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Implementation of the Housing and Planning Act 2016

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Summary

On publication of the *Housing and Planning Bill 2015-16* the Conservative Government said it would kick-start a "national crusade to get 1 million homes built by 2020" and transform "generation rent into generation buy."

Although it is over three years since the Bill was given Royal Assent on 12 May 2016, some of the Act's key provisions are yet to be implemented. On publication of the social housing Green Paper on 14 August 2018, A new deal for social housing, the Government confirmed that **several measures would not be implemented**.

The *Housing and Planning Act 2016* (HPA) provides the legislative basis for the **Starter Homes Initiative** (see the related House of Commons Library briefing paper for more details). These provisions are not yet in force and consequently no Starter Homes have been built to date.

Measures aimed at **tackling 'rogue' landlords and agents** came into force in April 2018.

The HPA 2016 contains a number of measures to reform **social housing**. The mandatory **'pay to stay'** policy has been dropped as has the requirement on local authorities to offer only **fixed-term tenancies**.

The Act does not give assured housing association tenants a statutory Right to Buy their homes, but it does provide for local authorities to make annual payments to the Exchequer. The intention was to use these payments to cover the cost of discounts for those tenants who exercise a voluntary Right to Buy. The May Government said that it "**will not bring the Higher Value Assets provisions of the Housing and Planning Act 2016 into effect"** and "**will look to repeal the legislation when Parliamentary time allows."**

The provisions on **custom and self-build housing** have been in force since 31 October 2016 and regulations aimed at **reducing the regulation of housing associations** came into force on 16 November 2017.

A number of the Act's planning measures are in force, including those relating to **neighbourhood and local planning** and **permission in principle and local registers of land**. The HPA 2016 allows the Secretary of State to impose restrictions on **planning obligations** (section 106 agreements) but these measures are not yet in force. The Community Infrastructure Levy Review Team has made some recommendations about how the Government could better use section 106 agreements.

Most of the **compulsory purchase** measures in Part 7 of the Act are in force. The measures concerning disputes and compensation came into force on 6 April 2018.

This paper provides an overview of progress in implementing the Act's provisions.

1. New homes in England

1.1 Starter Homes (sections 1-8)

More information about Government policy on Starter Homes can be found in the House of Commons Library briefing paper, Starter Homes for First-Time Buyers (England).

Section 2 defines Starter Homes as new properties, worth £250,000 or less (£450,000 in London) which are to be sold at least 20% below market value. They are reserved for first time buyers aged 23 years and over and under 40 years old. Through further regulation, the Secretary of State can amend much of this, and (as provided in section 3) restrict the sale and letting of Starter Homes post-purchase (subject to tapering).

Section 4 states that a local planning authority (LPA) "must carry out its relevant planning functions with a view to promoting the supply of starter homes in England" and must have regard to any Government guidance. Section 5 allows the Secretary of State, by regulation, to "provide that an English planning authority may only grant planning permission for a residential development of a specified description if the starter homes requirement is met." For instance, regulations could demand a certain proportion of Starter Homes in developments of a particular size.

Section 6 sets out how local planning authorities must report on their promotion and development of Starter Homes. Section 7 allows the Secretary of State to intervene if a local planning authority is not fulfilling its duties by issuing a 'compliance direction' to disregard incompatible local policies from relevant planning decisions.

Sections 1-8 of the Act are not in force.

In April 2015, the Conservative Party manifesto committed to "200,000 Starter Homes which will be sold at a 20 per cent discount, and will be built exclusively for first-time buyers under the age of 40".[1] The November 2015 Spending Review subsequently provided £2.3 billion to support the delivery of 60,000 Starter Homes.[2]

The *Housing and Planning Act 2016* set out the legislative framework for Starter Homes. Much of the detail of the statutory Starter Homes scheme will be set out in regulations. The Government consulted on the content of the Starter Homes regulations between 23 March and 30 June 2016. Views were sought on a range of issues including: the definition of a Starter Home; requirements relating to the provision of Starter Homes (e.g. the number of Starter Homes and the type of development site on which they should be delivered); and restrictions on the resale of Starter Homes. The Starter Homes regulations will need to be approved by both Houses of Parliament.

Between 2015 and 2018, government policy towards Starter Homes shifted. The Housing White Paper, Fixing our broken housing market (February 2017) marked a shift in the Government's housing policy from a strong focus on Starter Homes to delivering a wider range of affordable housing. The November 2017 Autumn Budget reallocated funding earmarked for Starter Homes to the £9 billion Shared Ownership and Affordable Homes Programme and the Land Assembly

1 Conservative Party, Conservative Party Manifesto 2015, 14 April 2015, p51
2 HM Treasury, Spending Review and Autumn Statement 2015, Cm 9162, 25 November 2015, para 1.146

Fund.[3] A number of PQs have been tabled in order to probe progress in developing Starter Homes, for example:

> **John Healey:** To ask the Secretary of State for Housing, Communities and Local Government, how many starter homes have been (a) started and (b) completed.
>
> **James Brokenshire:** As the secondary legislation required for the delivery of starter homes is not yet in place, no starter homes have been built. We intend to lay the regulations before Parliament in due course.
>
> While we develop these regulations the Government continues to focus on restoring the dream of home ownership to the hard working people who are struggling to get on the housing ladder. Since 2010, Government-backed schemes have helped over 540,000 households to buy a home and the number of first-time buyers is at the highest rate for 11 years.[4]

Following media articles that criticised the lack of progress in delivering Starter Homes, the National Audit Office undertook an investigation into Starter Homes. The NAO report confirmed that:

- no Starter Homes had been built;
- the Starter Homes legislative provisions were not yet in force; and
- The Department [MHCLG] no longer had a budget dedicated to the delivery of Starter Homes.[5]

The report also analysed the impact of the Department's investment in Starter Homes.

1.2 Custom and self-build housing (sections 9-12)

The *Self-build and Custom Housebuilding Act 2015* obliges local authorities to keep registers of those who are looking for land for custom or self-build housing. Section 10 of the HPA 2016 amends the 2015 Act, adding a duty to grant sufficient numbers of development permissions to reflect this demand.

Sections 10 to 12 provide that the Secretary of State can issue regulations regarding:

- the timeframe for local authorities to grant a development permission,
- how a local authority might apply for an exemption from their duty
- keeping the register in two parts with the second part to contain bids that did not pass the local authority's criteria
- fees for the permissions process

For more information see the House of Commons Library briefing paper: Self-build and custom build housing (England).

These sections came into force on 31 October 2016.

- *The Self-build and Custom Housebuilding Regulations 2016 (SI 2016/950),* which were subject to negative resolution procedure,

3 National Audit Office, Report by the Comptroller and Auditor General: Investigation into Starter Homes, HC 275 Session 2019, 5 November 2019, Key Findings, para 9
4 PQ 257414 [Housing: Construction], 5 June 2019
5 National Audit Office, Report by the Comptroller and Auditor General: Investigation into Starter Homes, HC 275 Session 2019, 5 November 2019, Key Findings

enforce the duty to compile a register of those looking for land, and explain how an authority can be exempted from this duty.

- *The Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 (SI 2016/1027),* which were subject to affirmative resolution procedure, specify that local authorities have 3 years within which to satisfy demand for land on the register. The regulations explain the rules to be followed when charging fees for maintaining the register.

2. Rogue landlords and agents

2.1 Banning Orders (sections 14–27)

These sections introduce 'banning orders' which can be issued by a First-Tier Tribunal (FTT) following an application by a local authority. A banning order can ban an individual from letting housing or engaging in any letting agency or property management work.

