

## **Housing and Planning Act 2016**

### **Summary of the passage of key housing proposals within the Bill through Parliament and the eventual key housing provisions of the Act**

#### **Lifetime and Fixed-Term Tenancies**

- The Government originally wanted to end the provision of "lifetime" tenancies for most tenants and replace them with fixed-term tenancies of two to five years (the Council currently provides 10-year fixed term tenancies – including a 1 year introductory period – to all new tenants)
- The House of Lords attempted to stop the Government's intention to move from lifetime tenancies to fixed-term tenancies - but they were unsuccessful.
- However, the proposed five-year, fixed-term tenancies were amended by the Government to:
  - At least 2 years and no longer than 10 years, generally; and
  - Up to 19 years for those with children up to 9 years of age
- However:
  - In deciding what actual length of tenancy is granted (between 2 and 10 years, or up to 19 years for those with children up to 9 years age) councils must have regard to any guidance given by the Secretary of State
  - Some commentators are of the view that the guidance will be quite prescriptive and state that 5-year fixed term tenancies will be the norm, with exceptions only made for those downsizing or freeing up a property adapted for a disabled person
- At present, unlike the Council's current approach, new tenancies of sheltered housing will also have to have fixed-term tenancies
  - However, it is possible that such tenants could be given an exemption through the forthcoming regulations
- The Government clarified during the passage of the Bill that tenants who are asked to move by a council will be able to transfer their lifetime tenancy – which has been included in the Act
- The Government indicated during the passage of the Bill that some tenants with lifetime tenancies requesting a move for specified reasons (e.g. needing additional bedrooms, downsizing) could also be given lifetime tenancies for their new properties
  - However, this is not included within the Act; all the specific exceptional cases are expected to be set out in Regulations
- Current arrangements for introductory tenancies continue, but form part of the overall fixed term (i.e. between 2 and 10 years, or up to 19 years for those children up to 9 years of age)
- The current requirements for councils to carry out a review between 6 and 9 months before the expiry of the fixed term continues

#### **Succession Rights**

- By including a specific provision within their tenancy agreements, councils continue to be able to extend succession rights (i.e. the transfer of a tenancy after a tenant's death) to "other family members" (i.e. other than spouse, civil partner or person living with the tenant as a partner) – the Council already includes this specific provision
- However, successions to tenancies by family members can only be for a fixed term of 5 years

**The Council must therefore await the detailed Government Guidance/Regulations on the requirements in order to determine if any changes will be required to the Council's current approach to both fixed-term tenancies and succession rights.**

*(Note that, due to the Council's experience of operating fixed term tenancies, the Council's Assistant Director (Housing Operations) has been invited to work with DCLG officials to discuss the detailed national arrangements).*

## **Voluntary Right to Buy for Housing Association Tenants and Sales of High Value Void Council Properties**

- Prior to publication of the Bill, the Government stated its intention to extend the Right to Buy (RTB) to all housing association tenants
- Due to fears by both the Government and housing associations that legislating for the RTB for housing associations could move housing associations from the private sector into the public sector, the National Housing Federation (NHF – the “trade body” for housing associations) proposed and reached a “deal” with the Government for housing associations to *voluntarily* give their tenants the Right to Buy.
- During the passage of the Bill, the Government committed to every home sold in London being replaced by two new affordable homes (but not necessarily the same tenure).
- Originally, it was proposed that councils would be required to sell all “high-value” homes over specified value thresholds that became vacant - and pass the income to the Treasury to fund the Right to Buy discounts for housing association tenants.
- However, this was changed slightly during the passage of the Bill to a requirement that councils must pay an annual levy to the Government, based on an assumption that councils will sell all void properties over Government-specified value thresholds and a Government estimate for each council of the number and value of such properties arising each year
- However, no information has yet been provided by the DCLG on what the value thresholds will be for different parts of the country, nor how the levy will be calculated or what the levy will be for each local authority
- It is understood that the DCLG may be seeking the first quarterly payment of the levy in January 2017 but, presumably, this will be dependent on when the guidance on the calculation of the levy has been finalised.
- During its passage, the Government introduced a provision within the Bill to enable the Secretary of State to reduce the amount of levy payable to the Government by councils outside of London if they used the retained amount to replace each high value property sold with a new affordable home. Although the junior minister for the Department for Communities and Local Government in the House of Lords indicated a willingness to add a “like-for-like” clause into the Bill to replace homes with the same tenure properties, this did not appear in the resultant Act.

*(Note: When this provision was added to the Bill, the Council's former Housing Portfolio Holder wrote to the Minister of State for Housing and Planning expressing an interest in the Council retaining sales proceeds to replace sold properties, and received a positive response from the Minister)*

- The Government agreed to a request from the House of Lords that all the rules around the sale of high-value void council properties will be referred back to Parliament for approval.

