



Department for Communities and Local Government

**Post Legislative Scrutiny - Memorandum
Housing and Regeneration Act 2008**

August 2013

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Department for Communities and Local Government

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Housing and Regeneration Act 2008**

Presented to Parliament by the Secretary of State for
Communities and Local Government
by Command of Her Majesty

August 2013

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1. Introduction

This Memorandum has been prepared by the Department for Communities and Local Government for submission to the Communities and Local Government Select Committee (“the Committee”) and is published as part of the post-legislative scrutiny process. It provides the Committee with the Department’s post-legislative scrutiny assessment of the Housing and Regeneration Act 2008 (“the Act”) that received Royal Assent on 22 July 2008. The Act:

- established the Homes and Communities Agency
- abolished the Urban Regeneration Agency and the Commission for the New Towns
- established the Office for Tenants and Social Landlords as the regulator of social housing
- established a system of regulation for social housing
- abolished the Housing Corporation
- made provision for sustainability certificates, landlord and tenant matters, building regulations and mobile homes
- made further provisions for housing and related issues (mainly through Part 3)

2. Summary

Part 1 and schedules 1- 8

Part 1 of the Act created the Homes and Communities Agency. The Homes and Communities Agency’s objectives were to:

- improve the supply and quality of housing in England
- secure the regeneration or development of land or infrastructure in England
- support in other ways the creation, regeneration or development of communities in England or their continued well-being; and
- contribute to sustainable development and good design.

This part also abolished the predecessor organisations whose functions were transferred to the Homes and Communities Agency, namely the Urban Regeneration Agency and the Commission for the New Towns, which operated under the joint name of English Partnerships. The Homes and Communities Agency also took on certain functions of the Housing Corporation related to investment in housing. The schedules associated with Part 1 set out the corporate structure of the Homes and Communities Agency, gave it various powers in relation to the acquisition of land, and made consequential amendments to other Acts of Parliament (such as the New Towns Act 1981).

Part 2 and schedules 9 and 16

Part 2 of the Act was designed to implement many of the recommendations of Professor Martin Cave's independent review of social housing regulation, published in June 2007. Professor Cave's remit – which was set by the previous Government – was to establish a clear set of objectives for the regulation of social housing to underpin any new regulatory system, present options for reform, and make recommendations about institutional arrangements. The reasons behind this were to:

- improve the regulation of social housing in England, empower and protect social housing tenants; and
- reduce the level of unnecessary regulation and bureaucracy on Registered Providers of Social Housing (or Private Registered Providers of Social Housing, as they are now known under section 80 of the Act).

This part of the Act created the Office for Tenants and Social Landlords (known as the Tenant Services Authority), abolished the Housing Corporation and transferred its functions in relation to social housing regulation to the Tenant Services Authority, and extended eligibility to register to include Local Authorities (via an Order making power) and 'For-profit' providers. It also introduced a power to charge fees on initial registration and for continued registration.

This part of the Act also set out the regulatory powers to be exercised by the regulator through the standards it can set for the provision and management of social housing. It also set out how those standards would be monitored in terms of:

- the information that registered providers must supply
- inspections
- consent requirements of changes to the constitutions of registered providers; and
- the issuing of guidance by the Regulator on the monitoring of standards and the use of its intervention powers.

Part 2 of the Act ensured that the provisions for the Right to Acquire continued to apply for assured and secure tenants of registered providers; and the circumstances in which Right to Buy would or would not apply and the role of registered providers. For example:

- clarified that a tenant subject to a possession order would not have the Right to Buy
- removed the power for bodies to be specified as 'approved lending institutions' for the purposes of Right to Buy; and
- made changes in the way in which social landlords can provide loans to their leaseholders.

Part 3 and schedules 10 - 15

Part 3 of the Act was designed to cover a range of other provisions related to housing but not specifically or intrinsically linked to the creation of the Homes and Communities Agency or the Tenant Services Authority. Part 3 covered three main areas and also included various miscellaneous provisions relating to housing law.