Local housing authorities may apply for a banning order against someone convicted of a 'banning order offence': the HPA 2016 gives the Secretary of State the power to issue affirmative regulations defining banning order offences.

The explanatory notes (pages 24 to 29) explain these provisions in greater detail.

Banning orders came into force on 6 April 2018.

The Housing and Planning Act 2016 (Commencement No. 8) Regulations 2018 (SI 2018/393) brought into force on 6 April 2018 all those provisions of Part 2 of, and Schedules 1 to 3 to, the HPA 2016 which were not already in force. The following sections and subsections were already in force on 6 April 2018:

- sub-sections 14(3) and (4) were brought partially into force on 3 November 2017 for the purposes of making regulations to define what constitutes a banning order offence.[6]
- subsection 23(8). Section 23 allows a local authority to impose a civil penalty of up to £30,000 as an alternative to prosecuting a landlord, if they breach a banning order. Subsection 8 came into force on 3 November 2017,[7] to allow the Secretary of State to regulate how money received via a financial penalty is used.
- section 26, together with paragraphs 5(3) and 9 of Schedule 3, have been in force since 3 November 2017. These relate to management orders following banning orders.

Consultation on the banning order offences took place between December 2016 and 10 February 2017. The Government published its response in December 2017.[8]

The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216) came into force on 6 April 2018. Regulation 3 and the Schedule list the offences that amount to banning order offences. These regulations were debated and approved by House of Commons Delegated Legislation Committee on 9 January 2018.[9]

The Housing (Management Orders and Financial Penalties) (Amounts Recovered) (England) Regulations 2018 (SI 2018/209) also came into force on 6 April 2018. These regulations make provision for how a local housing authority in England must deal with:

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6 *Housing and Planning Act 2016 (Commencement No. 6) Regulations 2017, SI 2017/1052*

7 *Housing and Planning Act 2016 (Commencement No. 6) Regulations 2017, SI 2017/1052*

8 DCLG, Consultation on proposed banning order offences under the Housing and Planning Act 2016: government response, 28 December 2017

9 HC Fifth Delegated Legislation Committee, 9 January 2018, cc1-12

a. any surplus collected or recovered under an interim or final management order in respect of property let in breach of a banning order made under section 16 of the Housing and Planning Act 2016); and

b. any financial penalty recovered for breach of a banning order. Any such amount may be used to meet an authority's costs and expenses incurred in carrying out its enforcement functions in relation to the private rented sector. If it is not used for that purpose the local housing authority must pay it into the Consolidated Fund.

The Government has published guidance for local housing authorities on Banning Order Offences under the Housing and Planning Act 2016 (April 2018).

2.2 Database of rogue landlords and letting agents (sections 28–39)

These sections require the Secretary of State to establish a database of landlords and agents subject to a banning order. Local authorities are responsible for the content of the database and can include details about those convicted of a banning order offence.
Sections 31 and 32 specify the notice that local authorities must give to landlords considered for this database, and the appeals procedure to a First-Tier Tribunal.
Sections 33 to 37 set out how information in the database is collected and managed.

The database of rogue landlords and property agents came into force on 6 April 2018.

The Housing and Planning Act 2016 (Commencement No. 8) Regulations 2018 (SI 2018/393) brought these provisions, to the extent that they were not already in force, into force on 6 April 2018.

Section 33, which specifies the information that must be recorded on the database, and which gives the Secretary of State power to make regulations on this matter, came into force on 3 November 2017.[10]

The Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018 (SI 2018/258) also came into force on 6 April 2018 and prescribe the information that must be included in the database including the name of the banned person, the offence which led to the ban and the length of the ban.

The Government has published statutory guidance for local authorities on the database of rogue landlords and property agents (April 2018).

In 2019 the Government consulted on widening access to the database to tenants and prospective tenants and expanding the scope of offences and infractions which could lead to entries on the database.[11] Consultation closed on 12 October 2019 and responses are being analysed.

[10] *Housing and Planning Act 2016 (Commencement No. 6) Regulations 2017, SI 2017/1052*
[11] MHCLG, Rogue Landlord Database Reform, 21 July 2019

2.3 Rent Repayment Orders (RROs) (sections 40–52)

The *Housing Act 2004* introduced Rent Repayment Orders. These are used against landlords who have failed to obtain a licence when one is needed for an HMO or a property in a selective licensing area (see part 3 of the 2004 Act for more details). The HPA 2016 has extended the circumstances in which an authority can apply to a First-Tier Tribunal for a RRO. Section 40 sets out the new offences that can lead to an RRO:

- illegal eviction
- breach of a banning order
- breaches of improvement orders and prohibition notices
- breach of a banning order under the *Housing and Planning Act 2016*

The other sections govern the administration and enforcement of an RRO, and the duties of local authorities to consider this option and help tenants with RRO applications.

Sections 40-46 and 48 were partially brought into force on 6 April 2017 by the *Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017 (SI 2017/281)*.[12] In effect, this ensured that, if committed before 6 April 2017, the additional offences listed above could not be eligible for a RRO. The only exception relates to licensing offences under the *Housing Act 2004* sections 72(1) or 95(1). If such an offence was rectified before 5 April 2018, any RRO sought would be subject to the 2004 legislation.

Section 47, enforcement of RROs, is fully in force: *Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 (SI 2017/367)*.[13]

Sections 49-52, which, along with interpretations and consequential amendments, provide that local authorities may help a tenant apply for an RRO, were brought into force by SI 2017/281 on 6 April 2017. SI 2017/281 also brought into force section 53, which provides that a person dissatisfied with a First-Tier Tribunal decision under Part 2 of the HPA 2016 can appeal to an Upper-Tier Tribunal.

The Housing and Planning Act 2016 (Commencement No. 8) Regulations 2018 (SI 2018/393) brought the remaining provisions of Chapter 4 into force on 6 April 2018.

The Government published statutory guidance for local authorities on the extension of rent repayment orders (April 2017).

12 *Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017, SI 2017/281*

13 Monies recovered by a local authority may be used to cover the costs and expenses of discharging their duties under Parts 1-4 of the Housing Act 2004 or Part 2 of the Housing and Planning Act 2016, or in connection with the enforcement of other legislation relating to the private rented sector.

3. Recovering abandoned premises

These provisions will allow a landlord to regain possession of their property should it be abandoned, without recourse to a court order. Certain conditions must be met for this to apply: section 58 provides for the periods of unpaid rent that must be due; sections 59 and 61 specify the warning notices that a landlord must give.

Section 60 allows a tenant to be reinstated to the property should there be good reason (agreed by the county court) why they could not respond to notices.

These sections are not yet in force.

4. Social housing in England

4.1 A voluntary Right to Buy (sections 64-68)

Background on this policy can be found in the House of Commons Library briefing paper, Introducing a voluntary Right to Buy for housing association tenants in England.

The Act does not give assured housing association tenants a statutory Right to Buy. The commitment is to give these tenants a voluntary Right to Buy – the process is being worked up between the Government and the National Federation of Housing.

Sections 64 and 65 allow the Secretary of State and the Greater London Authority to provide grants to private registered providers of social housing to cover the cost of discounts offered under the voluntary Right to Buy.

Section 66 gives the Secretary of State power to monitor how private providers exercise the Right to Buy against 'anticipated criteria for home ownership'. The Government has said that "the criteria will initially be set with reference to the voluntary Right to Buy agreement that has been agreed between the Secretary of State and the private registered providers sector."[14]

Although the relevant sections of the Act (64-68) have been in force since 26 May 2016, no implementation date has been announced.

