

## **UNISON BRIEFING: THE HOUSING AND PLANNING ACT 2016**

### **1. INTRODUCTION**

This briefing looks at key measures in the Housing and Planning Act 2016, including the extension of the Right to Buy, the sale of 'higher value' council homes, Starter Homes for sale and 'Pay to Stay', and their potential implications for social landlords (local authorities and housing associations), tenants, the workforce and housing provision in general.

### **2. BACKGROUND**

The Housing and Planning Act which received Royal Assent on 12 May 2016 applies to England. It contains a wide range of measures to expand homeownership, reform housing management and the planning process, and increase housing supply to tackle the housing crisis. However, the Act's main focus is on boosting homeownership at the expense of affordable and social housing, which the majority of people on average incomes need. As a consequence, there will be even fewer social and affordable homes, the housing crisis will worsen and it will become more difficult for people on average incomes to find an affordable home to rent or buy.

UNISON worked with parliamentarians both in the House of Commons and House of Lords to provide information about the implications of the legislation on housing provision, and to table amendments to improve the legislation during its passage in parliament. In particular, we called for improvements to measures including the Right to Buy, Pay to Stay, Phasing out Lifetime tenancies and Starter Homes, as we believe that these will lead to higher social rents, less secure accommodation and longer waiting lists. Our campaigning work and joint work with a broad housing coalition, including the Defend Council Housing, housing campaigners and tenant and community groups, led to a number of positive changes in the final Act.

### **3. THE HOUSING AND PLANNING ACT 2016 – KEY MEASURES**

Key measures in the Act which will have implications for housing provision in general include:

- *Extending the Right to Buy to housing associations tenants*
- *Legislating for the sale of 'higher value' vacant council homes to fund the extension of the Right to Buy*
- *Introducing mandatory rent increases for 'high income' tenants in council housing under the 'Pay to Stay Policy'*
- *Phasing out secure tenancies for life for local authority tenants*
- *Reforming the planning system and placing a general duty on local authorities to promote the supply of Starter Homes, which will be counted as 'affordable housing' on new build developments*
- *Empowering local authorities to tackle rogue landlords and letting agencies in the Private Rented Sector by giving them powers to identify, ban and fine repeat offenders, as well as seize or control their property*
- *Introducing mandatory electrical safety checks to protect tenants, and introducing measures to protect client's monies in private renting*
- *Introducing measures to deregulate housing associations to give them greater powers and freedoms*

### 3.1 The Right to Buy Extension / Sale of Higher Value Council Homes

The Housing and Planning Act contains measures requiring councils to consider the sale of vacant 'higher value' council homes and to remit the income generated from sales to the Treasury to fund the extension of the Right to Buy (RTB) to housing association tenants which will be offered by housing associations on a *voluntary basis*. UNISON and housing campaigners lobbied for improvements to make the policy fairer, as a result the Act contains a commitment for council homes sold to be replaced on a one-to-one basis, and in London every council home lost to be replaced with two homes.

While the Act makes provision for grants to be paid to housing associations to compensate them for homes sold under the voluntary RTB, there is no commitment, however, in the legislation that guarantees funding for the replacement of council homes. This raises questions as to how the replacement will be funded, how long it will take for homes to be replaced and the type of housing or tenure of the replacement homes, as these could be homes for sale, such as Starter Homes, rather than homes for social rent. These questions arise because much of the detail of the policy, a deal negotiated between the Government and the National Housing Federation which represents housing associations, is still being negotiated and are not included in the Act, the detailed rules will be set out in secondary legislation.

UNISON believes that the policy will lead to a further depletion of social rented homes and will have a negative impact on the workforce and housing supply. With a reduced stock and reduced rental income, jobs and services could be put at risk and hit the vulnerable hard.

### 3.2 'Pay to Stay' – Mandatory Rent Increases for High Income Social Tenants

The Act contains measures – under the Pay to Stay policy - which will require social housing tenants with a household income of more than £40,000 in London and £31,000 elsewhere to pay rents up to market rent or lose their social rented home (council or housing association home). The policy will be voluntary for housing associations (who will be able to keep additional rents collected to invest in housing) but local authorities will be compelled to implement it without keeping the income generated from the increased rents that they will generate, this will have to be remitted to the Government.

During the legislation's passage in parliament UNISON expressed concern that 'Pay to Stay' will make social housing too expensive for social housing tenants. The 'higher income' earners that the policy targets are already priced out of the market because of high housing costs, and therefore forcing them to pay market rent may expose them to unnecessary financial hardship and poverty. Tenants affected by the policy will be worried about rent hikes, eviction, and being penalised for working hard as a better paid job could mean paying a higher rent.

