



Draft Healthy Homes Bill and accompanying documents

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Introduction

The built environment has profound effects on people's health and well-being. The quality of people's homes matters to their short-term safety and long-term quality of life. The Grenfell Tower tragedy in summer 2017 should act as a lasting reminder in relation to the former.

It should go without saying that new homes, whether built from scratch or delivered via converting existing buildings, should be safe, and should enhance rather than undermine people's mental and physical health. Too much of the housing that is being built today, however, is unsafe and undermining people's health, wellbeing and life chances. This should be seen by everyone as totally unacceptable.

The TCPA recognises there is a need for more homes – and these must be decent homes. New homes and the places they are within should enable social transformation; rather than creating the slums of the future. This was a key motivation of the Garden City pioneers who founded the Association and continues to underpin our campaign for new Garden Cities.

The evidence gathered for the TCPA's Raynsford Review and in collaboration with University College London to inform the development of this proposed new legislation, confirms the poor quality of some of the new housing being built today. Much of this, although not all, has been enabled through the relaxation of the planning system. The TCPA has encountered multiple examples of converted buildings, undertaken using permitted development rights, that delivered homes with very limited access to natural light, room sizes that fall far below national space standards and no access to (communal) amenity spaces such as playgrounds or greenspace.

The quality of some of the homes being built today is even more shocking because we seem to have gone backwards over the last century. In 1918 the Tudor Walters committee published its recommendations on design standards for council housing. These standards were about space and design but also about energy, transport and green space. The standards were then enabled by the 1919 Housing and Town Planning Act, which was the origin of council housing in the UK, and together these were seen as fulfilling Lloyd George's, the then Prime Minister's, commitment for 'homes fit for heroes'.

The design standards shaped the quality of hundreds of thousands of council homes built between the wars and marked a seismic step change in space and quality. They created the classic three-bedroomed council houses with front and back gardens, green space and communal facilities. In 1963, these design guides evolved into the Parker Morris standards, which survived until 1980 when all mandatory standards were abolished.

We recognise that not everyone will be supportive of the idea of national design standards. Nonetheless, the positive transformation of housing quality enabled by the setting of national standards that was achieved, should not be forgotten.

There is cross party consensus on the need for more houses and also consensus around the importance of place-making and well-designed homes. The Healthy Homes Act aims to help take that debate forward by setting out ten principles which together constitute decent homes. These principles will be implemented through changes to building regulations and national planning policy and apply to all new homes. They will give consistency and certainty to house builders and local authorities. And ensure new homes meet basic, minimum standards that the TCPA believes the public would be outraged to realise are not met by many new homes today.



Draft Healthy Homes Bill

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Make provision about the delivery of decent homes. It sets out the principles that define a decent home and mechanisms for how those principles will be implemented for all new housing. It also sets out how development plan documents should be developed to meet the housing needs of residents.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PRINCIPLES OF A HEALTHY HOME

1 Policy statement on healthy homes principles

- (1) The Secretary of State must prepare a statement in accordance with this Act (the “policy statement on healthy homes principles”).
- (2) The statement must explain how the healthy homes principles are to be interpreted and applied by Ministers of the Crown in making, developing and revising their policies.
- (3) The statement may –
 - (a) deal with the healthy home principles separately or together;
 - (b) deal with policies separately or together.

2 Meaning of ‘healthy homes principles’

- (1) In this Act “healthy homes principles” means the following principles -
 - (a) the principle that all new homes must be safe in relation to the risk of fire,
 - (b) the principle that all new homes must have adequate liveable space to meet the needs of people over their whole life time, including minimum room sizes and adequate internal and external storage space,
 - (c) the principle that all main living areas and bedrooms of a new dwelling must have access to natural light,
 - (d) the principle that all new homes must be accessible and have accessible public realm,
 - (e) the principle that homes must be built within places that prioritise walkable services and sustainable transport,

- (f) the principle that all new homes must secure radical reductions in carbon emissions in line with the provisions of the Climate Change Act 2008 and, as a minimum, must be delivered to zero carbon standard.
- (g) principle that homes must have walkable access to green and play space,
- (h) the principle that all new homes must demonstrate how they will be resilient to a changing climate over their full life time
- (i) the principle that all homes must be secure and built to design out crime, and
- (j) the principle that homes must be free from unacceptable intrusive noise pollution.