The Autumn Statement 2016 announced that the Government would fund "a large-scale regional pilot of the Right to Buy for housing association tenants." After some delay, a large regional pilot scheme was launched in the Midlands on 16 August 2018. The Government said that the impact of the pilot will be assessed before deciding on the next steps for this policy.[15]

The Conservative Party's 2019 Manifesto contained a commitment to:

> ...maintain the voluntary Right to Buy scheme agreed with housing associations. Following the successful voluntary pilot scheme in the Midlands, we will evaluate new pilot areas in order to spread the dream of home ownership to even more people.[16]

4.2 Vacant higher value local authority housing (sections 69–79)

The Act contains measures to require English local housing authorities (which have a Housing Revenue Account) to make an annual payment to Government in respect of the expected sales of "higher value" vacant housing stock over the year. These payments would be used to compensate housing associations for selling housing assets at a discount to tenants under the voluntary Right to Buy scheme.

Section 69 allows the Secretary of State make a determination requiring local authorities to make such payments. This determination must set out how this is calculated, and the Government must define 'higher value housing'. Sections 70 to 75 set out the procedures for making determinations and how payments and over-payments are managed. Section 76 places a duty on local housing authorities to consider "selling its interest in any higher value housing that has become vacant."

The 2017 Government said that these provisions would be repealed.

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14 Explanatory notes to the Housing and Planning Act 2016, 2016, p36

15 'James Brokenshire launches £200 million pilot to boost social home ownership', MHCLG Press Release, 16 August 2018

16 Conservative Party 2019 Manifesto, p29

The sections have been in force since 12 May 2016, but the relevant determinations have not been made. On publication of the Social Housing Green Paper, A new deal for social housing on 14 August 2018, the Government announced that it would not require local authorities to make higher value asset payments:

> We have also been listening to councils about their concerns that the Government may decide to implement provisions contained in the Housing and Planning Act 2016 which would mean they have to make a payment in respect of their vacant higher value council homes and return some of the funds raised to the Government. Many councils have told us that without knowing for certain whether this policy might be implemented in future years, it is difficult to make long term investment decisions. The Government remains committed to the principle that councils should use their housing assets effectively and should consider selling high value homes and using the funding to build more affordable housing. However, this should be a decision to be made locally, not mandated through legislation and we understand that the uncertainty around the future of this policy could prevent councils from building. Therefore to increase councils' confidence to plan ambitious house building programmes, **we are confirming in this Green Paper that the Government will not bring the Higher Value Assets provisions of the Housing and Planning Act 2016 into effect. We will look to repeal the legislation when Parliamentary time allows**.[17]

4.3 Rents for high income social tenants (sections 80-91)

Background to the proposed 'pay to stay' scheme can be found in the House of Commons Library briefing paper Social housing: pay to stay at market rents. In brief, in 2012 the Coalition Government gave social landlords in England the discretion to charge market or near market rents to tenants with an income of £60,000 or more a year. The 2015 Conservative Government announced that it intended to make this compulsory for local housing authorities and lower the earnings threshold at which a higher rent must be paid. These measures were included in the *Housing and Planning Act 2016*.

Section 80 provides that "The Secretary of State may by regulations make provision about the levels of rent that an English local housing authority must charge a high income tenant of social housing in England".

The relevant sections (80-91) have been in force since 1 October 2016. However, on 21 November 2016 the then Housing Minister, Gavin Barwell, announced that the Government had decided **not to proceed with a compulsory approach** and that local authorities and housing associations "will continue to have local discretion".[18]

17 MHCLG, A new deal for social housing, 14 August 2018, para 153
18 HCWS274 [Social housing], 21 November 2016

4.4 Reducing regulation of social housing (sections 92-4)

Chapter 4 aims to reduce regulation of private registered providers of social housing in several ways.

Section 92 removes the need to ask permission from the social housing regulator for the disposal of housing stock and restructuring of the organisation. It also removes the need to keep a Disposal Proceeds Fund, managed by the Regulator, where proceeds from the sale of housing is recorded.

Sections 92 and 93 limit the instances where the Regulator can appoint managers or officers within a private provider and limit their influence through nominating board members or acting as shareholders.

Section 94 modifies the Regulator's right to claim back any financial assistance given to private providers of social housing where the "social housing provided […] is disposed of outside the regulated sector in consequence of either a lender enforcing its security or the winding up or administration […] of the recipient or a successor in title."

Section 92 came into force on 6 April 2017, sections 93 and 94 were brought into force on 3 February 2017.[19]

The *Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 (SI 2017/1102)* came into force on 16 November 2017. The regulations "restricts the percentage level of officers a local authority may nominate as board members of a private registered provider and removes a local authority's ability to hold voting rights as a member of a private registered provider."[20]

4.5 Insolvency of registered providers of social housing (sections 95-117)

This chapter "introduce[s] a special administration regime for private registered providers of social housing that are at risk of entering insolvency proceedings."[21] These provisions are explained in detail in the explanatory notes (pages 47 to 49).

Sections 95 to 101, 102(1) and 103 to 117 were brought into force on 5 July 2018 by *The Housing and Planning Act 2016 (Commencement No. 9 and Transitional and Saving Provisions) Regulations 2018 (SI 2018/805).* **Subsections 102(2) – (6) were brought into force by SI 2017/75 on 3 February 2017**.[22] This allowed the Secretary of State to issue regulations setting out the format of an administration scheme for an insolvent registered society or a charitable incorporated organisation providing social housing.

The Insolvency of Registered Providers of Social Housing Regulations 2018 (SI 2018/728) (affirmative) were made on 13 June 2018 and came into force 21 days later. These regulations apply housing administration legislation to all types of private registered provider of social housing.

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19 *Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017, SI 2017/75*

20 Explanatory Memorandum to the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017

21 Explanatory notes to the Housing and Planning Act 2016, 2016, p45

22 *The Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017, SI 2017/75*

4.6 End of secure tenancies for life (sections 118-121)

Under the *Localism Act 2011*, local authorities are permitted to offer fixed-term 'flexible tenancies' to social tenants, instead of so-called 'lifetime tenancies' (secure tenancies). The *Housing and Planning Act 2016* contains measures to prevent local authorities in England from offering secure tenancies for life in most circumstances. For more background on this policy, the House of Commons Library has published Social housing: flexible and fixed-term tenancies (England)

The 2017 Government said that these provisions would not be introduced "at this time".

None of these provisions are in force. On publication of the Social Housing Green Paper, A new deal for social housing on 14 August 2018, the Government announced that it would not implement the provisions "at this time":

> Given the pressures on social housing the Government introduced further changes in the Housing and Planning Act 2016 to restrict the use of lifetime tenancies by local authority landlords. These changes are not yet in force but would require local authorities generally to grant tenancies on a fixed term basis and to review them towards the end of the fixed term period to decide whether to grant a further tenancy.
>
> Since this legislation there has been a growing recognition of the importance of housing stability for those who rent. The challenges facing renters, including those in the private sector, were recognised in our White Paper, *'Fixing our broken housing market',* and we are consulting on how to overcome the barriers to longer tenancies in the private rented sector.
>
> Many residents spoke about the benefits of security in their tenancies, saying that they created strong, supportive communities, and particularly enabled people with vulnerabilities to thrive. Some felt that residents were more likely to look after their property, their neighbours, and the community if they had a lifetime tenancy. While some people thought it was right that residents should move out of social housing if they no longer needed it given the pressures on housing, many also had concerns about the uncertainty when fixed term tenancies came to an end and the impact this could have on their families and communities.
>
> **We have listened carefully to the views and concerns of residents and have decided not to implement the provisions in the Housing and Planning Act 2016 at this time**.[23]

The Government had intended to introduce exemptions for those tenants who "downsize into a smaller home, move for work or to escape violence".[24] The *Secure Tenancies (Victims of Domestic Abuse) Act 2018* received Royal Assent on 10 May 2018. The Act provides that when the mandatory fixed-term tenancies provisions in the 2016 Act are brought into force, certain victims of domestic abuse will retain a right to a secure 'lifetime' tenancy.

