

# **The Housing and Planning Act 2016: Rewarding the aspiration of homeownership?**

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## **Abstract**

In May 2016, the Housing and Planning Act 2016 became law and reflects the first purely Conservative Government intervention on housing in England since the 1990s. This article examines the key provisions of the Act as they pertain to social housing and the government's stated aim of increasing rates of homeownership in Britain. The Act, through the Starter Homes Scheme, extension of the Right to Buy to Housing Association tenants and changes to security of tenure in the social sector, has been heralded as a 'landmark' piece of legislation. This article scrutinises these policy measures and assesses their effectiveness and likely impact. In so doing, it is contended that the 2016 Act exposes the government's promotion of homeownership above all other housing tenures. This article further explores the deep moralisation at the heart of the homeownership narrative and the intensification in the residualisation of social housing in England which, it is argued, is the inevitable consequence of the reforms.

**Keywords:** Starter Homes; Right to Buy; housing policy; homeownership; social housing; residualisation

## **Introduction**

The Housing and Planning Act 2016 received Royal Assent on 12 May 2016 and represents the first purely Conservative legislative outing on housing policy since the end of the John Major

Government in the mid-90s. The 2016 Act, which stretches to over 200 sections and some 20 schedules, was described by the then Cameron Conservative Government as a ‘landmark’ piece of legislation and represents the current agenda for housing policy in this Parliament.<sup>1</sup> The Housing and Planning Bill 2015,<sup>2</sup> which endured a fraught parliamentary passage, was ultimately forced speedily through after a series of concessions and amendments to ensure its Royal Assent prior to the EU Referendum. The Bill saw widespread criticism from across the board: from local authorities, to politicians of all persuasions, housing charities and campaigners<sup>3</sup> but despite the significant protestations, the final text of the Act retains most of the key provisions of the Bill. Although much of the precise detail as to the operation of the provisions is yet unknown (this will be provided for in subsequent regulations), the 2016 Act offers an important moment to assess the trajectory of housing policy in England.<sup>4</sup> Detractors argue that the reforms sound the death knell for social housing,<sup>5</sup> herald ‘the end of localism’<sup>6</sup> and demonstrate ‘ideological overreach’ on the

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<sup>1</sup> A Housing White Paper, DCLG, *Fixing our broken housing market* (White Paper, cm9352, 2017) was published in February 2017 setting out new measures on housing policy under the May Government. These proposals are just that, proposals, and are out for consultation. Their full scale and impact is, as such, presently unknown.

<sup>2</sup> Introduced to the House of Commons in October 2015.

<sup>3</sup> As a measure of the controversy surrounding the Bill, the Government was said to have lost twice the number of votes on the Housing and Planning Bill than on all other legislation in 2015 combined: J. Healey, ‘The New Housing and Planning Bill is a Disaster for Affordable Homes’ *The Guardian*, 1 November 2015.

<sup>4</sup> The Act applies mostly to England. Scotland and Wales deviate from many of the measures in important respects.

<sup>5</sup> HL Deb vol 609 col 465 9 May 2016.

<sup>6</sup> n. 3.

part of the Conservative Party.<sup>7</sup> We assess these claims through an examination of the key provisions of the 2016 Act as they pertain to social housing and measures targeted to increase homeownership, and we evaluate their likely impact. In so doing, it is argued that the reforms reveal the government's determination to promote homeownership above all other housing tenures as the only stable housing option and, moreover, do so at the expense of social housing. We argue that the 2016 Act therefore contributes to an intensification in the residualisation of social housing under which those unable to access homeownership are denied the opportunity for housing stability. The Act sells a false dream of 'affordable housing' and adopts an overtly moralistic tone which praises homeowners as aspirational, thereby degrading those who do not or cannot own property. Crucially, the 2016 Act enters the statute book at a time of acute housing crisis in Britain: with homelessness on the rise,<sup>8</sup> the cost of the average home in popular towns reaching 10-20 times the average salary,<sup>9</sup> a surge in private sector rents<sup>10</sup> and rates of homeownership in decline.<sup>11</sup> It is against this febrile backdrop that the provisions of the Housing and Planning Act 2016 must be scrutinised.

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<sup>7</sup> Editorial, *The Guardian* 8 May 2016 at <https://www.theguardian.com/commentisfree/2016/may/08/the-guardian-view-on-the-housing-bill-ideological-overreach> (last accessed 16 September 2016).