3 Policy statement on healthy homes principles: process

- (1) The Secretary of State must prepare a draft of the policy statement on healthy homes principles.
- (2) The Secretary of State must consult such persons as the Secretary of State considers appropriate in relation to the draft statement.
- (3) The Secretary of State must lay the draft statement before Parliament.
- (4) If, before the end of the period of 21 sitting days beginning with the day after the day on which the draft statement is laid—
 - (a) either House of Parliament passes a resolution in respect of the draft, or
 - (b) a committee of either House, or a joint committee of both Houses, makes recommendations in respect of the draft, the Secretary of State must produce a response and lay it before Parliament.
- (5) The Secretary of State must lay before Parliament, and publish, the final statement, but not before—
 - (a) if subsection (4) applies, the day on which the Secretary of State lays the response required by that subsection, or
 - (b) otherwise, the end of the period of 21 sitting days beginning with the day after the day on which the draft statement is laid.
- (6) The Secretary of State may revise the policy statement on healthy homes principles at any time (and this section applies in relation to any revised statement).
- (7) “Sitting day” means a day on which both Houses of Parliament sit.

4 Policy statement on healthy homes principles: effect

- (1) A Minister of the Crown must have regard to the policy statement on healthy homes principles when making, developing or revising policies dealt with by the statement.
- (2) Relevant responsible authorities must have regard to the policy statement on healthy homes principles when discharging their duties under the planning acts.
- (3) “Relevant responsible authorities” include-
 - (a) local planning authorities,
 - (b) urban development corporations,
 - (c) new town development authorities,

- (d) the planning inspectorate, and
- (e) Homes England.

(4) “Planning acts” means the Local Government, Planning and Land Act 1980, Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Localism Act 2011.

5 Annual monitoring

- (1) The Secretary of State must prepare a progress report for each annual reporting period.
- (2) A progress report for an annual reporting period is a report on progress made in that period about the extent to which all new homes approved and completed during that period have met the healthy homes principles under section 2.
- (3) A progress report must include specific consideration of how the approval and creation of new homes has met the needs of those with protected characteristics under section 4 of the Equality Act 2010.
- (4) A progress report will include consideration of how progress could be improved.
- (5) The Secretary of State must –
 - (a) arrange for the progress report to be laid before Parliament, and
 - (b) publish them.

6 Complaints mechanism

- (1) A person may make a complaint to the New Homes Ombudsman under this section if the person believes that a relevant responsible body [as defined in section 4(3)] has failed to comply with the requirement stated in section 4(2).
- (2) The New Homes Ombudsman must prepare and publish a document which sets out the procedure by which complaints can be made.
- (3) A complaint under this section must be made in accordance with that procedure (as most recently published).
- (4) A complaint under this section may not be made by any person whose functions include functions of a public nature.

7 Investigation of complaints

- (1) The New Homes Ombudsman may carry out an investigation under this section if it receives a complaint made under section 6 that, in its view, indicates that—
 - (a) a relevant responsible authority has failed to comply with section 4(2), and
 - (b) the failure is serious.

(2) An investigation under this section is an investigation into whether the relevant responsible authority has failed to have regard to the policy statement on healthy homes principles when discharging its duties under the planning acts as set out in section 4.

(3) The New Homes Ombudsman must notify the relevant responsible authority of the commencement of the investigation.

(4) When the New Homes Ombudsman has concluded the investigation it must prepare a report and provide it to the relevant responsible authority.

(5) The report must set out—

- (a) whether the New Homes Ombudsman considers that the relevant responsible authority has failed to comply with the healthy homes principles;
- (b) the reasons the New Homes Ombudsman came to that conclusion;
- (c) any recommendations the New Homes Ombudsman may have (whether generally or for the relevant responsible authority) in light of those conclusions.

(6) The New Homes Ombudsman may publish the report.

(7) The New Homes Ombudsman must also—

- (a) notify the relevant Minister of the commencement of the investigation, and
- (b) provide the relevant Minister with the report prepared under subsection (4).

(8) In this Act “the relevant Minister”, in relation to a failure (or alleged failure) of a relevant responsible authority to comply with the healthy homes principles, means the Minister of the Crown that the New Homes Ombudsman considers appropriate having regard to the nature of the failure.

8 Duty to keep complainants informed

(1) Where a person makes a complaint to the New Homes Ombudsman under section 6, the New Homes Ombudsman must keep the complainant informed about its handling of the complaint.

(2) In particular, the New Homes Ombudsman must notify the complainant—

- (a) if it does not intend to consider the complaint because the complaint was not made in accordance with section 6;
- (b) if it has concluded that it will not be commencing an investigation under section 7;
- (c) if it carries out an investigation under section 7—
 - (i) that it is carrying out the investigation, and
 - (ii) when the investigation is complete, that it has been completed.