In light of the decision not to end secure tenancies for life "at this time", the Government said:

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23 MHCLG, A new deal for social housing, 14 August 2018, paras 183-86
24 PQ 42408 [Tenancy Agreements], 14 July 2016

> We have recently taken steps to ensure that when the mandatory fixed term tenancies provisions were implemented, lifetime tenants who suffer domestic abuse would retain lifetime security, when granted a new tenancy by a local authority. **We want to make sure that similar protections for victims of domestic abuse are in place where local authorities offer fixed term tenancies at their discretion, and will therefore seek to bring forward legislation to achieve this when parliamentary time allows**.[25]

The *Domestic Abuse Bill 2017-19* included a clause to ensure that where a housing authority is operating a discretionary scheme of flexible fixed-term tenancies, certain victims of domestic abuse will be entitled to the grant of a new secure 'lifetime' tenancy. The aim is to remove barriers which might prevent a victim from leaving their existing social housing tenancy and to support them to remain in their homes where the perpetrator has left. The Bill failed to complete its parliamentary stages before Parliament dissolved for the General Election 2019.

5. Housing, estate agents and rentcharges

5.1 Electrical safety standards (sections 122–123)

These sections allow the Secretary of State to make regulations about electrical safety standards in private rented property and provide for the enforcement of those standards.

These sections were brought into force on 25 October 2019.[26]
Regulations on electrical safety standards will be made under these sections in due course.

The Parliamentary Under-Secretary for the Department for Communities and Local Government (now MHCLG) responded to a PQ on this measure on 28 November 2017:

> An enabling power was included in the Housing and Planning Act 2016 allowing requirements for electrical safety standards in the private rented sector (PRS), and their enforcement, to be set through secondary legislation (affirmative) at a later date. Following Royal Assent, a Working Group of relevant experts was established to provide recommendations to ministers on what, if any, legislative requirements should be introduced. The Working Group's report has been published online at:
>
> https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-working-group-report
>
> The working group has recommended introducing five yearly mandatory electrical installation checks for private rented property

25 MHCLG, A new deal for social housing, 14 August 2018, para 188
26 *The Housing and Planning Act 2016 (Commencement No. 11) Regulations 2019, SI 2019/1359*

> and that other safety measures be encouraged as good practice and set out in guidance.
>
> The Government will consult in the new year to test the recommendations of the working group to ensure that any regulation introduced is balanced and works for landlords and tenants. We also want to take account of the conclusions of the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt before making policy decisions.[27]

The consultation paper, Electrical safety in the private rented sector, was published on 17 February 2018. Submissions were invited up to 16 April 2018. The Government's consultation response, published on 29 January 2019, confirmed its intention to legislate to require landlords to have electrical installations in privately rented homes checked every five years.[28] Landlords will also be required to ensure that the inspectors they hire to carry out safety inspections have the necessary competence and qualifications to do so - with financial penalties for those who fail to comply. The Government said that it would introduce secondary legislation on a phased basis, starting with new tenancies, as soon as Parliamentary time allows.[29]

5.2 Accommodation needs (section 124)

The *Housing Act 2004* introduced a specific duty on local authorities to carry out an assessment of the accommodation needs of Travellers and Gypsies when carrying out a review of housing conditions and needs within their areas (a process required by section 8 of the *Housing Act 1985*).

Section 124 of the HPA 2016 has removed sections 225 and 226 of the 2004 Act and amended section 8 of the 1985 Act to remove reference to Gypsies and Travellers. Section 8 has been further amended by section 124 to make it clear that the duty covers consideration of the needs of people residing in, or resorting to the district for, caravan sites and houseboat mooring sites.

Section 124 was brought into force on 12 July 2016.[30]

5.3 Housing regulation (sections 125–127)

Section 125 introduces additional requirements as part of the landlord test of fitness for the granting of licences for HMOs and other rented accommodation defined under part 3 of the *Housing Act 2004*. These tests include the landlord's immigration and financial status, as well as past performance when checking the immigration status of their tenants.

Section 126 enables the imposition of a financial penalty as an alternative to prosecution under the *Housing Act 2004.* These offences are set out in new schedule 9, which is also explained in the 2016 Act's explanatory notes.

Section 127 removes the cap on the fine available for contravention of an overcrowding notice under section 139 of the *Housing Act 2004.*

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27 PQ HL3245 [Private Rented Housing: Electrical Safety], 28 November 2017

28 MHCLG, Electrical safety in the private rented sector: government response, 29 January 2019

29 'Housing Minister tightens up rules on electrical safety to better protect renters', MHCLG Press Release, 29 January 2019

30 As set out in section 216 of the HPA 2016, this came into force two months after the Act was passed.

Only section 126 is in force (since 10 March 2017).[31]

5.4 Housing information (sections 128–130)

Section 128 amends section 212 of the *Housing Act 2004* so that any arrangements between the Secretary of State and a Tenancy Deposit Scheme administrator must require a scheme administrator to share specified information with a local housing authority. The House of Commons Library has a briefing paper on Tenancy Deposit Schemes for more background information.

Sections 235 – 238 of the *Housing Act 2004* allow local housing authorities to request access to information needed to carry out their duties under parts 1 to 4 of the 2004 Act. This is only for specified purposes: section 129 of the HPA 2016 allows the Secretary of State to adjust this list of purposes by regulations.

Section 130 of the HPA 2016 provides that "the Secretary of State may by regulations impose duties on a landlord to provide the secretary of a relevant tenants' association with information about relevant qualifying tenants."[32] This is subject to the consent given by individual leaseholder to their information being made available.[33] The intention is to improve the prospects of a tenants' association being formally recognised.

Sections 128 and 129 were brought into force on 6 April 2017. The Government published guidance on Obtaining and using Tenancy Deposit information, which outlines the information available to local authorities.

Section 130 has been in force since 12 July 2016. Consultation to inform the content of regulations was carried out in 2017: Recognising residents' associations, and their power to request information about tenants. *The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018* came into force on 1 November 2018.[34]

5.5 Administration charges (section 131)

As the explanatory notes state, section 131:

> …amends Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to give courts and tribunals a discretionary power to restrict the ability of a landlord to recover from the leaseholder as an administrative charge the landlord's costs of taking part in legal proceedings.[35]

Section 131 is in force such that, from 7 April 2017 tribunals or courts can consider, on application by the leaseholder, whether it is reasonable for a landlord to recover all or part of those costs. The Ministry of Housing, Communities and Local Government (MHCLG) published a guidance note on the changes in February 2018.

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31 *Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017, SI 2017/281*
32 HPA 2016, section 130(1)
33 Explanatory notes to the Housing and Planning Act 2016, 2016, p62
34 SI 2018/1043
35 Explanatory notes to the Housing and Planning Act 2016, 2016, p62

5.6 Estate agents: lead enforcement authority (section 132)

Since 1 April 2014, the National Trading Standards Estate Agency Team (NTSEAT), headed by Powys County Council, has been responsible for regulating estate agents across the UK.

Section 132 of the HPA 2016 makes a technical amendment to the *Estate Agents Act 1979* which enables the Secretary of State to appoint an alternative authority should Powys County Council fail to secure a further contract.