Following widespread opposition against the policy, Peers in the House of Lords pushed for changes to make the policy fairer. They called for a taper to be applied to limit rent increases. As a result rent rises will be tapered at 15p (the Government had wanted a 20p taper rate) in the pound for every pound earned over the thresholds. The thresholds will be reviewed and up-rated each year in line with CPI. The policy has also been made fairer by exempting some people and excluding some income – it will only apply to the taxable income of two main household earners and exclude those on tax credits, housing benefit claimants, including those receiving the housing element of universal credit, and existing tenants.

The policy could also prove to be expensive, complex and challenging for social landlords to administer, as they will have to take on additional costs to carry out administrative work, such as market rent valuations, liaising with the HRMC to verify tenants' incomes, system changes, setting a variety of rents based on the incomes of 'higher' earning social tenants, chasing supplemental rent and staffing costs.

### 3.3 Ending Lifetime tenancies

The new Act removes security of tenure for most council tenants. It contains clauses which requires councils to issue new council tenants with fixed term tenancies from 2-5 years, up to 10 years for some, including those with a disability, with potential longer tenancies for families with children (until their child reaches age 19) to give them stability in their home for as long as their children are in school. These are changes that were negotiated by Peers, as it had originally been the Government's intention to get rid of lifetime tenancies for most tenants and replace them with fixed term tenancies of just 2-5 years with no concessions for families with children. The measures in the Act will require councils to review tenancies when they are about to expire and to make decisions as to whether to renew or end tenancies or to recover possession. The policy will likely lead to the breakup of stable and mixed communities, and force many people into insecure, expensive private lets.

The Government argues that the phasing out of lifetime council tenancies is to ensure that social housing is seen as a scarce resource that supports only those who genuinely need it. But it is also clear that those who resort to social housing need secure and stable renting to help them stay invested in their local communities and plan for their futures. It is likely that the real reason behind the phasing out of lifetime tenancies is to ensure that there is a constant supply of vacant council homes that can be sold off to fund the discounts available to future association tenants who exercise their Right to Buy under the extended scheme. The Act therefore promotes homeownership as the only worthwhile route to a secure home. However, the fact remains that the majority of people cannot afford to buy their own home even with the help of government backed schemes, which is why UNISON is calling for significant investment in building more homes of all types to alleviate the housing crisis.

### 3.4 Starter Homes

The Housing and Planning Act places a general duty on local authorities to promote the supply of Starter Homes on new build developments. Starter Homes will be sold to first-time buyers between 23 and 40 years of age at a discount of at least 20% of market value, subject to value caps of £450,000 in London and £250,000 elsewhere in England. The Act also widens the definition of 'affordable housing' to include Starter Homes, which will be prioritised above genuinely affordable homes such as social housing and other forms of low cost housing that it will replace, as a result the policy will lead to a further decline of genuinely affordable housing.

[UNISON](#) has expressed concern that Starter Homes will only help those who are already able to buy their own home or who are on higher incomes as it will require people to be earning at least £76,000 a year in London and £50,000 elsewhere, pricing them way beyond the reach of nurses, teaching assistants, and school cleaners. UNISON believes that the scheme should not be at the expense of building genuinely affordable homes at prices that people on average incomes can afford. It should be additional to affordable housing supply, not a replacement of it.

### 3.5 Private Rented Sector – Tackling rogue landlords and letting agents in England

The Act empowers local authorities to tackle [rogue landlords](#) with powers to identify, ban and fine unscrupulous landlords and letting agents. Measures in the Act include:

- Giving councils access to tenancy deposit data, this will give councils an indication of the size of the Private Rented Sector (PRS) in their area and help them to target resources on tackling rogue landlords as part of their enforcement work
- Empowering councils to blacklist rogue landlords who have been fined or convicted of an offence by entering their names on a database of rogue landlords

- Empowering councils to obtain and issue bans for the most serious offenders to stop them from letting a property or engaging in letting agency work for a period of time, and new civil financial penalties for breaching a banning order
- Empowering councils to make management orders which will allow them to seize or take control of the management of a property
- to seize or take control of a property by making management order
- Giving renters living in poor housing the ability to claim back some of the rent they have paid to rogue landlords (who neglect to maintain their home in good repair) and for councils to also get back rent on behalf of benefit recipients

The measures will incentivise local authorities to carry out their enforcement powers as they will be able to keep fines which will help them to target resources where needed to hold bad landlords and letting agents to account.

The Act *also* contains measures to improve regulation in the PRS which will make a difference to private renters. For example, the Act makes it a law for letting agents to have 'client money protection'. This means that any monies, such as rent payments, that renters and landlords entrust to agents, would be protected by law as is the case for deposits which are already protected. This new measure will strengthen consumer protections for renters and landlords alike. The Act also contains another important measure, which requires private landlords to carry out electrical safety checks every 5 years to ensure the safety of tenants from electrical faults in a property. Given that every year 350,000 people are injured – and 70 people are killed each year - due to electrical faults in the home, this new law will go a long way in protecting tenants' lives.

