



2008 Housing and Regeneration Act – key amendments

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Some 717 Government amendments to the [2008 Housing and Regeneration Act](#) were tabled during its passage through parliament. This note provides a brief guide to the key Government amendments made at the various parliamentary stages. The Act obtained Royal Assent on 22 July 2008.

Background information on the Act can be found in [Library Research Paper 07/79](#) and a more detailed analysis of the debate and amendments made during the Public Bill Committee stages can be found in [Library Research Paper 08/28](#).

Contents

1	Part 1: The Homes and Communities Agency (HCA)	2
2	Part 2: Regulation of Social Housing	3
3	Part 3: Other provisions	4
3.1	Tenant empowerment	4
3.2	Family intervention tenancies	4
3.3	Possession orders	4
3.4	Leasehold enfranchisement	5
3.5	Service charges	5
3.6	Right to buy	5
3.7	Homelessness and the allocation of housing	6

1 Part 1: The Homes and Communities Agency (HCA)

- Section 2 (Objects) of the Act was amended to make contributing to the achievement of sustainable development¹ and good design, which includes giving due regard to the needs of elderly and disabled persons, objects of the HCA.²
- Section 13 (Power of Secretary of State to make designation orders) was amended to provide that the Secretary of State must be satisfied that making a designation order is likely to improve the effectiveness with which local planning authority functions will be discharged.³ The Secretary of State is required to publish a draft of the designation order, provide reasons for making it and consult local authorities, local planning authorities and the representatives of local authorities' interests.⁴ The ability of the Secretary of State to determine that the HCA should be the local planning authority for all permitted purposes under the Act, for all kinds of development, and in respect of all functions, has been restricted.⁵
- Section 15 was added to the Act (The HCA as local planning authority: local involvement) and requires the HCA to prepare and publish a statement of local involvement to set up the policy and make it clear how much it will involve local authorities and relevant people affected by a designation order. Section 15 also provides for the local authority to be part of the implementation process.⁶
- Provisions in the original Bill enabling the Secretary of State to make designation orders in relation to the traffic regulation of private streets were removed.
- Provisions in the original Bill enabling the Secretary of State to dis-apply any enactment where functions are conferred on the HCA were removed.⁷
- Section 30 (Community services) was amended to give the HCA a general power to provide such services for communities as it considers appropriate.⁸
- Section 31 (Duties in relation to social housing) was amended to ensure that where the HCA is the direct provider of housing (this is only expected to happen on rare occasions) when such property is made available for rent the landlord must be "a relevant provider of low-cost rental housing".⁹ This will ensure that accommodation provided by the HCA is subject to adequate regulation. The definition of a relevant provider was extended to include arm's length management organisations and other entities controlled by a local authority.¹⁰ Where the HCA is considering giving financial assistance for the provision of low-cost home ownership accommodation it will be required to consult the regulator of social housing.¹¹ This change was made to ensure that the burden of complying with the

¹ HC Deb 31 March 2008 c519 & c542

² HL Deb 17 July 2008 cc1328-32

³ HL Deb 7 July 2008 cc536-7

⁴ HL Deb 7 July 2008 c537-8

⁵ HL Deb 17 July 2008 c1332-3

⁶ HL Deb 7 July 2008 c538

⁷ HL Deb 17 July 2008 c1333

⁸ HL Deb 17 July 2008 c1336-7

⁹ PBC Deb 17 January 2008 c305

¹⁰ PBC Deb 17 January 2008 c315

¹¹ HL Deb 7 July 2008 c606-7

regulator's standards will not be significantly different from the burden of complying with the HCA's contractual requirements.¹²

- A new section 44 (Local government involvement) was added to the Act to require the HCA to consult with representatives of local government from time to time and publish a statement setting out how this consultation will take place.

2 Part 2: Regulation of Social Housing

It was originally envisaged that the regulator would be called the Office for Social Tenants and Landlords (Oftenant); it is now referred to as the Tenant Services Authority (TSA).

