



# Housing and Planning Act

## FAQs

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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 three areas in particular:

- Starter homes
- The sale of higher value council homes as they become vacant
- 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. Purchasers will have to have an annual income which does not exceed £80,000 (£90,000 in London) and will need to be buying with a mortgage (ie: cash buyers will not be permitted).

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. However government have now confirmed that they will not be implementing this element of the policy. Instead they will require 10 per cent of homes on most new sites to be made available for affordable home ownership.

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

A. There will now be no specified proportion of new build homes which must be sold as starter homes. Instead government will amend the national planning policy framework (NPPF) in order to require that a minimum of 10 per cent of homes should be made available for affordable home ownership.

In practice, this could be comprised of starter homes, homes for shared ownership, rent to buy or a combination of these.

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

A. The 10 per cent affordable home ownership requirement is intended to be a minimum. Local authorities will be able to require other forms of affordable housing to be included on individual sites over and above this, where it is viable to do so. This could of course include affordable homes 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. It is likely that this will continue in the future but that this will provide more of a mix of different forms of affordable housing, for both rent and sale.

### **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.

Accrately 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. Government has confirmed that where starter homes are developed on rural exception sites buyers will need to demonstrate a local connection. However this will not be the case for the majority of starter homes available elsewhere.

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

A. The detail of this is still to be set out in regulations. However government have confirmed that buyers of a starter home will not be able to sell it on at full value for 15 years after purchase. If the property is sold before then, some or all of the discount will have to be repaid.

It is also expected that owners of starter homes will be prevented from renting their property out during the same 15 year period.

## **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.

## Fixed term tenancies

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 to 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.