These measures are welcome, but the Act could have been strengthened to improve regulation in the PRS, for example, by introducing measures to control extortionate rents charged by private landlords and measures to end letting agency fees to stop agents from being able to charge a letting fee for renting out properties in addition to requiring a deposit and a month's rent upfront, as well as measures to extend security of tenure, all of which would make private renting more attractive and affordable.

### 3.6 Deregulation of Housing Associations

In 2015 the ONS reclassified housing associations as public bodies based on an extension of government influence over them emanating from the Housing and Regeneration Act 2008. The government pledged to bring forward a [package of deregulation measures](#) to reverse this, especially as it adds £64bn of extra debt to the public sector balance sheet, and make housing associations independent (private bodies) again. The Housing and Planning Act 2016 therefore contains measures which repeal elements of the Housing and Regeneration Act 2008, they include:

- The removal of the requirement of housing associations to seek consent from the Government regulator Homes and Community Agency (HCA) before they dispose of assets. However, some associations registered with the Charity Commission will have to seek consent from this organisation instead unless they deregister from this charity regulator
- The removal of the requirement for housing associations to obtain consent for voluntary arrangements over the winding up and restructuring of these organisations, with housing associations only having to notify the HCA of these actions
- The removal of restrictions to the 'disposal proceeds fund', allowing housing associations freedoms for investment of their disposal proceeds

The Housing Act also introduces a new power for the Secretary of State to make regulations to limit the influence that local authorities have over housing associations and introduces new provisions for the housing regulator (the HCA) to act to prevent housing associations from failing.

These measures will provide housing associations with more autonomy and freedoms in managing their business, in particular around how they manage their assets, dispose of assets, how they reinvest in housing and restructure their business. However, the government will still be able to exert influence on housing associations through housing public policy, albeit in a relaxed and flexible environment.

#### **4. IMPLEMENTATION OF THE ACT**

Much of the detail of the Act is to be set out in secondary legislation, with a number of these regulations expected over the coming months.

#### **5. IMPLICATION OF THE ACT ON GENERAL HOUSING PROVISION AND UNISON MEMBERS**

The Act contains controversial measures, such as the Right to Buy and forced sale of higher value council homes, which will only worsen the housing crisis. With an emphasis on homeownership, those who currently cannot afford to rent or buy in the market are not supported by this legislation.

The Act will lead to a further depletion of social and affordable homes and impact on social housing jobs and services. Many UNISON members / public service workers will be directly affected by the measures in the Act, whether they are tenants who are forced to pay up to market rents and / or lose secure tenancies or staff who lose their jobs or see their pay, terms and conditions eroded. An increasing number of our members providing essential public services find themselves in the private rented sector where typically rents are high and tenancies are insecure, due to the lack of social housing and financial barriers to purchasing their own home. Some have to commute long distances because they cannot afford a decent home close to where they work – and the Act will make their situation worse.

#### **6. UNISON CAMPAIGNING AROUND HOUSING**

UNISON is committed to challenging Government housing reforms that impact on housing provision, jobs and services. We will continue to raise housing issues affecting our members with politicians and decision-makers to influence and shape public housing policy to ensure that the Government commits to the delivery of decent, affordable and secure housing for current and future generations, and to ensure that social housing jobs and services are protected.

UNISON will continue to work with Housing Campaigners, including Defend Council Housing and the “Axe the Housing Act” Campaign to challenge and fight against measures in the Act which “attack” affordable housing, for example, by calling for changes when elements of the Act which will be set out in secondary legislation or regulation come back to Parliament for scrutiny in the coming months.

#### **What UNISON Members can do:**

- Write to your MP: <https://www.writetothem.com/> and raise the issues in this briefing around the controversial measures such as the Right to Buy Extension, Pay to Stay and the phasing out of secure tenancies for council tenants
- Provide UNISON with **case studies** on how the new Act is likely to affect your housing options or if you work for a local authority landlord or housing association or provide a housing service, you can provide case studies on how the Act is likely to impact on service provision, tenants and the

workforce

- Support “Axe the Housing Act” Campaign – a broad housing coalition including Defend Council Housing, housing campaigners, tenant groups and trade unions including UNISON in campaigning against the controversial measures in the Act. More information here: <https://www.facebook.com/Axe-the-Housing-Act-secure-homes-for-all-1535565046764103/?fref=ts>

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UNISON housing campaign: <https://www.unison.org.uk/at-work/community/key-issues/housing>

The Housing Act: [http://www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga\\_20160022\\_en.pdf](http://www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga_20160022_en.pdf)