

# HEALTHY HOMES BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Healthy Homes Bill [HL] as introduced in the House of Lords on 17 March 2022 (HL Bill 133).

- These Explanatory Notes have been prepared by Lord Crisp, the Peer in Charge of the Bill, 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; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The objectives of the Bill are to secure healthy homes for England by placing a duty on the Secretary of State to consider health and well being through the application of the healthy homes principles.

## Policy background

- 2 The existing approach to achieving healthy homes and communities lack any overall legal obligations on the positive promotion of human wellbeing. In addition, regulation is complex and fragmented. Those requirements which do exist are spread across the building regulations regime, town planning, some aspects of Health and Safety law and a variety of other legislation. There are at least six main approaches that exist to setting standards in the built environment.

### Building regulations

- 3 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 'Approved Documents'. These are not an absolute set of standards 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. There are, however, three main problems with building regulations as a means of securing the health and wellbeing of end-users:
  - a. The regime is not founded on any absolute safeguards on health and wellbeing but on 'reasonable' compliance with regulations.
  - b. The regulations are limited in extent<sup>1</sup> and focused on building fabric. While they do include a minimum level of energy performance (Part L), they do not deal with health and wellbeing but focus on reasonably 'safe' outcomes. For example, they do not require new homes to have any natural light or meet internal minimum space standards or standards for indoor air quality.
  - c. The enforcement regime has flaws with significant cultural problems of non-compliance by parts of the development industry.<sup>2</sup> The Government's consultation, 'Building a Safer Future: Proposals for reform of the building safety regulatory system', aims to deal with some aspects of these flaws but does not address the wider health and wellbeing of people.

### Technical housing standards

- 4 The Government sets out technical standards for new homes, including a Nationally Described Space Standard (NDSS).<sup>3</sup> This is not mandatory on local planning authorities, but if a local planning authority wishes to adopt a space standard it has to be the NDSS. The NDSS has to pass through the local plan viability test, so it can be difficult to require if developers argue that meeting the standard is too expensive, for instance in areas where land values are low. These standards do not cover external storage, for bikes or bins for example.

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<sup>1</sup> New homes achieved through conversions do not have to meet Category 1 of ADM – the most basic level of accessibility.

<sup>2</sup> An issue identified in Hackitt Review in 2018:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707785/Building\\_a\\_Safer\\_Future\\_-\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard>

- 5 The Government has also stated the following in relation to the Nationally Described Space Standard: “The optional regulations and space standard can only be applied where there is a local plan policy based on evidenced local need and where the viability of development is not compromised.”

### National planning standards

- 6 The boundary between building regulations and planning requirements is blurred. There are no legal duties in planning law on health and wellbeing. There is a legal duty to consider good design during the plan making process, but this is not defined in detail a way which makes it meaningful. The National Planning Policy Framework (NPPF) and Planning Policy Guidance (PPG) contain high-level policy on design, but no minimum housing standards. The Government has published national guidance on the preparation of new design codes but while local authorities could address health and wellbeing in these documents they are not required to do so.

### Local planning requirements

- 7 Local authorities have some scope to adopt housing standards on some issues in Local Plans. All policy must pass through the viability testing regime which allows developers to challenge local approaches. As a result, there is patchy adoption of design standards particularly where development values are low and developers ‘value engineer’ delivery to produce poor design outcomes. Local authorities also have no effective control over development delivered through permitted development rights (PDR), which means for some areas they do not control the standards for many new housing units currently being delivered through the conversion of commercial buildings.

### Voluntary cross-sector standards

- 8 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 a Healthy Life (previously titled Building for Life 12),<sup>4</sup> 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 binding standards. All of these additional standards have limited weight in the planning process.

### Garden city principles

- 9 The Garden City Principles<sup>5</sup> - referenced in national policy and guidance - are applicable at a range of scales and contexts, including the renewal of existing places. They are a development model rather than a detailed set of standards. In contrast, the Healthy Homes principles are intended to provide a minimum standard for housing safety, performance and resilience, design and layout; they provide a baseline from which the more ambitious and transformational Garden City principles can be developed.

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<sup>4</sup> 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](https://www.designcouncil.org.uk/sites/default/files/asset/document/Building%20for%20Life%2012_0.pdf)

<sup>5</sup> See ‘The Garden City Principles’ on the TCPA’s website: <https://www.tcpa.org.uk/garden-city-principles>

# Commentary on provisions of Bill

## Clause 1: Duty on the Secretary of State

- 10 At present there is no overall legal obligation on ministers in the planning acts or building control acts to secure the health and wellbeing of individuals and the wider community. There is no legal duty in planning law and while the 1984 Building Act enables ministers to consider a wide range of issues in building regulations it does not require them to do so. Clause 1 is intended to ensure that health and wellbeing are the clear legal priority for both town planning and building regulations.

