

DRAFT OUTLINE OF LEGISLATION ON NEW HOMES QUALITY

s1 would be a definitions clause. It would define “home”, “new home”, “quality”, “non-profit organisation”, “new home warranty”. “building control”

ORGANISATIONAL ARRANGEMENTS

s2 would set up a New Homes Standards Committee. This could perhaps be appointed by Parliament and consist of 15 members of whom at least 8 would be MPs or peers, at least 8 would be professionally qualified as architects, surveyors or other construction-related professions, at least 2 would have experience as advocates of consumer interests (at least 1 in relation to new homes), at least 2 would have personal consumer experience of problems with home construction work, at least 2 would have experience related to quality control, quality improvement, quality inspection or warranty provision (including at least 1 in relation to new homes), and at least 2 would have qualifications or experience related to health and the environment . The fact that the committee has only 15 members but the “at leasts” add up to 24 would mean many members would have more than one of these qualifications.

s3 would empower the New Homes Standards Committee to adopt standards for application in new homes construction and would provide that it may do so by adoption of standards drawn up by other bodies. The section could also specify certain existing standards which the Committee shall be deemed to have adopted as soon as the Act takes effect including those in building regulations, those in NHBC mandatory and technical standards and other standards that are generally accepted such as CIEE.

The section should empower the committee to include standards for record keeping and inspection within the standards it adopts and should provide that its approach shall be focused on evidence-based outcome-oriented approaches rather than on a tick box approach.

s4 would provide that the New Homes Standards Committee shall ensure that there are non-profit organisations which effectively carry out the function of promoting improved quality in new homes, and to that end it shall have power to make grants to such organisations, to set conditions for such grants, and to issue directions as to how the functions funded by such grants are carried out. (We think the power to issue directions is necessary to bring the Teckal ruling of the European Court of Justice into play and thereby exclude EU procurement rules from this process. We envisage that, for example, the NHBC in its quality improvement role could be drawn into this framework but this can't be specified or the bill would become a hybrid bill and the arrangements would become too inflexible). There should be a duty to monitor the effectiveness of this work including the use of consumer surveys.

s5 would empower the New Homes Standards Committee to confer duties in relation to the enforcement of the standards (including duties to keep records which are available to homeowners and prospective purchasers)

(a) upon bodies carrying out the building control function and

- (b) upon local authorities responsible for building control in relation to all new homes being built within their area, whether or not they are the body carrying out building control

s6 would provide that amongst the duties which the New Homes Standards Committee shall confer upon local authorities shall be the duty to make arrangements for the existence of a warranty provider which is owned by local authorities, underwritten by the Crown and provides a new home warranty meeting standards set by the New Homes Standards Committee (We envisage this duty being discharged through LABC but again this can't be specified or the bill would become a hybrid bill and the arrangements would become too inflexible)

s7 would require the New Homes Standards Committee to appoint a New Homes Ombudsman and to make regulations for the operation of the Ombudsman's service. Amongst the provisions of these regulations must be a requirement for the Ombudsman to consider evidence from the consumer as well as from the contractor or warranty provider and a power to arrange independent evidence

s8 would provide for the Ombudsman to make arrangements for rapid adjudication of disputes within the jurisdiction of the Ombudsman. These arrangements must require the adjudicator to consider evidence from the consumer as well as from the contractor or warranty provider, secure any necessary independent advice and make a considered judgment.

s9 would provide that in relation to new home warranties the New Homes Ombudsman shall, in addition to any power conferred by this Act, also have all the powers of the Financial Ombudsman and where it would be proportionate to do so (having regard to the value of the house and the rectification work needed) may set aside the financial limit for those powers applicable to the Financial Ombudsman.

s10 would provide that the New Homes Standards Committee shall be accountable to Parliament, that it may report to Parliament on any matter that relates to the quality of new homes, and that its proceedings shall enjoy Parliamentary privilege. Gagging clauses which would prevent people discussing matters with members of the Committee shall be banned.

STATUTORY DUTY OF RECTIFICATION

s11 shall provide that for every standard set by the Committee there shall be a period, called the "guarantee period" during which it shall be normal for a defect from the standards to be rectified and that

- (a) for serious structural defects, for matters which would be subject to the Consumer Protection Act 1987 if the house were a product, for breaches of the Defective Premises Act, and for such other matters as the New Homes Standards Committee may determine that period shall be 10 years (or such longer period as the Committee may determine for specific purposes)
- (b) for all other matters it shall be 8 years except to the extent that the Committee determines that a different period (not less than 3 years) shall apply for specific purposes

s12 would provide that for any new home

(a) there shall be a “responsible contractor” who shall accept the responsibility for rectifying any defect from the standards set by the Committee which is noted during the guarantee period

(b) there shall be a “warranty provider” who shall guarantee the performance of the responsible contractor

(c) the responsible contractor may vary over time, for example where it is agreed that after a specified period the warranty provider shall take over the role of the responsible contractor

s13 would provide that where a defect is reasonably suspected during the guarantee period and the suspicion is reported during the period to the responsible contractor or to the warranty provider or to the body responsible for building control or to such other body as any of those bodies may have specified or to the New Homes Ombudsman

(a) the responsible contractor (or, in default, the warranty provider) shall take reasonable steps promptly to investigate the suspicion and make good any damage occasioned by the investigation

(b) where, within or after the guarantee period, it is shown that the defect which was reasonably suspected is in fact present the responsible contractor (or, in default the warranty provider) shall promptly rectify the defect and make good any damage occasioned by the rectification unless

(i) rectifying the defect is wholly disproportionate in which case the contractor or warranty provider may instead pay compensation

(ii) the main adverse effect of the defect is a shortening of life expectancy of the property or a component of the property in which case the contractor or warranty provider may instead extend the guarantee period or may pay compensation