Sustainability certificates

This provided for the introduction of mandatory sustainability ratings for new homes in England and Wales. This information would be in the form of either a certificate showing the results of assessment against sustainability standards, or a statement that there is no such certificate because no assessment has been made. The purpose of sustainability standards was to improve the sustainability of new homes during both the construction and the lifetime of the home.

The intention for this legislation was to link the Code for Sustainable Homes, Code Certificate and Energy Performance Certificate.

Landlord and tenant matters

This provided for a number of issues, for example:

- ensuring formal ballots take place before any transfer of housing stock from a local authority to private landlords
- retaining shared ownership houses for future shared owners in areas where replacement would be difficult
- setting out the information that landlords must supply to service charge payers
- how service charge monies are to be held; and
- consequential changes to existing leaseholder rights to have a management audit.

Housing finance and other provisions

This provided powers to the Secretary of State to enter into agreements with local authorities to hold certain properties outside the Housing Revenue Account Subsidy system (thereby enabling them to retain the full rental income from those properties). It also amended provisions relating to homelessness assistance and social housing priorities by:

- creating disregards in the case of certain applicants; and
- enabling members of the armed forces to establish a local connection through residence and work.

It also extended the time limits for bringing a prosecution for contravention of the provisions in certain Building Regulations and gave residents of local

authority traveller sites the same procedural safeguards against eviction enjoyed by those living on other residential mobile home sites.

3. Implementation

Part 1 of the Act was brought into force on 2 September 2008, 26 November 2008, and 26 March 2009.

Part 2 was commenced in full in two stages. The provisions abolishing the Housing Corporation and creation of the Office for Tenants and Social Landlords (the Tenant Services Authority) were commenced in December 2008. The remaining provisions, which established the reformed regulatory system, were commenced on or before 1 April 2010.

Part 3 was commenced in several stages from September 2008 to April 2011.

4. Secondary legislation

Along with a number of commencement and consequential provision orders, a number of more minor Statutory Instruments were also made:

- Family Intervention Tenancies (Review of Local Authority Decisions) (England) Regulations 2008.
- The Housing (Right to Manage) Regulations 2008
- The Housing (Purchase of Equitable Interests) (England) Regulations 2009
- The Housing (Service Charge Loans) (Amendment) (England) Regulations 2009
- The Housing (Replacement of Terminated Tenancies) (Successor Landlords) (Wales) Order 2009
- The Housing (Replacement of Terminated Tenancies) (Successor Landlords) (England) Order 2009
- The Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009
- The Housing and Regeneration Act 2008 (Moratorium) (Prescribed Steps) Order 2010.
- The Housing and Regeneration Act 2008 (Penalty and Compensation Notices) Regulations 2010.
- The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010
- The Housing (Right to Manage) Regulations 2012

5. Legal issues

There were no specific legal issues during the implementation of the Act.

6. Other reviews

Part 1

The Localism Act 2011 transferred the Homes and Communities Agency's housing and regeneration functions to the Greater London Authority insofar as they related to the London Boroughs and made changes to remove the Homes and Communities Agency's ability to undertake activities in London.

The Coalition Government transferred the Agency's functions to the Greater London Authority as it considered this demonstrated devolution to the most appropriate local level and ensures better democratic accountability. Investment decisions in London should be undertaken by the most accountable person, and for London this is the Mayor.

Part 2

The Coalition Government disagreed with two key parts of Part 2 of the 2008 Act: the establishment and delivery of an independent regulatory function through a separate standalone Arms Length Body: and that the objective of consumer protection is best advanced by proactive regulatory activity by the Regulator. It believed that this approach was too centralist and was over-regulatory and therefore failed in terms of its new policy aims.

The Coalition Government undertook a review of Social Housing Regulation in 2010 to address these points. It concluded that the Tenant Services Authority should be abolished in line with the Coalition Government's commitment to reduce the number of quangos, and its policy that resolution of tenants' problems with their landlords are best resolved by tenants at a local level rather than through a central agency. To ensure the continued independence of regulation, the Localism Act 2011 transferred the Tenant Services Authority's regulatory functions to a separate, independent statutory committee within the Homes and Communities Agency, legally separated from its investment functions and with its membership appointed by the Secretary of State.

