

13/2016 Housing and Planning Act Implications for Council Housing



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Key Points

- The Housing and Planning Act 2016 was published on 23 May.
- This briefing provides a guide to the provisions in Part 4 of the Act that affect council housing.
- Chapter 2 of Part 4 relates to sale of vacant higher value council housing
- Chapter 3 imposes higher rents on higher income council tenants
- Chapter 6 requires most new council tenancies to be of a fixed term of 2 to 10 years.

Sale of Vacant Higher Value Council Housing

Chapter 2 of Part 4 came into force on 12 May. It includes the following sections:

Section 69 allows the Secretary of State to make a determination requiring a local authority with an HRA to make a payment in any year equal to an estimate of the market value of higher value homes likely to become vacant during the year, less specified costs and other deductions.

“Higher value” must be defined in regulations debated and approved by both Houses of Parliament (i.e. by affirmative resolution). The Bill was amended to refer to “higher” rather than “high” value in the House of Lords to allow wider scope to include housing not of high value relative to national or regional house prices.

Section 70 states that only HRA housing may be taken into account in making a determination, except that a council transfers HRA stock to a PRP it may be treated as if it still owned that stock.

Section 71 requires the Secretary of State to consult affected local authorities before making a determination.

Section 72 includes more about determinations, including allowing that they may make different provisions for different areas and local authorities, and for different purposes.

Section 73 allows a part-year determination to be made in the current financial year. It is likely that the first determination will cover the last quarter – January to March 2017.

Section 74 allows (but does not require) the Secretary of State to enter into an agreement with a local authority to reduce the amount payable under a determination provided the reduction is used to provide new affordable housing. An agreement must provide for at least one new affordable home for each old home included in the determination, and, in London, at least two new affordable homes for each old home. The Secretary of State may make exceptions to these rules by regulations, and, in London, homes provided by the Greater London Authority may be counted against the two-for-one requirement.

For the purposes of this section, a “new affordable home” is defined as being either a starter home, as defined elsewhere in the Act, or a home “to be made available for people whose needs are not adequately served by the commercial housing market”. The Secretary of State may amend this definition by regulation. In Parliament, the Government resisted amendment of the Bill to require “like-for-like” replacement of social rented housing with social rented housing.

Section 75 allows the Secretary of State to set off overpayments by a local authority in relation to a determination against other amounts it is liable to pay.

Section 76 places a duty on every local authority that keeps a HRA to consider selling any higher value stock that becomes vacant.

Section 77 amends the consent requirements for disposal of housing.

Section 78 allows the Secretary of State to set off overpayments by a local authority in relation to a determination against other amounts it is liable to pay.

Section 79 provides guidance on interpretation of terms used in this Chapter. It states that housing “becomes vacant” when a tenancy comes to an end and is not renewed expressly or by operation of law, but allows the Secretary of State by regulations to specify circumstances under which housing is not to be treated as becoming vacant.

High Income Social Tenants

Chapter 3 of Part 4 allows the Secretary of State to make regulations requiring local authorities to charge higher rents to higher income tenants. It comes into force when the regulations are approved. The likely timetable for implementation is that draft regulations will be issued in July, be debated by Parliament early in the Autumn and come into force in November. Local authorities are expected to contact tenants to request information in October and to have decided which tenants are liable to pay more in time for rent increases to come into effect from April 2017. Regulations are likely to specify that:

- The household income threshold above which a higher rent would be payable will be £31,000 (£40,000 in London); these thresholds will be increased annually in line with CPI;
- Tenants receiving housing benefit or universal credit will be exempted;
- Income will be defined as taxable income, thus excluding tax credits, child benefit, disability living allowance and personal independence payments;
- Household, for the purposes of calculating household income, will be defined to include the tenant or joint tenant and their partner(s) but to exclude any other resident non-dependants, such as adult children; only the income of the two highest earners will be taken into account;
- The additional rent payable will be limited to 15 pence for each £1 by which household income exceeds the threshold;
- Consideration will be given to exempting councils where current rents are so close to market rents that the costs of collection would be disproportionate compared with the additional income.

Section 80 allows the Secretary of State to make regulations requiring local authorities to charge “high income” a higher rent. Regulations may require different rents for tenants with different incomes and in different areas. Regulations may create exceptions for high income tenants of housing of a specified description.

Section 81 requires that the regulations define what is meant by “high income” in this context. It allows regulations to define “high income” differently in different areas and to specify whose income is to be taken into account and what is to count as income, the period by reference to which income is to be calculated and how a person’s income is to be verified. It also allows him to issue statutory guidance on the calculation and verification of income.

Section 82 allows regulations to give local housing authorities the power to require a tenant or prospective tenant to provide information or evidence relevant to deciding whether they are required to charge that tenant a higher rent (i.e. information or evidence about household membership or income). They may also require a local authority to charge the “maximum rent” to a tenant who has failed to provide information or evidence. The “maximum rent” is defined as the rent payable for that dwelling by a tenant with the highest income.

Section 83 allows HMRC to disclose to a local authority or to the Secretary of State, for passing on to a local authority, information about income necessary for deciding whether a tenant is liable to pay a higher rent.

Section 84 allows regulations to permit a local authority, where a tenant's circumstances change so that they are no longer liable to pay a higher rent, to treat the tenant as if such circumstances had never applied. This is to cover situations including where the tenant's household income has fallen since the relevant period for assessing liability, and where the maximum rent was applied because of failure to supply information and the information has subsequently been provided.

Section 85 allows regulations to permit local authorities to vary the rents chargeable to tenants and to vary the procedures local authorities are required to follow introducing rent increases, in order to accommodate higher rents for high income tenants.

Section 86 allows regulations to require local authorities to make payments to the Secretary of State based on estimates of the additional income arising from charging high income tenants higher rents, less an allowance for administrative costs. Interest may be charged on late payments.

Section 87 allows regulations to require local authorities to provide relevant information to the Secretary of State.

Section 88 includes consequential amendments to other legislation.

Section 89 requires a PRP which operates a Pay to Stay policy to publish it and to include a procedure for reviewing or appealing decisions under the policy. PRPs are not required to operate such a policy.

Section 90 allows HMRC to disclose information to a PRP which operates a Pay to Stay policy for the purpose of operating that policy.

Section 91 includes definitions of various terms used in this Chapter.

Phasing out of Lifetime Tenancies

Chapter 6 of Part 4, and Schedules 7 and 8, includes proposals to require councils to offer fixed term tenancies of two to five years to nearly all new tenants, and to reform the law on succession to secure tenancies.

Schedule 7 amends the Housing Act 1985 to add new sections as follows:

Section 81A requires all new tenancies to be for a fixed term of 2 to 10 years except where the tenancy is offered to a household including a child under 9, when the tenancy may last until the child is 19, or as specified in section 81B.

Section 81B specifies that "old-style" secure tenancies (i.e. not fixed term) may be offered where a local authority requires a tenant to move, or in other circumstances specified in regulations. It also requires a local authority to have regard to any guidance issued by the Secretary of State in deciding the appropriate length of tenancy to offer.

Section 81D gives tenants the right to ask for a review of a decision on the length of tenancy they are offered.

Section 86A requires the landlord, at the end of a fixed-term tenancy, to carry out a review and decide whether to offer a new tenancy of the same property, a new tenancy of another property or whether to seek possession without making an offer of alternative property.