



# Housing and Planning Act

## FAQs

NOVEMBER 2016

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This briefing addresses a number of frequently asked questions about the main measures which are included in the Housing and Planning Act 2016. It focuses on four areas in particular:

- Starter homes
- The sale of higher value council homes as they become vacant
- Pay to stay
- The mandatory use of fixed term tenancies for new council tenants.

In many cases we are still awaiting the detail of these measures, but this document aims to address members' questions as best as is currently possible.

## Starter homes

Starter homes will be built exclusively for first time buyers aged over 23 and under 40, and will be sold at 20 per cent below normal market prices. The Act creates a new duty on all local authority planning departments to promote the supply of starter homes in their area. It also allows the government to set regulations requiring starter homes to be included on residential sites as a condition of securing planning permission.

### **Q** What proportion of homes on a site will need to be starter homes?

A. This is still to be determined and will eventually be set out in regulations. However a government consultation earlier in the year proposed that 20 per cent of homes on most sites should be starter homes. Local authorities would be able to require other forms of affordable housing to be included over and above this, but only where it would be viable to do so.

Developments in rural exception sites will be granted an exemption from the policy and the consultation also suggested a number of further exemptions including, for example, sites of fewer than 10 units, developments of new supported housing, estate regeneration schemes and other affordable housing-led developments.

### **Q** What impact will this have on the provision of affordable homes for rent?

A It depends on what is eventually included in the regulations. Should government implement the policy as it was described in the consultation, with 20 per cent of homes on most sites being built as starter homes, it is likely that on many sites it will not be possible to also include other forms of affordable housing. In that case, many starter homes would directly replace homes which would otherwise have been built for rent.

In 2013/14 37 per cent of all new affordable homes were funded via 'planning gain' (ie: they were included on private developments as a condition of planning permission being granted), so this is a significant source of much needed affordable homes to rent.

There has been some speculation that government might make changes to the starter homes policy in order to allow a wider variety of different types of affordable housing to be built. However this has not been confirmed

### **Q** Who will calculate the 20 per cent discount?

A It is not yet clear whether or how developers will be expected to demonstrate that they have applied a 20 per cent discount.

Accurately valuing a starter home could also be a challenge. For example, it is difficult to say how the fact that they can only be bought by buyers who meet the eligibility criteria and cannot initially be rented out will affect the property's value.

### **Q** How will developers manage demand for starter homes?

A Although there are some restrictions on who can buy them, starter homes are ultimately intended to be sold on the open market. There is no suggestion that demand will be managed through an applications process, or that properties will be allocated in the way that new affordable homes to rent would be.

## **Q Can local authorities require that those buying starter homes, which have been provided as a condition of obtaining planning permission, to have a local connection?**

A. The Act allows the Secretary of State to introduce additional eligibility criteria for starter homes. However to date government have not suggested that they will enforce any kind of local connection.

## **Q What will happen to the discount when starter homes are sold on?**

A. This will also be set out in regulations. However the government's previous consultation suggested that buyers could be prevented from selling the home on at full market value for five years. If they were to sell the property on during that period, it would have to be to another qualifying first time buyer and at a discount.

The consultation also suggested that buyers could also be prevented from renting their property out for five years.

## **Q When will the detail of this measure be confirmed?**

A. To date there has been no announcement about when regulations setting out the final details of the scheme will be published.

## **Sales of higher value council homes**

**The Act enables the government to set out a definition of 'higher value' homes and will create a duty on local authorities to consider selling homes that meet this definition when they become vacant. It also allows the government to estimate the amount of money they would expect each individual authority to receive, in each financial year, from sales of higher value homes. Authorities will then be required to pay this amount to the Treasury.**

**The receipts from these sales are intended to fund the extension of the right to buy to housing association tenants, as well as the building of replacement council homes.**

## **Q What is the definition of a 'higher value' home?**

A. This has not yet been determined. However it is unlikely that a single threshold (eg: homes worth more than, for example, £250,000) will be set and applied across the whole country. Instead government will devise some sort of formula which takes into account regional variations in property values and the values of different sizes of property.

## **Q Will there be an exemption from sales for properties in rural exception sites?**

A. Government have not yet determined the formula that they will use to calculate how much money each local authority must raise through sales. It is possible that some specific types of property could be excluded from these calculations, but government have not previously said that they intend to exclude homes in rural areas.

Whatever formula is used individual local authorities will still ultimately make the decision about which properties they want to sell. They could choose not to sell particular properties, such as those in rural areas, but will need to identify alternatives which still allow them to generate the required amount of receipts from sales. Property prices in rural communities are generally high, so if these are included in calculations it is likely that this will increase the amounts that many authorities will be required to raise.

