



Housing: construction defects

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This note provides background on the scheme of assistance that was set up for people who bought public sector housing that was subsequently found to be defective (usually constructed using non-traditional methods). As this scheme has now ended the note discusses other possible options for owners of these properties.

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A. Part XVI of the 1985 Housing Act

The post-war housing shortage led to a boom in new 'non-traditional' methods of house construction which were mainly taken up by local and public authorities. In the early 1980s studies carried out by the Building Research Establishment revealed problems with some of these methods, for example, where prefabricated reinforced concrete had been used it was found that steel reinforcing rods had rusted causing the surrounding concrete to crack.

In 1984 the Government introduced a statutory scheme of assistance for people who had purchased a 'designated defective' type of property from a public authority without knowledge of the defect. The *1984 Housing Defects Act*, which was later consolidated into Part XVI of the *1985 Housing Act*, provided for a 90% grant towards the cost of repairing the defect, subject to an expenditure limit, or repurchase at 95% of the defect free value.

The following types of properties were 'designated defective' by the Secretary of State:

Type	Cut-off date
Airey	8.9.82
Boot	26.4.84
Boswell	23.12.86
*Cornish Unit (1)	26.4.84
+Cornish Unit (2)	26.4.84
*Dorran (1)	26.4.84
+Dorran (2)	26.4.84
Dyke	26.4.84
Gregory	26.4.84
*Myton (1)	26.4.84
+Myton (2)	26.4.84
*Newland (1)	26.4.84
+Newland (2)	26.4.84
Orlit	26.4.84
Parkinson	26.4.84
Reema Hollow Panel	26.4.84
Schindler &	
Hawksley SGS	26.4.84
Smith	19.12.85
Stent	26.4.84
Stonecrete	26.4.84
*Tarran (1)	26.4.84
+Tarran (2)	26.4.84
Underdown	26.4.84
*Unity & Butterley (1)	26.4.84
+Unity & Butterley (2)	26.4.84
Waller	26.4.84
Wates	26.4.84
*Wessex (1)	26.4.84
+Wessex (2)	26.4.84
Winget	26.4.84
Woolaway	26.4.84

* PRC components in ground storey only
+ PRC components in ground and first storey

The cut of date represents the date by which the defects in a particular type of designated property became generally known. To be eligible for assistance the owner must have bought the property:

- Before the cut off date; or
- Within 12 months of that date, provided that the purchaser bought in ignorance of the designated defect and at a price which did not take proper account of it.

Properties were only designated if they were defective by reason of their design or construction *and* their value had been reduced substantially because the defects had become generally known. Designation was reserved for serious inherent defects that owners, councils, or professional advisors could not have known about on survey, sale or purchase. In addition to the national designation of the property types listed above, local authorities had the power to designate some local property types.

Local authorities estimated that owners of around 31,000 properties would qualify for assistance under the statutory scheme.¹

The Housing Defects scheme has now ended; the last date by which owners of most designated dwelling types could apply for assistance was 30 November 1994. Owners of Smith properties had until 30 April 1996 and Boswell owners until 7 April 1997. Department of the Environment Circular 3/94 advised local authorities with outstanding statutory obligations of the need to ensure that they had taken reasonable steps to inform all owners who were potentially eligible for assistance of their right to apply under the scheme. The Circular noted that over 90% of eligible owners had already been assisted under the scheme by February 1994.

B. Non-designated & designated properties after the scheme

Aside from those 'designated defective' construction methods there are other similar methods of construction that were used by local authorities around the same period that were not designated by the Secretary of State. Some people have also bought a 'designated defective' property after the cut-off date for claiming assistance with knowledge of the existence of the defect.

The question of assistance for ex-tenants who have bought one of these properties has been raised in parliamentary questions:

Dr. Tonge: To ask the Secretary of State for the Environment, Transport and the Regions if the Government will take steps to assist people who have bought their

council houses and subsequently find them to have major structural defects; and if he will ensure that they are eligible to apply for home improvement loans from their local council.

