

Extended Right to Buy: Part 4

In an Act of more than 200 sections, those providing - directly and indirectly – for the voluntary extension of the right to buy to the assured tenants of private registered providers number just 16. The reason, of course, is the voluntary nature of the extension: the real meat of the right is provided not in the statute itself but in the National Housing Federation’s 2015 agreement with Government. The key principles of that agreement (available [here](#)) have been the subject of extensive discussion and controversy in the trade and legal press. They are not the subject of this briefing. The few and consequential provisions made by the 2016 Act are.

Compensatory grants and local authority payments

As anticipated by the 2015 agreement, the 2016 Act provides for the payment of grants to private registered providers to compensate them for selling their housing at a discount¹. The provisions give effect to a key principle of the 2015 agreement that private registered providers receive the full market value of the housing they sell, with the discount funded by Government.

The Secretary of State and, in respect of dwellings in London, the Greater London Authority ('GLA') are, however, given power to make grants on any terms and conditions they think fit. Clearly, the scope of this statutory discretion is wide. Far less clear is the use to which the Government and GLA will put it.

This uncertainty has led some to speculate that, in the absence of an overt mechanism for enforcing compliance with the 2015 agreement (see below), the Government and GLA might use the discretion as a 'backdoor' means of enforcement. Given the importance of discount compensation to the 2015 agreement and to the efficacy of a voluntary right to buy

¹ Section 63 of the 2016 Act for grants made by the Secretary of State in respect of dwellings outside of London; and section 64 for grants made by the Greater London Authority in respect of dwellings in London.

extension, this seems unlikely. Far more likely, it is suggested, is the exercise of the discretion to ensure that private registered providers use their grants to finance new-build accommodation. Like so many aspects of the extended right to buy, however, the use to which this statutory discretion is ultimately put is only likely to become clear with time.

The Act provides a mechanism (discussed in detail elsewhere in this briefing) by which these grants will be funded. In overview, by Chapter 2 of Part 4, local housing authorities will be required to make payments to the Secretary of State at the start of each financial year, calculated by reference to the value of their 'higher value' social housing, which is likely to become vacant in the coming year. It is anticipated that local housing authorities will sell that housing to finance the payments required by the 2016 Act. Indeed, they are obliged to consider doing so. The payments will in turn be used to fund the grants payable to registered providers.

The detail of the scheme - not least the definition of 'higher value' housing, the statutory determinations requiring local housing authorities to pay the Secretary of State and the method for calculating the amount they are required to pay - will be provided in regulations made under the 2016 Act, many of which are expected later this year.

Compliance with the voluntary, extended right to buy

One controversial issue to which the voluntary extension of the right to buy has given rise is the means by the 2015 agreement will be enforced. The 2016 Act contains no overt means of enforcing the agreement, but provides instead that the Regulator of Social Housing, currently the Homes and Communities Agency ('HCA'), must *monitor* compliance at the Secretary of State's request².

It is anticipated, therefore, that the Secretary of State will ask the HCA to monitor private registered providers' compliance with the 2015 agreement and, to that end, publish yardstick 'home ownership criteria', by which their compliance will be measured. The Act defines the

² Section 65(1) of the 2016 Act.

criteria as “criteria ... that relate to the sale of dwellings by private registered providers to tenants otherwise than in exercise of a right conferred by an Act”³.

The HCA will be obliged to provide the Secretary of State, upon request, with reports and information about private registered providers’ compliance with the criteria⁴ but otherwise, it seems, has no statutory powers of enforcement. Instead, the Secretary of State “may publish information about a private registered provider that has not met the home ownership criteria”⁵.

The Explanatory Notes to the Bill stated that compliance with the 2015 agreement “is expected to be sufficient to meet the expected level of compliance with the home ownership criteria”. The proof of that particular pudding will, of course, be in the eating. In the meantime, the lack of any overt means of enforcing the agreement has led some to question whether what is essentially a ‘naming and shaming’ provision in the 2016 Act will be enough to compel compliance; or whether the provision for monitoring compliance with the voluntarily extension of the right to buy is not in fact a statutory damp squib.

Again, it is suggested, only time will tell. In the meantime, housing professionals, lawyers and tenants alike will continue to watch with interest.

Dean Underwood

Barrister and Chair of the Social Housing Law Association

³ Section 65(2)-(3) of the 2016 Act

⁴ Section 65(5) of the 2016 Act

⁵ Section 65(6) of the 2016 Act