services can offer carbon and cost savings – which can be missed if we don’t have a regional overview.”

On one view, the government is effectively passing the responsibility and the blame for lack of social housing to local councils. On another view, giving members of the local community the opportunity to have a role in the future of their communities promotes ‘public legitimacy’ of the planning system.

If passed, the Decentralisation and Localism Bill will be the instrument that ends Regional Spatial Strategies, a body which helped to plan for regions, and liaised with both central government and local councils. Regional planning powers would be returned to local authorities. For example, from April 2012, it transferred the investment powers and responsibilities of the HCA to London Greater London Lord Mayor’s office, and hand over the roles and responsibilities of the London Development Agency (LDA) to the Greater London Authority (GLA). The arrangements are governed by a board, chaired by the Mayor, and made up of equal representatives of the Mayor and London boroughs.

The bill will set up local housing trusts that will be able to grant planning permission for homes that meet local need, and supposedly make it easier for communities to provide homes for local people.13 The government is effectively passing on the responsibility for the provision of housing to the local planning authorities. Local councils in their role as local planning authorities will set out the affordable housing requirements for their area. It is therefore essential that local authorities, developers and registered providers understand that the new Affordable Rent product should be considered as ‘affordable housing’ for planning purposes, and that the definition of affordable housing refers to ‘Affordable Rent’. However it may be rather difficult to grasp the idea that charging 80% of the market rent could be conceived to be ‘affordable rent’.

**Criticism of Housing Reforms**

There is mounting criticism of the new rent model and many of the government’s affordable housing proposals. The anticipated extra income hoped to be gained from the new higher rents set as “affordable rent” is obviously supposed to be used by housing associations to finance the building of new homes. There is concern that higher rents are unlikely to fund a required number of new homes. Andrew Stunell (Parliamentary Under Secretary of State, Communities and Local Government; Hazel Grove, Liberal Democrat)20 admitted that the government cannot predict the actual number of homes that will be delivered in each year. He said will be dependent on agreements between registered providers and the Homes and Communities Agency in consultation with local authorities. Providers have until 3 May 2011 to submit delivery proposals to the agency. He deflected responsibility for housing levels to the local planning authorities (as per the Localism Bill) in stating that the Government Department does not forecast levels of future house building, and that the delivery of housing will be determined by local housing plans. He also added that there is almost £4.5 billion investment in new affordable housing to deliver up to 150,000 new build affordable homes.21 But, one may well wonder, how and where?

As Pat Ritchie, chief executive of the Homes and Communities Agency (HCA) said:

At a time when funding is tight, this new way of operating will allow us to do more with less resources, but it will rely heavily on effective working partnerships, which is where the HCA will play a significant part.22

The Shadow housing minister Alison Seabeck accused the government of failing to understand aspiration by allowing landlords to let homes with a minimum tenure of only two years, and at the same time, she states, ‘the Tory-led government wants to hike up rents for many new social housing tenants by thousands of pounds a year, to

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18 Richard Heap, ‘Quango cuts and localism among Queen’s Speech bills’ (Public Property UK.com 25/05/10 11:43 am) http://www.publicpropertyuk.com/2010/05/25/quango-cuts-and-localism-among-queens-speech-bills/


21 Ibid.

cover for their cuts in funding for new house building.23 But will the rent be affordable for many tenants? If not then the anticipated funds for new house building will not be available. For example, in Cambridge, in 2010, the average market rent for a two-bedroom house was nearly £900 a month. 80% of this would be £720 a month.24

The Chartered Institute of Housing considers that the principle behind the government’s affordable rent scheme is ‘flawed’. It is concerned that the new regime will not allow providers to develop enough supported housing, and could limit the building of larger homes, particularly in London. It also warned many tenants would be unable to pay the higher rents. It did approve some aspects of the plans, however, including allowing tenants to convert affordable rent homes to shared ownership, allowing landlords to convert social rented properties to models other than affordable rent to make schemes work, and encouragement for local authorities to develop homes after April 2012 when self-financing begins.25

Local Housing Allowance and Housing Benefit

Tenants in Affordable Rent properties will be eligible for housing benefit,26 rather than Local Housing Allowance.27 The Affordability Housing framework document did make some ‘concessions’ which are worth bearing in mind, however, there is not scope in this paper to elaborate upon them in this paper including:

The retention of the current formula for setting rent increases until at least 2014/15

More flexibility around contracts, with no requirement for detailed agreements to be signed by 1 April

Confirmation that local authorities will play a key role in agreeing investment plans, but will not be able to veto them

Recognition of a continuing role for low-cost ownership products.28

Interestingly, there are no concessions regarding the housing benefit cap. The caps on the amount a household can claim in housing benefit will be set at between £280 and £400 a week, or up to £20,800 a year. In central London, the Local Housing Allowance gives families in four bedroom homes up to £1,000 per week to pay their rent. Families in Westminster and parts of boroughs such as Camden could be worse off by up to £600 per week, or £31,200 per year. Families in Camden in the inner north London sub-region can currently get up to £575pw, and in cheaper inner east areas, such as Southwark and Lambeth, families can get up to £430pw.29

According to the Greater London Authority’s rent map, the median weekly rent for a four bedroom home in Westminster is £1,100; in Camden £825; in Southwark £450.

