
HOUSING AND PLANNING ACT 2016

SUMMARY REPORT

Purpose of the Report

1. This report provides information on changes that will affect a number of areas of the housing service as a result of the introduction of the Housing and Planning Act 2016

Summary

2. The Housing and Planning Act received Royal Assent in May 2016 and introduced a number of significant changes to housing and planning in general. This report focuses on those changes that will directly impact on Council housing services.

These include the following:

- (a) Pay to Stay - An additional rent charge to be introduced if the two highest earners in a property have a taxable income above £31,000 per year. The additional income will be used by the Government to reduce the national debt.
 - (b) The end of secure tenancies. Apart from in a limited number of circumstances all new tenancies will be let as fixed term "flexible" tenancies. This is intended to ensure better use of Council stock. There will also be an impact on the right of succession introducing flexible tenancies on succession for some and also making succession for anyone other than a partner or spouse discretionary.
 - (c) The introduction of a charge on vacant "higher value" Council properties which will force the sale of some properties. The income is intended to be used to compensate Housing Associations for the introduction of the voluntary right to buy.
 - (d) A new obligation has been introduced for Councils to consider the sale of higher value properties as they become available to let. It is intended to ensure that Local Authorities consider how they make use of their housing assets to meet local needs.
3. The legislation is unusual in that it lacks detail in some areas and requires further consideration by parliament during the Autumn to verify guidance and regulation. The Government had stated that they want these changes to be implemented by April 2017 and the legislation is designed with this date in mind. However, the draft guidance has now been delayed and is expected to be published in September/

October 2016 at the earliest. This introduces uncertainty about the timetable for implementation.

4. Until it is clear what proportion of the stock will be classified as “higher value” it is not possible to estimate the full significance of the impact. However, when put in to the context of other changes such as the 1% rent reductions introduced through the Welfare Reform and Work Act 2016 which will see a loss of £2.5 million per year by 2020 there is the potential for a considerable detrimental impact.
5. There is little discretion in the implementation of these changes for Councils and until the guidance and regulation is available on these changes it will remain unclear what decisions will need to be made. However, as the timetable is uncertain and implementation may be required over a shortened period this report forms an early part of the preparation for these changes.

Recommendation

6. It is recommended that :-
 - (a) The changes that are being introduced through the Housing and Planning Act 2016 are noted and a further report is provided as part of the Medium Term Financial Plan.

Paul Wildsmith
Director of Neighbourhood Services and Resources

Background Papers

Localism Act 2011
 Housing and Planning Act 2016

Pauline Mitchell: Extension 5831

S17 Crime and Disorder	No direct impact
Health and Well Being	No direct impact
Carbon Impact	No direct impact
Diversity	No direct impact
Wards Affected	Those with Council tenancies
Groups Affected	Anyone living in or seeking a Council tenancy
Budget and Policy Framework	There are likely to be significant budgetary implications
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	The changes will have a mixed impact, increasing the potential for greater social mobility which may increase employment opportunities but it may also reduce the total amount of stock available to rent
Efficiency	There will be a significant increase in administration costs

MAIN REPORT

Information and Analysis

7. The Housing and Planning Act introduces a broad range of changes that include widening the definition of affordable housing, the introduction of Starter Homes, changes to the planning framework, and changes to dealing with rogue landlords and property agents. The section on social housing includes deregulation of housing associations and extending the Right to Buy to housing associations through a voluntary scheme. There are four changes being introduced that only affect council housing and these are the specific focus of this report.
8. During the passage of the Bill parliament agreed that the supporting regulation and guidance that is needed for delivery of the Act would be brought back to parliament to consider. Parliament was concerned that in some areas there was not enough detail to be certain of the impact of the changes. This was also partly a result of a number of changes and amendments being made to the Bill during its passage that needed further clarification before implementation.
9. The Government drafted the legislation with the intention that it would be implemented by April 2017. They intended for draft guidance and regulations to be published in July to allow local authorities time to begin preparations while they were also being considered by parliament in the autumn. However, the Department of Communities and Local Government have recently said that it would be unlikely that draft guidance and regulations would be available until September/October at the earliest. There is now uncertainty about the implementation timetable. However the Council needs to begin background preparations in case the government decides to stay with its original timetable.

Introduction of Fixed Term (Flexible) Tenancies for all new lettings

10. Flexible tenancies were first introduced in the Localism Act 2011. It is intended to help make the best use of the stock by limiting the time a tenancy can be held. A review process is carried out towards the end of the fixed term to allow for an assessment of the tenant's continuing need for that property. The review can conclude that the tenancy should continue for a further period or the tenancy can be brought to an end with a minimum of 6 months' notice. The Localism Act allowed housing providers to decide if they wanted to introduce this type of tenancy and the extent to which it was introduced. It was agreed in Autumn 2012 that in Darlington a limited number of scarce properties would be converted to flexible tenancies. These included rural houses, 4 bed properties and properties with expensive adaptation. Flexible tenancies are limited to tenants new to social housing meaning transfers are exempt. A total of 30 tenancies have been let on 5 year flexible tenancies since this policy was introduced. Reviews are not due to start until early 2018.
11. As a result of the Housing and Planning Act 2016 all new tenancies will be let as flexible tenancies including transfers. Existing tenants who remain in their current

property will not be affected. There are a small number of exemptions. Where the transfer is not instigated by the tenant, as a result of regeneration for example, they will be able to retain their existing secure tenancy. Other limited circumstance may be included in the guidance such as people downsizing to a smaller property.

