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# Local Occupancy Restrictions Policy

(s157 Housing Act 1985)

Allerdale

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<b>Document title</b>	<b>Local Occupancy Restrictions Policy (s157 Housing Act 1985)</b>
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<b>Who is accountable for this policy/strategy?</b>	Andrea Smith, Policy Manager (Housing)
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<b>Is the document confidential?</b>	No

### Revision History

<b>Date</b>	<b>Version</b>	<b>Summary of Changes</b> Keep VERY brief	<b>Section(s) Changed</b>
12 Nov 2013	V0.1	Introduced local occupancy restrictions in line with S157 Housing Act 1985.	New Policy – Not formally adopted
April 2020	V0.2	Changes in name of organisation, Exception to the restrictions	2.4/2.5/7.4

**Equalities Impact Assessment** This must be done each time a policy/strategy is fundamentally revised

<b>Assessment date</b>	<b>March 2020</b>
<b>Assessment location</b>	This policy enables the Council to meet local housing needs where affordable housing is limited. There are no amendments to the legislation and only minor amendments to the process in respect of decision making when applying exceptions to the restrictions.

## 1. Introduction

- 1.1 Local Occupancy Restrictions are criteria attached to certain properties which the occupants of the dwelling must comply with. The criteria are implemented by way of conditions registered on the properties' titles and are based upon the premise that in certain rural areas (particularly those within the National Parks) the very limited level of available housing was tending to go towards externally derived needs (be it from people retiring to the area, or looking to acquire a second home/holiday accommodation).
- 1.2 This has given rise to difficulties for people with a genuine need to live in a particular locality to access the housing market, which in turn raises issues in respect of sustaining balanced, working communities.
- 1.3 The use of Local Occupancy Restrictions is a policy tool which attempts to intervene in this process by steering what is a finite and limited supply of housing opportunities in rural areas towards occupants who can demonstrate a link to the locality and a need to live in a given location.

## 2. Types of Local Occupancy Restrictions and the Legal Framework

- 2.1 Local Occupancy Restrictions may be registered against various types of properties. The three main types of local occupancy restriction are:
- a. **Former Council Houses** as a result of right-to-buy legislation;
  - b. **New properties** or residential conversions of old buildings as a result of planning conditions under a s106 Agreement or similar;
  - c. **Affordable Housing** (including renting) as a result of planning conditions, covenants or similar restrictions.
- 2.2 This policy document has been prepared on the basis that Allerdale Borough Council has the benefit of restrictions registered against former Council properties (paragraph 2.1(a) above) and to a lesser extent Affordable Housing (paragraph 2.1(c) above). Those properties will be within

the boundaries of either the Lake District National Park or the Solway Coast Area of Outstanding Natural Beauty (AONB).

2.3 **Section 157 Housing Act 1985** deals with restrictions on the disposal of dwelling-houses in National Parks and AONB including former Council properties. A copy of s157 Housing Act 1985 is attached to this policy document at Appendix 1.

2.4 Attention is also drawn to s37 Housing Act 1985 which deals with restrictions on the disposal of dwelling-houses in National Parks and AONB including affordable/former social housing. A copy of s37 Housing Act 1985 is attached to this policy document at Appendix 2.

2.5 The Lake District National Park Authority imposes local occupancy restrictions on properties in the National Park pursuant to planning conditions under a s106 legal Agreements of the Town and Country Planning Act 1990. Where the Council decides to register local occupancy restrictions on new-build development properties within the National Park, we will be guided by the Lake District National Park current Development Plan and its Supplementary Planning Document.

2.6 The Council sets separate qualifying criteria where a property is to be let by a Registered Housing Provider in restricted parishes. Those criteria are set out in the Council's Local Lettings Policy.

### **3. Purpose of this policy**

3.1 The purpose of this policy is to ensure that local people continue to have access to housing which remains affordable and which serves local needs. Local people are those people who have lived or worked in the region for three years immediately prior to purchase as defined at paragraph 4.2 below.

3.2 Where a prospective purchaser does not meet the strict requirements of s157 Housing Act 1985, this policy will offer guidance on whether an exception to the restrictions can be made.

#### **4. Local Occupancy Restrictions – Allerdale Borough Council**

4.1 The Council has registered restrictions against the titles of former Council properties within the Lake District National Park and Solway Coast AONB which restrict the disposal of those properties so that they may only be sold with the Council's written consent.

