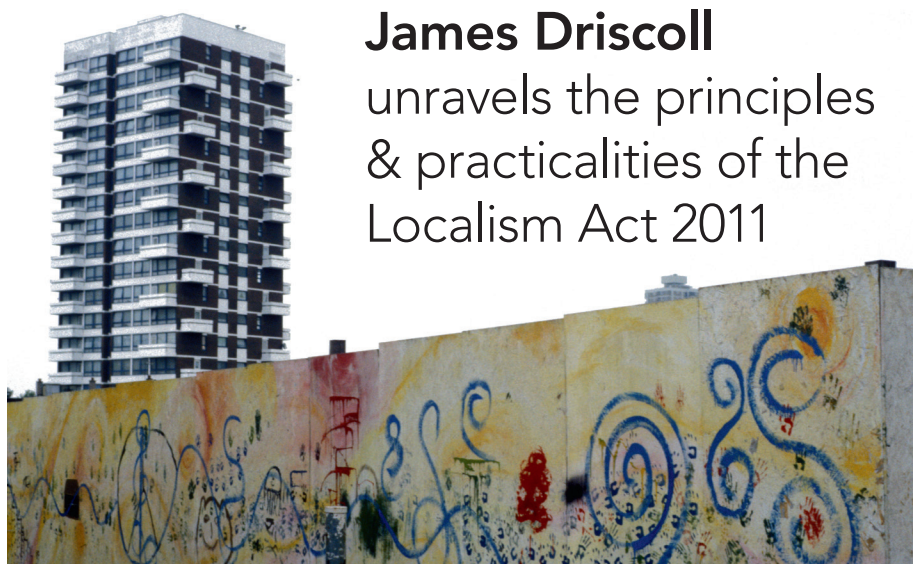


Property / Landlord & tenant

All change for social housing?

James Driscoll
unravels the principles
& practicalities of the
Localism Act 2011



IN BRIEF

- The housing law & policy changes to be introduced by the Localism Act 2011 will have an extensive impact on social housing.

A recent government announcement to make illegal subletting of social housing a criminal offence (CLG announcement, 10 January 2012) has attracted much publicity. What has received far less publicity, until now, at any rate, are the housing law and policy changes introduced by the Localism Act 2011 (LA 2011) which had Royal Assent in November 2011 and which are more far-reaching in their effects on social housing.

Some of the housing provisions under the new Act came into force on 15 January 2012 (under the Localism Act 2011 (Commencement No. 2 and Transitional and Saving Provision) Order 2012 (SI 2012/57 (C.2)). The remainder are expected to come into force in April 2012. One principle underlying LA 2011, according to government, is to decentralise political decisions, and this informs many of the housing law changes in Pt 7 of LA

2011. Another principle is to allow local housing authorities the option of granting a secure tenancy for a fixed term rather than the current position where (usually) periodic tenancies are granted for an indefinite period. This and many of the other changes, however, will not affect existing secure tenancies. Similar arrangements are to be made to tenancies granted by housing associations.

Allocations & homelessness

LA 2011 gives local authorities greater freedom to set local policies about who should qualify to go on the waiting list for social housing in their area. For example, they could decide to prevent people who have no need of social housing from joining a waiting list. Authorities will still be required to ensure that social homes go to the most vulnerable in society and those who need it most.

Sections 145, 146 and 147 of LA 2011 introduce a number of changes to the allocation of social housing by amending Pt 6 of the Housing Act 1996 (HA 1996). These changes give local housing authorities in England the power to determine which classes of persons are or are not qualifying persons to be allocated housing and take existing social tenants out of the scope of Pt 6 of HA 1996, with the exception of those who must be given reasonable preference for an allocation.

A new s 166A in HA 1996 requires each local housing authority to have a scheme for determining priorities for those who are eligible for social housing and for the procedures to be followed in allocation decisions. A consultation paper has been published on this (see: *Allocation of accommodation: guidance for local housing authorities in England: Consultation*, CLG January 2012). Later this year guidance will be published on the allocation of social housing.

There are changes also to local housing authority duties to the homeless. This is effected by amendments to Pt VII of HA 1996. Section 148 of LA 2011 enables a local authority in England or Wales fully to discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement. Tenancies must be for a minimum fixed term of 12 months. Under the amended s 193 of HA 1996, the main homelessness duty will recur, regardless of whether the applicant has a priority need for accommodation, if the applicant becomes unintentionally homeless again within two years of accepting a private sector offer and re-applies for accommodation.

Changes to social tenancies

Other important provisions in LA 2011 allow local housing authorities to offer so-called "flexible tenancies" instead of a permanent tenancy. A flexible secure tenancy must for a fixed term of not less than two years and in practice they may be offered for longer terms than this (see new s 107A of the Housing Act 1985 (HA 1985)). The landlord must give a notice to the prospective tenant that it will be a flexible secure tenancy. During the term

the landlord can recover possession on one or other of the grounds in Sch 2 of HA 1985 and the tenant also has the right to bring the tenancy to an end (new s 107C of HA 1985). At the end of the term, the landlord may give notice that no further flexible tenancy will be granted and that possession is required (new s 107D) or the landlord can offer a further secure tenancy. The reasons for a decision not to must be given in the notice and the tenant can seek a review (new s 107B).

