



# Housing and Planning Act 2016

## 2016 CHAPTER 22

### PART 4

#### SOCIAL HOUSING IN ENGLAND

### CHAPTER 2

#### VACANT HIGHER VALUE LOCAL AUTHORITY HOUSING

##### *Payments to Secretary of State by local housing authorities*

#### **69** Payments to Secretary of State

- (1) The Secretary of State may make a determination requiring a local housing authority in England to make a payment to the Secretary of State in respect of a financial year.
- (2) The amount of the payment must represent an estimate of—
  - (a) the market value of the authority's interest in any higher value housing that is likely to become vacant during the year, less
  - (b) any costs or other deductions of a kind described in the determination.
- (3) For the housing to be taken into account, see section 70.
- (4) A determination may only be made in respect of a local housing authority that keeps a Housing Revenue Account.
- (5) A determination must set out the method for calculating the amount of the payment.
- (6) A determination may, in particular, provide for all or part of the amount to be calculated using a formula.
- (7) A determination may provide for assumptions to be made in making a calculation whether or not those assumptions are, or are likely to be, borne out by events.

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- (8) The Secretary of State must by regulations define “higher value”, in relation to housing, for the purposes of this Chapter.
- (9) Regulations under subsection (8) may define “higher value” in different ways for different kinds of housing, different local housing authorities or different areas.
- (10) In determining how to define “higher value”, in relation to housing, the Secretary of State may—
  - (a) use any category of housing that the Secretary of State considers appropriate as a comparator (for example, housing in which a local housing authority has an interest or housing in a particular area);
  - (b) take into account any other factors that the Secretary of State considers appropriate.

## **70 Housing to be taken into account**

- (1) This section is about the housing to be taken into account under section 69(2).
- (2) Housing is to be taken into account only if—
  - (a) it appears in the list in section 74(1) of the Local Government and Housing Act 1989 (Housing Revenue Account), and
  - (b) it is not excluded by regulations made by the Secretary of State.
- (3) Where a local housing authority disposes of housing under section 32 or 43 of the Housing Act 1985 to a private registered provider of social housing the Secretary of State may for the purposes of this Chapter—
  - (a) treat the local housing authority as still having that housing, and
  - (b) treat the housing as being likely to become vacant whenever it would have been likely to become vacant if it had not been disposed of.
- (4) A determination under section 69 must identify any housing that the Secretary of State has taken into account under subsection (3).

## **71 Procedure for determinations**

- (1) Before making a determination under section 69 that relates to all local housing authorities or a description of local housing authority the Secretary of State must consult such representatives of local government and relevant professional bodies as the Secretary of State thinks appropriate.
- (2) Before making a determination under section 69 that relates to a particular local housing authority, the Secretary of State must consult that local housing authority.
- (3) As soon as possible after making a determination under section 69 the Secretary of State must send a copy of it to each local housing authority to which it relates.
- (4) Section 87(4) to (7) of the Local Government and Housing Act 1989 (electronic communications) applies to a determination under this Chapter as it applies to a determination under Part 6 of that Act.
- (5) A consultation requirement imposed by this section may be satisfied by consultation carried out before this Act was passed.

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## **72 More about determinations**

- (1) A determination under section 69 must be made before the financial year to which it relates.
- (2) But the determination may be varied or revoked by a subsequent determination under that section made before, after or during the financial year to which it relates.
- (3) A determination under section 69 may relate to one financial year or to more than one financial year.
- (4) A determination under section 69 may make provision about how and when a payment is to be made including, in particular, provision for payments by instalment.
- (5) A determination under section 69 may provide for interest to be charged in the event of late payment.
- (6) A determination under section 69—
  - (a) may make different provision for different areas;
  - (b) may make different provision for different local housing authorities;
  - (c) may otherwise make different provision for different purposes.

## **73 Determinations in the first year that section 69 comes into force**

If section 69 comes into force part way through a financial year, then, in relation to that financial year—

- (a) a determination under section 69 may be made at any time (despite section 72(1)), but
- (b) any reference in section 69 to housing becoming vacant during a financial year is to be read as limited to housing becoming vacant after the determination is made (or, in a case where it is varied in accordance with section 72(2), housing becoming vacant after the original determination in relation to that financial year is made).

## **74 Reduction of payment by agreement**

- (1) The Secretary of State and a local housing authority may enter into an agreement to reduce the amount that the authority is required to pay because of a determination under this Chapter.
- (2) The terms and conditions of an agreement must include—
  - (a) the amount of the reduction mentioned in subsection (1), and
  - (b) any terms and conditions required by subsection (3) or (4).
- (3) Where the agreement is with a local housing authority outside Greater London, it must include terms and conditions requiring the authority to ensure that at least one new affordable home is provided for each old dwelling.
- (4) Where the agreement is with a local housing authority in Greater London, it must include terms and conditions requiring the authority to ensure that at least two new affordable homes are provided for each old dwelling.
- (5) But if the Greater London Authority has agreed to ensure that a number of the new affordable homes are provided, that number is to be deducted from the number for

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which the local housing authority must be made responsible by terms and conditions under subsection (4).

