



Report to the Safer and Stronger Communities Scrutiny & Policy Development Committee 22nd September 2016

Report of: Director of Housing and Neighbourhoods Service

Subject: Housing and Planning Act 2016 Update

Author of Report: Louise Cassin, Housing Business Plan Officer, 2930240

Summary:

In 2015, a number of major changes for social housing were announced, some of which were included in the Housing and Planning Act 2016 that was enacted on 12 May 2016.

The key changes impacting on social housing included in the Act are:-

- 'Pay to Stay' – Higher Rents for Higher Earners
- The Extension of Right to Buy to Housing Association Tenants
- The Sale of Higher Value Assets
- Phasing out of Secure Tenancies

As requested by the Safer and Stronger Communities Scrutiny Committee, this report provides an overview of the key changes within the Housing and Planning Act 2016 that will have the biggest impact on council housing including key implications and impacts and an early insight to Sheffield City Council's response to the changes.

Type of item: The report author should tick the appropriate box

Reviewing of existing policy	
Informing the development of new policy	x
Statutory consultation	
Performance / budget monitoring report	
Cabinet request for scrutiny	
Full Council request for scrutiny	
Community Assembly request for scrutiny	
Call-in of Cabinet decision	
Briefing paper for the Scrutiny Committee	x
Other	

The Scrutiny Committee is being asked to:

The Committee is asked to note the update provided in this report and provide views on the response to be taken by the Council in relation to the Housing and Planning Act 2016.

Background Papers:

[Housing and Planning Act 2016, 12 May 2016](#)

Category of Report: OPEN

Report of the Director of Housing and Neighbourhoods **Housing and Planning Act 2016 Update**

1. Introduction

- 1.1 In 2015 a number of major changes for social housing were announced, some of which were included in the Housing and Planning Act 2016 that was enacted on 12 May 2016.
- 1.2 The key changes impacting on social housing included in the Act 2016 are:-
- Extension of Right to Buy to Housing Association Tenants
 - Sale of Higher Value Assets
 - 'Pay to Stay' – Higher Rents for Higher Earners
 - Phasing Out of Lifetime Tenancies
- 1.3 Sections 2-5 in this report provide an overview of each of the above policy proposals listed above. Section 6 of this report details the likely implications and impacts for council housing in Sheffield as a result of the policy changes.
- 1.4 This report is an update following on from a presentation on the Housing and Planning Bill made to the Safer and Stronger Communities Scrutiny Committee on 3 December 2015.

2 Extension of Right to Buy to Housing Association Tenants

- 2.1 Chapter 1, Part 4 of the Housing and Planning Act 2016 enables the Secretary of State to reimburse Housing Associations in relation to discounts made available to tenants exercising their Right to Buy as part of the voluntary agreement.
- 2.2 This is to be funded nationally through payments by local authorities to the Government based on estimated receipts from the sale of higher value council homes as they fall vacant.
- 2.3 A pilot scheme is currently running with 5 Housing Associations taking part nationally.

3 Sale of Higher Value Assets

- 3.1 Chapter 2, Part 4 of the Housing and Planning Act 2016 gives the Secretary of State power to levy stock-owning councils in relation to higher value vacant properties.
- 3.2 There is still no indication from Government what the definition of 'higher value' assets will be. This is expected in regulation still to be published.

4.0 'Pay to Stay' – Higher Rents for Higher Earners

- 4.1 Chapter 3, Part 4 of the Housing and Planning Act 2016 includes proposals for a mandatory 'Pay to Stay' scheme whereby Local

Authorities will have to charge a market or near market rent to tenants whose household income exceeds £31,000 (£40,000 in London).

- 4.2 The policy will be mandatory for Councils but will be voluntary for Housing Associations. Local authorities will be required to pay the resulting additional income to the Treasury for deficit reduction; however Housing Associations who decide to implement the policy will be able to retain the additional income for development purposes.
- 4.3 A taper is to be included within the policy and it is expected that affected households will pay an additional 15p in rent per week for every £1 they receive in taxable income above the £31,000. Further details of this are to be included in regulations yet to be published.
- 4.4 The policy will apply to existing and transferring tenants and household income is defined as the tenants income and their partner, civil partner or, spouse's income, or if there are joint tenants' in the property their income combined. Households that do not disclose their household income are to be charged a full market rent for their property.
- 4.5 Tenants receiving Housing Benefit or Universal Credit will be automatically excluded. Income will be defined as taxable income so will not include tax credits, child benefit, disability living allowance or personal independent payments.
- 4.6 The policy is due to be implemented from April 2017, however there has been no regulation issued by Government making the timescales for Councils to prepare for implementation of such a policy very short. The regulations will also be subject to the affirmative procedure and therefore subject to scrutiny in the House of Commons and House of Lords. This could result in further delays to the agreement and publication of the regulations.