<sup>8</sup> Department for Communities and Local Government, *Homelessness Statistical Release* (23 March 2016).

<sup>9</sup> Office for National Statistics, *Housing Summary Measures Analysis* (5 August 2015).

<sup>10</sup> HomeLet, *HomeLet Rental Index* (June 2016).

<sup>11</sup> Resolution Foundation Report, *The Housing Headwind: The Impact of Housing Costs on Living Standards* (28 June 2016) at <<http://www.resolutionfoundation.org/publications/the-housing-headwind-the-impact-of-rising-housing-costs-on-uk-living-standards>> [last accessed 16 September 2016]; S. Clarke, 'Home ownership struggle reaches Coronation Street' (Resolution Foundation Blog, 2 August 2016) at <<http://www.resolutionfoundation.org/media/blog/home-ownership-struggle-reaches-coronation-street/>> [last accessed 16 September 2016].

## Background to the 2016 Act

Housing policy has, since the earliest days of the 2010 Coalition Government, taken centre stage in policy-terms<sup>12</sup> and dealing with ‘the housing problem’ has become an essential marker of political competence. Theresa May’s coronation as Prime Minister in July 2016 saw housing re-emphasised and located as a central motivation for her incoming government.<sup>13</sup> From the 2010 Coalition to the Cameron Conservative Government which introduced the 2016 Act, the housing policy landscape has been shaped by the deployment of a series of housing policy narratives. The ‘Big Society’ narrative espoused by David Cameron from 2009-2010 to the Coalition Government’s repeated calls to ‘localism’, culminating in the Localism Act 2011,<sup>14</sup> were key policy platforms in the period of 2010-2015. One might think, then, that the Housing and Planning Act 2016 would reflect narrative continuity in the Big Society and localism messaging. Instead, as we highlight, the 2016 Act tracks a different path. The 2016 Act departs from the ideological, localist narrative of the Coalition Government which emphasised the need for local flexibility and recognised the ‘enormous importance’ of social housing<sup>15</sup> and returns to what can be termed ‘individualistic localism’ epitomised by the Margaret Thatcher Governments of 1979 to 1990. The

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<sup>12</sup> See 2015 General Election and 2016 London Mayoral Election of 2016 which were fought largely according to which political party or candidate could out-promise their rivals as to the number of houses it would build if elected.

<sup>13</sup> Theresa May, First Speech as Prime Minister (London, 13 July 2016) noting there was a ‘need to do far more to get more houses built’ at <http://press.conservatives.com/post/147947450370/we-can-make-britain-a-country-that-works-for> [last accessed 16 September 2016].

<sup>14</sup> C. Bevan, ‘The Localism Act 2011: the hollow housing law revolution’ (2014) 77(6) MLR 964-982.

<sup>15</sup> Department for Communities and Local Government, *Local decisions: a fairer future for social housing Consultation* (November 2010), Ministerial Foreword.

2016 Act advances one core policy message: that homeownership is now the single most *legitimate* housing tenure in Britain and that owning a home is the only route to securing long-term housing stability. We argue, therefore, that the 2016 Act reflects an important shift from the logic of localism to the logic of homeownership. As the Government explained: ‘The Act sets out a clear determination from the government to keep the country building while giving hard working families every opportunity to unlock the door to home ownership.’<sup>16</sup> Prioritisation and promotion of homeownership above other tenures is therefore the central motivation of this new statutory scheme. As then Housing Minister, Brandon Lewis, noted, the Act aims to:

help anyone who aspires to own their own home achieve their dream ... It will increase housing supply alongside home ownership building on the biggest affordable house building program since the 1970s ...The Act will contribute to transforming generation rent into generation buy, helping us towards achieving our ambition of delivering 1 million new homes.<sup>17</sup>

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<sup>16</sup> Department for Communities and Local Government, ‘Landmark Housing and Planning Bill receives Royal Assent’ (13 May 2016) at < <https://www.gov.uk/government/news/landmark-housing-and-planning-bill-receives-royal-assent>> [last accessed 16 September 2016].