## **Q What are the prospects of homes that are sold being replaced?**

A. Receipts from sales are intended both to compensate housing associations for the discounts they will be offering under the extension of the right to buy and to fund replacement council homes. Government have said that they expect all council homes which are sold under the scheme to be replaced on a one-for-one basis, or two-for-one in London. However we are concerned about whether this will be possible in practice.

To some extent this may depend on how many homes housing associations sell under the extended right to buy, as more sales will mean more of the money raised is needed to fund discounts. As it is not yet clear what

the eligibility requirements will be for the extended right to buy or whether government will limit annual sales in some way, it is very difficult to estimate this.

However our previous research suggested that up 7,000 council homes could be lost per year if government does not commit further funding to ensure that replacement is always possible.

**Q If sales under the extended right to buy scheme are lower than expected, will this be reflected in the number of homes that councils are required to sell?**

A. It is not likely that government will know exactly how many housing association tenants are going to exercise their right to buy, and therefore how much the scheme will cost, at the point when they decide how much each council must raise in higher value sales.

Our main concern is the possibility that the money raised from higher value sales might not be enough to cover both the cost of discounts under the right to buy and the cost of replacement council homes. However it is also possible that, if fewer housing association tenants than expected buy their homes, there could be more money raised than is needed. Should that occur it is not currently clear whether more money would be returned to local authorities and/or whether the amounts that they are expected to raise in subsequent years would be reduced.

**Q When will the detail of this measure be confirmed?**

A. Unlike many of the other areas of the Act where detail has still to be confirmed, both the definition of 'higher value' and the formula for calculating how much individual councils must raise in sales must be debated in the both the House of Commons and the House of Lords before they can be finalised. So far government has not announced when that will happen.

## Pay to stay

The Act requires local authority tenants with a higher income to pay a higher rent. Initially a 'higher income' will be defined as a household earning more than £31,000 per year, or £40,000 in London. Increased rents will be calculated on the basis of an additional 15p rent for every extra pound earned above the income threshold.

Pay to stay will not be mandatory for housing associations, but they will be able to implement a similar scheme if they choose to.

**Q What types of income will 'count' towards the £31,000 threshold?**

A. Calculations will be based on gross, rather than net income, and all taxable income (ie: anything which would be considered when calculating how much income tax an individual should pay) will be included. This includes both the state and private pensions.

Calculations will be based on a household's income, rather than an individual's, meaning that a couple who each earn £16,000 p/a will be affected by the policy. We are concerned that as a result of this many people who could not reasonably be considered to be high earners will be affected. For example a couple who each work full time and each earn the new national living wage will only be around £1,000 p/a below the threshold.

**Q What evidence will tenants need to provide of their earnings? And what will happen if a tenant does not provide this?**

A. The Act requires council tenants to declare their income to their landlord and allows local authorities to share that data with HMRC in order to verify that it is correct. However the practicalities of that data sharing arrangement have still to be determined.

Tenants who do not provide data on their income will be charged a full market rent. The process for doing this is currently being worked through.

## **Q How often will information on tenants' earnings need to be updated, with rents being adjusted if necessary?**

A. This is not yet clear. However many tenants will have earnings which vary on a month-by-month basis and developing a system which accurately reflects their ability to pay is likely to be a major challenge.

It is unlikely that councils will be equipped to monitor tenants' incomes on a 'live' basis and so a system of regular, perhaps annual, reviews combined with some sort of mechanism to take account of major changes of circumstance, like a redundancy, may be more likely.

## **Q Are there any groups of tenants who will be exempt from the scheme?**

A. Anyone receiving housing benefit, or the housing costs element of universal credit will be exempt from pay to stay. This includes households who would become eligible, should their rent be increased in line with the policy.

Pensioners are not exempt and will be affected, if their income exceeds the threshold.

## **Q Will there be a limit on how much rents will be increased by? How will this be calculated?**

A. Rents will increase by 15p for every £1 that a household earns over the threshold until they reach 'market rent'. Individual local authorities will need to decide on a definition of market rent.

## **Q What impact will the policy have on work incentives?**

A. Pay to stay will mean that many households will benefit less from an increase in their earnings. As well as paying income tax on their additional income and perhaps, depending on their circumstances, seeing their entitlement for some benefits reduced, they will also have to pay more rent.

We are concerned that this will weaken work incentives, something government has previously sought to strengthen both by raising income tax thresholds and by introducing universal credit.

## **Q Will councils be allowed to keep the additional money raised?**

A. No, the majority of the money raised will be returned to the Treasury. Councils will only be allowed to retain enough money to cover the cost of administering the policy. The details of how this will be calculated have not yet been determined.

We have previously argued that councils should be allowed to retain all of the additional money raised, so that it can be reinvested to build new homes and/or to improve services for tenants.