5 Phasing out of Lifetime Tenancies

- 5.1 Chapter 6, Part 4, and Schedules 7 and 8 in the Housing and Planning Act 2016 includes proposals to require councils to offer fixed term tenancies of between 2 -5 years to new tenants (extending to 10 years in certain circumstances still to be determined).
- 5.2 Shortly before the end of the fixed term, the landlord (Sheffield City Council) must carry out a review and decide whether to:
 - i. Offer to grant a new (fixed term) tenancy of the dwelling
 - ii. Seek possession of the dwelling but grant a tenancy of another dwelling instead or;
 - iii. Seek possession of the dwelling without offering a tenancy of another dwelling.
- 5.3 Only spouses, civil partners and common law partners can succeed automatically to a lifetime tenancy. Other family members that qualify as a successor to a tenancy will be granted a 5 year fixed term tenancy.

- 5.4 The policy will apply to new tenants, however existing lifetime tenants *required* to move home will retain security of tenure and existing tenants who *choose* to move home may be given a further lifetime tenancy in circumstances still to be prescribed in regulations.
- 5.5 The expected implementation date for this policy change is April 2017; however we are still awaiting regulations to be issued by Government that will provide guidance on length of tenancies, reviews and successions.

6 Implications and Impacts

- 6.1 There are a number of implications the policy changes as described in the previous sections will have on council housing in Sheffield. Each policy is mandatory, meaning the Council will by law have to implement them. The key implications and impacts for each policy change are described below.

- Extension of Right to Buy to Housing Association Tenants

The main implication of this policy is that the Council will be paying a 'levy' in order to fund the extension the Right to Buy to Housing Association tenants. This will be of no benefit to the Council or council tenants, but will provide Housing Association tenants the opportunity for home ownership if eligible. This will be of detriment to the Council and council tenants as previously described, the funding of this will need to come from a levy paid by the Council which may include the proceeds of the sale of higher value council assets as they fall vacant.

At the time of writing this report, it is still not known how much the Right to Buy levy for Sheffield will be.

- Sale of Higher Value Assets

The sale of higher value council homes as they become vacant links very closely with the extension of Right to Buy for Housing Association tenants. As mentioned previously, there will be a requirement for the Council to pay a Right to Buy levy which may include the proceeds of the sale of higher value council assets as they fall vacant.

Regulation is still to be issued by Government which will contain further details of the policy including a definition of higher value assets. Until we know what this definition is, alongside what the Right to Buy levy will be for Sheffield, it is very difficult to determine the impact to the Housing Revenue Account (HRA) and Business Plan for the foreseeable future. .

The impact of this policy is therefore two-fold. The Council could be forced to sell its higher value properties - reducing the homes available to potential tenants. It will also mean a reduction in the rental income to Council which will have a significant impact on the 30 year HRA Business Plan.

The sale of higher value assets will result in a reduction in council housing stock numbers and for certain profiles such as larger council properties which are most likely to be of a higher value.

- 'Pay to Stay' – Higher Rents for Higher Earners

The number of tenants affected by this policy isn't known as we do not routinely collect household income information from our tenants.

In order to implement this policy, there would be extra administration costs associated with income information collection, communications with tenants, processing changes in circumstances and appeal processes. The additional administration will result in additional costs to the Council in terms of staff time and systems and processes. Although Government have said that Councils would be able to recover any reasonable administrative costs, without any regulation, it is difficult to assess how much the administrative costs for this policy will be. It was originally envisaged that household income information from HMRC could be accessed, however since initial announcements; this is not an option at this time.

Initial desktop exercises have been completed based on best guess assumptions in the absence of any regulation or further guidance from Government.