A concern is that those paying 80 percent of market rents will still be eligible for Local Housing Allowance, but the coming caps on the amounts payable and universal credit will still be eligible for Local Housing Allowance, but the coming caps on the amounts payable and universal credit cap of £26,000 a year would make those rents unaffordable for some, reducing still further the amount of homes available to the less well-off.

The government will also reduce the amount of housing benefit for working-age tenants who under-occupy their homes from 2013. The impact assessment report from the Department for Work and Pensions, released 17 February 2011, as part of the government’s Welfare Reform Bill, shows that this will affect around a third of those living in

25 Tom Lloyd, ‘CIH warns affordable rent model is flawed’ (Inside Housing, 16 February 2011) http://www.insidehousing.co.uk/news/finance/cihs-warns-affordable-rent-model-is-flawed/6513677.article
26 Directgov.uk, ‘Housing Benefit’ (Money, Tax and Benefits) http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On_a_low_income/DG_10018926 last accessed 30 June 2011. You may get housing benefit if you pay rent and your income and capital (savings and investments) are below a certain level. You could qualify if you are out of work, or in work and earning a wage. Use the online benefits adviser to get an estimate of the benefits, including Housing Benefit, you may get. You can’t usually get Housing Benefit if: 1. you have savings of over £16,000, unless you are getting the ‘guarantee credit’ of Pension Credit 2. you live in the home of a close relative 3. you’re a full-time student (unless you’re disabled or have children) 4. you’re an asylum seeker or are sponsored to be in the UK.
27 Ibid., see Local Housing Allowance, http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/On_a_low_income/DG_10018928 last accessed 30 June 2011. If you are renting a property or room from a private landlord, Local Housing Allowance is used to work out how much Housing Benefit you get. The amount of Housing Benefit you get will depend on where you live and who lives with you. Local Housing Allowance rates are set for different types of accommodation in each area. The rates range from a single room in a shared house, up to properties with four bedrooms. If you have been getting Housing Benefit since before 7 April 2008, the Local Housing Allowance will only apply to you if you change address or have a break in your claim.’
social housing- this is obviously a significant number.30 It says most tenants only under-occupy by one bedroom, and will lose around £11 a week in 2013/14, when the change comes into play. The report estimates that limiting housing benefit payments to the number of bedrooms that a social tenant actually needs will affect 670,000 people living in social housing. Those with two or more bedrooms that they do not use will lose an average of £20 per week. It also states that tenants in the north, east midlands and Wales were more likely to be affected than those living in London and the south east. Around 46 per cent of social tenants in the north east will see their housing benefit cut by around £12 a week, while only 19 per cent of London tenants will be affected. The north/south disparity is grossly unfair.

The National Housing Federation also condemned the housing benefit plans. David Orr, chief executive, said:

Ministers have long promised to protect the vulnerable and yet these plans could force thousands of people to move out of homes they have lived in for many years.

As a result of these changes, thousands of couples are no longer able to offer their grown-up children a room to stay in should their circumstances change, and many single parents will be pushed away from friends, relatives and support networks.31

The National Housing Federation also questioned how the affordable rent reforms tie in with housing benefit changes. It said plans to limit overall benefit payments to £26,000 a year would make it unlikely that housing benefit would cover the 80 per cent rents. It also noted the new product would have little impact in low value areas where social rents are already near the 80 per cent level, already limiting the potential for development.

Shadow housing minister Alison Seabeck said that ‘Their new proposals not to cap higher rent levels at the same level as housing benefit caps could see social rents in London more than treble - but even that won’t fund the extra homes needed.’32

It looks as though the new model will fail to deliver the right number of new homes in low value areas. So are a third of the population requiring housing benefit going to live?

It is possible that such issues will provide an incentive for housing associations to put more of their resources into building homes outside London, but it may be difficult to obtain loans from banks against future rental income, rather than a government funding guarantee. To remedy the situation the government proposes ‘a revenue-led investment model’. This model is supposed to ensure that new “affordable” homes continue to be built despite a huge decline in government financial support. But it is unclear whether or not housing associations would be investing in a solution to London’s housing problems. How the Lord Mayor will manage with more responsibility for housing, but less money to spend on it is also unclear, but there it is not within the scope of this paper to examine this issue further.