4.2 To gain consent, prospective purchasers of former Council properties within the National Park or AONB must comply with s157 Housing Act 1985 in that they must have lived (in their only or principal home) or worked within the boundaries of the National Park or AONB respectively, or a combination of the living or working for three years immediately prior to purchase.

4.3 If there are two or more purchasers, at least one person has to satisfy this requirement.

#### **5. Qualifying applicants**

5.1 Where a prospective purchaser qualifies by proving that they satisfy the residency and/or employment requirements, they should provide their solicitor with appropriate evidence such as electoral register documents, letters and wage records from employers or from academic institutions. They should then provide the Council with a formal statutory declaration.

5.2 On receipt of a satisfactory statutory declaration, the Council will forward their consent to the purchaser's solicitor so that the appropriate arrangements can be made with the Land Registry upon transfer of the property.

## **6. Applicants who fail to satisfy the criteria**

- 6.1 If a prospective purchaser does not qualify by failing to provide satisfactory evidence of residency and/or employment within the National Park or AONB, the Council is under no obligation to provide consent for the removal of the local occupancy restriction.
- 6.2 The Council does, however, have discretion as to whether or not to grant consent even where a prospective purchaser does not meet the requirements of s157 Housing Act 1985. The Council will give consideration to factors such as whether the prospective purchaser is in key employment, economic hardship or long term family links with the National Park or AONB respectively. Full details of the Council's policy on making such exceptions are set out at paragraph 7 below.

## **7 Exceptions to the restrictions**

- 7.1 Where a prospective purchaser does not meet the requirements of s157 Housing Act 1985, the Council may consider special circumstances if the prospective purchaser believes the restriction to be unduly harsh.
- 7.2 In those circumstances, prospective purchasers will need to provide supporting evidence as to why they consider that they should qualify including dates and addresses of residence, electoral register documents, letters and wage records from employers or from academic institutions, self-employment details, details of existing family connections to the area and any other relevant issues. The Council may require a written statement from the applicant.
- 7.3 When deciding whether or not to grant an exception to restriction, the Council will consider the following issues (although special consideration will be given in certain circumstances. e.g. bereavement):

- i. The property must have been actively marketed, with the local occupancy restriction noted, for at least three months, at a price which takes the local occupancy restriction into account.
- ii. The prospective purchaser must intend to use the property as their only home.
- iii. The prospective purchaser must demonstrate that they cannot afford to purchase a suitable property in the parish concerned at open market value, without the local occupancy restriction, subject to availability of other suitable properties in the parish.
- iv. The prospective purchaser must be able to demonstrate a strong connection with the parish in which the property is located, in one of the following ways:
  - a. Lived in the parish for the majority of their life;
  - b. Need to live in the parish to take up a key worker post in the parish i.e. doctor, nurse, police officer, fire officer, teacher.
  - c. Need to live in the parish to give or receive support from a close family member (medical evidence will be required).
- v. The Council will give consent to waive the restriction only for a single disposal; the restriction will continue to apply on future sales of the property.
- vi. There is a right of appeal. The Council will consider any appeal and provide a formal response containing the reasons for their decision.

7.4 The Housing Policy department will consider any applications in the first instance. If the applicant is not satisfied with the decision, the matter will be passed to a Head of Service or more Senior Officer for adjudication.

7.5 For properties that fall under 2.1 a) or b) any changes to the occupancy conditions would require a variation of conditions planning permission

**APPENDIX 1: S157 HOUSING ACT 1985**

**157 Restriction on disposal of dwelling-houses in National Parks, etc.**

(1) Where in pursuance of this Part a conveyance or grant is executed by a local authority... or a housing association ("the landlord") of a dwelling-house situated in—

- (a) a National Park,
- (b) an area designated under [section 82 of the Countryside and Rights of Way Act 2000] as an area of outstanding natural beauty, or
- (c) an area designated by order of the Secretary of State as a rural area,

the conveyance or grant may [(subject to section 156A(8)] contain a covenant limiting the freedom of the tenant (including any successor in title of his and any person deriving title under him or such a successor) to dispose of the dwelling-house in the manner specified below.