9 Information notices

(1) The New Homes Ombudsman may give an information notice to the relevant responsible authority if—

- (a) the New Homes Ombudsman has reasonable grounds for suspecting that the relevant responsible authority has failed to comply with section 4(2), and
- (b) it considers that the failure is serious.

- (2) An information notice is a notice which—
 - (a) describes an alleged failure of a relevant responsible authority to comply with section 4(2), and
 - (b) requests that the relevant responsible authority provide such information relating to the allegation as may be specified in the notice by such date as may be specified in the notice.
- (3) The recipient of an information notice must—
 - (a) respond in writing to the notice, and
 - (b) so far as is reasonably practicable, provide the New Homes Ombudsman with the information requested in the notice.
- (4) The recipient of an information notice must comply with subsection (3) by—
 - (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (5) The written response to an information notice must set out—
 - (a) the recipient’s response to the allegation described in the notice, and
 - (b) what steps (if any) the recipient intends to take in relation to the allegation.
- (6) The New Homes Ombudsman may withdraw an information notice.

10 Decision notices

- (1) The New Homes Ombudsman may give a decision notice to a relevant responsible authority if—
 - (a) the New Homes Ombudsman is satisfied, on the balance of probabilities, that the relevant responsible authority has failed to comply with section 4(2), and
 - (b) it considers that the failure is serious.
- (2) A decision notice is a notice that—
 - (a) describes a failure of a relevant responsible authority to comply with the healthy homes principles, and
 - (b) sets out the steps the New Homes Ombudsman considers the relevant responsible authority should take in relation to the failure (which may include steps designed to remedy, mitigate or prevent reoccurrence of the failure).
- (3) The recipient of a decision notice must respond in writing to that notice by—
 - (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (4) The written response to a decision notice must set out—
 - (a) whether the recipient agrees that the failure described in the notice occurred,
 - (b) whether the recipient intends to take the steps set out in the notice, and
 - (c) what other steps (if any) the recipient intends to take in relation to the failure described in the notice.

(5) The New Homes Ombudsman—

- (a) may not give a decision notice to a relevant responsible authority unless it has first given at least one information notice relating to the failure to comply with section 4(2) that is described in the decision notice;
- (b) may withdraw a decision notice.

11 Duty of the New Homes Ombudsman to involve the relevant Minister

(1) The New Homes Ombudsman must—

- (a) provide the relevant Minister with—
 - (i) a copy of the notice and,
 - (ii) a copy of any correspondence between the New Homes Ombudsman and the recipient of the notice that relates to the notice (apart from correspondence sent by virtue of paragraph (b)), and
- (b) provide the recipient of the notice with a copy of any correspondence between the New Homes Ombudsman and the relevant Minister that relates to the notice (apart from correspondence sent by virtue of paragraph (a)).

12 Enforcement

(1) The New Homes Ombudsman may make a review application in relation to conduct described in a decision notice given to a relevant responsible authority.

(2) The New Homes Ombudsman may make a review application in relation to conduct of a relevant responsible authority occurring after a decision notice was given to the them that is similar, or is related, to conduct that was described in the notice as a failure of the relevant responsible authority to comply with section 4(2).

(3) In this Act, a “review application” means an application to the High Court for judicial review.

(4) Neither subsection (1) nor (2) overrides any requirement for permission of the court to be obtained before making a review application.

(5) The New Homes Ombudsman is to be treated as having a sufficient interest in the matter to which a review application under subsection (1) or (2) relates for the purposes of any proceedings in relation to the application.

(6) A review application under subsection (1) must be made before the end of the 3 month period beginning with the day by which the house builder was required to respond to the decision notice (see section 10(3)) (and this time limit applies instead of any other time limit that would otherwise apply).

(7) A relevant responsible authority that is the subject of a review application under subsection (1) or (2) must publish a statement after the conclusion of the proceedings relating to that application (including any appeal) that sets out the steps (if any) it intends to take in light of the outcome of those proceedings.

PART 2

PLANNING FOR HEALTHY AND AFFORDABLE HOUSING

13 Duty on local planning authorities to plan for affordable housing needs

(1) In section 19 (Preparation of local development documents) of the Planning and Compulsory Purchase Act 2004 after paragraph 19(1E) insert -

“(1F) Development plan documents must (taken as a whole) include policies designed to meet the housing needs of the local planning authority’s area in such a way as to secure the long-term health, safety and wellbeing of residents. In meeting such needs planning authorities must have particular regard to ensuring that housing is affordable to those on average or below-average household incomes.”