Legal Aid Reduction

Legal aid is funds made available by the government to enable free legal advice and representation to those on low incomes. Housing advice and representation is also well known to play a very important role in helping the most vulnerable to obtain accommodation, avoid homelessness and avoid unlawful eviction for many reasons: - housing law is complicated, stable accommodation is required to maintain employment, and health, especially children’s health and education, are adversely affected by lack of accommodation, frequent moves or by living in poor accommodation in disrepair.

The government has recently proposed to reduce legal aid still further for Housing Advice and Representation than in previous years (the reduction in Housing legal aid for customers by volume of cases from 2008/9 was 40,400), even though, as stated in a Green Paper (a consultation paper produced by Parliament when considering a new law), that housing clients are more likely to be ill or disabled compared with the civil legal aid client base as a while.33 The proposals include proposals to cut £350m out of the justice ministry’s annual £2.1bn legal aid budget.34 on Monday night, at a Law Society meeting, Lady Hale, a Supreme Court judge (the court is the highest court in the UK judge, warned that cuts to legal aid would have a “disproportionate effect upon the poorest and most vulnerable in society” and on Tuesday, 28 June 2011, the Law Centres Federation claimed that 18 out of 52 centres in England and Wales were likely to close as a result of cuts to legal aid.35


32 Ibid.


34 Alan Travis, ‘Legal aid cuts: surprise exceptions take out the sting’ (News, 15 November 2010) guardian.co.uk

The Government does propose to keep civil legal aid for some cases e.g. defending possession and advice on homelessness applications and appeals; also very serious housing disrepair cases would remain in scope, but the threshold will be set very high, i.e., where the life or health of the tenant of their family is at serious risk. \[36\]

It will stop many housing problems from being resolved at an early stage resulting in greater financial hardship as the matter progresses to a court hearing. Naturally the reduction in legal aid funding results in a reduction of law firms and centres including Citizen Advice Bureaus as they lose the funding needed to assist housing cases - so as many query - who will provide housing advice? Local councils, either administering, or connected with those administering government planning policy, most likely. A panel of independent experts have concluded that cutting legal aid will not bring the savings to Government spending that government hopes for. \[37\]

**Legal Problems for Registered Providers of Affordable Housing**

The implementation of the new affordable housing programme is also likely to lead to legal wrangles for landlords. For example, the landlord can decide not to re-issue a tenancy at the end of its term (most often to be a two year term) but this could result in a number of scenarios including possession proceedings and evictions. In England the landlord must obtain a possession order to evict secure tenants. Usually he may not attempt to legally evict a tenant without a further order from the Court which gives a warrant to evict the tenant effective from a given date. Most council and social housing tenants are currently secure tenants. A secure tenancy cannot be brought to an end by the landlord except by a court order. The method by which this is achieved varies depending on whether the tenancy is fixed or periodic. If it is a fixed term tenancy, i.e., fixed for a term of years, the landlord must obtain a termination order under s.82 of the Housing Act 1985 \[38\]. This involves validly forfeiting the property after which the court will make an order terminating the tenancy on a specified date. Upon this date the fixed term tenancy will end and become a periodic secure tenancy under s86(1) (b), a tenancy lasting from week to week or form month to month. To end this periodic tenancy, the landlord will then have to follow the procedure for periodic tenancies. There is no requirement for two separate hearings; a s83 notice may be served alongside the Notice of Seeking Possession (NOSP) of the fixed term tenancy.

The landlord must follow the notice procedure contained in s.83 of the Act 1985 and serve a NoSP on the tenant. The NoSP must be in the prescribed form and must:

- Specify a date after which the proceedings may be begun (this date must be no earlier than the tenancy could have been determined at common law)
- Specify the ground or grounds on which it seeks possession, and give particulars of the ground(s)
- The NoSP may be dispensed with if the court considers it just and equitable to do so (s83(1)(b))

Tenants may challenge the decisions of councils or housing association to terminate the tenancy or at the proceedings or court orders on human rights grounds, e.g., article 8 concerns the right to respect for the home, which includes a right not to have one’s home life interfered with, including by unlawful surveillance, unlawful entry, and arbitrary evictions. Tenants may well be inspired by the recent landmark case of Manchester Council v Pinnock [2010] UKSC 45 where the Supreme Court reinforced the need for a court to consider the proportionality of a possession order. It stated that whilst a possession order may be valid under domestic law, a consideration of Article 8 may justify either suspending a possession order, extending the period for possession, or refusing an order completely.

