

Co-operative Housing Tenure Bill

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Make provision that occupiers of dwellings owned by certain forms of co-operatives shall occupy those dwellings by virtue of their membership of the co-operative and not as tenants or under any other type of property interest; to make provision for co-operative tenure and for the respective rights and obligations of the co-operative and its members; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Fully mutual housing co-operatives and rights of occupation

- (1) The rights of occupation by a person of a dwelling owned by a fully mutual housing co-operative shall derive from membership of the fully mutual housing co-operative and from the terms of the member’s occupancy agreement and none of the laws relating to landlord and tenant shall apply to such occupation save as expressly set out in this Act. 5
- (2) In this Act the words “fully mutual” in relation to a housing co-operative mean that the rules of the co-operative—
- (a) restrict membership to persons who are occupiers or prospective occupiers of dwellings owned by the co-operative, and 10
 - (b) preclude allowing anyone other than members and members’ households to occupy the dwellings.
- (3) Where this section applies and the conditions in section 3 are met the occupier occupies by virtue of co-operative tenure only and such right to occupy shall not be an estate or interest in land, but shall confer on the occupier a right to occupy the dwelling to the exclusion of all others for so long as the rules of the co-operative and the terms of the member’s occupancy agreement permit. 15

2 Dwellings in England

This Act applies only in relation to dwellings located wholly in England.

3 Conditions under which co-operative tenure to apply

- (1) Section 1 shall apply only if the following conditions are met.
- (2) Condition 1 is that the co-operative is the owner whether freehold or leasehold of the dwelling and no other person holds a leasehold interest of the dwelling from the co-operative. 5
- (3) Condition 2 is that the occupier took up occupation on or after the date of commencement of this Act.
- (4) Condition 3 is that the co-operative served notice on the occupier before occupation commenced to the effect that this Act would apply to their occupation. 10
- (5) Condition 4 is that the rules of the co-operative –
 - (a) make provision either within the rules or within a document referred to in the rules for the terms on which members occupy the co-operative’s dwellings, and that such provisions comply with Section 7, and 15
 - (b) make provision for the co-operative, in general meeting subject to not less than two thirds of the members who vote at the meeting voting in favour, to make regulations for the orderly and sustainable management of the dwellings and other property assets owned by the co-operative. 20

4 Application of other legislation to co-operative tenure

- (1) Section 262(6)(b) of the Housing Act 2004 is amended by inserting after the word “licensee” the words “or as a person occupying under co-operative tenure as defined in the Co-operative Housing Tenure Act 2012.”.
- (2) Nothing in the Unfair Contract Terms Act 1977 shall prevent a co-operative from making regulations in accordance with rules adopted in order to meet Condition 4(b) in section 3. 25

5 Effect of investment by members in certain co-operatives

- (1) This section applies when –
 - (a) a member of a co-operative occupies by virtue of co-operative tenure, 30
 - (b) the rules of the co-operative enable investment by members whether through payment for the co-operative’s shares, loan stock or otherwise, and
 - (c) a member does so invest.
- (2) Section 6 of the Industrial and Provident Societies Act 1965 (Maximum shareholding in society) shall not apply. 35
- (3) Any shares or loan stock acquired in accordance with the co-operative’s rules shall be capable of being assigned by the member to another, whether to another actual or potential member or by way of security, and the co-operative’s rules shall make provision for any conditions to be attached to or procedures to be followed to give effect to such assignments as the co-operative thinks fit. 40
- (4) Any mortgagee or chargee shall give notice to the co-operative of their interest and the co-operative shall maintain a register of such interests which shall be

available for inspection by members, prospective members and mortgagees and prospective mortgagees.

- (5) Any shares or loan stock acquired in accordance with the co-operative's rules shall vest under the member's will or on the member's intestacy in the same manner as any other property and section 23 of the Industrial and Provident Societies Act 1965 (nomination to property in society) shall not apply. 5
- (6) A mortgagee or chargee of such shares or loan stock may in the event of default by the member require that the co-operative accepts as a member the person to whom the mortgagee or chargee wish to sell such shares or loan stock, in accordance with such procedures as the co-operative's rules may require, and in such event the defaulting member shall cease to be a member and their right of occupation shall cease. 10

6 Recovery of possession by co-operative

- (1) Where the occupier occupies by virtue of co-operative tenure and the co-operative in accordance with its rules and any other applicable written terms of occupation has ended the occupier's right to occupy, and the occupier has not ceased to occupy, the co-operative shall be entitled to apply to the County Court for a possession order and the court must make an order for possession if it is satisfied that the occupier's right to occupy has ended in accordance with its rules and any other applicable written terms of occupation. 15 20
- (2) If the member's right to occupy has been ended and the member does not so vacate when required by the mortgagee, chargee or receiver of the co-operative as appropriate, the mortgagee, chargee or receiver shall be entitled to apply to the County Court for a possession order and the court must make an order for possession if it is satisfied that the mortgagee, chargee or receiver is entitled to gain possession under the terms of their mortgage or charge or to comply with the terms on a community share or loan stock issue made by the co-operative if the following conditions are met. 25
- (3) Condition 1 is that the co-operative has granted a mortgage or charge over the dwelling whether as security for loans or in connection with the raising of finance through a community share or loan stock issue. 30
- (4) Condition 2 is that the member's agreement makes provision for the dwelling to be vacated by the member in the event of the co-operative defaulting.
- (5) The court may refuse to grant an order for possession under Section 6(1) if— 35
- (a) the member has appealed against the decision to end the member's right to occupy, and
 - (b) the court is satisfied that the co-operative has failed to consider the appeal in accordance with the provisions for the appeal made in or under the co-operative's rules or that the decision on the appeal is otherwise wrong in law. 40

7 Occupancy agreements

In order to comply with Condition 4(a) in Section 3(5) the member's occupancy agreement must make provision for the matters in this section, and may also make provision for other matters—

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- (a) the division of repair and maintenance responsibilities for the dwelling and all common parts and communal areas between the co-operative and the member,
 - (b) the responsibility of the co-operative to ensure that any gas appliance provided by the co-operative is adequately serviced, inspected and certified as safe by a Gas Safe engineer on an annual basis, 5
 - (c) whether or not the member has an equity interest in the value of the co-operative's dwellings and if they have such an interest the terms on which they may assign or charge it,
 - (d) the right of the member to appeal against a decision to terminate the member's occupancy agreement unless such right is in the co-operative's rules, 10
 - (e) the member's obligation to comply with regulations made by the co-operative in accordance with its rules for the sustainable and orderly management of the homes owned by the co-operative, and 15
 - (f) the circumstances in which the member's right of occupancy may be terminated by the co-operative and the member's right of appeal against termination of their occupancy agreement.

8 Short title, commencement and extent

- (1) This Act may be cited as the Co-operative Housing Tenure Act 2012. 20
- (2) This Act comes into force at the end of the period of 9 months beginning with the day on which it is passed.
- (3) This Act extends to England and Wales only.

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To make provision that occupiers of dwellings owned by certain forms of co-operatives shall occupy those dwellings by virtue of their membership of the co-operative and not as tenants or under any other type of property interest; to make provision for co-operative tenure and for the respective rights and obligations of the co-operative and its members; and for connected purposes.

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