Section 132 has been in force since 1 October 2016.

5.7 Client money protection (sections 133–135)

Client Money Protection Schemes secure any money that agents hold on behalf of tenants or landlords, such as a deposit. Should the agent fail to return the money, or go into administration, this money will be returned to the tenant or landlord.

These sections of the HPA 2016 give the Secretary of State the power to make regulations that:

- Make client money protection schemes mandatory for property agents.
- Approve or designate such schemes.
- Identify how this legislation will be enforced. In particular, the Government can define the level of financial sanctions available and allow local authorities to enforce the legislation.

The Mandatory client money protection schemes for property agents: consultation closed on 13 December 2017. The Government response was published on 1 April 2018.[36] *The Housing and Planning Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2018* **brought sections 133 to 135 into force on 19 March 2018**.

From 1 April 2019, all property agents in the private rented sector are required to join a government-approved scheme to protect their clients' money while it is in their possession – with fines of up to £30,000 if they fail to do so.[37] *The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 (SI 2018/751)* set out the conditions that scheme providers of client money protection must meet. The *Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (SI 2019/386)* require property agents to belong to an approved client money protection scheme. The *Tenant Fees Act 2019* amended the HPA 2016 to move client money protection enforcement from district council to county council level (in non-unitary authorities).[38]

36 MHCLG, Mandatory client money protection schemes for property agents: government response, 1 April 2018
37 'New rules to better protect renters' money', MHCLG Press Release, 7 March 2019
38 Section 21 of *The Tenant Fees Act 2019*

5.8 Enfranchisement and extension of long leaseholds (section 136)

Section 136 and Schedule 10 of the HPA 2016 has amended the *Leasehold Reform Act 1967* and the *Leasehold Reform, Housing and Urban Development Act 1993* to allow the Secretary of State to make regulations in respect of the calculation of the price payable for a minor superior tenancy (houses) and an intermediate leasehold interest (flats). This was necessary because the previous statutory formula referred to a calculation which could no longer be carried out

Section 136 has been in force since 12 May 2016. *The Valuation of Minor Intermediate Leasehold Interests (England) Regulations 2017 No. 871* came into force on 1 October 2017.

5.9 Rentcharges (sections 137–138)

Some freeholders must pay a certain amount to a third party who owns no other interest in the property. This is known as a rentcharge. The *Rentcharges Act 1977* allows some rentcharges to be 'redeemed' by paying a lump sum.

The Consolidated Stock named in the formula for calculating rentcharges and the value of minor superior tenancies and leasehold interests (for the purposes of lease renewals and enfranchisement) was no longer in use: these amendments enable a workable formula to be put in place.

Section 137 amends sections 9 and 10 of the 1977 Act, requiring the price paid for redeeming a rentcharge to be "calculated in accordance with regulations made by the Secretary of State".

Section 138 also amends the 1977 Act to allow the Secretary of State to prescribe a new procedure for redeeming rentcharges in England via regulations.

Section 137 has been in force since 12 May 2016. *The Rentcharges (Redemption Price) (England) Regulations 2016* came into force on 1 October 2016.

Section 138 is not yet in force.

6. Planning in England

In answer to a PQ in February 2018, asking whether the Government would publish a timetable for implementing the measures in the Housing and Planning Act 2016 (and the *Neighbourhood Planning Act 2017)* which had yet to be commenced, the then Housing Minister, Dominic Raab, said the Government was fully committed to implementation, but offered no timetable:

> Except with reference to the Written Answer by Lord Bourne of Aberystwyth on 1 November 2017 (HL2050[39]), the Government is fully committed to implementing all measures across both the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017.
>
> We are taking end-to-end action to fix our broken housing market through our wider package of reforms, including last year's Housing White Paper and the measures announced at Autumn Budget. We regularly update the House on progress towards fixing our broken housing market, and will continue to do so.[40]

The following sections identify those planning provisions of the HPA 2016 which are not yet in force.

6.1 Neighbourhood planning (sections 139–142)

The role of neighbourhood plans is explained on the Government's website.

A parish council or body acting as a neighbourhood forum can apply to a local planning authority (LPA) for a neighbourhood development order, designating areas within which neighbourhood planning activities may take place. Subject to any necessary local referendums, a LPA must designate at least some of the area applied for.

Section 139 of the HPA 2016 amends the *Town and Country Planning Act 1990* to enable "the Secretary of State to make regulations requiring a local planning authority (LPA) to designate all of the area applied for if the application meets prescribed criteria or has not been determined within a prescribed period (subject to prescribed exceptions)."[41]

An LPA has a number of duties following an application for a neighbourhood development order. Section 140 of the HPA 2016 amends the 1990 Act to allow the Secretary of State to determine time periods in which these duties must be carried out or decided.

Section 141 prescribes circumstances in which the Secretary of State can intervene, at the request of the body responsible for a neighbourhood planning area, in a decision to hold a referendum on a neighbourhood planning proposal. The Secretary of State may by regulation specify the procedure to follow for such an intervention.

Section 142 "requires a local planning authority, at the request of a neighbourhood forum in their area, to notify the forum of planning applications in the neighbourhood area for which the forum is designated."[42]

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39 In which it was confirmed that provisions on rents for high income social tenants had formally been dropped.

40 PQ 125517, 6 February 2018

41 Explanatory notes to the Housing and Planning Act 2016, 2016, p64

42 Explanatory notes to the Housing and Planning Act 2016, 2016, p66

All these provisions have been in force since 12 May 2016 and 1 October 2016.[43] In September 2016, the Government published its response to the Neighbourhood Planning element of the technical consultation on implementation of planning changes which considered many of the new powers in this chapter of the HPA 2016.[44] The Government has since issued the *Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016,* which came into force on 1 October 2016. DCLG's planning practice guidance on neighbourhood planning explains the Secretary of State's intervention powers, created by the HPA 2016.[45]

6.2 Local planning (sections 143-8)

These sections amend the *Planning and Compulsory Purchase Act 2004,* giving the Secretary of State or the Mayor of London powers to intervene in local development plans.

Section 143 clarifies powers to demand changes to a local development scheme which fails to cover the entire local area or address particular local issues.

LPAs must submit development plan documents to the Secretary of State for independent examination. Section 144 allows the appointed examiner to suspend an inspection to consider further evidence or take certain procedural steps.

Under section 21 of the *Planning and Compulsory Purchase Act 2004*, the Secretary of State has the power to direct a LPA to withdraw or modify its unadopted plan. Section 145 sets out what happens if such a direction is withdrawn or partially withdrawn. Section 145 also inserts a new provision allowing the Secretary of State to issue a 'holding direction' requiring a LPA to not take any steps toward formally adopting the local plan while the Secretary of State considers whether to intervene under section 21. An article from the Library's Second Reading blog, Local Plan Intervention: a question of MP influence, discusses this power in greater depth.

Section 27 of the *Planning and Compulsory Purchase Act 2004* allows the Secretary of State to take over responsibility for drafting a local plan if the LPA fails to do so. This section is replaced by section 146 of the HPA 2016, which retains these powers but also allows the Secretary of State to require the LPA itself to prepare or revise a plan.

Section 147 extends a similar power to the Mayor of London or a combined authority.

Sections 145 and 148 allow the Secretary of State to be reimbursed by a LPA for the costs of using powers under section 21 and 27 of the 2004 Act.