Although the Supreme Court made the point that as assessment under Article 8 as to whether the decision to evict is proportionate is likely to be more relevant when dealing with vulnerable occupiers with mental and/or physical disabilities, all social landlords must now consider the likelihood of potential judicial reviews regarding their housing management decisions. Similar challenges are almost guaranteed for new “affordable rent” tenancies, landlords may find they are threatened with litigation regarding the proportionality of their decision to terminate and/or not offer other accommodation, therefore making it even more difficult and longer to end these types of tenancies.

**Alternative strategy**


One strategy which could be utilised by local councils to provide affordable housing involves promoting more ‘mixed housing’. Some parts of the country with a high cultural mix are very interested in the idea. For example, as a result of the reports into community division in northern towns, the Bradford city council consulted with social housing providers about ways to counter “white flight” and the defensive clustering of ethnic minorities. Around 2003 council staff and housing association staff became involved with ‘affordable housing’ in the Yorkshire Dales and found that many from both white and Asian communities were frustrated by a shortage of suitable property in “their” areas. The answer was to direct them to areas that were not their areas but which did contain affordable housing through robust marketing e.g., posters such as “Don’t be scared of Allerton or Queensbury” and for example, to attract white residents into a predominately Asian area: “Don’t be frightened to move into Halifax’s Park area.” Housing consultants emphasise that marketing is the key to success of such mixed housing schemes, e.g., at Allerton, the presence of high profile housing officers arranging long, reassuring sessions at mosques, and the hosting of group arrivals, has assured the success of such schemes. Now, years later, it seems that the scheme has worked, with most original tenants still living in Allerton and Queensbury for example, and some starting to buy their homes from the social landlord. A report by independent DBA Consultancy ‘What Makes Successful Mixed Communities?’ which Home Group housing association was promoting as national best-practice in the field.41 The Home Group’s senior manager, John Hanson, says: “We really want to get this report read round local and national government. It is not the answer to everything, but a counter to the way that bad news always seems to get the bigger headlines, and so distort the real picture.”42

Conclusion

The new government’s preoccupation seems to be with reducing the increasing deficit, however as I have suggested above there may be other more economically efficiently means of doing this in relation to planning and housing. In light of this and budget restraints, it seems that the government may view existing and new housing issues as local issues for local authorities, where the responsibility to provide adequate housing and decision-making powers should be run hand in hand. The trick will be to find a way of providing incentives to make development worthwhile for both local authorities and local populations. They may include the flexibility to develop new streams of funding for infrastructure provision as well as direct payment or tax benefits from increasing housing supply. The shift away from centralised target-based decisions towards a system based on locally agreed housing requirements will require local communities to plan for the longterm, as well as taking into account needs of neighbouring communities. It will be necessary for partnerships to have a positive approach to development based on housing markets rather than administration. The role of regional tiers is to encourage local authorities to work together for planning and planning purposes. It may be that the removal of the regional tier will destroy the strategic planning capability and skills that currently exist between the national and the local levels. It may be that this forum has added little to the delivery of housing. But the object of any new changes at national and local level has to be more housing developments and a more inclusive planning system

The government proposals for a new planning system, as devised in the Localism Bill involving the reduction of funds for councils which in the past have provided and assisted with the implementation of housing schemes will impact on every aspect of housing provision and housing assistance. The Localism Bill, once law, which is highly likely, will have the effect of decentralising planning decisions concerning the allocation of affordable housing requirements in the UK. This means that responsibility for providing adequate and sufficient housing will be taken away from the central government and intermediate bodies and given completely to local councils. Although councils will be allocated some funding they have to find most of what is needed for the provision of old build housing, new build projects and housing restoration from joint ventures with private enterprise or community initiatives or other means. The amount of funds available for enabling the success of mixed housing projects, where marketing and harmonious integration play a key role, is also consequentially reduced

It seems that the government has passed responsibility for the provision of affordable housing to inadequately funded local councils, which are likely to impact most upon the poor and vulnerable. The recent government changes to housing and planning and housing benefit and local housing allowances seem also to be a recipe for increasing homelessness statistics, or at least an opportunity for human rights challenges, e.g., arguably article 6, the right to a fair trial in the case of eviction, but more likely, article 8, the protection of private and family life. The reduction in legal aid assistance to those with typical housing issues, such as homelessness and possession hearings is a false economy. It will not assist the maintenance or provision of housing, neither will it protect the rights of vulnerable people or uphold the rule of law.

The human cost to the vulnerable and socially of such reductions leading to the likelihood of increasing homelessness is counterproductive to the goals of the HCA.
Overall, it seems that recent government housing reforms do not promote the goals of the HCA and may result in a housing and welfare crisis for many vulnerable people in the near future.