DRAFT HEALTHY HOMES BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the draft Healthy Homes Bill as published by the Town and Country Planning Association in May 2019.

- These Explanatory Notes have been prepared by the Town and Country Planning Association in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice and provide background information on the development of policy.
- These Explanatory Notes are best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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PART 2

PLANNING FOR HEALTHY AND AFFORDABLE HOUSING

- Clause 13: Duty on local planning authorities to plan for affordable housing needs

Policy context: The current approach to securing decent homes

The Government's existing approach to securing decent homes and communities is fragmented and spread across the building regulations regime, planning, Health and Safety Executive and a variety of other legislation. The nature of these 'requirements' is highly variable with some duties in planning law, such as the requirement to contribute to the achievement of sustainable development¹, being effectively meaningless in practice. Brexit adds further uncertainty about the future direction of UK regulation.

There are six main approaches that exist to setting standards in the built environment:

i) Building regulations

Designed to create a 'reasonable' level of health and safety, these regulations are based on enabling primary legislation and secondary statutory orders. The regulations in each order are expressed at a high level and interpreted through the Governments 'Approved Documents'. These are non-statutory and not an absolute set of standards in any real sense but offer a measure of flexibility around compliance subject to an inspection regime. Inspection involves an element of professional judgement as to what 'reasonable' might mean.

This inspection regime has been part privatised. The conversion of existing buildings to residential use will normally require actions classed as building operations and building regulations will apply. There are, however, three main problems with building regulations as a means of securing the health and wellbeing of end-users:

- The regime is not founded on absolute safeguards but on 'reasonable' compliance with regulations;
- The regulations are limited in extent and focused on building fabric. They do not deal with health and wellbeing but focus on reasonably safe outcomes. For example, they do not require new homes to have a set amount of access to natural light. They do include a minimum level of energy performance (Part L); and
- The enforcement regime has flaws with significant cultural problems of non-disclosure by parts of the development industry and wider perceptions of trust².

ii) National planning standards

The boundary between building regulations and planning requirements is unhelpfully blurred. There are no legal duties in planning law which require any minimum standards in the built environment. There is a legal duty on good design³, but this is not defined in a way which

¹ Section 39(2) of the Planning and Compulsory Purchase Act 2004

² See TCPA, *Raynsford Review of Planning: Final Report*, November 2018

<https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd>

and as identified in *Building a Safer Future. Independent Review of Building Regulations and Fire Safety: Final Report*. Cm 9607. Hackitt Review. May 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf

³ Section 39(2A) of the Planning and Compulsory Purchase Act 2004, as amended.

makes it useful. The National Planning Policy Framework (NPPF)⁴ and Planning Policy Guidance (PPG)⁵ contain high level policy on design but no minimum standards.

The Government abolished requirements in England for zero carbon homes and the legal requirement for sustainable urban drainage schemes. In comparison, national standards on a range of issues exist in Wales, Scotland and Northern Ireland in the form of national and regional planning policy and legislation⁶.

iii) Nationally described technical standards

The Government has a set of technical standards for new homes, particularly on space standards⁷. These are not mandatory on local planning authorities, however, if a local planning authority wishes to adopt a space standard it must comply with these national standards. It is worth noting that these standards do not cover some issues such as the external storage of bikes or bins.

iv) Local planning requirements

Local authorities have limited abilities to adopt standards in local plans. Significantly, all policy must pass through the NPPF viability testing regime. In other areas some of the barriers are more practical, for example in relation to the maintenance of green and play space. Currently, local authorities have no effective control over development delivered through permitted development rights, which means for some areas they do not control the standards of many new housing units currently being delivered.

v) Voluntary cross-sector standards

In relation to all the main standards identified above there is a wealth of professional advice. National planning policy suggests the use of assessment frameworks such as Building for Life 12⁸, which is endorsed by the house building industry. This framework sets out 12 questions about urban design with a traffic light system for compliance. This process can be conducted by the developer and does not set minimum standards. It also does not deal with internal design issues such as space. In some cases, particularly around energy performance, there are competing additional standards. There also remains a body of archived standards from various Government Agencies.