These provisions came into effect on 26 May, 13 July and 1 October 2016.[46]

6.3 Planning in Greater London (section 149)

Under the *Town and Country Planning Act 1990*, the Mayor of London can 'call-in' and make a decision on planning applications that have London-wide strategic importance. The Secretary of State prescribes in secondary legislation which applications are subject to these powers. Section 149 allows the Secretary of State to make a wider range of planning applications open to Mayoral scrutiny by reference to the Mayor's "spatial development strategy under Part 8 of the *Greater London Authority*

43 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*
44 DCLG, Neighbourhood planning, September 2016
45 DCLG, Planning practice guidance: Neighbourhood planning, updated 10 August 2017
46 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*. See also PQ 71591, 26 April 2017

Act 1999 or London borough development plan documents adopted or approved under Part 2 of the *Planning and Compulsory Purchase Act 2004*."[47]

Section 149 also "enables the Secretary of State, by development order, to enable the Mayor to direct a London borough to consult the Mayor before granting planning permission for development described in the direction."[48]

Section 149 has been in force since 12 May 2016.

In a deposited paper from 9 January 2017, the Government said that a negative SI was expected, although it remained 'under review':

> The regulations will cover consequential amendments to the Town and Country Planning (Mayor of London) Order 2008. This prescribes which planning applications of potential strategic importance (PSI applications) are subject to the Mayor of London's powers to 'call-in' and direct refusal of planning applications.
>
> […] The Government also intends to amend the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 to enable the Mayor to define in the London Plan areas of London where different thresholds apply for the use of these powers.[49]

6.4 Permission in principle and local registers of land (section 150-1)

Section 150 introduces a new pathway to gaining planning permission for residential housing: 'permission in principle' (PiP).

Traditional planning permission applications require a significant amount of work to be invested by a developer before permission is given. Permission in principle is a way of quickly ascertaining if, in principle, a developer will be able to develop a plot of land. The developer will still need to obtain a 'technical details consent' to go ahead, although at this stage a LPA will not be able to refuse permission unless there is a significant, unconsidered technical problem.

Section 150 inserts a new section into the *Town and Country Planning Act 1990.* This new section gives the Secretary of State the power, by development order, to grant permission in principle to land that is allocated for development in a 'qualifying document': the latter is explained in the legislation. This is expected to include:

- Land on a brownfield register
- Development plan documents
- Neighbourhood plans

Section 150 also gives the Secretary of State the power, by regulation, to allow developers to apply directly to a LPA for permission in principle: this is expected to be limited to minor developments "as defined by Article 2 of The *Town and Country Planning (Development Management Procedure)(England) Order 2015)".*[50]

More details about PiP can be found in the explanatory notes (pages 58-70).

Section 151 allows the Secretary of State to issue regulations requiring a LPA to maintain a register of land in their area which fulfils certain criteria. The Government intends to use this power to require LPAs to compile lists of brownfield land in their area to encourage the development of this land.

Section 150 came into effect on 12 July 2016.

47 Explanatory notes: Housing and Planning Act 2016, 2016, p68
48 Explanatory notes: Housing and Planning Act 2016, 2016, p68
49 Deposited Paper 2017-0016
50 Explanatory notes: Housing and Planning Act 2016, 2016, p68

In 2016, the technical consultation on the implementation of planning changes considered both PiP and brownfield registers. The Government response was published in March 2017. Two SIs have since been issued:

- *Town and Country Planning (Permission in Principle) Order 2017*[51]
- *Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017* [52]

Section 151 came into force on 12 May 2016.

The Town and Country Planning (Brownfield Land Register) Regulations 2017 have made brownfield registers a requirement.[53]

MHCLG's Planning practice guidance on PIP sets out how PIP can be granted through registers of brownfield land and how PIP relates to local and neighbourhood plans.[54]

The technical consultation on implementation of planning changes also considered whether the Government should require LPAs to have a register of small sites big enough for 1 to 4 plots. Based on the negative responses, the Government decided to monitor how this information is conveyed via LPAs and the commercial sector.

6.5 Planning permission etc (sections 152-7)

Permitted development rights

Section 60 of the *Town and Country Planning Act 1990* allows a general planning permission to be granted in England (by Parliament, rather than by a LPA) to allow certain changes to be made to a building without applying for planning permission. For more information see the House of Commons Library briefing paper on Permitted Development Rights.

Many 'permitted development rights' that relate to the **use of buildings** are already subject to an approval process with a LPA. Section 152 of the HPA 2016 introduces this approval process for **building operation rights** (i.e. for demolition, rebuilding and structural alterations of or additions to buildings).

Applying for planning permission to the Secretary of State

Under section 62A of the *Town and Country Planning Act 1990,* a development may apply for planning permission directly to the Secretary of State if:

- the LPA is designated by the Secretary of State due to a failure to determine applications for development; or
- the development is 'major', a category defined by statutory instrument

Section 153 of the HPA 2016 allows the Secretary of State "to designate a local authority for its performance in determining applications for categories of development described in regulations made by him (which could now include a separate category of non-major development)."[55] The Secretary of State can also specify applications that will still need to be considered by a LPA, even if the authority has been designated for poor performance.

Planning freedom schemes

Section 154 of the HPA 2016 introduces the concept of 'planning freedom schemes'. Such a scheme "disapplies or modifies specified planning provisions in order to facilitate an increase in the amount of

51 SI 2017/402
52 SI 2017/276
53 SI 2017/403
54 DCLG, *Planning practice guidance on permission in principle*, 28 July 2017
55 Explanatory notes: Housing and Planning Act 2016, 2016, p73

housing in the planning area concerned." The Secretary of State can issue such as scheme for a specified area in England as long as:

- A LPA has requested a planning freedom scheme
- There is a need for housing in the area and the proposed scheme would encourage building
- A consultation has been carried out and the Secretary of State has had a chance to study it

Reporting financial benefits in planning approvals

When a LPA accepts a planning application, this will often bring financial benefits to the LPA: common examples are a Community Infrastructure Levy or Government grants. Section 155 requires a planning officer to compile a report of these potential benefits when making their recommendations. The Secretary of State may issue regulations about publishing financial gains to other bodies and what particular information must be included in such reports.

Section 156 inserts section 75ZB to the *Town and Country Planning Act 1990,* which ensures that any report to a local planning committee recommending granting planning permission, must explain how any neighbourhood development plan has been considered.

Fees for planning applications

Section 303 of the *Town and Country Planning Act 1990* provides that the Secretary of State and Welsh Ministers can issue regulations allowing local authorities to charge fees for planning applications. These are subject to the affirmative procedure when changed nationally but when fees are changed for only some authorities, such 'hybrid instruments' entail a longer Parliamentary procedure. Section 157 provides that such measures will be subject to the affirmative procedure.

All of these sections are in force, apart from section 155 (information about financial benefits), where one negative SI is expected to set out which financial benefits local authorities must record.[56] The technical consultation on implementation of planning changes considered this matter and the responses are published on pages 23-25.

The other provisions came into force on 12 May, 12 and 13 July and 1 October 2016.[57] The Government did introduce a separate category of 'non-major development' for which a local authority can now be designated for poor performance (now allowed under section 62A of 1990 Act).[58]

6.6 Planning obligations (sections 158-9)

Planning obligations, under section 106 of the *Town and Country Planning Act 1990,* are agreements between a private developer and a local authority designed to mitigate the impact of a development on a local area. They can impose many kinds of conditions on a piece of land but they are commonly used to ensure a developer pays a sum of money to be invested in the infrastructure of the affected area. For more information, see the House of Commons Library briefing paper on Planning obligations (Section 106 Agreements).

Section 158 of the HPA 2016 inserts a new section 106ZA into the 1990 Act which, in turn, introduces a new Schedule 9A. This Schedule requires the Government to appoint someone to investigate where disputes arise over a planning obligation agreement. Further regulations and guidance can set out the procedure to apply for an appointed person and how their role is to function.

