

The Housing and Planning Act 2016 update

The Government has recently made a number of announcements concerning implementation of the Housing and Planning Act 2016 (“the Act”), including the publication of the intended timetable for introduction of many of the housing-related. To date, these updates have included the abandonment of the ‘pay to stay’ market rent policy for higher-income tenants; delayed introduction of the voluntary right to buy scheme for housing associations and associated levy on higher-value local authority assets; and a public consultation on provisions concerning rogue landlords and secure tenancies.

Detailed background on the housing-related provisions of the Act was provided in Cornerstone Barristers’ special edition housing newsletter in May 2016.¹

‘Pay to stay’: market rent for higher-income tenants

On 21 November 2016 the Housing Minister Gavin Barwell announced that the Government no longer intends to implement Chapter 3, Part 4 of the Act, which provided for the introduction of mandatory rents for social housing tenants with ‘higher incomes’. The Minister’s statement explained the rationale for this turnaround as follows:

“Since the summer, the government has been reviewing this policy. We have listened carefully to the views of tenants, local authorities and others and as a result, we have decided not to proceed with a compulsory approach. Local authorities and housing associations will continue to have local discretion.

The Government remains committed to delivering its objective of ensuring social housing is occupied by those who need it most. But we need to do so in a way that supports those ordinary working class families who can struggle to get by, and in a way which delivers real savings to the taxpayer. The policy as previously envisaged did not meet those aims.”²

The announcement marks a major turnaround in the Government’s housing priorities, this having been one of the most hotly debated sections of the Act during its passage through the House of Lords. The Act would have mandated all local authorities in England to enforce the policy and, as rent increases were to be paid directly to the Treasury (s. 86 of the Act), was plainly motivated by a desire to generate additional revenue from the social housing sector.³

The Government had intended that social tenants earning over £30,000 (or over £40,000 within Greater London) would be charged market or near-market rents on their properties. The Act itself contained only skeleton

¹ <https://cornerstonebarristers.com/news/cornerstone-barristers-special-edition-housing-newsletter-housing-planning-act-2016/>.

² [Social housing: Written Statement – HCWS274](#), 21 November 2016.

³ House of Commons Library, [Social Housing: ‘pay to stay’ at market rents](#), 22 November 2016.

provision for this policy, to be implemented by way of Regulations which, being subject to the affirmative procedure, would have required the approval of both Houses of Parliament. Regulations would have had to grapple with the complex realities of the policy, including the formulation of workable definitions of 'income' and 'high income', and the calculation of appropriate rent increases. These details had raised difficult questions regarding effective implementation, particularly in local authority districts where social and market rent levels are similar or where there were very few 'high-earning' tenants.

It appears the policy will remain available voluntarily to social landlords pursuant to DCLG policies which have been in place since 2014.⁴ However, it is perhaps telling that during the passage of the Act through Parliament it emerged there was no evidence of any housing providers across the country having voluntarily taken up the policy to date.

For tenants, scrutiny of their income does not end here. As secure 'lifetime' tenancies are replaced with fixed-term 'renewable' tenancies of between two and five years' length (see below), tenants will likely be required to declare their income to their landlords when applying for a review of their tenancies. The Minister's announcement on 21 November confirmed that local authorities will be expected to take tenants' financial circumstances into account and to prioritise the grant of new tenancies for those on lower incomes. The Government "*will also consider whether other options exist to ensure that high income tenants in social housing make a greater contribution to costs.*"

Replacement of secure 'tenancies for life'

On 12 January 2017 *Inside Housing* published a timetable obtained from DCLG which sets out implementation deadlines (or perhaps to be more accurate, intended deadlines) for key sections of the Act.⁵ This included the announcement that Chapter 6 of the Act, which provides for the phasing out of secure 'lifetime' tenancies, will be brought into force in Autumn 2017.

Chapter 6 will be implemented by way of Regulations which will prescribe the circumstances in which councils are entitled to offer further 'lifetime' tenancies to existing tenants who agree to move home. The timetable states that preparatory work is underway with a group of local authorities, "*to test practicalities and inform shaping of regulations and consultation planned for [2017]*". The affirmative procedure will be used so that Parliament is allowed to scrutinise the content of the Regulations.