**The Council must now wait for both the draft and final Government Regulations/Guidance on the detailed operation of the Act, including the value thresholds to be applied and the proposed levy that that Council must pay the Government – and then make arrangement to sell all, or the majority of, Council properties that become vacant with values above the threshold, and decide if it wishes to formally seek a reduction in the required levy to fund the provision of replacement affordable homes.**

## **Starter Homes**

- According to a number of commentators, the Government faced some of the strongest opposition to the Bill on the proposed introduction of Starter Homes. However, this was a policy where the Government only made a few changes during the passage of the Bill.
- Under the Act, Starter Homes are defined as “affordable housing” (in the same way as affordable/social rented housing and shared ownership)
- Only first-time buyers under the age of 40 years will be eligible for Starter Homes
- During the passage of the Bill, the Government announced its intention that applicants for Starter Homes under 23 years of age would not be eligible
- Starter Homes will be sold to eligible applicants at a discount of 20% on their open market value for no more than £450,000 in London and £250,000 outside of London
- Councils have a duty to promote the supply of Starter Homes.
- The Government’s original intention was that Starter Home owners could sell the property at full market value after five years.
- However, after opposition, the Government announced its intention to extend the period of time before a property could be sold to eight years; but the consultation exercise has not yet been completed
- The House of Lords sought an amendment to give councils a choice over whether or not to provide Starter Homes in their area, but the Government voted against this.
- The Government is currently consulting on a proposal that 20% of all the dwellings provided on new developments that comprise 10 or more dwellings should be provided as Starter Homes, and form part of the overall affordable housing requirement for such developments. The Council currently seeks 40% affordable housing on such development sites (50% in settlements in excess of 3,000 population) which means that, subject to viability, the remaining 20% (or 30%) can continue to be provided as affordable rented or shared ownership
- However, the Government made a small concession which allows councils to avoid building Starter Homes on rural exception sites.

**The Council must now await the outcome of the Government’s consultation exercise on Starter Homes, which will feed into the Council’s new Local Plan. When the Government’s requirements have been formulated the Council will need to formulate a new Affordable Housing Policy, prior to inclusion within the Local Plan.**

## **“Pay to Stay” (Increased rents for tenants on higher incomes)**

- “Pay to Stay” is the Government’s proposal to require Council tenants in excess of a specified household income to pay higher rents
- On the introduction of the Bill, the Government’s intention was that tenants earning over a certain income threshold should pay the market rent for the property
- The household income thresholds are £40,000 per annum in London and £31,000 per annum outside of London
- The precise definition of what is counted as “household income” has not yet been specified, but Baroness Williams gave undertakings in the House of Lords that:
  - No household in receipt of Universal Credit or Housing Benefit would be subject to the policy
  - Income would be defined as “taxable income” which would take account of employment earnings, pension income and investment income, but not Child Benefit, Disability Living Allowance or Tax Credits
  - A “household” will be defined as:
    - The tenant
    - Any joint tenants
    - Their spouses, partners or civil partners

- Within a household, only the incomes of the two highest earners will count, and the incomes of non-dependent children would not count unless they are named on the tenancy agreement and they are one of the two highest earners
- Following objections and amendments by the House of Lords, during the passage of the Bill, the Government introduced a “taper” whereby rents would be increased proportionately in relation to a tenant’s household income above the threshold, up to either market value or “near market value”
- The House of Lords proposed that the taper should to be based on an increase in rent of 10p per annum for every £1 per annum income above income thresholds of £50,000 in London, or £40,000 outside London
- However, the Government decided that the taper should be based on an increase in rent of 15p per annum for every £1 per annum income over the thresholds of £40,000 in London and £31,000 outside of London. Therefore, for example, a tenant with a household income of £41,000 outside of London would have their social rent increased by £1,500 per annum (£28.85 per week)
- Income thresholds will be reviewed annually and increased in line with the Consumer Price Index (CPI)
- Councils are now empowered to require tenants to provide information on their income; tenants who do not can be charged the maximum rent
- HMRC may disclose income data on tenants to councils to assist with rent setting
- Tenants will have the right to request a review of decisions to increase their rent
- All of the increased rental income must be passed to the Government, although the Government has said that it will enable councils to retain some of the increased income to help meet the increased costs of administering the new scheme
- Housing associations can voluntarily choose to operate a Pay to Stay policy, based on the Government’s scheme, and if they do, they can keep all of the increased income, provided that they use the increased income to fund the provision of new affordable homes
- The Act enables councils to require tenants to provide details of their taxable income, and enables HMRC to provide income details to councils
- Following the Act receiving Royal Assent, the Government has set out a proposed timetable for the introduction of the Pay to Stay Policy from April 2017.

**The Council must now await the detailed Government Regulations/Guidance and then create additional posts, introduce procedures and reconfigure its IT systems - to operate the new scheme and inform all tenants in time for the Government’s proposed implementation date of April 2017.**

**However, in the meantime, an officer project team is being established, chaired by the Assistant Director (Private Sector and Communities Support), to prepare for the new regime.**