<sup>17</sup> *ibid.*

The 2016 Act therefore seeks to ‘unlock the door’ to reward the ‘aspiration’ of homeownership and to realise the Government’s ‘national crusade’<sup>18</sup> of one million homes built by 2020.<sup>19</sup> The Act also contains measures to eradicate ‘rogue’ landlords and property agents from the privately rented sector.<sup>20</sup> The private rented sector, however, continues to be viewed as a more transitory tenure for the young and upwardly mobile: those not yet ready to become home-owners. In this way, whilst undoubtedly playing an increasing role in current housing policy, the private rented sector is not the primary focus of the 2016 Act and therefore of this article. In this article, we focus on the three most significant changes to housing policy advanced by the 2016 Act: the Starter Homes Programme; extension of the Right to Buy to Housing Association tenants and the ending of security of tenure for local authority social tenants.

### **Starter Homes Scheme**

Of all the measures contained in the 2016 Act, the Starter Homes Scheme is perhaps one of the most eye-catching. It attracted much media attention and was particularly controversial during the parliamentary process. Under the scheme, two new duties are imposed on planning authorities<sup>21</sup> for the promotion of ‘Starter Homes’; new-build properties aimed at first-time buyers who will

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<sup>18</sup> Prime Minister’s Office, Press Release (12 October 2015) at <<https://www.gov.uk/government/news/prime-minister-councils-must-deliver-local-plans-for-new-homes-by-2017>> [last accessed 16 September 2016].

<sup>19</sup> This pledge has been re-committed by current Housing Minister, Gavin Barwell, as part of Theresa May’s strategy to close the so-called ‘homes deficit.’ HC Deb, vol 613, col 531 18 July 2016.

<sup>20</sup> Housing and Planning Act 2016, Part 2.

<sup>21</sup> Town and Country Planning Act 1990, Part 3.

receive a discount of at least 20 per cent on the purchase price.<sup>22</sup> First, a general duty requires all planning authorities in England to promote the supply of these homes when carrying out relevant planning functions.<sup>23</sup> Secondly, a new duty means that an affected authority will only be able to grant planning permission for certain residential developments if starter homes requirements are met.<sup>24</sup> These obligations follow the publication in July 2015 of the Government's Productivity Plan<sup>25</sup> and are intended to fulfil the stated ambition to 'see starter homes built on housing sites across the country'.<sup>26</sup> The specific requirements are to be set out in regulations on which the government consulted in 2016.<sup>27</sup> The 2017 White Paper, however, proposes that any mandatory requirement as to the number of starter homes to be built be dropped in favour of a minimum delivery of 10 per cent of a more broadly-defined category of 'affordable home ownership units'.<sup>28</sup> Councils will, nevertheless, remain subject to the general duty to promote starter homes albeit without a statutory requirement as to how many it must build.

The new duty is likely to operate in conjunction with the current mechanism through which affordable housing is delivered; so-called section 106 agreements.<sup>29</sup> The Joseph Rowntree Foundation has expressed concern about the scheme, arguing that section 106 is an important

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<sup>22</sup> Housing and Planning Act 2016, s 2(1) and 2(6)

<sup>23</sup> Housing and Planning Act 2016, s 4.

<sup>24</sup> Housing and Planning Act 2016, s 5.

<sup>25</sup> The Chancellor of the Exchequer, *Fixing the foundations: Creating a more prosperous nation* Cm 9098 (July 2015), para 9.23.

<sup>26</sup> Department for Communities and Local Government, *Starter Homes Regulations: Technical Consultation* (March 2016), 5.

<sup>27</sup> *ibid.*

<sup>28</sup> DCLG, n.1, at [4.16]-[4.17].

<sup>29</sup> Town and Country Planning Act 1990, s106; Department for Communities and Local Government, *Renegotiation of Section 106 planning obligations Consultation* (2012) para 1.

mechanism for the delivery of affordable rented housing.<sup>30</sup> Its research suggests that only three per cent of social tenants could afford shared ownership or starter homes.<sup>31</sup> The Local Government Association (LGA) was also critical, arguing that ‘Councils need the powers and flexibility to shape the supply of genuinely affordable homes to meet needs of different people in their area ...’.<sup>32</sup> The Government has claimed that it ‘recognises the importance of local planning authorities’ [sic] continuing to have the local flexibility to secure additional section 106 contributions beyond the starter homes requirement’.<sup>33</sup> Nevertheless, its own impact analysis suggests that for every 100 starter homes built through these agreements, between 56 and 71 affordable or social rented homes (and a small proportion of low cost home ownership) homes will not be built.<sup>34</sup>

