

Get in on the Act

Housing and Planning Act 2016

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Background

The Housing and Planning Bill was introduced in the House of Commons on 13 October 2015 by the Secretary of State for Communities and Local Government, the Rt Hon Greg Clark MP. It followed an announcement made in the 2015 Queen's Speech that legislation would be introduced to support home ownership and give housing association tenants the chance to own their own homes. The legislation completed its passage through Parliament on 11 May 2016 and received Royal Assent on 12 May 2016.

The Housing and Planning Act 2016 (the Act) contains provisions on new homes (including starter homes), landlords and property agents, abandoned premises, social housing (including extending the Right to Buy to housing association tenants, sale of local authority assets, 'pay-to-stay', and secure tenancies), planning, compulsory purchase and public land (duty to dispose).

The Act is made up of nine parts that are split into a number of chapters, and also includes 20 schedules. Further information on the measures is included in this guide.

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The following came into force on 13 May 2016: chapter 2 of part 4 (vacant high value local authority housing); sections 122 and 123 and schedule 10; sections 125, 126, 135, 137, 138 (1) and 141; sections 145 to 151. The following coming into force two months after the Act was passed: section 115; sections 136 (1) to (3) and 139. Other provisions of the Act are to be brought into force by regulations at a later date.

The role of the LGA and local government in influencing the legislation

We worked with MPs and peers during the passage of the Bill to provide background information and research on the proposals, support and table amendments to the legislation, and influence government policy.

We sought to improve provisions in the Act that would have a detrimental effect on local authorities, but much will depend on the detail of the regulations when they are published. Following Royal Assent, the LGA has been working with the Government to shape the regulations.

As the legislation made its way through Parliament:

- Councillor Martin Tett, Vice-Chairman of the Environment, Economy, Housing and Transport (EEHT) Board, gave evidence to the Public Bill Committee on the Housing and Planning Bill as part of its scrutiny of the legislation.
- The LGA organised policy briefings in Parliament for more than 50 MPs and peers in total, hosted by LGA Chairman Lord Porter, LGA President Lord Kerlake, and former LGA President Lord Best.
- We provided the Communities and Local Government Select Committee with written and oral evidence to assist in its inquiry into the housing association sector and the Right to Buy.¹
- To support our work in Parliament, we published extensive research on the likely impact of the changes and secured national and trade press coverage.

¹ LGA written evidence to Communities and Local Government Committee inquiry into housing associations and Right to Buy: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communities-and-local-government-committee/the-housing-association-sector-and-the-right-to-buy/written/19845.pdf>

Our campaigning on behalf of local government, developed with the support from and input of, councils from across the country, led to a number of positive changes in the final Act, including:

- **Starter Homes discounts**
The Government will introduce in regulations restrictions around the resale of Starter Homes, which may prevent the home being sold at full price for a specified period of time, or could require the seller to make a payment to the Secretary of State, local planning authority or another specified person.
- **Higher value council homes**
The Act requires councils to sell higher value housing as it falls vacant. We worked with parliamentarians to put on the face of the Bill a requirement to ensure that where the Government makes an agreement with a local authority outside London about building new homes, at least one new affordable home is provided for each dwelling that is assumed to be sold.
Parliamentarians secured a commitment from the Government that the change of wording from 'high' to 'higher' value would not be used to raise additional funds from local government.
- **Pay to stay**
For tenants above the high income thresholds, rent increases will be tapered. Every £1 they earn above the threshold will mean a 15p increase. The income thresholds will increase annually in line with consumer price index (CPI).
The Government committed to councils being able to keep the costs of administering pay to stay and to consider exemptions where the costs outweigh the additional rent collected.
- **Secure tenancies**
Enabling local authorities to grant longer-term tenancies of up to 10 years in certain circumstances with potential for longer tenancies for families with children.
- **Competition in processing planning applications**
The Government will carry out time-limited pilots on competition in processing planning applications, which will be fully evaluated.

The key provisions and their implications for local government

Part 1, chapter 1: Starter Homes

Chapter 1, part 1, provides a statutory framework for the delivery of Starter homes, which are defined as a new dwelling only available for purchase by qualifying first-time buyers and made available at a price at least 20 per cent less than market value. It contains a general duty for local planning authorities to promote the supply of starter homes when planning functions are carried out, and a specific duty in relation to decisions on planning applications.

Throughout the passage of the Bill we argued that local planning authorities need flexibility to shape the development of Starter Homes alongside other forms of affordable housing. We worked to amend the Bill to ensure restrictions around the resale of Starter Homes so that owners cannot ‘cash in’ the discount after a few years. The regulations may prevent the home being sold at full price for a specified period of time, or could require the seller to make a payment to the Secretary of State, local planning authority, or another specified person.

The Government has consulted on the definition of Starter Homes and the Starter Home requirement on planning authorities. Regulations are due to be published in summer 2016.