It is anticipated the 'Pay to Stay' policy will affect a small number of households in Sheffield. Recent analysis from the Local Government Association (LGA) suggests around 4% of households in the Yorkshire and Humber region will be affected by the policy. Early analysis suggests this could be between 3-6% of households in Sheffield, however as we do not routinely collect income data from our tenants, it is difficult to make an accurate assessment.

Pay to Stay could also lead to increased tenant arrears due to the additional rent affected households will have to pay. The time it takes to process changes in circumstances such as changes in income levels to a household may result in tenants not paying the additional rent (especially if the change is a household income that has reduced under the £31,000 threshold). An increase in Right to Buy applications is anticipated as for many tenants who are eligible, if paying a rental amount for their council house is similar to a mortgage payment, this option may seem more worthwhile.

- Phasing out of Lifetime Tenancies

Traditionally lifetime tenancies have meant that people have been able to access council housing knowing that their secure tenancy has meant they could settle within a community for a prolonged period of time. Although new tenants may be able to sustain their tenancy pending a review after 5 years, this policy removes that security they may otherwise have had with council housing. Implications and impacts as a result of this is are likely to be increased tenancy turnover, which is likely to have an impact on repairs and maintenance costs. It could also create an issue around community cohesion and sustainability if there is an increase in turnover within estates and areas.

Other impacts this policy creates is that we are reviewing out tenancy conditions which are now delayed pending the tabling of the legislation. It is not yet clear what policy we will need to develop locally to support this statutory requirement. The phasing out of lifetime tenancies will

require the allocations policy to be amended to make reference to the need to review the tenancy before it ends and possibly around the criteria that will be applied (subject to regulation).

Again with all the policy changes, we are still awaiting regulation to be published that will determine the finer detail.

- 6.2 Regulation which is to provide further detail and guidance as to how the Council is to implement the policies is still to be published by Government. This was originally expected in the summer, however is now speculated to be published in September at the earliest. Until the regulation is published, it is very difficult to assess what the full impacts will be for the Council and our tenants.

7. Responding to the Housing and Planning Act 2016

- 7.1 As highlighted in previous sections of this report, it has been difficult to plan and mitigate for the policy changes due to regulation not yet being published. Despite this lack of guidance, we have started work to assess the impacts where we can.
- 7.2 Market rent calculations on all of our council properties has begun. This work will help us to determine the market rent for each property. This work will also help to determine the additional funds that the 'Pay to Stay' policy may generate that will be paid back to Government for deficit reduction.
- 7.3 Work is being carried out to scope the administrative costs likely to be associated with 'Pay to Stay' and the practicalities of implementing the policy.
- 7.4 Tenants who do not receive Housing Benefit or Universal Credit will be asked to provide proof of their household's income in line with Government's provisional timetable for 'Pay to Stay'. However as we are still awaiting the regulation for this from Government, timescales may be subject to change.
- 7.5 Sheffield City Council are working with the Association of Retained Council Housing (ARCH) by providing a response of our early estimates and impacts of the Pay to Stay policy and the implications of the policy being implemented from April 2017. ARCH will be taking a collective response from their members to the Department of Communities and Local Government in September with the hope of delaying the implementation of the policy.
- 7.6 Tenants have been kept informed of progress in relation to the Housing and Planning Act 2016 via a number of communications including the Housing and Neighbourhoods Panel (HANAP), an update on the council housing web page, an article in 'In Touch' magazine that is delivered to all tenants and an article in 'The Bridge' magazine that is delivered to all Tenants and Residents Associations (TARAs). Further updates are planned for Citywide Forum in September. Tenants will continue to be kept informed once any further updates are provided from Government and regulation has been published.
- 7.7 The Director of Housing and Neighbourhoods and the Cabinet Member for Housing are working closely with central government on these issues

to ensure the best outcome for Sheffield is achieved to minimise the risk to tenants.

8 What does this mean for the people of Sheffield?

- 8.1 The Council owns approximately 40,100 homes that are home to around 47,000 people as tenants. It is the Council's current and future tenants who will be impacted most by the Housing and Planning Act 2016.
- 8.2 We don't yet know the definition of higher value, but the sale of a number of council properties would reduce income to the HRA and reduce properties that are available to residents of Sheffield.
- 8.3 Early analysis suggests 3-6% of households in Sheffield could be affected to some degree by the Pay to Stay policy.
- 8.4 The number of new council lettings in 2015/16 was around 4,500. If the phasing out of secure tenancies is implemented from April 2017, this provides an indication of how many new fixed term tenancies that may require issuing.