- Sections 68 to 70 define the term social housing for the purposes of the Act and regulation. Amendments were made to these sections during the Commons Committee Stage to tackle a concern that the original drafting could result in applicants for social housing being means-tested on the basis of whether they could afford to buy or rent a home at market prices.¹³
- A definition of Community Land Trust was added to section 79 (English bodies) of the Act in order "to bring clarity and certainty to stakeholders and partners about the nature of the CLT sector".¹⁴ It is hoped that the provision of a legal definition of a CLT will assist the development of housing through this means.
- A new section 99 was added to the Act to place a duty on the regulator to promote awareness of its functions; to consult and discuss the exercise of its functions with tenants, where appropriate, and to involve tenants in the exercise of its functions, where appropriate.¹⁵
- A new section 114 was added to the Act to allow the Secretary of State to make an order under the affirmative resolution procedure to enable the regulator to regulate local authorities.¹⁶ This section will enable the introduction of cross-domain regulation at some point in the future.
- Section 117 (Fees) was amended to provide that the principles on which the regulator will set its fees must be approved by the Secretary of State.
- Amendments were made to section 197 (Direction by the Secretary of State) to ensure that the Secretary of State's role in directing the TSA will be limited to strategic direction with direct influence only possible in relation to rent, physical maintenance and tenant empowerment.¹⁷ The regulator will have to take account of the desirability of registered social landlords' boards managing their own businesses and setting their own corporate direction when setting standards (section 194). These amendments were made in response to concerns raised over the possibility of "policy passporting" by the Government via the regulator and the fear that the non-public status of housing associations would be jeopardised.

¹² HC Deb 21 July 2008 c583

¹³ PBC 24 January 2008 c547

¹⁴ HL Deb 17 July 2008 cc1338-41

¹⁵ HL Deb 9 July 2008 cc770-2

¹⁶ HL Deb 17 July 2008 cc1341-3

¹⁷ HC Deb 31 March 2008 c549 & 569

- Section 215 (Use of intervention powers) has been strengthened to provide that the regulator must issue guidance on how it will use its regulatory powers and also guidance on making a complaint to the regulator in respect of a registered provider.¹⁸ The guidance will set out the procedure to be used in making a complaint to the regulator, the criteria to be used by the regulator in deciding whether to investigate and the periods within which the regulator will aim to inform complainants of the result of complaints. Tenants' representatives will have to be consulted before the guidance is issued.
- The Act was amended to remove "breach of standards" as a ground on which the regulator can use its enforcement powers of management transfer, transfer of land, amalgamation, restrictions on dealings and removal or suspension of an officer. The regulator must seek the Secretary of State's consent before exercising the powers of transfer management and amalgamation.¹⁹

3 Part 3: Other provisions

3.1 Tenant empowerment

- Section 294 (Ballots before certain disposals to private landlords) of the Act was amended to require the Secretary of State or Welsh Ministers in Wales to publish guidance on the consultation process with tenants and the holding of ballots prior to the possible transfer of council housing stock to registered providers. Local authorities must have regard to that guidance.

3.2 Family intervention tenancies

- At Commons committee stage a Government amendment was made to section 297 of the Act (Family intervention tenancies: general) to ensure that when a notice is issued to a family before they decide to voluntarily sign up to a family intervention tenancy, it will contain advice as to how and where these families may seek assistance on the contents of the notice. Regulations will specify the type of advice that must be provided.
- In the Lords sections (297 and 298) were amended to ensure that the behaviour support services provided under a family intervention tenancy (FIT) will be services identified in the behaviour support agreement between the landlord, tenant and local housing authority. Before a FIT is entered into the tenant must be served with a notice that includes the matters set out in the Act and which states that the tenant is not obliged to accept the offer. The power of the Secretary of State to amend the contents of a FIT notice has been made subject to the affirmative procedure.²⁰

3.3 Possession orders

- During the Commons Report stage a new section 298 was added to the Act which gives effect to schedule 11. These provisions are aimed at resolving the issue of existing tolerated trespassers and "will ensure that no tolerated trespassers are

¹⁸ Deb 9 July 2008 c772-3

¹⁹ HL Deb 9 July 2008 cc793-5

²⁰ HL Deb 9 July 2008 c806

created in the future.”²¹ The relevant section and schedule were further amended in committee in the Lords.²²