The new duties are couched in mandatory language and provision is made for the Secretary of State to issue a compliance direction, where satisfied that a local planning authority has either failed to carry out its starter homes functions, or has carried them out inadequately.<sup>35</sup> While not as draconian as the government’s enforcement powers under the Right to Buy,<sup>36</sup> nevertheless this provision illustrates the government’s willingness to by-pass the wishes of local authorities in

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<sup>30</sup> Joseph Rowntree Foundation, *Housing and Planning Bill Lords Committee Stage Briefing* (5 February 2016), 5.

<sup>31</sup> *ibid.*

<sup>32</sup> Local Government Association briefing, *Housing and Planning Bill*, House of Commons, Committee Stage (19 November 2015).

<sup>33</sup> DCLG, n. 26, 11.

<sup>34</sup> Local Government Association briefing, *Housing and Planning Bill*, House of Lords Second Reading (26 January 2016).

<sup>35</sup> *Housing and Planning Act 2016*, s 7. A softening in tone is discernible in the 2017 White Paper such that ‘it will be for local areas to work with developers to agree an appropriate level of delivery of starter homes, alongside other affordable home ownership and rented tenures.’ (DCLG, n.1, at [4.17]).

<sup>36</sup> *Housing Act 1980*, s 23.



pursuit of its own policy of expanding owner occupation. The LGA welcomed changes introduced during the Bill's Report Stage to give local authorities more discretion<sup>37</sup> but the primary legislation remains relatively non-committal. Authorities are given the power to dispense with the obligation for rural exception sites,<sup>38</sup> but a more wide-ranging discretion 'may' be given in regulations.<sup>39</sup> Consequently, much of the detailed implementation of the scheme will depend on those regulations and the outcome of the consultation process on the 2017 White Paper.

Thus, under the 2016 Act, the starter homes policy becomes a major vehicle for the delivery of affordable houses in England.<sup>40</sup> This is problematic on three grounds. First, it must be of great concern that the scheme will be funded through the cancelling of other housing initiatives or by which affordable houses are currently built. This means that the overall number of affordable homes being built will not rise to meet demand that exists. Secondly, and perhaps more pressingly, is the fundamental question as to whether these 'affordable' starter homes will be affordable. According to research by the LGA and Savills, starter homes will be out of reach for the majority of people in need of an affordable home.<sup>41</sup> In 220 council areas, no family seeking an affordable

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<sup>37</sup> Local Government Association briefing Housing and Planning Bill, House of Lords, Third Reading (27 April 2016) at <http://www.local.gov.uk/documents/10180/5533246/LGA+Briefing+-+Housing+and+Planning+Bill+-+Lords+-+Third+Reading+-+27+April.pdf/0b77df64-263c-479e-a6d2-d52682218a82> [last accessed 16 September 2016].

<sup>38</sup> Housing and Planning Act 2016, s 5(2).

<sup>39</sup> *ibid* s 5(6).

<sup>40</sup> Starter homes are presented as a key part of a wider focus on the provision of 'affordable home ownership unites' in the 2017 White Paper.

<sup>41</sup> Local Government Association Press Release (17 February 2016) at <[http://www.local.gov.uk/media-releases/-/journal\\_content/56/10180/7694909/NEWS](http://www.local.gov.uk/media-releases/-/journal_content/56/10180/7694909/NEWS)> [last accessed 16 September 2016].

home will be able to access a starter home and in a further 80 areas, under 10 per cent will be able to avail themselves of the scheme. Research by Shelter<sup>42</sup> in 2015 supports the concern. The organisation found that most Britons would be locked out of accessing the scheme on affordability grounds. The homes would be unaffordable to 58 per cent of families earning average wages in 2020, and to 98 per cent of families earning the National Living Wage.<sup>43</sup> Most single people would be unable to take advantage of the scheme and London, the area of greatest housing demand, would see the smallest number of beneficiaries of the programme.<sup>44</sup> Instead, it will be better off families and couples with children who will be well-placed to benefit. Lord Jeremy Beecham described the policy in the House of Lords as a ‘costly approach to a massive housing problem for the benefit of only one section of the population... at the expense of people whose own needs and aspirations will continue to be unmet.’<sup>45</sup> Thirdly, is the very real issue of delivery of the pledged 200,000 starter homes by 2020, a figure which even if achieved still falls some way short of the stated 250,000 homes needed to be built every year to meet demand.<sup>46</sup> According to the Council of Mortgage Lenders, the 200,000 target is wholly unrealistic and only a more modest 112,000 houses