Local authorities and housing associations were empowered to grant fixed-term 'flexible' tenancies on a discretionary basis by the Localism Act 2011, but it appears there has been very limited take-up of fixed-term and flexible tenancies by councils and housing associations. DCLG recently estimated that in 2014-2015 only 15% of social housing tenancies were let on a fixed-term basis.⁶

Section 118 of the Act will impose mandatory use of fixed term tenancies of between 2-5 years, on the expiry of which a further tenancy may be granted following review of the conduct of the tenancy (and the tenants) by the landlord. Once in force, Schedule 7 of the Act will amend the Housing Acts 1985 and 1996, Landlord and Tenant Act 1985 and Localism Act 2011, *inter alia*, so that local authorities in England will be prevented from offering

⁴ DCLG, [Guidance on Rents in Social Housing](#), May 2014.

⁵ Inside Housing, [Full implementation dates for Housing Act policies revealed](#), 12 January 2017.

⁶ DCLG, [Lifetime tenancies: Equality impact assessment](#), May 2016, p. 4.

lifetime tenancies in most circumstances. Housing associations will retain discretion as to their length of their tenancies.⁷

Alongside these changes, s. 120 and Schedule 8 of the Act will also substantially reduce the rights of family members to succeed to secure tenancies following the death of the tenant.⁸

Right to Buy and sale of higher-income assets

The extension of the Voluntary Right to Buy (“VRtB”) scheme for housing association tenants has been delayed until at least April 2018. Correspondingly, the Government has stated that it will not demand so called ‘high-value asset payments’ from local housing authorities before the financial year 2018-2019.

A ‘slow down’ on the policy was first mentioned by Hilary Davies, DCLG’s Head of Voluntary Right to Buy Implementation, while speaking at a National Housing Federation conference on 3 November 2016.⁹ Following the Autumn Statement on 23 November, the Minister confirmed the new timetable looking toward 2018, although no firm deadline has yet been given.¹⁰ The Government had previously intended to begin implementing the policy from April 2017.

Chapters 1 and 2 of Part 4 of the Act, which provide the legislative framework for these policies, came into force on 26 May 2016 once the Act received Royal Assent. However housing associations will not begin to offer VRtB in practice before DCLG Guidance is published, for which there is now no fixed timetable. Further, the recent announcement gives an assurance that the Minister will not use his powers to impose a levy on councils’ “*higher value*” assets until at least April 2018. The levy will effectively require local housing authorities to sell any of their “*higher value housing*” which is likely to become vacant during the financial year (s. 69). The recently-published DCLG implementation timetable indicates this levy will be introduced by way of Regulations defining the scope of ‘higher value’ property and relevant exclusions, one of which will be subject to the affirmative procedure in Parliament.

A VRtB pilot scheme involving five housing associations has recently completed and published its findings. Although of an admittedly limited size and scope, the pilot was intended to assess the implications for national roll-out, assist in developing DCLG guidance and estimate future demand for take-up. The findings warn of significant additional demands on staff; possible increases in preserved right to buy applications; the utility of up-to-date information on both housing stock and tenants; the benefits of learning lessons from the expansion of the statutory RTB scheme, particularly as regards rules against sub-letting and resale of RTB properties; and the need to manage expectations around the value of applicants’ properties as well as the types of housing stock which will be exempt from the scheme (between 15 and 67% of properties in the pilot associations were excluded from sale).¹¹

The Autumn Statement included an announcement of a larger regional pilot scheme which will now continue this work over the next five years, and which will test one-for-one replacement among other aspects of the policy. The Government has allocated £250 million to the expanded pilot to 2021 and anticipates at least 3,000 tenants

⁷ House of Commons Library, [Social Housing: The end of ‘lifetime’ tenancies in England?](#) 27 May 2016.

⁸ Tara O’Leary, [Succession to Secure Tenancies](#), Cornerstone Barristers Housing Newsletter, November 2016.

⁹ Inside Housing, [DCLG: Right to Buy extension delayed by Brexit vote](#), 3 November 2016.

¹⁰ Inside Housing, [Right to Buy extension delayed until at least 2018](#), 24 November 2016.

¹¹ Sheffield Hallam University, Centre for Regional Economic and Social Research, ["The Pilot Programme for the Voluntary Right to Buy for Housing Associations: An Action-Learning Approach"](#), January 2017.

buying their homes. It is highly likely that the length of the programme, together with the cost of the Exchequer, means that the higher value asset levy will be introduced prior to the end of the pilot.