12. The new legislation allows for differing lengths of Flexible Tenancy depending on personal circumstances:
 - Single people and childless couples who are below pensionable age and have no disability will be offered a 5 year flexible tenancy
 - Everyone else can be offered up to 10 year flexible tenancies except;
 - Those with a child in school can have a flexible tenancy until they reached 19 so they could be offered up to a 19 year flexible tenancy.
13. There will also be changes to the right of succession. Only a spouse or partner will have an automatic right to succeed. They will be able to succeed to a secure lifetime tenancy if the tenant was a secure lifetime tenant. The statutory rights of succession of other family members are changed. They will no longer have an automatic right of succession. Local Authorities will have the discretion to award succession. Where succession is awarded it will be a 5 year flexible tenancy.
14. The changes will see the phasing out of secure tenancies over time. There will be an increase in administration as a result of the change due to the range of types of tenancies.

Pay to Stay

15. This is an additional charge that will be applied to tenancies where a household annual taxable income is £31,000 and above. The Government believe that tenants who earn more than this amount should pay more. The additional income will be paid to the Government. The threshold is set close to the income of two people working full time on the minimum wage.
16. A household is defined as tenants, joint tenants and their spouses, partners and civil partners. Non-dependent children living at home but not on the tenancy will not be included in the income assessment. Those who receive Tax Credits, Child Benefit, Disability Living Allowance and Personal Independence Payments will not count towards establishing the income thresholds. About 70% of Council tenants are in receipt of Housing Benefit and will automatically be exempt. Tenants are to be charged an additional 15p in rent per week for every £1 they receive in taxable income above the threshold. This is £2.88 per week for every £1000 above the threshold.
17. Councils are required to contact their tenants and ask them to provide evidence of their income. This information will need to be gathered and assessed in order to make adjustments to the rent. Consequently the Council will need to write to all tenants to inform them of the changes and to contact around 1500 tenants who are not in receipt of benefits to gather income information. Tenants will need to supply evidence of their income such as pay slips. Income information will also need to be gathered from new tenants. This will create a different relationship with tenants who will not be used to divulging income details to the Council. It is likely some will be

reluctant to provide this information. If tenants do not supply information then the Council are required to charge a full market rent. It will be up to the Council to determine the level of market rents. On average market rents in Darlington are about £30 per week higher than social rents and £22 higher than affordable rents.

18. The Council will have to put in place a system for monitoring and reviewing income. How this is expected to be done will form part of the regulations. As well as changes in wages there will be constant change as tenants move in and out of benefits. As a result there will be considerable additional administration.
19. The Government intend to clarify a number of key details of the scheme including the way Local Authorities will assess “reasonable costs” for administering this scheme. The Council will be able to retain reasonable cost of administration from the income raised from this scheme. Until we begin to gather income information it will be impossible to estimate how many tenants are likely to be affected and until the guidance is published on monitoring income it is difficult to judge the scale of administration. However, the Government will consider the viability of introducing this scheme by local authority. There may be some areas where the level of additional income after administrative costs are deducted is so low that the authority will be exempt from the policy.

The charge for vacant higher value Council properties

20. The aim is to introduce a charge on “higher value “Council properties that will be used to offset the costs incurred by housing associations through the voluntary Right to Buy. The Government have not defined what they mean by “higher value”. The Act allows for the higher value to be interpreted differently in different areas. These details will form part of the regulations to be published in the autumn.
21. Local Authorities with a Housing Revenue Account (HRA) will be charged annually. The charge will be based on a Government estimate of the income that could be derived from the sale of higher value properties that might become vacant during the year within the Local Authority stock. The Government will use information from previous years to estimate how many higher value properties might become vacant. The Council do not therefore have to sell properties but due to the scale of the impact on the HRA there is unlikely to be much choice. As an illustration only, of the 60 properties that were valued for Right to Buy in 2015/15 the 20 most expensive properties had an average valuation of £99,000. If only 10 of these properties were included in the annual charge then the Council could face paying the Government about £700,000, after debts and costs are deducted
22. Local authorities have to be consulted about the proposed charge for their area and the Government acknowledge that notification of the charge should allow sufficient time to enable proper financial planning. The charge can be set for more than one year to aid long term financial planning.
23. The Local Authority can enter into an agreement with the Secretary of State to retain part of the proceeds to replace properties that have been sold. It is not clear how much a Local Authority can retain. It is clear that the Council would still have to fund most if not all of the cost of each new property. This does not mean that it will

necessarily be a like for like replacement or the same tenure. The agreement may be to increase home ownership or for “affordable housing” which was redefined in the Act to include starter homes as well as shared ownership and rented accommodation.

24. The Council could choose not to sell higher value properties but instead sell less popular properties. In either case the Council will see stock reducing. This has to be considered in the context of four years of 1% rent reductions introduced in 2016 together with the impact of the other Welfare Reforms. Of the changes introduced in the Act this will certainly be the most challenging to deal with.

Obligation to consider selling vacant higher value Council properties

25. A new duty has also been introduced to require stock retaining Local Authorities to consider selling higher value Council properties when they become vacant. This is separate to the higher value charge and is therefore a standalone action. The aim is to ensure that Local Authorities consider how they can best manage their assets and consider selling higher value properties as they become available to let in order to use the money that is released to fund new development or improve existing stock. There is no obligation to sell properties.

Consultation

26. Both the Tenant’s Housing Executive and the Customer Panel have considered these changes. They recognise that in particular the charge for higher value Council properties will present a challenge for the Housing Business Plan. They have asked that they are consulted on implementation plans and that tenants in general are kept informed of the changes. A Communications Plan is being developed that will include the use of Hot News and social media as well as the Council Website to inform tenants.
27. The introduction of pay to stay may require changes to the Tenancy Agreement. This would require a formal consultation with all tenants.