

Committee(s): Policy and Resources Committee	Date(s): 19 March 2020
Subject: Amendment of Section 618 of the Housing Act 1985	Public
Report of: The City Remembrancer	For Decision
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Summary

This report sets out the options for amendment of section 618 of the Housing Act 1985 to disapply the prohibition of voting by Members of the Common Council in housing matters governed by that Act.

Recommendation

Members' instructions are sought on implementation action.

Main Report

Background

1. At its meeting on 21 November 2019, this Committee received a resolution from the Standards Committee on the prospective repeal of section 618 of the Housing Act 1985. Members agreed that the Remembrancer should be asked to look into the possibility and implications of pursuing such a repeal, reporting back to allow for a decision to be made. The Committee resolved accordingly.

Current Situation

2. Section 618 of the 1985 Act, which applies only to the City of London, provides that the Common Council may establish a Committee to discharge its functions under the Act consisting of such persons as it sees fit. That provision continues to be required for the Common Council's discharge of its housing functions. Subsection (3), however, provides:-

“A person is not, by reason only of the fact that he occupies a house at a rental from the Common Council, disqualified from being elected or being a member of that Council or any committee of that Council; but no person shall vote as a member of that Council, or any such committee, on a resolution or question which is proposed or arises in pursuance of this Act or the Housing Associations Act 1985 and relates to land in which he is beneficially interested.”

Options for Change

3. The change needed to remove the disqualification is amendment rather than repeal of section 618, by removing subsection (3).
4. As a statutory provision, such amendment can only be achieved legislatively. The most obvious mechanism for achieving this is by including a provision in another piece of legislation currently being considered by Parliament which is amenable to the inclusion of an amendment removing the disqualification. In practice, this means a Bill currently being considered by Parliament in a subject area germane to the amendment sought.
5. At the time of the Policy and Resources Committee resolution, the identity of the Government was unknown (the General Election took place on 12 December 2019) and it was not possible to anticipate the legislation which would be current in the first session of the new Parliament.
6. Following the General Election, the subsequent Queen's Speech and recent Budget, it appears that (subject to the exigencies imposed by the current Coronavirus pandemic) legislation bearing on housing and planning will be brought forward in the current session. The details of the legislation are not currently settled but the subject matter appears to be sufficiently proximate to section 618 for it to accommodate an amendment to that section. With this in mind, the Ministry of Housing and Local Government has been approached to establish their 'in principle' view of the inclusion of such a provision. A reply is awaited.
7. If this Committee is of the opinion that amendment is to be pursued by action in Parliament, this is the most obvious procedural mechanism. It should be mentioned, however, that there are other potential options – through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006 or by including a provision in a future City of London (Various Powers) bill. These are, however, second rank alternatives.
8. Successfully securing an amendment largely depends on the preparedness of the Government to back, or at least to allow, a change. That is a matter for negotiation at official level and (if there is resistance) representations at a political level. If there is Government agreement or acquiescence, the procedure is one of liaison with the Government Bill team on drafting and briefing. If there is neither there is an option to seek to change by an amendment tabled from the backbenches. Such a move can incentivise the Government but by its nature is unlikely to result in incorporation of the amendment as tabled, as opposed to a Government commitment to further consideration with the aim (on the part of the City) of securing subsequent acceptance for the case for the amendment.

Conclusion

9. On the basis that legislation in the current session of Parliament is likely to be amenable in principle to the tabling of an amendment to section 618 of the Housing Act 1985, there is a current opportunity to pursue such action in Parliament if Members wish to take this course. If so, a formal proposal will be formulated and put to the officials responsible for developing the relevant Government legislation. Subsequent action will be informed by the response.

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