Mr. Raynsford: Local authorities already give grants for repairs to owner occupiers. Renovation grant under Part I of the Housing Grants, Construction and Regeneration Act 1996 is available at the authority's discretion for making property fit and for other works of repair or improvement which go beyond making a property fit. Such grants are subject to a means test. Under separate provisions, certain classes of defective properties, designated as defective under sections 528 or 559 of the Housing Act 1985, are eligible for assistance under Part XVI of that Act. However, works to address the defects in such properties are not eligible for grant under the 1996 Act.²

Local authorities' powers to offer grants under the 1996 Act have now been replaced by wider powers to provide assistance under *The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002* (see below).

Governments have consistently refused to provide additional assistance for people who find that they cannot 'sell on' their homes:

Gordon Prentice: To ask the Secretary of State for the Environment if he will take further measures to aid financially persons who knowingly purchased defective houses under the right to buy scheme and who now find they cannot sell them on.

Sir George Young: No. The housing defects legislation – part XVI of the Housing Act 1985 – compensates people who purchased designated defective house types from public sector landlords before it was known that they contained serious inherent structural defects, and who paid a price which did not reflect the existence of the defects. People who knowingly purchase defective houses do so at their own risk, and the purchase price should take account of the defects.³

As noted above, local authorities have been given new powers to assist owner occupiers in carrying out improvement works to their homes under *The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002*. Details are contained in the Library standard note, *Assistance to improve/repair private sector housing*.⁴ The Coalition Government discontinued funding for the private sector renewal programme with effect from March 2011.

Local authorities can buy-back properties from ex-tenants. Changes made to regulation 104 of the *Local Authorities (Capital Finance) Regulations* with effect from 1 April 1999 improved the financial viability of this option but it still remains at the discretion of the local authority.

¹ HC Deb 14 June 1994 c343W

² HC Deb 18 November 1997 c137W

³ HC Deb 11 January 1994 c5W

⁴ SN/SP/1617

C. Failure to disclose the existence of a defect

A 2001 Court of Appeal case established that councils can be liable for damages for breach of statutory duty where they fail to give full information to tenants exercising the right to buy of the defects present in the property being purchased.⁵ However, if a tenant is made fully aware of the defects present in a dwelling and goes ahead with the purchase there are no schemes of assistance in existence to help them (other than persuading the council to buy the property back) if they later find that they have difficulties selling because of the construction method used.

D. Tenanted properties

There are no specific schemes that have been developed to give financial support to tenants of 'designated defective' dwellings who want to exercise the right to buy. Local authorities are not obliged to carry out structural works in order to bring the properties up to a mortgageable standard to enable tenants to exercise the right to buy. Department of the Environment housing booklet 18, *Designated Defective Housing*,⁶ noted that: 'The properties are usually quite safe to live in without full scale repair. Councils are therefore free to reach their own decision on the repairs and improvements (if any) needed to their rented stock, in the normal way'.

Requests to allow local authorities to issue mortgages to enable tenants of designated defective homes to buy their homes have been rejected in the past:

Gordon Prentice: To ask the Secretary of State for the Environment if he will provide additional resources to local authorities that wish to offer mortgages to tenants who wish to buy homes which have been designated as defective.

Robert B Jones: There are no plans to make additional resources available to local authorities for this purpose. Local housing authorities receive a housing investment programme allocation each year. It is for each authority to decide how best to use this allocation to meet local housing needs.⁷

E. Getting a mortgage

Tenants and prospective owners of designated defective properties that have been repaired under the 1985 Act and other, non-designated property types, sometimes experience difficulty in getting a mortgage to buy these properties. Lenders are free to decide which properties they will and will not offer a mortgage on; a survey of the largest building societies carried out in 1986 by the Building Societies Association "suggested that almost all will consider, subject to normal conditions and valuation, an application for mortgage on a

⁵ See *Rushton v Worcester CC* [2001] EWCA Civ 367. CA, June 2001, Legal Action

⁶ April 1994

⁷ HC Deb 25 January 1995 c208W

defective house repaired under the housing defects legislation. Generally this remains the position today.”⁸

⁸ HC Deb 26 April 1995 c534W