(2) The limitation is... that until such time (if any) as may be notified in writing by the landlord to the tenant or a successor in title of his,

- (a) there will be no relevant disposal which is not an exempted disposal without the written consent of the landlord; but that consent shall not be withheld if the disposal is to a person satisfying the condition stated in subsection (3) [and—
- (b) there will be no disposal by way of tenancy or licence without the written consent of the landlord unless the disposal is to a person satisfying that condition or by a person whose only or principal home is and, throughout the duration of the tenancy or licence, remains the dwelling-house].

(3) The condition is that the person to whom the disposal is made (or, if it is made to more than one person, at least one of them) has, throughout the period of three years immediately preceding the application for consent [or, in the case of a disposal by way of tenancy or licence, preceding the disposal]—

- (a) had his place of work in a region designated by order of the Secretary of State which, or part of which, is comprised in the National Park or area, or
- (b) had his only or principal home in such a region;

or has had the one in part or parts of that period and the other in the remainder; but the region need not have been the same throughout the period.



(4) ...

(5) ...

(6) A disposal in breach of such a covenant as is mentioned in subsection (1) is void [and, so far as it relates to disposals by way of tenancy or licence, such a covenant may be enforced by the landlord as if—

(a) the landlord were possessed of land adjacent to the house concerned;  
and

(b) the covenant were expressed to be made for the benefit of such adjacent land].

(6A) Any reference in the preceding provisions of this section to a disposal by way of tenancy or licence does not include a reference to a relevant disposal or an exempted disposal.]

(7) Where such a covenant imposes the limitation specified in subsection (2), the limitation is a local land charge and the Chief Land Registrar shall enter [a restriction in the register of title reflecting the limitation.]

(8) An order under this section—

(a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and

(b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## APPENDIX 2: S37 HOUSING ACT 1985

### 37 Restriction on disposal of dwelling-houses in National Parks, etc.

(1) Where a conveyance, grant or assignment executed under section 32 is of a house situated in—

- (a) a National Park.
- (b) an area designated under section 82 of the Countryside and Rights of Way Act 2000 as an area of outstanding natural beauty, or
- (c) an area designated as a rural area by order under section 157 (which makes provision in relation to disposals in pursuance of the right to buy corresponding to that made by this section),

the conveyance, grant or assignment may (unless it contains a condition of a kind mentioned in section 33(2)(b) or (c) (right of pre-emption or restriction on assignment) or a covenant as mentioned in section 36A(3)(right of first refusal for local authority)) contain a covenant limiting the freedom of the purchaser (including any successor in title of his and any person deriving title under him or such a successor) to dispose of the house in the manner specified below.

(2) The limitation is that until such time (if any) as may be notified in writing by the local authority to the purchaser or a successor in title of his

- (a) there will be no relevant disposal which is not an exempted disposal without the written consent of the authority; but that consent shall not be withheld if the disposal is to a person satisfying the condition stated in subsection (3) and
- (b) there will be no disposal by way of tenancy or licence without the written consent of the authority unless the disposal is to a person satisfying that condition or by a person whose only or principal home is and, throughout the duration of the tenancy or licence, remains the house.

(3) The condition is that the person to whom the disposal is made (or, if it is made to more than one person, at least one of them) has, throughout the period of three years immediately preceding the application for consent or, in the case of a disposal by way of tenancy or licence, preceding the disposal—

- (a) had his place of work in a region designated by order under section 157(3) which, or part of which, is comprised in the National Park or area, or
- (b) had his only or principal home in such a region;

or has had the one in part or parts of that period and the other in the remainder; but the region need not have been the same throughout the period.

(4) A disposal in breach of such a covenant as is mentioned in subsection (1) is void and, so far as it relates to disposals by way of tenancy or licence, such a covenant may be enforced by the local authority as if—

(a) the authority were possessed of land adjacent to the house concerned;  
and

(b) the covenant were expressed to be made for the benefit of such adjacent land.

(4A) Any reference in the preceding provisions of this section to a disposal by way of tenancy or licence does not include a reference to a relevant disposal or an exempted disposal.

(5) The limitation imposed by such a covenant is a local land charge.

(5A) Where the Chief Land Registrar approves an application for registration of—

(a) a disposition of registered land, or

(b) the disponee's title under a disposition of unregistered land,

and the instrument effecting the disposition contains a covenant of the kind mentioned in subsection (1), he must enter in the register a restriction reflecting the limitation imposed by the covenant

(6) In this section "purchaser" means the person acquiring the interest disposed of by the first disposal.