⁴ MHCLG, *National Planning Policy Framework*, February 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779764/NPPF_Feb_2019_web.pdf

⁵ MHCLG, *Planning Practice Guidance*, <https://www.gov.uk/government/collections/planning-practice-guidance>

⁶ For example, Schedule 3 to the Flood and Water Management Act 2010 came into force in Wales from 7th January 2019 making sustainable urban drainage systems a mandatory requirement for all new developments.

⁷ DCLG, *Technical housing standards – nationally described space standard*, March 2015

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524531/160519_Nationally_Described_Space_Standard_Final_Web_version.pdf

⁸ Design Council, *Building for Life 12 (third edition)*, 2015

https://www.designcouncil.org.uk/sites/default/files/asset/document/Building%20for%20Life%2012_0.pdf

All of these additional standards have limited weight in the planning process. It is interesting to note that the RICS guidance on viability testing⁹ has powerful status on decision making despite having no formal policy or legal status. This demonstrates that Government can, where it chooses, empower organisations to set out approaches and standards in the planning process which are more binding.

vi) Garden City Principles

The Garden City Principles¹⁰ - referenced in national policy and guidance - are applicable at a range of scales and contexts, including the renewal of existing places. They are a framework rather than a detailed set of standards and are accompanied by guidance which includes some benchmark standards - for example on provision of social housing, greenspace and energy¹¹. The Healthy Homes principles are designed to provide a minimum standard on housing safety, design and layout; they provide a baseline from which the more ambitious and transformation Garden City principles can be developed.

⁹ RICS, *Financial viability in planning*, August 2012 <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/land/financial-viability-in-planning-1st-edition-rics.pdf> [updated version awaited at the time of writing]

¹⁰ <https://www.tcpa.org.uk/garden-city-principles>

¹¹ <https://www.tcpa.org.uk/guidance-for-delivering-new-garden-cities>

Commentary on provisions of Bill

Clause 1: Policy statement on health homes principles

Clause 1 requires the Secretary of State to publish a policy statement on the healthy homes principles. This statement would explain the meaning of the healthy homes principles in practice and how these principles would be used and implemented.

Subsection (2) provides specific information on what the healthy homes principles policy statement must include. The policy statement will provide guidance on the interpretation and proportional application of the principles in relation to the development of policies by Ministers of the Crown. The statement will set out how ministerial government departments should interpret and apply specific healthy home principles when developing and implementing new policies, as well as updating existing policies. It may also set out the need for regulations or secondary legislation to be updated in order to implement the principles.

Subsection (3) sets out that the Secretary of State may explain in the statement how other considerations should be taken into account by Ministers of the Crown, when they are interpreting and applying the healthy home principles. For example, it may be necessary in a particular policy area to consider a specific principle alongside other considerations such as social benefits.

Clause 2: Meaning of “healthy homes principles”

Clause 2 defines a set of principles which taken together define what constitutes a healthy home. They draw on research that highlights the profound impact homes can have on people’s health, safety, wellbeing and life chances.

The clause sets out a core list of principles for the Secretary of State to develop into a policy statement on how healthy homes will be delivered in the future, whether those homes are built or developed from existing buildings. These principles should serve as a foundation for the development of policy and law that delivers high quality, decent homes that benefit people and communities.

Healthy homes principles are principles which will act as a foundation for decision-making about new housing. There is no single agreed definition set of principles about what constitutes a healthy home, so the policy statement produced by the Secretary of State under clause 1 will include a fuller definition of each of the healthy home principles included and can decide to include wider principles and policies if necessary.

The meaning of the individual healthy homes principles, as initially set out in the Bill, is as follows:

1. the principle that all new homes must be safe in relation to the risk of fire: all new homes must be safe and comply with a robust and comprehensive set of fire regulations, which prioritise people’s safety over all other considerations.
2. the principle that all new homes must have adequate liveable space to meet the needs of people over their whole life time, including minimum room sizes and adequate internal and external storage space: all new homes must comply with

the Government's minimum national space standards for room sizes and internal storage. They must also provide for external storage so that bins and bicycles and pushchairs do not have to be stored in the open.