Part 1, chapter 2: Self-build and custom housebuilding

Part 1, chapter 2 amends the duties placed on local authorities under the Self-Build and Custom Housebuilding Act 2015, which requires councils to keep and have regard to registers of people seeking land for self-build and custom housebuilding. Section 9 requires local authorities to grant sufficient

suitable development permissions on plots of land to meet demand in their area. Section 10 requires a local authority to grant sufficient suitable development permissions on serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The Secretary of State can set out exemptions through regulations.²

Part 2, chapter 2: Banning orders

Chapter 2 introduces orders which can be used to ban a person from a range of activities, including letting housing in England or engaging in letting agency work, for at least 12 months. It is set out in the Act that a local authority in England may apply for a banning order against a person who has been convicted of a banning order offence. The chapter sets out the process for making a banning order and the consequences of breaching an order.

Part 2, chapter 3: Database of rogue landlords and property agents

Local authorities will be responsible for maintaining the content of the new database of rogue landlords and property agents. There will be a duty for councils to update the register with persons convicted of a banning order offence and the provisions require local authorities to keep the information up-to-date. The chapter also sets out the procedure for appeals, removals from the database, and access to information kept in the database.

² Department of Communities and local Government (DCLG), Starter Homes regulations – technical consultation: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510478/Starter_homes_regulations_technical_consultation.pdf

Part 3: Recovering abandoned premises in England

Part 3 of the Act sets out a procedure that a landlord may follow to recover possession of a property where it has been abandoned, without the need for a court order.

Part 4, chapter 1: Implementing the Right to Buy on a voluntary basis

Part 4, chapter 1 enables the Secretary of State to pay for the cost of the discount when a tenant of a private registered provider applies to buy their home under the voluntary agreement between the Secretary of State and the provider.

Part 4, chapter 2: Vacant higher value local authority housing

Part 4, chapter 2 enables the Secretary of State to require local housing authorities to make a payment to the Secretary of State that is calculated by reference to the market value of the higher value vacant housing owned by the authority. This applies to all local authorities required to keep a Housing Revenue Account.

The LGA opposed proposals to require payments from councils. We worked with parliamentarians to put on the face of the Bill a requirement to ensure that, where the Government makes an agreement with a local authority outside London about building new homes, at least one new affordable home is provided for each dwelling that is assumed to be sold. During the passage of the Bill, we pushed for assurances from government that councils would be able to retain the full capital costs of the replacement homes. We also called for local flexibility through agreements between central government and councils.

The Government will consult on a formula for calculating payments and on the individual determinations from councils. The proposed thresholds for higher value housing will be set out in regulations, subject to parliamentary approval.

Part 4, chapter 3: Rents for high income social tenants

Part 4, chapter 3 gives the Secretary of State the power to set the levels of rent that local authorities must charge to high income social tenants, for an amount that will be specified in secondary legislation. This is commonly referred to as 'pay to stay'. Local authorities will be required to return any additional income to central government. We called for this to be optional for councils and that any income collected should be reinvested in new and existing housing.

Following amendments supported by the LGA, tenants above the high income thresholds, rent increases will be tapered to 15p in each £1. The income thresholds will increase annually in line with CPI. During the debates the Government committed to councils keeping reasonable administrative costs for pay to stay and to consider exemptions where the costs outweigh the additional rent collected.

Part 4, chapter 4: Reducing regulation of social housing

This chapter removes requirements on registered providers of social housing to seek permission from the social housing regulator to dispose of social housing stock, removes the regulator's constitutional consents regime, and removes the requirement to hold a Disposal Proceeds Fund.

Section 93 confers powers on the Secretary of State to make regulations that limit or remove the ability of local authorities to exert influence over private registered providers of social housing through the nomination of board members and acting as shareholders.

Part 4, chapter 5: Insolvency of registered providers of social housing

This chapter introduces a special administration regime for private registered providers of social housing and sets out the conditions on which the Secretary of State can make grants or loans to a provider in administration.

Part 4, chapter 6: Secure tenancies

Section 113 amends the Housing Act 1985 and the Housing Act 1996 to phase out lifetime tenancies. In future, secure tenancies will have to be for a fixed term and will not automatically be renewed.

The LGA campaigned against this measure and called for councils to continue to be free to manage their tenancies. In response to LGA amendments, the Government brought forward amendments enabling local authorities to grant longer-term tenancies of up to 10 years, with longer tenancies for families with children.

Part 5: Housing, Estate Agents and Rent Charges

Section 122 allows the Secretary of State to impose duties in regulations on private landlords to ensure electrical safety standards are met.

Section 124 makes amendments to section 8 of the Housing Act 1985 and revokes section 225 and 226 of the Housing Act 2004. It removes separate definitions in housing legislation and provides that when authorities are carrying out a review of housing needs they consider the needs of all people residing in the area.

Section 125 amends the fitness test for licences to let houses in multiple occupation.

Part 6: Planning in England

Sections 139 to 142 simplify the neighbourhood planning process to support communities that seek to meet local housing needs through neighbourhood planning.