## Clause 2: Policy statement on healthy homes principles

- 11 Clause 2 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.
- 12 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.
- 13 Subsection (3) sets out that the Secretary of State may explain in the statement how the development's location should be taken into account by Ministers of the Crown, when they are interpreting and applying the healthy homes principles. For example, it may be necessary in a rural area to apply a specific principle in a different way from homes being built in an urban location.

## Clause 3: Meaning of 'healthy homes principles'

- 14 Clause 3 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.
- 15 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 deliver high quality homes that benefit people and communities.
- 16 The healthy homes principles are principles which will act as a foundation for decision-making about new housing. There is no single agreed definition or set of principles about what constitutes a healthy home, so the policy statement produced by the Secretary of State under clause 2 will include a fuller definition of each of the healthy homes principles and the Secretary of State can decide to include wider principles and policies if necessary.
- 17 The meaning of the individual healthy homes principles, as initially set out in the bill, is as follows:
  1. **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. **All new homes must have, as a minimum, the liveable space required to meet the needs of people over their whole lives, including adequate internal and external**

**storage space.** All new homes must comply with the Government's Nationally Described Space Standard 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. **All main living areas and bedrooms of a new dwelling must have access to natural light.**
4. **All new homes and their surroundings must be designed to be inclusive, accessible, and adaptable to suit the needs of all, with particular regard to protected characteristics under the Equality Act 2010.** New homes and the environments within which they are built should aim to create social and safe places for all sections of society, including those protected under the Equalities Act 2010.
5. **All new homes should be built within places that prioritise and provide access to sustainable transport and walkable services, including green infrastructure and play space.** Major housing developments, defined as 10 or more homes, should have access to public services, including but not limited to a primary school, public transport, health services and a convenience store, within 500 metres. All new homes must have accessible green infrastructure and play space within 500m. The space must be open to all, regardless of tenure or income.
6. **All new homes must contribute to reductions in carbon emissions in line with the provisions of the Climate Change Act 2008.** All new homes must help the country achieve the objects and budgetary provisions of the Climate Change Act. This should include, as a minimum, being delivered to zero carbon standard and being capable of being energy positive.
7. **All new homes must be demonstrably 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 ensure thermal comfort.
8. **All new homes must be built to design out crime and be secure.**
9. **All new homes must be free from unacceptable intrusive noise pollution and light pollution.** Homes need to secure a tranquil environment which supports physical and mental health.
10. **All new homes must not contribute to unsafe or illegal levels of indoor or ambient air pollution and must be built to minimise, and where possible eliminate, the harmful impacts of air pollution on human health and the environment.**
11. **All new homes must be designed to provide year-round thermal comfort for inhabitants.** This principle applies particularly for those suffering from fuel poverty.

#### Clause 4: Policy statement on healthy homes principles: process

- 18 Clause 4 sets out that as part of the development of the healthy homes 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.
- 19 Subsection (2) requires that the Secretary of State must consult on the draft policy statement with those who are considered to be relevant.

- 20 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.
- 21 Subsection (4) sets out provisions for cases where either House of 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 a House of Parliament.
- 22 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.
- 23 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.
- 24 Subsection (7) clarifies the meaning of ‘sitting day’ for the purposes of this clause.

#### Clause 5: Policy statement on healthy homes principles: effect

- 25 Clause 5 makes it clear that both Ministers of the Crown and those with responsibility for planning must have regard to the healthy homes principles policy statement. It should, therefore, be taken into consideration by both national and local Government.
- 26 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, policymakers must consider the healthy homes principles policy statement and follow the approach which is set out in the statement.
- 27 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.
- 28 Subsection (3) defines what is meant by ‘relevant responsible authorities’.

#### Clause 6: Annual monitoring

- 29 Clause 6 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)).
- 30 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.
- 31 Subsection (5) requires that the Secretary of State’s reports must be laid before Parliament and published.

#### Clauses 7 and 8: Establishment and powers of the Healthy Homes Commissioner

- 32 The purpose of the Healthy Homes Commissioner is to provide a framework for accountability, and a source of independent expert advice to the Secretary of State as to where

the principles are being effectively implemented and what legal and policy change may be required. The Commissioner also has a role to provide advice to the wider sector on detailed implementation.

### Clause 9: Duty on local planning authorities to plan for healthy and affordable housing needs

- 33 Clause 9 amends section 19 (preparation of local plans) of the 2004 Planning Act by the insertion of new subsections (1F) and (1G). This requires local planning authorities to plan for the long term and for the full range of healthy housing needs in the area, with a particular emphasis on the provision of affordable homes relative to people's income (subsection (1G)). This measure would, for the first time, create a legal duty on planning authorities to plan for health and wellbeing. It would also require them to plan for affordable homes based on ability to pay rather than 80% of market price which is the current approach set out in national planning policy for England.

### Clause 10: Extent and short title

- 34 The Act extends to England and Wales only.
- 35 The Act may be cited as the Healthy Homes Act 2022.



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