3. the principle that all main living areas and bedrooms of a new dwelling must have access to natural light.
4. the principle that all new homes must be accessible and have accessible public realm: all new homes must meet people's lifetime needs and be adaptable. Urban environments within which homes are built must also be accessible for all and aim to create social and safe places for all sections of society.
5. the principle that homes must be built within places that prioritise walkable services and sustainable transport: major housing developments, defined as 10 or more homes, must have access to public services, including but not limited to, primary school, public transport, health services and convenience store, within 500 metres.
6. the principle that all new homes must secure radical reductions in carbon emissions in line with the provisions of the Climate Change Act 2008 and, as a minimum, must be delivered to zero carbon standard: all new homes must help the country achieve the provisions of the Climate Change Act and be capable of being energy positive.
7. principle that homes must have walkable access to green and play space: all new homes must have accessible green and play space within 500m. Access to such space is important for people of all ages and the space must be open to all, regardless of tenure or income.
8. the principle that all new homes must demonstrate how they will be resilient to a changing climate over their full life time: all new homes must be resilient to climate change for their full design life. These measures must include the implementation of green sustainable urban drainage schemes and other design measures to mitigate over heating.
9. the principle that all homes must be secure and built to design out crime.
10. the principle that homes must be free from unacceptable intrusive noise pollution: all homes to meet enhanced standards to prevent unacceptable noise pollution.

These principles cannot be changed without primary legislation.

Clause 3: Policy statement on healthy homes principles: process

Clause 3 sets out that as part of the development of the healthy home principles policy statement, the Secretary of State must publish a draft and consult appropriate parties. The Secretary of State must follow a specific process each time the policy statement is updated. Parties will be consulted as appropriate to provide the Secretary of State with views on the potential impact of the updated policy statement.

Subsection (2) requires that the Secretary of State must consult on the draft policy statement with those who are considered to be relevant.

Subsection (3) requires that a draft must be produced and laid before Parliament for their consideration. This must take place before the policy statement is finalised.

Subsection (4) sets out provisions for cases where Parliament chooses to respond to the draft policy statement, either by passing a resolution in respect of the draft policy statement, or recommending changes to the statement, within the period of 21 sitting days after the draft statement has been laid. The Secretary of State is required to lay a response to any resolution passed or recommendations made by Parliament.

Subsection (5) requires the final published healthy homes policy statement to be presented to Parliament and published. The Secretary of State must not publish the final statement before laying a response, if required under subsection (4), or otherwise, before a period of 21 sitting days has passed since the draft statement is laid. This is intended to allow Parliament sufficient time to scrutinise the draft policy statement.

Subsection (6) clarifies that the policy statement may be revised at any time, but that the above requirements in this clause still apply and the same process must therefore be followed by the Secretary of State in order to revise the statement.

Subsection (7) clarifies the meaning of “sitting day” for the purposes of this clause.

Clause 4: Policy statement on healthy homes principles: effect

Clause 4 makes it clear that both Ministers of the Crown and those with responsibility for planning must have regard for the healthy homes principles policy statement. It should, therefore, be taken into consideration at both the national and local level.

Subsection (1) clarifies that Ministers must have regard to the healthy homes principles policy statement when making, developing or revising policies dealt with by the statement. This means that in the development of policy, policy-makers must consider the healthy homes principles policy statement and follow the approach which is set out in the statement.

Subsection (2) clarifies that relevant responsible authorities must have regard to the healthy homes principles policy statement when they are undertaking their duties and responsibilities in relation to the planning acts.

Subsection (3) defines what is meant by ‘relevant responsible authorities’.

Subsection (4) defines what is meant by the ‘planning acts’.

Clause 5: Annual monitoring

Clause 5 establishes a duty on the Secretary of State to produce a progress report for each annual reporting period (subsection (1)) about the extent to which all new homes approved and completed during the reporting period have met the healthy homes principles (subsection (2)).

Subsection (3) also requires that progress reports consider how the new homes approved and completed during that period have met the needs of groups with protected characteristics, as defined by section (4) of the Equality Act 2010. These characteristics relate to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. And subsection (4) requires that the progress report considers how progress could be improved.

Subsection (5) requires that the Secretary of State's reports must be laid before Parliament and published.

Clause 6: Complaints mechanism

Clause 6 provides that the New Homes Ombudsman may receive complaints regarding alleged contraventions of the policy statement on healthy homes principles.

Subsection (1) allows for any legal or natural person to make a complaint to the New Homes Ombudsman if they believe either a Minister of the Crown or a relevant responsible authority has failed to comply with the policy statement on healthy homes principles. However, other public bodies are excluded from complaining to the New Homes Ombudsman under subsection (4), as this would amount to one arm of government complaining about another.

Subsection (2) sets out that the New Homes Ombudsman must publish a document which sets out the procedure by which complaints can be made, and subsection (3) provides that complaints must be submitted in accordance with the most recent version of that procedure. This is to allow the New Homes Ombudsman to specify the means by which it will accept complaints. This could be, for example, in writing, by telephone or through an online complaints portal. Complaints that are not submitted in accordance with the procedure do not have to be considered by the New Homes Ombudsman.