Rogue landlords and housing enforcement

The Government will begin implementation Part 2 of the Act on rogue landlords and property agents in England from April 2017, with a number of further provisions to come into force in October, according to DCLG's implementation timetable.

It is intended that from 6 April 2017, rent repayment orders and civil (fixed) penalties will become available to housing authorities taking action against landlords and property agents:

- Under Part 2, Chapter 4 of the Act rent repayment orders will be available upon application to the First Tier Tribunal in relation to a range of specified housing-related offences (s. 40(3)). In practice, the Act expands the availability of rent repayment orders in a number of additional areas beyond those already provided for by the Housing Act 2004, including illegal eviction and harassment of tenants under the Protection from Harassment Act 1977.
- Under s. 126, local authorities will be able to impose a civil penalty of up to £30,000 on landlords and agents as an alternative to prosecution at the Magistrates' Court under the Housing Act 2004 for offences including failure to comply with improvement and overcrowding notices and HMO and selective licensing requirements and management regulations. Recipients of penalty notices will be entitled to appeal the service of the notice and amount of the fine to the First Tier Tribunal.

It is anticipated that October 2017 will see the launch of the national database of rogue landlords and property agents (s. 28) and the introduction of banning orders and management orders:

- The database of rogue landlords and property agents will be operated by DCLG but its content shall be managed and maintained by local authorities. Details of landlords and property agents who have been convicted of various housing-related offences will be made publicly available, some on a mandatory and others on a discretionary basis (ss. 28-37).
- Banning orders will prohibit landlords or agents from letting their own properties or from any involvement in the lettings and property-management industry or associated companies (s. 14-20). Local authorities will be able to apply to the First Tier Tribunal for the making of an order following the commission of 'banning order offences' by landlords and agents, which may then be made on a discretionary basis for a minimum period of 12 months and maximum unlimited period.
- Further, the making of a banning order will provide grounds for the making of a management order under s. 101 of the Housing Act 2004, permitting local authorities to take over the management and letting of the property in question and to keep the receipts of rent generated by lettings (s. 26).

A public consultation on banning order offences launched on 13 December 2016 and will close on 10 February 2017.¹² Banning orders are plainly draconian and should be reserved for the most serious cases, given their effect will be to deprive landlords and agents of their income and livelihood for a potentially unlimited period of time. The Government's proposed list of offences however covers a wide range of circumstances, including not only the typical housing-related offences comprised in the 1977 and 2004 Acts but also a broad range of "*serious criminal offences*" if committed by landlords or agents at their properties. It also cites the controversial 'right to

¹² DCLG, [Proposed banning order offences under the Housing and Planning Act 2016: A consultation paper](#), December 2016.

rent' offences arising from Part 3 of the Immigration Act 2014, which criminalise landlords who fail to confirm their tenants' immigration status and which have been linked to concerns about discrimination in the housing sector.¹³

Conclusion

Developments since November have made it clear that the Government remains committed to the delivery of its 2015 election manifesto commitments on housing reform, with the conspicuous exception of the abandoned 'pay to stay' policy. The reasons for that particular handbrake turn remain unclear. Although the Minister referred to concerns expressed about the policy by actors within the industry, those views had already been expressed loudly and clearly during the passage of the Act through Parliament. So what changed?

The comments made by Ms Davies on 3 November regarding delayed implementation of the VRtB are perhaps revealing. She stated that "*the Brexit vote has made us think about timing and is leading to a delay in the process. The new government is supporting Right to Buy, but you can imagine what is at the top of their to-do list currently. We have a new government as of July, and we don't really know yet where the ministers are with regard to the details.*"

It remains to be seen how much Brexit will impact the implementation of the Act as a whole, but given the inevitable competition within the civil service for resources this year, it may be that DCLG's implementation timetable proves ambitious. The large number of statutory instruments required by the Act will make access to parliamentary draftsmen a particular priority. Local authorities and housing associations may wish to watch out for further public consultation and opportunities to provide input for regulations and Ministerial guidance in due course this year.

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¹³ Joint Council for the Welfare of Immigrants, [No Passport Equals No Home](#), 3 September 2015.