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<sup>42</sup> Shelter, R. Emmett and A. Van Lohuizen, ‘Starter Homes: Will They Be Affordable?’ (August 2015) at <[https://england.shelter.org.uk/\\_\\_data/assets/pdf\\_file/0011/1183790/Starter\\_Homes\\_FINAL\\_w\\_Appendix\\_v2.pdf](https://england.shelter.org.uk/__data/assets/pdf_file/0011/1183790/Starter_Homes_FINAL_w_Appendix_v2.pdf)> [last accessed 16 September 2016].

<sup>43</sup> *ibid*, 11.

<sup>44</sup> *ibid*, 3.

<sup>45</sup> HL Deb vol 771 col 18 11 April 2016.

<sup>46</sup> Shelter and KPMG Joint Report ‘Building The Homes We Need’ (June 2015), 4 at <[http://www.shelter.org.uk/\\_\\_data/assets/pdf\\_file/0019/802270/Building\\_the\\_homes\\_we\\_need\\_-\\_a\\_programme\\_for\\_the\\_2015\\_government.pdf](http://www.shelter.org.uk/__data/assets/pdf_file/0019/802270/Building_the_homes_we_need_-_a_programme_for_the_2015_government.pdf)> [last accessed 16 September 2016].

could conceivably be built in the time-frame.<sup>47</sup> The starter homes scheme might therefore be construed as a laudable attempt to increase the supply of affordable homes in England but, in practice, is an ill-conceived policy which fails to address either the root cause or meet the scale of the crisis of the shortage of affordable housing.

### **Extending the right to buy to housing association tenants**

A key Conservative Party manifesto pledge in the 2015 General Election was the promise to extend the right to buy to housing association tenants. The Conservatives' ambition was to 'give more people the chance to own their home'<sup>48</sup> and redress the 'unfairness' that existed whereby local authority tenants could take the benefit of the right to buy but not those in housing association tenancies.<sup>49</sup> The intention was included in the Queen's speech<sup>50</sup> and drew immediate criticism, not least from housing associations themselves who questioned the government's right to require them to sell their stock, given their semi-private status.<sup>51</sup> Following intensive negotiations, the National Housing Federation (NHF) put an offer to the government to introduce the right to buy to housing

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<sup>47</sup> Council of Mortgage Lenders, 'Response to Starter Homes Regulations' (May 2016), 2 at <<https://www.cml.org.uk/policy/consultations/starter-homes-regulations-technical-consultation/>> [last accessed 16 September 2016].

<sup>48</sup> The Conservative Party Manifesto 2015, *Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future* (London: The Conservative Party, 2015) 51.

<sup>49</sup> *ibid*, 52.

<sup>50</sup> The Chancellor of the Exchequer, n. 25, para 9.24.

<sup>51</sup> M. McDermont, *Governing Independence and Expertise: The Business of Housing Associations* (Oxford: Hart, 2010) 41.

association tenants on a voluntary basis.<sup>52</sup> Consequently, the Act simply provides for the Secretary of State to make grants to ‘private registered providers’ for right to buy discounts.<sup>53</sup> The agreement reached between the NHF and the government contains important safeguards, providing housing associations with greater control over sales than that enjoyed by local authority landlords. For example, housing association tenants must fulfil more stringent eligibility criteria of 10 years’ residence, whereas English local authority tenants need only have lived for three years in the public sector before being eligible to buy.<sup>54</sup> Crucially, properties sold will be replaced by ensuring that associations receive the full market value, including repayment of the discount received by the tenant.<sup>55</sup> While the one-for-one replacement scheme for local authority housing has existed since 2012,<sup>56</sup> doubts have been expressed about its effectiveness.<sup>57</sup>

This extension of this watered-down ‘right’ to buy is notable in two respects. First, it provides further evidence of the government’s commitment to extend owner occupation. Secondly, the way

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<sup>52</sup> National Housing Federation, ‘An offer to extend Right to Buy discounts to housing association tenants’ (Undated) at [http://nationalhousingfederation.newsweaver.com/icfiles/1/55885/161177/5359868/a266db71336fb8bfef6fbbf2/rtb%20offer%20final%20fed\\_2.pdf](http://nationalhousingfederation.newsweaver.com/icfiles/1/55885/161177/5359868/a266db71336fb8bfef6fbbf2/rtb%20offer%20final%20fed_2.pdf) [last accessed 4 July 2016].