Sections 143 to 148 give the Secretary of State more flexible powers to intervene if Local Plans are not effectively delivered. Throughout the passage of the Bill we raised concern about these provisions, arguing that an approach that seeks to understand what the blockages are and to resolve them would be more beneficial in the long-term than the imposition of a plan on local areas.

Section 149 enables the Secretary of State to devolve further powers to the Mayor of London.

Sections 150 and 151 enable the Secretary of State to require local authorities to hold a register of various types of land, with the intention of creating a register of brownfield land to facilitate unlocking land to build new homes; and enables permission in principle to be given to suitable housing-led sites identified in the brownfield register and in local and neighbourhood plans, and provides an opportunity for applicants to obtain permission in principle for small sites.

Throughout the passage of the Bill we argued that it is important that communities continue to have a say on decisions that affect them through their local planning committees and efforts to introduce a permission in principle should reflect this and not create undue complexity or confusion within the existing planning system. We also called for flexibility for councils to exempt certain types of development, and development on certain land or in certain areas, from the permission in principle development order as well as from the register of land. The Government responded by introducing a degree of flexibility for local planning authorities on when permission in principle takes effect and/or ceases to have effect. Sections 152 to 157 amend the power which enables conditions to be attached to development orders for building operations so that they are consistent with those for change of use; extends the planning performance regime to apply to smaller applications; puts information about the financial benefits of proposals for development and information about neighbourhood development plans before local authority planning committees; enables local authorities to request alterations to the planning system; and simplifies the parliamentary process for making changes to planning application fees that affect some authorities but not others.

The LGA opposed proposals to extend the planning performance regime to small applications, arguing that the planning performance regime is an unnecessary measure that focuses on process targets rather than good quality service provision.

Sections 158 and 159 allow the Secretary of State to place restrictions or conditions on the enforceability of planning obligations relating to the provision of affordable housing and provides for the Secretary of State to appoint a person to help resolve outstanding planning obligation issues within set timeframes.

The LGA opposed proposals on powers for the Secretary of State to restrict the ability of local authorities to secure contributions for affordable housing, arguing that they should be able to require contributions towards affordable housing where the needs of local communities warrant them and viability allows. The new powers will not apply to development in certain rural areas, including rural exception sites, national parks and areas of outstanding natural beauty.

Section 160 allows developers who wish to bring forward applications for housing relating to a major infrastructure project to apply for consent under the nationally significant infrastructure planning regime.

Sections 161 to 164 allow the Secretary of State to introduce, through regulations, pilot schemes to test the benefits of introducing competition in the processing of applications for planning permission. The pilots will be time-limited and will be fully evaluated.

Throughout the passage of the Bill we argued that proposals to pilot competition in the processing of planning applications must not destabilise local success and that planning decisions should continue to be made locally through a democratically accountable planning system. The Bill now provides clarity that pilot schemes introduce competition into the processing of applications, but does not extend to the determination of planning applications. The LGA also called for the Bill to introduce powers which would enable councils to set planning fees locally, to enable full cost recovery.

Section 165 requires a review of minimum energy performance standards for new dwellings.

Sections 166 to 170 modernise the process for creating Urban and New Town Development Areas and Corporations.

Section 171 requires a review of elements of the planning system that relate to sustainable drainage.

The Government has also consulted on changes to national planning policy.³

Part 7: Compulsory purchase

Part 7 introduces a new general power of entry for survey and valuation purposes, which will be available to all acquiring authorities in connection with a proposal to acquire land.

Part 8: Public authority land

Part 8 of the Act requires engagement with public authorities in relation to proposals to dispose of land, puts a duty on public authorities to publish a report on surplus land they hold in England, Wales or Scotland, enables the Secretary of State to direct certain public authorities to dispose of land and contains a measure that requires local authorities to prepare an annual report containing a buildings efficiency and sustainability assessment of their estate. Councils support the Government's ambitions to realise value through better and more strategic management of public sector land. However, we called for councils to be free to manage their assets locally and will continue to call on government to work with councils on bringing forward development on the wider public estate.

3 DCLG Consultation on proposed changes to national planning policy: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488276/151207_Consultation_document.pdf;

DCLG Technical consultation on planning changes: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507019/160310_planning_consultation.pdf

A note of thanks

We extend our thanks to all those parliamentarians that supported us in our detailed work on the Act and championed concerns, speaking on behalf of local government during key debates. This includes the LGA's Chairman Lord Porter, President Lord Kerlake, and vice-presidents, who spoke on the role of local government in housing provision in a number of the debates.

Useful links

For the full text of the Act and the explanatory notes please refer to: www.legislation.gov.uk

For the LGA's briefings at each stage of the Bill, please go to: www.local.gov.uk/briefings-and-responses/-/journal_content/56/10180/7529077/ARTICLE

For more information about the LGA's work on housing and planning, please go to: www.local.gov.uk/environment-planning-and-housing

For more information about the LGA Housing Commission, please go to: www.local.gov.uk/housing/-/journal_content/56/10180/7570944/ARTICLE



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