(c) where it is shown that the facts which gave rise to the suspicion were in fact evidence of a different defect which was also within its guarantee period at the time those facts were noted, the responsible contractor shall promptly rectify that defect subject to the same provisos as in (b)

s14 would provide that where suspicion of a defect is reasonably suspected and

(a) the homeowner reasonably considers that the investigation of the defect is not being conducted sufficiently promptly or

(b) that the investigation is reaching erroneous conclusions or

(c) that the work proposed is not adequate or

(d) that the work proposed is not being carried out sufficiently promptly

the homeowner may apply to the New Homes Ombudsman who may

(i) order the carrying out of investigations to a specified timescale and/or

(ii) order the carrying out of rectification work to a specified timescale and/or

(iii) arrange for the carrying out of investigations or rectification work other than by the responsible contractor and recharge the responsible contractor

s15 shall provide that if the New Homes Ombudsman considers that time is pressing the New Homes Ombudsman may delegate the powers in s13 to an adjudicator carrying out an adjudication under s8

s16 would allow homeowners a right of appeal to a New Homes Ombudsman against a decision of an adjudicator and a right of appeal from the New Homes Ombudsman to the Upper Tribunal with leave of the Ombudsman or the Upper Tribunal. (Allowing a similar right of appeal to contractors would undermine the need for the scheme to operate promptly, but a right could be created for contractors to apply to the Ombudsman for compensation on the basis of errors by the adjudicator)

s17 would allow the New Homes Ombudsman to order a responsible contractor (or, in default, a warranty provider) to pay a homeowner compensation

- (a) for inconvenience, delay, or stress arising from a defect, any discussions concerning it and any rectification work, and
- (b) for any loss of use of all or part of the property or other consequential losses (including liabilities to third parties) as a result of a defect or any investigations or remedial work, and
- (c) for costs and expenses incurred in connection with any investigations and discussions of a suspected defect and
- (d) for any loss of quality resulting from a defect not being fully rectified on the grounds of proportionality

s18 would allow the New Homes Ombudsman to make an order for a responsible contractor (or, in default, a warranty provider) to pay compensation to a third party who has suffered personal injury or damage to property as a result of a defect in a new home

s19 would allow the New Homes Ombudsman, after the expiry of the guarantee period, to make any order that could have been made within the guarantee period if satisfied that in all the circumstances of the case it would be fair and reasonable to do so.

ARRANGEMENTS FOR WARRANTY PROTECTION

S20 would require that before commencing construction of a new home and at all times until construction is completed the responsible contractor must satisfy the local authority within whose area the home is being constructed that

- (a) the home is being built in such a way (including the carrying out of such inspections and the keeping of such records) that the warranty established under s6 will be offered by that warranty provider or
- (b) the home has already been sold to a person who intends to occupy it and that arrangements have been made for the issue of a warranty by a warranty provider acceptable to the New Homes Standards Committee or
- (c) the responsible contractor is an individual person and the home is being built to be occupied by the responsible contractor and will not be sold for a period of 10 years after completion without making warranty arrangements acceptable to the local authority

s21 would provide that if the above duty remains in force at the time of the completion of the property then the warranty established under s6 shall be issued to the first purchaser unless that purchaser chooses the issue of a warranty by another warranty provider acceptable to the New Homes Standards Committee

s22 will provide that if a contractor so breaches the undertakings in s20(a) that the warranty specified in s6 cannot be issued then

- (a) if the house has been sold then the purchaser shall be entitled
 - (i) to revoke the contract and to receive the repayment with interest of all monies paid and of any expenses incurred or
 - (ii) to require the responsible contractor to provide financial security for any rectification work and the New Homes Ombudsman shall be entitled to determine whether any such financial security is adequate
- (b) if the house has not been sold or if the purchaser elects to revoke the contract then the local authority shall
 - (i) enter into arrangements with the responsible contractor to provide financial security for any rectification work or
 - (ii) make a management order entitling it to manage the property for a period of 10 years

s23 shall require that purchasers before making a choice of warranty shall be given full information about the s6 warranty and about the other warranties being offered to them, in a format approved by the New Homes Standards Committee

POWER TO EXTEND THE PROVISIONS OF THE ACT

s24 would provide that the provisions of the Act may be extended by statutory instrument, subject to affirmative resolution, to any other category of construction or maintenance work on buildings or land forming part of a home

To the extent (if any) that the bill is a devolved matter and can apply only to England s25 would allow it to be brought into force in Scotland, Wales or Northern Ireland by a simple resolution of the appropriate Parliament or Assembly but without prejudice to the right subsequently to amend it under devolved powers

FINANCIAL PROVISIONS

We envisage

- a single financial accountable officer for the Ombudsman and the Committee
 - a Parliamentary estimate covering the Committee's basic administrative costs
 - a turnover based levy on the construction industry to meet the costs of the Ombudsman, the grants to bodies promoting improved quality and the compensation scheme for adjudication errors,
 - a supplement to the building control fee to cover increased costs of inspection
 - the costs of the adjudication system to be met by contractors and warranty providers against whom adverse adjudication decisions are made paying the full cost of the adjudication which they have lost and an additional contribution sufficient to defray the costs of those adjudications for which no adverse decision was made
 - a risk-based premium charged to the builder for the public warranty provision
- (In practice the total costs for a good quality socially responsible builder may well be no more than such a builder already pays voluntarily. Making them compulsory would protect good builders against unfair competition and ensure that the organisations are independent and accountable.)

MISCELLANEOUS PROVISIONS

There would be the usual miscellaneous technical provisions such as the commencement date, the short title, transitional provisions and the schedule of amendments and repeals