56 Deposited Paper 2017-0016

57 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*

58 *The Town and Country Planning (Section 62a Applications) (Amendment) Regulations 2016, SI 2016//944*

Section 159 inserts section 106ZB into the 1990 Act. The explanatory notes describe the new powers in this section:

> Subsections (1) and (2) provide the Secretary of State with the power to make regulations which restrict, or impose other conditions on, the enforceability of planning obligations which relate to the provision of affordable housing.

For example, regulations may restrict or place conditions on the enforceability of planning obligations which provide for affordable housing on sites of a certain size, or where the development is of a specific nature (such as providing a certain type of housing). This does not prevent parties from entering into planning obligations relating to affordable housing provision on these sites, but it will limit the remedy available should these obligations be breached.[59]

These provisions are not yet in force.

In a PQ reply in October 2016, the junior Housing Minister, Lord Bourne of Aberystwyth, set out how the provisions would speed up house-building:

> We are keen to drive up delivery of new housing once permission has been granted and we are actively taking steps to tackle some of the factors which can delay a start to development. (…) We have also, through the Housing and Planning Act 2016, introduced a provision for a section 106 dispute resolution process. This will assist in speeding up negotiations on the content of section 106 planning obligations, where developers and local authorities have failed to reach an agreement. Secondary legislation is required to implement the provision.[60]

In January 2017, a deposited paper stated that these measures were being considered by the Community Infrastructure Levy (CIL) Review Team.[61] Their report, A new approach to developer contributions: a report by the CIL review team, was published in February 2017. Section 5.2 made several recommendations about regulating the use of section 106 agreements. The responses to the technical consultation on implementation of planning changes were published at the same time: pages 26 to 30 consider suggestions from the public for improving the section 106 dispute resolution procedure.

More recently, officials at MHCLG have told the Commons Library that measures to introduce a section 106 dispute resolution process will not be taken forward at this time.[62]

6.7 Nationally significant infrastructure projects (section 160)

NSIPs are usually large-scale developments relating to energy, transport, water or waste. They require a 'development consent' from the Government to proceed. A 'Development Consent Order' currently cannot make approval for any housing included within a development. Section 160 will allow a Development Consent Order to allow housing to be built alongside a NSIP if it is functionally or geographically linked to the project.

59 Explanatory notes: Housing and Planning Act 2016, 2016, pp76-7
60 PQ HL2321, 27 October 2016
61 Deposited Paper 2017-0016
62 Personal communication, 5 September 2019

This provision has been in force since 6 April 2017.[63] In March 2017, the Government published Planning Act 2008: Guidance on Nationally Significant Infrastructure Projects and Housing.

6.8 Powers for piloting alternative provision of processing services (sections 161-4)

These sections permit the Secretary of State, by regulation, to allow organisations other than the LPA to process planning applications in some areas of England. Pilots will "test the practicality and desirability of competition in the processing (but not determining) of applications". The final decision on an application will still be made by the LPA.

These sections have been in force since 12 May 2016 but the necessary regulations have not been made. The technical consultation on implementation of planning changes tested opinion on piloting competition in planning application processing and the Government published a summary of responses (see pages 18 – 22). One SI subject to the affirmative procedure is expected.[64]

6.9 Review of minimum energy performance requirements (section 165)

Section 165 inserts in the *Building Act 1984* a requirement that the Secretary of State carry out a review of the minimum energy performance requirements for new dwellings approved under building regulations made under that Act for England.[65]

Section 165 is in force. A review has not yet been initiated.

6.10 Urban development corporations (sections 166-8)

UDCs facilitate the regeneration of an area by "bringing land and buildings into effective use, encouraging the development of existing and new industry and commerce, creating an attractive environment and ensuring that housing and social facilities are available to encourage people to live and work in the area."[66] They are established by statutory instrument, under the powers given to the Secretary of State by part 6 of *the Local Government, Planning and Land Act 1980*.

Sections 166 – 8 of the HPA 2016 require that the Secretary of State consult local habitants, businesses and authorities before designating a location as an urban development area. This continues temporary changes that were made by the *Deregulation Act 2015*. Any Order to create a UDC is subject to the affirmative Parliamentary procedure but these sections of the HPA 2016 have also 'de-hybridised' the process, thus removing the right to petition against the creation of a UDC.[67]

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63 *Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017, SI 2017/281*
64 Deposited Paper 2017-0016
65 Explanatory notes: Housing and Planning Act 2016, 2016, p.78
66 *Local Government, Planning and Land Act 1980*, section 136(2)
67 Explanatory notes: Housing and Planning Act 2016, 2016, p79

These provisions have been in force since 12 May 2016.

6.11 New towns (sections 169-70)

The Explanatory Notes describe the changes these sections will bring about:

> Section 169 amends the New Towns Act 1981. It brings the process for establishing New Town Development Corporations and Areas in England into line with the process for establishing Urban Development Corporations and Areas set out above.
>
> […] Section 170 amends the New Towns Act 1981 to require New Town Development Corporations in England to contribute to achieving sustainable development and good design in pursuing their objectives of securing the laying out and development of the new town.[68]

These provisions have been in force since 13 July 2016.[69]

6.12 Sustainable drainage (section 171)

This section states that "The Secretary of State must carry out a review of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the development of land in England."

Section 171 is in force. During the eighth sitting of the Public Bill Committee on the Neighbourhood Planning Bill on 27 October 2016, the then Housing Minister Gavin Barwell said that work on a review had begun.[70] In answer to a Written Parliamentary Question in October 2017, Dr Thérèse Coffey (Parliamentary Under-Secretary for the Department for Environment, Food and Rural Affairs) noted that DCLG (now MHCLG) was leading a review on "the effectiveness of planning policy in delivering sustainable drainage systems in new developments in England".[71] MHCLG published A review of the application and effectiveness of planning policy for Sustainable Drainage Systems (SuDS) on 23 August 2018.

68 Explanatory notes: Housing and Planning Act 2016, 2016, p79
69 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*
70 HC Deb 27 October 2016 c297
71 PQ 105552 [Land Drainage], 13 October 2017

7. Compulsory purchase

Part 7 of the 2016 Act made a number of changes to compulsory purchase procedures. Authorisation is mainly obtained through Compulsory Purchase Orders (CPOs), but may also be obtained through Acts of Parliament, development consent orders, Transport and Works Act Orders and harbour orders.[72]

The Housing and Planning Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2018

7.1 Right to enter and survey land (sections 172–9)

Before the *Housing and Planning Act 2016*, only some local acquiring authorities had the power to enter and inspect land considered for compulsory purchase. Sections 172 to 179 introduce a new general power of entry for survey and valuation purposes.

Sections 172 to 179 have been in force since 13th July 2016.[73]

7.2 Confirmation and time limits of compulsory purchase order (sections 180–2)

Section 180 amends the *Acquisition of Land Act 1981* requiring that the Secretary of State (or Welsh Ministers) to publish a timetable and set out the steps to be taken by confirming authorities for CPOs. This section also provides for an annual report to be published on compliance with timetables.

Section 181 allows a confirming authority (usually the relevant Minister) to appoint an Inspector to act in its place in respect of confirming a CPO.

Section 182 amends the *Compulsory Purchase Act 1965* so that a 'notice to treat' or 'general vesting declaration' (two mechanisms by which possession of land, subject to a CPO, can be obtained) cannot be served later than three years after a CPO was confirmed.