Clause 7: Investigation of complaints

Clause 7 deals with the investigation of complaints.

Subsection (1) of this clause provides that the New Homes Ombudsman may undertake an investigation on the basis of a complaint if it considers that the complaint indicates that a relevant responsible authority has committed a serious failure to comply with the policy statement on healthy homes principles when discharging their planning duties. This provision allows the New Homes Ombudsman to exercise discretion in the investigation of complaints, prioritising cases with the most serious potential implications on people's health, safety, wellbeing and/or life chances.

Subsection (2) sets out the purpose of the investigation, which should focus on establishing whether the alleged breach has taken place.

Under subsection (3) and (7), at the start of an investigation the New Homes Ombudsman is required to notify the relevant responsible authority about whom the complaint has been submitted and the relevant Minister about the commencement of the investigation.

Subsection (8) outlines that this should be the Minister of the Crown that the New Homes Ombudsman considers appropriate having regard to the nature of the relevant responsible authority and the nature of the failure (i.e. the Minister whose department is responsible for the policy area). For example, this may be a Minister within the Ministry for Housing, Communities and Local Government or the Department for Health. The intention of these subsections is to ensure that central government departments remain informed of complaints related to their subject areas, and therefore able to contribute, even if the complaints are not directly about these departments or their Ministers.

When an investigation is concluded the New Homes Ombudsman is required to provide a report to the relevant responsible authority (subsection (4)), copied to the relevant Minister under subsection (7). The New Homes Ombudsman may publish the report in full or in part under subsection (6).

Clause 8: Duty to keep complainants informed

Clause 8 sets out the procedure for the New Homes Ombudsman to inform complainants about whether an investigation following a complaint will be carried out and the progress of the investigation. This clause requires that:

- a. The New Homes Ombudsman must inform the complainant if the complaint will not be considered for further investigation on the basis that it was not made in accordance with clause 6. For example, the complaint may not be about a valid matter or may not have been submitted in accordance with the specified procedure. This is covered in subsection (2)(a) of the clause.
- b. Where a complaint has been made in accordance with clause 6, the New Homes Ombudsman must inform the complainant about whether or not an investigation into that complaint will be carried out – this is covered in subsections (2)(b) and (c)(i) of the clause. This reflects the intention, described in clause 7, that the New Homes Ombudsman should be able to exercise discretion in choosing which complaints to investigate, prioritising cases with the most serious or strategically significant potential environmental implications.
- c. The complainant must also be notified when the investigation into a complaint has been concluded, as per subsection (2)(c)(ii).

Clause 9: Information notices

Clause 9 provides that the New Homes Ombudsman can take enforcement action in the form of written information notices in cases where it suspects a relevant responsible authority has failed to comply with the requirements of clause 4, subsection (2). This action may follow the investigation of a complaint, but the New Homes Ombudsman can also take enforcement action if it has some other reason to suspect there has been a serious breach (for example, based on information presented in a report on the implementation of a law, or arising from a parliamentary inquiry or other source).

This clause, alongside those that follow it (particularly clauses 10 and 12) reflect the intended enforcement function and process of the New Homes Ombudsman.

Under subsection (1), the New Homes Ombudsman may issue an “information notice” if it has reasonable grounds for suspecting that a relevant responsible authority is failing to comply with the healthy homes principles, and it considers that the failure is serious. The New Homes Ombudsman therefore may not serve an information notice in relation to trivial matters, or serve a speculative information notice if it does not have a reasonable basis to believe an authority is failing to comply with the principles.

Information notices are a means by which the New Homes Ombudsman can formally request information from the relevant responsible authority concerned in relation to a suspected failure. Subsection (2) states that an information notice is to describe the alleged failure and the information that the New Homes Ombudsman requests in relation to it. Subsection (3) requires the relevant responsible authority to respond in writing to an information notice within a fixed time period as specified in subsection (4), and subsection (5) sets out what information should be included in such responses.

Under subsection (6), the New Homes Ombudsman may withdraw an information notice.

Clause 10: Decision notices

Clause 10 provides that the New Homes Ombudsman can take enforcement action by issuing a written decision notice where it has found that a relevant responsible authority has failed to have regard to the policy statement on healthy homes principles and where the New Homes Ombudsman consider the failure to be serious.