3.4 Leasehold enfranchisement

- The Government added a new section 300 to the Act to remove the low rent test for people seeking to exercise their rights under the *1967 Leasehold Enfranchisement Act*. It will still be used as a basis for valuing freehold interests and where the claim is for a lease extension rather than enfranchisement. It will also still apply to existing leases.²³
- Two new sections (301 and 302) were added to the Act in response to concerns expressed by rural stakeholders such as the Campaign to Protect Rural England and the Affordable Rural Housing Commission. The aim of the sections is to ensure that shared ownership properties are retained for future purchasers. New section 301 will allow all affordable housing providers to grant shared-ownership leases that do not allow the purchaser to staircase up to 100 per cent ownership.²⁴ New section 302 will enable the Secretary of State to make an order designating an area as one where limited land is available for the replacement of affordable housing. Where a designation is made, local authorities will be able to designate specific sites within these areas and require providers of affordable housing operating on those sites to ensure that the housing built is kept affordable in perpetuity. The Minister advised that criteria on the designation of protected areas would be published “shortly” for consultation with stakeholders.²⁵

3.5 Service charges

- A new section 303 and schedule 12 was added to the Act to establish new requirements for landlords to provide long leaseholders with regular service charge statements containing specific accounting information.²⁶ The first use of regulation making powers under these provisions will be subject to the affirmative procedure.²⁷

3.6 Right to buy

- New section 305 and new Schedule 13 were added to the Act during the twelfth sitting of the Public Bill Committee. The *Housing Act 2004* added an exemption to the Right to Buy²⁸ covering properties due to be demolished during the next two years. This was introduced in response to evidence indicating that some tenants were exercising the Right to Buy in order to take advantage of the compulsory purchase compensation rules when notified that their homes were due to be demolished. The 2004 Act also gave landlords the power to serve an initial demolition notice that suspends the Right to Buy. This exemption and power to suspend are not available where the landlord sells or transfers the property to another landlord. Section 305 and schedule 13 will allow the relevant notices to remain in effect in these circumstances.

²¹ HC Deb 31 March 2008 c450

²² HL Deb 23 June 2008 cc506-9

²³ PBC Deb 22 January 2008 cc411-2

²⁴ As a general rule purchasers buy a share of these properties (around 25%) and gradually buy additional shares leading to 100% ownership as their financial situation improves.

²⁵ PBC Deb 22 January 2008 cc412-18

²⁶ HC Deb 31 March 2008 cc450-1

²⁷ HL deb 23 June 2008 cc509-510

²⁸ Exemptions to the Right to Buy are set out in Schedule 5 to the *Housing Act 1985*.

The Minister advised the Committee that this section and schedule will come into effect automatically 2 months after the Act obtains Royal Assent (i.e. in September 2008).²⁹ Further amendments were made in during the Lords committee stages to improve the transparency of this process and to extend the maximum permitted lifetime of an initial demolition notice from five to seven years.³⁰

- A new section 309 was added to the Act during the eleventh sitting of the Public Bill Committee, the purpose of which is to fulfil a Government commitment made in March 2007 to give local authority landlords and Registered Social Landlords (RSLs) the power to buy a share, i.e. an equitable interest, in flats which they hold on long leases. This power will be used to assist owners of these flats to meet some or all of the service charges that they are liable to pay. The purchase price of these “shares” will be met by the landlord cancelling part or all of the leaseholder’s service charge liability. Regulations will provide for the detail of the scheme; landlords’ power to buy an equity share will be discretionary.³¹

3.7 Homelessness and the allocation of housing

A new section 314 was added to the Act during the Lords committee stage to remedy section 185(4) of the 1996 Housing Act which was declared incompatible with the European Convention of Human Rights in the UK courts. The Act also amends section 119(1) of the *1999 Asylum and Immigration Act* which makes similar provision in respect of Scotland and Northern Ireland.³²

²⁹ PBC Deb 22 January 2008 cc423-5

³⁰ HL 23 June 2008 cc510-12

³¹ PBC Deb 22 January 2008 cc382-85

³² HL Deb 23 June 2008 cc520-25