The changes to Part 2 of the Act also made clear that the primary purpose of regulation was economic and was needed to maintain lender confidence and protect both historic and future investment by taxpayers. The changes to the Act also ensured there was a more focussed, proactive economic regulation of housing associations with more focus on value for money for the taxpayer.

Following the reforms in the Localism Act 2011, an independent regulation function now operates within the Homes and Communities Agency, overseen by an independent Regulation Committee and local mechanisms are in place to hold landlords to account on service delivery, mostly notably the reforms made to the complaint system and the Housing Ombudsman's remit.

The review also concluded that the Secretary of State should be empowered to direct the Regulator to set standards regarding tenures offered by registered providers and housing mobility as this would:

- allow landlords greater flexibility over the use of existing stock and ensure that affordable housing went to those most in need; and
- ensure that those tenants seeking a move to another property, for example for work or to be closer to family members, were assisted by their landlords and had the widest possible choice.

The Localism Act 2011 amended this part of the 2008 Act to allow the Secretary of State to direct the Regulator on tenure and mobility standards and re-defined the standard setting powers as 'consumer' and 'economic' respectively. It also added new sections to define the Regulator's future role in monitoring and enforcing non-compliance against them.

Part 3

Although the Part 3 requirement for sustainability certificates was never implemented through secondary legislation, sustainability certificates were required as part of Home Information Packs. When the Government took the decision to suspend Home Information Packs in 2010, this included suspension of mandatory sustainability certificates.

Sections 148 and 149 of the Localism Act 2011 amended parts of schedule 15 to allow local authorities in England or Wales to end the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement.

7. Preliminary assessment

Summary

As with all legislation, changing economic and other circumstances will mean that over time the provisions within the Act and the scope of their coverage may need review. For example, the inclusion of a wider range of providers in the social housing sector (for example for-profit bodies) and the movement into more diverse activities by existing not-for profit providers (into areas such as private renting) means that the provisions around the disposal of social housing assets may need to be considered again in the future.

Part 1

Part 1 of the Act effectively translated the Government's proposals into law and established a body which was able to deliver the Government's housing and regeneration objectives. The objects of the Homes and Communities Agency were designed to be broad enough to accommodate changing housing and regeneration priorities but, where necessary, were also specific

enough so that their purpose was not ambiguous. The Homes and Communities Agency has been in existence for over 4 years and has consistently met or exceeded what has been asked or expected of it, (for example, achieving and exceeding its delivery targets for the 2011-2015 Affordable Homes Programme.) The Agency's remit was clearly set out in legislation allowing it to combine the functions of the bodies it replaced.

Part 2

Part 2 was effective at translating the Government's proposals into law and making changes to the regulation of social housing in England. There are no cases in which Part 2 has failed to deliver its stated purposes and this has been acknowledged by external partners. The improvements included the introduction of clear national standards, a risk-based co-regulatory approach and the availability of a range of intervention and enforcement powers. Where the regulator has had to rely on statutory powers in relation to particular registered providers, these have generally proven effective in addressing any problems.

Part 2 also reduced the level of unnecessary regulation on providers and made it simpler and more effective. For example, providers' data collection obligations were streamlined, and the requirements of regulation were focussed on the provision of social housing services. The Coalition Government's reforms to regulation (implemented by the Localism Act 2011) kept many of the fundamental building blocks of Part 2 in place - including the single national regulatory system and the issuing of binding regulatory standards.

Part 3

Unlike parts 1 and 2 of the Act, part 3 did not have a single purpose. Instead, it created or amended legislation linked to other policies such as Home Information Packs, homelessness, housing finance and landlord and tenant matters. Overall its component parts achieved what they were intended to but some have become superfluous. For example, the Coalition Government abolished Home Information Packs since they increased costs for sellers and were not trusted by buyers.



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