After commencement, local housing authorities will have this new option of granting a fixed term secure tenancy allowing them to recover possession at the end of that term if they do not wish to grant a further one. This will also augment their current powers to offer introductory tenancies (under HA 1996), which become secure after a year, unless the landlord decides to recover possession and the cases where an authority has obtained a court order which converts a secure tenancy into either a demoted or a family intervention tenancy. In these cases (which are designed to deal with housing related anti-social behaviour) such tenancies can become secure later. For all three of these cases where the current tenancy is not secure, the landlord can offer a flexible tenancy instead of a fully secure tenancy. In other words the landlord might decide that there is a justification for continuing to accommodate the tenant but for a fixed term and not for an indefinite period.

How will this work for housing association tenancies (now called "private registered providers of social housing") which are usually assured or assured shorthold tenancies (under the Housing Act 1988 (HA 1988))? Such social landlords can offer a type of introductory tenancy by offering an assured shorthold tenancy for a fixed term with the option of giving notice that the tenancy has become fully assured at the end of that tenancy. Housing associations can also obtain a court order which demotes the tenancy from its previous assured status (under section 6A of HA 1988). They have the right too, to obtain from a court a family intervention tenancy to replace a fully assured tenancy. Under LA 2011 amendments for such tenancies the landlord has the new option of granting a new assured shorthold tenancy for a term of not less than two years as opposed to notifying the tenant that the new tenancy is to be fully assured or by recovering possession.

There is a fundamental difference between an assured tenancy and an assured shorthold tenancy, that is under s 21 of HA

Regulation & funding: a volte-face

A significant change was made to the regulation and funding of social housing by the Housing and Regeneration Act 2008. For the first time these two key functions were separated with the regulatory functions transferring to the Tenant Services Authority (TSA) and the funding functions passing to the Homes and Community Agency (HCA).

Under LA 2011, the TSA is to be abolished just over a year after it was set up—a quite remarkable volte-face. Its functions pass to the HCA.

Second, the funding functions of the HCA for London pass to the Greater London Authority. So the policy of separating regulation and the funding of social housing has been ended.

1988, the landlord has a mandatory claim for possession if a notice is given that possession is required. In the case of such fixed term tenancies the landlord's s 21 notice (as amended by LA 2011) must also state that the landlord has given the tenant not less than six months notice that another fixed term will not be granted and the reasons for this decision.

Allied to these provisions is a new requirement for local housing authorities to prepare and publish a 'tenancy strategy' on matters such as the kinds of tenancies they grant and in what cases tenancies of a particular type are granted (LA 2011, s 150). Authorities must consult with social landlords such as housing associations in its area when preparing the tenancy strategy and it must also have regard to its current allocation scheme, its current tenancy strategy scheme and for London authorities, the current London strategy (LA 2011, ss 151 and 152).

Transfer & succession

Sections 158 and 159 and Sch 14 of LA 2011 together provide that, subject to certain conditions, existing secure and assured tenants will be able to retain a similar level of security on exchanging their property with a social tenant with a less secure tenancy, such as a flexible secure tenancy.

LA 2011 amends HA 1985 succession provisions by removing the statutory right of those other than spouses and partners to succeed to a secure tenancy. It also provides a discretion for landlords to grant succession rights in addition to the statutory minimum of one succession to a spouse or partner. Similar changes to HA 1988 enables landlords to grant additional succession rights for assured tenancies. Tenancies which started before these sections come into force are not affected by these changes.

LA 2011 also amends HA 1985 and HA 1988 so that the court may direct that the period during which a local authority

landlord in England or Wales can seek to recover possession of a property can run from six to twelve months after the landlord becomes aware of the previous tenant's death, rather than only from the date of death. This applies where the landlord is: seeking possession because the previous tenant has died; a person other than the previous tenant's spouse or civil partner has succeeded to the tenancy; the property is too large for that person and the landlord proposes to move them to a smaller property. It also ensures that where an individual inherits the balance of a fixed term tenancy in England the landlord can recover possession. Like changes are made to assured tenancies granted by housing associations.

LA 2011 also extends repairing obligations on the landlord (under the Landlord and Tenant Act 1985 (LTA 1985)) to include flexible secure tenancies and assured tenancies granted by housing associations with a fixed term of seven years or more. Currently these statutory obligations apply only to tenancies of less than seven years. Presumably the purpose of this amendment is to allow social landlords to grant fixed term tenancies longer than seven years to which the statutory repairing obligations under LTA 1985 will apply.

The law on rented housing continues to be complicated and difficult: the different statutory provisions for social housing being particularly troublesome. Some type of consolidation and simplification advocated by the Law Commission with a draft Bill (*Renting Homes: The Final Report* (Law Com No 297, 2006) is long overdue. Will Parliament ever find the time for such important legislation? NLJ

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