9. Recommendation

- 9.1 The Committee is asked to note the update provided in this report and provide views on the response to be taken by the Council in relation to the Housing and Planning Act 2016.

Appendix 1 - Progress of the Housing and Planning Act 2016

The **Housing and Planning Act 2016** received Royal Assent on **12 May 2016**. Department for Communities and Local Government (DCLG) officials had previously indicated that the Regulations and Guidance were expected to have been available in July 2016 but could give no firm indication of when local authorities could expect to see them. At the time of writing this report, no Regulations have yet to be published.

The sections below provide an overview of progress of each relevant section of the Housing and Planning Act 2016 including changes, alterations and delays that have occurred to date.

Sale of Higher Value Assets

- The Bill, as introduced, referred to “**high value**” council housing. This was amended in the Lords to “**higher value**” to allow the Secretary of State greater flexibility to decide which housing should be so categorised.
- The Bill as introduced was amended by both Houses and the Act now includes a condition that any such agreement should provide at **least one replacement home for each one sold**, and, in London, at least two replacement homes. Successive amendments were pressed by the Lords to require that replacement be not just one-for-one but also “like-for-like”, in the sense that, where the local authority could demonstrate need, sold homes for social rent should be replaced by new homes for social rent. These were all resisted by the Government and rejected by the Commons.
- DCLG officials attending the Association of Retained Council Housing (ARCH) Regional Event on 21 July, indicated that a decision on the Regulations and Determinations on the definition of **higher value voids** and **RTB levy** was unlikely to be made until **September 2016**.
- The Regulations on higher value voids will be subject to scrutiny by both Houses of Parliament and timing will be crucial. At this stage there is a possibility that the first payments from local authorities may not be levied until **2017/18 or later** if Parliamentary time cannot be found to debate the draft Regulations prior to 31 March 2017.

‘Pay to Stay’ – Higher Rents for Higher Earners

- The **proposed thresholds** were expected to be £40,000 in London and £30,000 elsewhere. The threshold for outside London was **slightly raised to £31,000** and the maximum rent increase payable limited to 15 pence for each £1 of income above the threshold.
- In **May**, Government issued a **timetable** for the introduction of the ‘Pay to Stay’ scheme:-

July 2016	DCLG publish draft Regulations
July - Sep 2016	Councils begin to consider and put processes in place to calculate market rents, collect income data, apply tapers, manage reviews of market rents, changes in tenant circumstances and set up appeals processes
Oct- Dec 2016	Councils write to tenants to request income data. Tenants declare income and provide supporting evidence
November 2016	Regulations in force
Dec 2016 - Mar 2017	Councils determine which tenants should pay higher rents. Calculate amounts and issue bills
April 2017	Councils begin to collect additional higher rental payments, calculate admin costs & set up arrangements to pay over monies to central government on quarterly basis. (NB money transferred in first year will be based on actual receipts less reasonable admin costs)

- DCLG officials attending the ARCH Regional Event on 21 July recognised the **proposed implementation** date of April 2017 was **extremely tight** and appreciated that without sight of the draft Regulations and Guidance local authorities could do very little by the way of planning for implementation.
- DCLG officials attending the ARCH Regional Event on 21 July, indicated that a decision on the Regulations and Determinations on 'Pay to Stay' were likely to be **delayed**.
- DCLG have asked for any **evidence** from local authorities of **difficulties in implementation** of 'Pay to Stay' by the April 2017 deadline together with evidence of **implementation costs** and **forecasts** of additional rental income expected as a result of the agreed income thresholds and tapers. Sheffield City Council has submitted concerns to ARCH to take to DCLG officials in **September**.

Phasing out of Lifetime Tenancies

- Following debate in the Lords, the Government made amendments to Schedule 7 to allow councils discretion to offer new tenancies up to **10 years** in certain circumstances. The amendments include a power for the Government to issue statutory guidance on the exercise of this discretion, to which councils would be required to have regard.