The New Homes Ombudsman may issue a “decision notice” under subsection (1) if it is satisfied, on the balance of probabilities, that the relevant responsible authority has failed to comply with clause 4, subsection (2), and it considers that the failure is serious.

As defined in subsection (2), decision notices are a means by which the New Homes Ombudsman can take action against the relevant responsible authority failing to comply with clause 4, subsection (2), by setting out suggested remedial steps for the relevant responsible authority to take.

The relevant responsible authority that receives a decision notice is not compelled to carry out the steps detailed in the notice. Under subsection (3) the public authority is required to respond to a decision notice either 2 months after the notice was given, or by a date as may be specified in the notice, whichever is later. The written response from the relevant responsible authority should include whether the authority agrees that there has been a failure to comply with the law, and if the steps set out in the notice will be followed, as specified in subsection (4). This subsection also requires the relevant responsible authority to specify any other steps that will be taken in relation to the alleged failure described in the notice.

Subsection (5) provides that the New Homes Ombudsman may withdraw a decision notice after it has been issued (paragraph (b)), and also requires that the New Homes Ombudsman must have previously issued at least one information notice relating to the alleged failure of the relevant responsible authority before a decision notice is issued (paragraph (a)).

Clause 11: Duty of the New Homes Ombudsman to involve the relevant Minister

Clause 11 deals with how the New Homes Ombudsman should involve the relevant Minister of the Crown. Subsection (1) requires the New Homes Ombudsman to send a copy of the notice to the relevant minister, as well as any correspondence between the New Homes Ombudsman and the relevant responsible authority concerned. This is to ensure that the Government remains informed about the matter and is able to contribute if appropriate. This subsection (paragraph (b)) also requires that the New Homes Ombudsman must provide the recipient of a notice with a copy of correspondence it has with the relevant Minister which concerns the notice.

Clause 12: Enforcement

Clause 12 provides for the New Homes Ombudsman to bring legal proceedings against a relevant responsible authority, regarding a breach of the duty on them to have regard for the policy statement on healthy homes principles. Subsection (1) sets out that the breach in question must have been described in a decision notice issued to the relevant responsible authority in question.

Under subsection (2) the New Homes Ombudsman is able to make a review application regarding further misconduct of the relevant responsible authority which takes place after the New Homes Ombudsman has issued its decision notice. This is on the grounds that the conduct in question is similar to that described in a previous decision notice as a failure to comply with clause 4, subsection (2). This is to address the possibility that a public authority could respond to a first decision notice by accepting a non-compliance and committing to remedial action over a period of several months – by which time the time limit for the New Homes Ombudsman to act under subsection (6) would have passed – but could then fail to take the steps needed to address the failing. In this scenario, subsection (2) provides that the New Homes Ombudsman may apply to the courts for a review after the time period in subsection (6) has passed and without having to serve another decision notice.

Subsection (3) establishes that a “review application” refers to an application to the High Court for judicial review.

Subsection (5) gives the New Homes Ombudsman standing in relation to all applications made under the clause. This means it does not need to demonstrate to the court’s satisfaction that it has “sufficient interest” to bring a review application on a case-by-case basis.

Subsection (6) provides that an application for review must be made within 3 months of the day that was specified for the relevant responsible authority to respond to the decision notice. It also specifies that this time limit overrules any other time limit which would otherwise apply (for instance, the Civil Procedure Rules’ time limit for making a claim for judicial review).

Subsection (7) requires a relevant responsible authority which has been the subject of review application proceedings brought by the New Homes Ombudsman under clause 12 to publish a statement when these proceedings are concluded. This statement should describe any steps the authority intends to take based on the outcome of these proceedings. For example, if the Court were to agree with the conclusions outlined by the New Homes Ombudsman in its decision notice, this statement could include details of how the relevant responsible authority intends to ensure the recommended steps to rectify the failing in question are taken, or details of how it will ensure future breaches will be avoided. This statement should be published

after the final disposal of proceedings, meaning after judgment has been delivered on the final issue in the case, including any subsequent appeal proceedings. Therefore, a relevant responsible authority would not be expected to publish a statement after initial proceedings have concluded if it intended to, or had already initiated appeal proceedings against this judgment.

Clause 13: Duty on local planning authorities to plan for affordable housing needs

Clause 13 places a legal duty on local planning authorities in relation to meeting housing needs. Subsection (1) requires local planning authorities to plan for the long-term and full range of housing needs in the area, with a particular emphasis on the provision of genuinely affordable homes.