The Housing and Planning Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2018 **brought sections 180 and 181 into force on 6 April 2018. Section 182 has been in force since 13 July 2016.**[74]

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72 *Draft Explanatory Memorandum to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2016*, para 7

73 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*

74 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*

7.3 Vesting declarations: procedure (sections 183–5)

Under the *Compulsory Purchase (Vesting Declarations) Act 1981*, an acquiring authority had to issue a preliminary notice of intention and wait for two months before executing a general vesting declaration (GVD). Section 183 abolishes the need to publish a preliminary notice. Instead, when executing the GVD, the authority must publish a prescribed statement about the effect of Parts 2 and 3 of the 1981 Act in its already mandatory confirmation notice.

However, section 184 extends the minimum time period between this notice and the point at which land may be taken into possession from 28 days to three months.

Section 185 clarifies that "an acquiring authority may not execute a general vesting declaration in respect of land if they have already served a 'notice to treat' in respect of that land."[75]

All these provisions are in force as of 1 October 2016 and 3 February 2017.[76] The *Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017* made consequential changes to other Acts of Parliament.[77]

7.4 Possession following 'notice to treat' (sections 186–190)

Section 186 changes the minimum notice period after which possession of land may be taken under the notice to treat/notice of entry procedure from 14 days to three months. If a new interest in the land emerges before possession, a shorter notice period of 14 days is allowed as long as the new interest is not an occupant of the land in question.

Section 187 enables a person in possession of land subject to a CPO to serve a counter-notice, requiring the transferral of land to happen on a specific date: this is to avoid the uncertainty over liabilities if an acquiring authority fails to take possession on the date specified in a notice of entry.

Section 188 allows the acquiring authority and a landowner subject to a CPO to agree to postpone a date of possession.

Section 189-191 contains consequential amendments.

These sections have been in force since 13 July 2016 and 3 February 2017.[78]

7.5 Compensation following CPO (sections 192-8)

Section 192 amends the *Land Compensation Act 1961,* allowing the Secretary of State or Welsh Minsters to "to make regulations to impose further requirements about the notice claimants must give the acquiring authority detailing the compensation sought by them."[79]

Section 193 allows compensation to be claimed by a successor to a piece of land subject to a CPO, even if the successor has not been served a notice to treat.

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75 Explanatory notes: Housing and Planning Act 2016, 2016, p83

76 *Housing and Planning Act 2016 (Commencement No. 3) Regulations 2016, SI 2016/956* and *Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017, SI 2017/75*

77 SI 2017/16

78 *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733* and *Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017, SI 2017/75*

79 Explanatory notes: Housing and Planning Act 2016, 2016, p84

Landowners are, under the *Land Compensation Act 1973*, entitled to advance payment ahead of any land transferral. Sections 194 to 198 modify the 1973 Act to make this system clearer and quicker and clarify when advance payments must be repaid if necessary.

The Housing and Planning Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2018 **brought sections 192 to 198 into force on 6 April 2018.** Section 196 was already partially in force for the purpose only of making regulations under section 52B(4) of the *Land Compensation Act 1973* (interest on advance payments of compensation paid late). The SI setting this interest rate has not been issued.

In September 2017, when asked why sections 195-6 had not been brought into force, the then Housing Minister, Alok Sharma, said that the reforms were being implemented in stages:

> The Housing and Planning Act 2016 and Neighbourhood Planning Act 2017 contain a package of measures to make the compulsory purchase system clearer, fairer and faster for all. These important reforms are being implemented on a staged basis: on 22 September we commenced a number of provisions in the Neighbourhood Planning Act 2017, and the Government will now take forward work on the outstanding measures.[80]

7.6 Disputes

If an acquiring authority issues a CPO for only part of a landowner's property, the landowner can service a counter-notice asking the acquiring authority to purchase all of their land. This can be claimed on the basis that a part-purchase will render the rest of their land less valuable (cause a 'material detriment' to their retained land).

Section 199 introduces schedules 17 and 18. These harmonise some procedural elements of serving counter-notices when they follow a 'notice to treat' or a 'general vesting declaration'.

Section 200 "amends section 153 (reference of objection to Upper Tribunal) and section 166 (saving for claimant's right to sell whole hereditament etc.) of the *Town and Country Planning Act 1990* (1990 Act) in order to preserve the current procedure for objections to the division of land following a blight notice."[81]

In the case of a dispute over the CPO being taken to High Court, section 201 clarifies "that the court has the power to quash the decision to confirm the compulsory purchase order as well as the power to quash the whole or any provision of the order itself." If only the decision is quashed, it will return to the relevant Minister.

Currently, an acquiring authority must wait for a legal challenge to be resolved until acquiring the disputed land, which can take up a significant amount of the three years normally allowed. Section 202 provides for the extension of the compulsory purchase time limit to compensate.

These provisions have been in force since 13 July 2016 and 3 February 2017.[82]

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80 PQ 105331, 9 October 2017

81 Explanatory notes: Housing and Planning Act 2016, 2016, p88

82 *Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017, SI 2017/75 and Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*

7.7 Power to override easements and other rights (sections 203–6)

An **easement** is a right benefiting one piece of land over another: for instance, a common easement is one that allows one landowner use another person's land for accessing their own property. A **restrictive covenant** is a clause in a deed prohibiting certain uses of a property. Local planning authorities and regeneration companies (under the *Town and Country Planning Act 1990*) can override these rights for development purposes as long as the respective landowners are compensated.

These sections replace the relevant parts of the 1990 Act in order to expand these powers to:

- other acquiring authorities such as statutory undertakers (those authorised to work on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator).[83]
- bodies developing land that has been vested in or acquired by a Minister, local planning authority, or body established by Act.

These provisions have been in force since 13 and 19 July 2017.[84]

[83] *Town and Country Planning Act 1990,* Section 262(1)
[84] *Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016, SI 2016/733*

8. Public authority land

Government disposal of land

Section 207 states that a Minister of the Crown must, when considering the disposal of their interest in any land, engage with affected local authorities and any public authorities specified in regulations. This applies in England, Wales and Scotland, but is subject to limitations in Wales and Scotland.

Local authorities' disposal of land

Section 208 requires local authorities in England, Scotland and Wales to report on their surplus land. Again, these powers are more limited in Wales and Scotland. The definition of 'surplus' land can be defined in guidance published by the Secretary of State, to which public authorities must have regard.

Section 209 expands the Secretary of State's power (provided in Section 98 of the *Local Government, Planning and Land Act 1980*) to direct public authorities to dispose of land. Before the passing of the HPA 2016, the Secretary of State could only demand disposal of land that the Government believed was underused. Section 209 amends the 1980 act to allow the Secretary of State to demand the disposal of land of any public authority in circumstances to be determined in regulations. The authority concerned will retain the right to make representations before such a direction is confirmed.

Efficiency and sustainability of publicly owned buildings

Section 210 requires that local authorities produce an annual 'buildings efficiency and sustainability assessment'. Government guidance must be considered for such reports and a Minister of the Cabinet Office "may by regulations provide for buildings of a specified description to be treated as being, or as not being, part of an authority's estate for the purposes of this section."

Section 211 extends the duty of the Government to report on the "efficiency and sustainability" of the central government civil estate to military buildings. A Minister of the Cabinet Office may by regulations establish which buildings are and are not to be included in such a report.

These provisions are not yet in force.

The Cabinet Office's guide for the disposal of surplus land remarks that this area of policy is in development:

> There are also some areas where policy is in development, including:
>
> - Part 8 of the Housing and Planning Act 2016 which is not yet in force.
> - Government Hubs
> - Accelerated Construction, and
> - The new Government Property Agency currently being established.[85]

[85] Cabinet Office, Guide for the disposal of surplus land, March 2017: p5

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