## **Q What will happen if the additional money raised does not exceed the cost of collecting it? And what about areas where market rents are lower than social rents?**

A. These are issues that government will need to consider when working out the details of the scheme. Government has suggested that they may allow some individual councils to opt out of the scheme, where it would be unlikely to generate any additional income. However this has not been confirmed.

## **Q When is the scheme due to be introduced, and when will further details be announced?**

A. At present the scheme is due to be introduced from April 2017.

With many crucial details still to be determined, many local authorities are now asking for this to be delayed on the basis that they will not now have enough time to prepare for its implementation. However to date government has not confirmed any change.

**Q Is there any guidance for housing associations who are considering implementing pay to stay? When will they be able to introduce their schemes, and will they also have access to HMRC data?**

A. Housing associations (and councils) are already able to charge those earning more than £60,000 p/a a higher rent. However the Act will give associations a more general power to begin charging higher rents to higher earning tenants. It will also allow them to share data on tenants' incomes with HMRC, in the same way that local authorities will.

Unlike the councils, housing associations will be able to determine the detail of their schemes for themselves, including the thresholds above which they will begin increasing rent and the rate at which they will do so. They will also be able to keep and reinvest any additional income which they raise as a result.

The relevant sections of the Act have not yet been enacted and it is not currently clear when they will be. It is possible that this could be at the same time that the council scheme is implemented. However as housing associations who intend to implement a scheme will be able to design this themselves at a local level, there is no reason why they cannot begin that process now.

## Pay to stay

**The Act requires that most new local authority tenancies are granted for fixed terms of between two and 10 years. However local authorities will be able to grant households containing a child under the age of nine a longer tenancy, which will last until that child reaches the age of 19.**

**Housing associations are unaffected by this section of the Act and will still have discretion to use either assured or fixed term assured shorthold tenancies, as they see fit.**

**Q Are there any exceptions to the policy? What about existing tenants who complete a transfer or mutual exchange, will they keep their existing security of tenure?**

A. The Act allows the Secretary of State to set out in regulation some circumstances in which councils will still be allowed to issue secure tenancies. It is possible that government could use this power to grant a blanket exemption to all existing tenants who complete a transfer or mutual exchange, but government has previously suggested that they are not likely to do this.

Instead they are more likely to allow secure tenancies to be issued in some specific circumstances where they would not want to discourage tenants from moving. This might include, for example, where a tenant is downsizing or moving to another area for work.

More generally, we have argued that councils should be given as much freedom as possible to make their own decisions about exemptions. There will still be circumstances where it will be more appropriate to issue secure tenancies, for example we know that many councils do not want to issue fixed term tenancies to those moving in to sheltered accommodation. However this is likely to vary from one area to another depending on local circumstances and so we believe that individual councils would be best placed to make these decisions.

**Q What will happen at the end of a fixed term?**

A. Some councils have been using fixed term (or 'flexible') tenancies on a voluntary basis since 2012 and mandatory fixed terms will operate in the same way as these.

Not all tenants will be required to leave their home at the end of their tenancy. Councils will have the option of granting a further tenancy, either in the same or a different property, and it is likely that individual councils will be allowed to make their own decisions about the circumstances in which they will do this. Councils will need to publish a tenancy policy setting this out and must then review each tenancy against their policy at least six months before it is due to end.

## **Q Will possession have to be sought through the courts at the end of a fixed term tenancy?**

A. Where a council decides not to issue a further tenancy at the end of a fixed term, a process for ending the existing tenancy is already set out in the Localism Act 2011. This is not expected to change.

In summary councils must give at least six months' notice that they do not intend to renew the tenancy, must offer the tenant a chance to appeal against that decision and must also issue a second notice two months before the end of the tenancy. There is also an expectation that councils provide advice and assistance to help the tenant to find alternative accommodation.

Once the notice period has been exhausted it likely that most tenants will vacate the property voluntarily, but if a tenant refuses to leave it will be necessary to seek possession through the courts.

## **Q What is the likelihood of legal challenge, for example around whether councils' decisions are reasonable and proportionate?**

A. Provisions in the Localism Act make clear that a court can only refuse possession at the end of a fixed term if the correct procedure has not been followed or if the court is satisfied that the decision not to grant another tenancy was otherwise 'wrong in law'. In practice this means that councils should only need to demonstrate that they have followed the prescribed process and that their decision has been made in accordance with their published policy.

While it is never entirely possible to prevent legal challenges, particularly under human rights legislation, the legal advice that we have previously received is that councils can minimise the risk of challenges by ensuring that they have a clear policy and procedure and that they apply this consistently.

## **Q When is the policy due to be implemented, and when will we know the detail?**

A. Government have not yet confirmed when this policy will be implemented and it is also not yet clear when any circumstances in which councils will be allowed to continue issuing secure tenancies will be confirmed.