- (6) The Secretary of State may by regulations create other exceptions to subsection (3) or (4) in relation to one or more local housing authorities.
- (7) In this section—
- “new affordable home” means a new dwelling in England that—
- (a) is to be made available for people whose needs are not adequately served by the commercial housing market, or
- (b) is a starter home as defined by section 2;
- “new dwelling” means a building or part of a building that—
- (a) has been constructed for use as a single dwelling and has not previously been occupied, or
- (b) has been adapted for use as a single dwelling and has not been occupied since its adaptation;
- “old dwelling” means a single dwelling taken into account under section 69(2) for the purposes of the determination.
- (8) If a determination under this Chapter relates to more than one financial year—
- (a) an agreement under this section may be made in relation to the determination so far as it relates to a particular financial year, and
- (b) in the definition of “old dwelling” in subsection (7) the reference to the determination is to the determination so far as it relates to the financial year to which the agreement relates.
- (9) The Secretary of State may by regulations amend this section so as to change the meaning of “new affordable home”.

## **75 Set off against repayments under section 69**

Where the Secretary of State is liable to repay an amount that has been overpaid by a local housing authority under section 69, the Secretary of State may set off against the amount of the repayment any amount that the authority is liable to pay the Secretary of State under—

- (a) section 69, or
- (b) section 11 of the Local Government Act 2003.

### *Duty to consider selling*

## **76 Duty to consider selling vacant higher value housing**

- (1) A local housing authority in England that keeps a Housing Revenue Account must consider selling its interest in any higher value housing that has become vacant.
- (2) The duty in subsection (1) applies only in relation to housing that appears in the list in section 74(1) of the Local Government and Housing Act 1989 (Housing Revenue Account).
- (3) The Secretary of State may by regulations exclude housing from the duty in subsection (1).

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- (4) In discharging its duty under subsection (1) a local housing authority must have regard to any guidance given by the Secretary of State.

### *Amendments and interpretation*

## **77 Local authority disposal of housing: consent requirements**

- (1) The Housing Act 1985 is amended as follows.
- (2) In section 34(4A) (consents to disposals and conditions), after paragraph (ca) (but before the “and”) insert—
- “(cb) any reduction in the amount that the local authority may be required to pay under section 69 of the Housing and Planning Act 2016 (payments to Secretary of State in respect of vacant higher value housing in England) as a result of the disposal;”.
- (3) In section 43(4A) (consents to disposals and conditions), after paragraph (ca) (but before the “and”) insert—
- “(cb) any reduction in the amount that the local authority may be required to pay under section 69 of the Housing and Planning Act 2016 (payments to Secretary of State in respect of vacant higher value housing in England) as a result of the disposal;”.

## **78 Set off under section 11 of Local Government Act 2003**

- (1) Section 11 of the Local Government Act 2003 (use of capital receipts) is amended as follows.
- (2) In subsection (5), after “an authority” insert “ in Wales ”.
- (3) After subsection (5) insert—
- “(5A) Where the Secretary of State is liable to repay an amount that has been overpaid by a local housing authority in England under this section, the Secretary of State may set off against the amount of the repayment any amount that the authority is liable to pay the Secretary of State under—
- (a) this section, or
- (b) section 69 of the Housing and Planning Act 2016 (payments in respect of vacant higher value housing).”

## **79 Interpretation of Chapter**

- (1) In this Chapter—
- “becomes vacant”: housing in which a local housing authority has an interest “ becomes vacant ” when a tenancy granted by the authority comes to an end and is not renewed expressly or by operation of law (but see subsection (2));
- “financial year” means a period of 12 months beginning with 1 April;
- “higher value”, in relation to housing, has the meaning given by regulations under section 69;
- “housing” means a building, or part of a building, which is occupied or intended to be occupied as a dwelling or as more than one dwelling;

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“Housing Revenue Account” has the meaning given by section 74 of the Local Government and Housing Act 1989;

“interest” means a freehold or leasehold interest;

“local housing authority” has the meaning given by section 1 of the Housing Act 1985;

“tenancy” includes a licence to occupy.

- (2) The Secretary of State may by regulations specify circumstances in which housing is to be treated as not having become vacant for the purposes of this Part even if it otherwise would be.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 95(1)(ia) inserted by [2023 c. 36 Sch. 1 para. 2](#)
- s. 100(7)(aa) inserted by [2023 c. 36 Sch. 1 para. 3](#)
- s. 172(1)(a) words renumbered as s. 172(1)(a) by [2017 c. 20 s. 26\(8\)\(a\)\(i\)](#)
- s. 172(1)(b) inserted by [2017 c. 20 s. 26\(8\)\(a\)\(ii\)](#)