

LOCALISM ACT 2011

EXPLANATORY NOTES

COMMENTARY

Part 7: Housing

Chapter 1: Allocation and Homelessness

Sections 145, 146 and 147: Allocation

371. [Sections 145, 146 and 147](#) make reforms to the legislation on the allocation of social housing under Part 6 of the Housing Act 1996 (the 1996 Act). They give local housing authorities in England the power to determine what classes of persons are or are not qualifying persons to be allocated housing and take existing social tenants out of the scope of Part 6 of that Act, with the exception of those who must be given reasonable preference for an allocation.

Section 148 and 149: Duties to homeless persons

372. [Section 148](#) enables a local authority in England or Wales fully to discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement. Tenancies must be for a minimum fixed term of 12 months.
373. [Section 149](#) provides that the main homelessness duty will recur, regardless of whether the applicant has a priority need for accommodation, if the applicant becomes unintentionally homeless again within 2 years of accepting a private sector offer and re-applies for accommodation.

Chapter 2: Social Housing: Tenure Reform

Sections 150 to 153: Tenancy strategies

374. [Section 150](#) places a new duty on every local housing authority to publish a tenancy strategy setting out, in high-level terms, the matters to which all registered providers of social housing should have regard in framing their own tenancy policies.
375. [Section 151](#) sets out the procedure an authority must follow when preparing its strategy or making a modification to it that involves a major change of policy, and in particular its obligation to consult private registered providers on a draft of the strategy.
376. [Section 152](#) provides that the Secretary of State may direct the social housing regulator to set a standard on tenure. [Section 153](#) requires that a local housing authority, when formulating its homelessness strategy, must have regard to its current allocations scheme, tenancy strategy and, where the authority is a London borough council, the London housing strategy.

Sections 154 and 155: Flexible tenancies

377. **Section 154** gives local authorities the power to offer flexible tenancies to new social tenants and to family intervention tenants. A flexible tenancy is a secure tenancy of a fixed term (not less than two years). Section 154 provides for the circumstances in which a new tenancy will be a flexible tenancy. It also provides for the process by which a landlord may offer and terminate a flexible tenancy as well as a tenant's right to terminate a tenancy or request a review of a landlord's decision with regard to the offer or termination process.
378. **Section 155** provides that certain statutory rights to improve and to be compensated for improvements will not apply to a flexible tenancy. The section also prescribes the circumstances in which an introductory tenancy will, on coming to an end, become a flexible tenancy. The section also prescribes that when a flexible tenancy is demoted, on successful completion of the period of demotion, the landlord may grant another flexible tenancy. These provisions will apply where prior written notice has been served on the tenant advising them that the tenancy will become a flexible tenancy.

Sections 156 to 166: Other provisions relating to tenancies of social housing

379. **Sections 156 and 157** provide that flexible tenancies and assured tenancies granted by private registered providers in England, except where they are long tenancies or shared ownership leases, do not have to be executed by deed or registered with the Land Registry
380. **Sections 158 and 159** and Schedule 14 together provide that, subject to certain conditions, existing secure and assured tenants will be able to retain a similar level of security on exchanging their property with a social tenant with a less secure tenancy.
381. **Section 160** removes the statutory right of those other than spouses and partners to succeed to a secure tenancy. It also provides discretion for landlords to grant succession rights in addition to the statutory minimum of one succession to a spouse or partner. Section 161 enables landlords to grant additional succession rights for assured tenancies. Tenancies commenced before these sections come into force are not affected by these changes.
382. **Section 162** provides that the court may direct that the period during which a local authority landlord in England or Wales can seek to recover possession of a property can run from six to twelve months after the landlord becomes aware of the previous tenant's death, rather than only from the date of death, where the landlord is: seeking possession because the previous tenant has died; a person other than the previous tenant's spouse or civil partner has succeeded to the tenancy; the property is too large for that person and the landlord proposes to move them to a smaller property. It also ensures that where an individual inherits the balance of a fixed term tenancy in England the landlord can recover possession.
383. **Section 163** provides that, where the tenant under an assured shorthold tenancy becomes the tenant under a family intervention tenancy, the landlord may subsequently convert the family intervention tenancy into an assured tenancy that is an assured shorthold tenancy. It also provides that, where an assured shorthold tenancy for a fixed term of at least two years is demoted, the landlord can secure that the tenancy reverts to being an assured shorthold tenancy in the event of the tenant successfully completing the demotion period.
384. **Section 164** provides that a court cannot make an order for possession of a property let by a private registered provider of social housing with a fixed term of at least two years, unless the landlord has given the tenant at least six months' notice in writing stating that they do not intend to grant another tenancy and informing the tenant how they can obtain help and advice.

385. [Section 165](#) provides that tenants of private registered providers with assured shorthold tenancies will have the right to acquire their property subject to the same conditions applicable to assured tenants and further exclusions made by way of regulation.
386. [Section 166](#) extends repairing obligations on the landlord to include flexible tenancies and assured tenancies granted by registered providers with a fixed term of seven years or more.

Chapter 3: Housing Finance

Sections 167 to 175: Housing Finance

387. [Sections 167 to 175](#) and Schedule 15 provide for a new system of council housing finance. The Housing Revenue Account subsidy system will end and councils that operate a Housing Revenue Account will keep all of their rental income and use it to support their own housing stock.
388. [Section 168](#) sets out the framework for calculating the value of each local housing authority's housing service. To implement the new system some local housing authorities will be required to make a payment to Government and other local housing authorities will receive a payment from Government. The framework will be used in calculating the values of those payments, known as "the settlement payment", the details of which will be provided in a determination published by the Secretary of State.
389. [Section 169](#) allows the Secretary of State to issue a further determination if there has been a change in any matter that was taken into account when the settlement payment was calculated.
390. [Section 170](#) provides for the Secretary of State to require that payments to or by central government under sections 168 and 169 are made in a certain way.
391. [Section 171](#) gives the Secretary of State the power to set a maximum amount of housing debt that can be held by each local housing authority.
392. [Section 172](#) requires local housing authorities to provide information necessary to exercise powers in this Chapter.
393. [Section 173](#) allows determinations issued according to powers in this Chapter to apply to all local housing authorities, groups of local housing authorities or individual local housing authorities and requires the Secretary of State to consult before making a determination
394. [Section 174](#) amends the Local Government Act 2003 to enable the Secretary of State to continue to enter into agreements with local authorities to exempt certain council homes from the requirement, in regulations made under that Act, that a percentage of the net receipt be surrendered to central Government should those homes be sold.

Chapter 4: Housing Mobility

Section 176: Standards facilitating exchange of tenancies

395. [Section 176](#) inserts section 193(2)(ga) and section 197(2)(d) into the Housing and Regeneration Act 2008.
396. New section 193(2)(ga) will give the regulator of social housing the power to set a standard for registered providers in respect of assisting tenants with regard to mutual exchanges.
397. New section 197(2)(d) will give the Secretary of State power to direct the regulator to set a standard under section 193 of the Housing and Regeneration Act 2008 Act, or about the content of standards under section 193, or to have regard to specified objectives

when setting standards under section 193 or 194, where the direction relates in the Secretary of State's opinion to methods of assisting tenants to exchange tenancies.

Section 177: Assisting tenants of social landlords to become home owners

398. **Section 177** enables tenants who are shareholders of their landlord organisation to benefit from payments which assist tenants to move out of their social rented property into owner occupation of another dwelling.

Chapter 5: Regulation of social housing

Section 178: Transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency;

399. **Section 178** introduce Schedule 16 which abolishes the Office for Tenants and Social Landlords (known as the Tenant Services Authority) and transfers the functions of regulation of social housing to the Homes and Communities Agency through the creation of a regulation committee of that body.

Section 179: Regulation of social housing

400. **Section 179** introduces Schedule 17 which makes amendments to the Housing and Regeneration Act 2008 primarily in order to enact a change in the role of the regulator in relation to consumer matters. This includes provision to ensure the regulator may only use its monitoring and enforcement powers if it has reasonable grounds to believe that there has been a serious failure affecting tenants (or if there is a risk that there will be such a failure without the intervention of the regulator).

Chapter 6: Other Housing Matters

Section 180: Housing Complaints

401. **Section 180** makes changes to the way in which a tenant may make a complaint about their social landlord to a housing ombudsman. A complaint must be referred to the relevant ombudsman by way of a referral from a member of the House of Commons, a councillor (a member of the local housing authority for the district in which the property concerned is located) or a designated tenant panel; unless 8 weeks have elapsed since the end of the landlord's complaints process, or the designated person declines to refer the complaint, or agrees it may be made direct by the tenant.
402. This section also provides an order-making power to enable the Secretary of State to provide that the housing ombudsman may apply to a court or a tribunal in order that a determination it makes against a social landlord may be made enforceable.

Sections 181 and 182: Transfer of functions to the housing ombudsman

403. **Sections 181 and 182** provide for the creation of a unified service for investigating complaints about the provision of social housing. Under existing arrangements tenants of a local housing authority make their complaints to the Local Government Ombudsman (Local Commissioner) and tenants of private providers of social housing make their complaints to the Independent Housing Ombudsman. These sections extend the Housing Ombudsman's remit to cover local authorities in their capacity as registered providers or managers of housing services while removing these matters from the jurisdiction of the Local Government Ombudsman.

Section 183 – Abolition of Home Information Packs

404. This section repeals Part 5 of the Housing Act 2004 which is concerned with the duty to provide a home information pack.

Section 184: Tenancy deposit schemes

405. **Section 184** amends the tenancy deposit provisions in the Housing Act 2004. It amends section 213(3) and (6) of that Act to extend the time limits within which a landlord must comply with the requirement to protect a deposit taken in connection with an assured shorthold tenancy in accordance with the rules of a tenancy deposit scheme and within which a landlord must provide prescribed information to the tenant from 14 to 30 days. It amends section 214(1)(a) and (2) of the Housing Act 2004 to make clear that penalties for non-compliance will apply when the landlord has not complied within those time limits. It inserts subsections (2A) and (3A) into section 214 of the Housing Act 2004 to clarify that penalties for non-compliance will also apply when the tenancy has ended and to make clear what order the court may make as regards the deposit in those circumstances. Section 214(4) of the Housing Act 2004 is amended to give the courts discretion about the level of the penalty that may apply. Finally, in section 215 of the Housing Act 2004, subsections (1) and (2) are amended and subsection (2A) inserted to clarify that landlords are able to seek possession under section 21 of the Housing Act 1988, where the deposit is not held in a tenancy deposit scheme or the time limits have not been complied with, provided action has been taken to rectify the situation.

Section 185: Exemption from HMO licensing for buildings run by co-operatives

406. **Section 185** adds houses in multiple occupation (“HMOs”) that are controlled or managed by a co-operative society to Schedule 14 to the Housing Act 2004 (buildings which are not HMOs for the purposes of that Act (excluding Part 1)), which exempts such buildings from HMO licensing.