<sup>53</sup> Housing and Planning Act 2016, s 64.

<sup>54</sup> Housing Act 1985, s 119(A1).

<sup>55</sup> House of Commons Library (W. Wilson and A. Bate), *Extending the ‘voluntary’ Right to Buy (England)* Briefing Paper Number 07224 (13 April 2016) 19.

<sup>56</sup> Department for Communities and Local Government, *Reinvigorating the Right to Buy and one for one replacement* Consultation (2011) and *Reinvigorating Right to Buy and One for One Replacement Information for Local Authorities* (2012).

<sup>57</sup> Chartered Institute of Housing, Local Government Association and the National Federation of ALMOs, *Keeping Pace – replacing Right to Buy sales* (2015).

it is to be financed demonstrates the government's attempt to residualise further local authority housing and its willingness to use draconian powers against local government. In its 2015 election manifesto, the Conservative party announced that it would fund the extended right to buy by requiring English local authorities to make an annual payment to government for the expected sales of 'high value' vacant stock over the year. These payments will be used to compensate housing associations for selling housing assets at a discount to tenants. The amount of the payment must represent an estimate of the market value of the authority's interest in any higher value housing that is likely to become vacant during the year.<sup>58</sup> The government claims that

The provisions are intended to encourage the more efficient use by local authorities of their housing stock through the sale of their high value housing so that the value locked up in high value properties can be released to support an increase in home ownership and the supply of more housing.<sup>59</sup>

Trenchant criticism has come from many quarters. The Public Accounts Committee was highly critical of the lack of detailed information presented to Parliament about the potential impacts of the legislation.

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<sup>58</sup> Housing and Planning Act 2016, s 69.

<sup>59</sup> Explanatory Notes to the Bill, paras 165-167.

The importance of proper scrutiny of the Department's proposals is underlined by the concerns raised by expert stakeholders that this policy would lead to those in need of social housing suffering greater overcrowding.<sup>60</sup>

The Committee was particularly sceptical that the government's commitment to replace homes sold under the policy would be realised.<sup>61</sup> The LGA has also expressed its strong disapproval, arguing that 'Local authorities should retain all receipts from the sale of vacant high value homes and from council Right to Buy in order to invest locally in new homes that communities need.'<sup>62</sup> The concern is echoed by the Joseph Rowntree Foundation.<sup>63</sup> Its research 'stresses the importance of the availability of low-cost rented housing to containing and mitigating poverty'.<sup>64</sup>

The new right has been piloted since November 2015 with five housing associations. Research undertaken in February 2016 indicated that only seven per cent of housing association tenants are assessed as being able to afford to buy their home and have expressed the desire to do so.<sup>65</sup> It has subsequently been reported that only around one percent of households within the pilot areas have,

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<sup>60</sup> House of Commons, Committee of Public Accounts, *Extending the Right to Buy to housing association tenants* Thirty-eighth Report of Session 2015-16, HC 880 (25 April 2016) para 1.

<sup>61</sup> *ibid*, para 3.

<sup>62</sup> Local Government Association briefing Housing and Planning Bill, Consideration of amendments (May 2016).

<sup>63</sup> Joseph Rowntree Foundation, Housing and Planning Bill Lords Committee Stage Briefing (5 February 2016) 9.

<sup>64</sup> *ibid*.

<sup>65</sup> B. Pattison, D. Robinson and I. Wilson, *Tenant Perceptions of the Right to Buy Extension: Evidence from the Big Tenant Survey* (Sheffield Hallam University, Centre for Regional Economic and Social Research, and Housing Partners, February 2016).

so far, made a formal application to buy.<sup>66</sup> In November 2016, new ‘large-scale’ regional right to buy pilots were announced. These pilots are to run until 2021 and the government has set aside funding of £250 million.<sup>67</sup>

This new right can be seen as operating at two levels. First, it allows those social tenants who, perhaps through no choice of their own, find themselves as tenants of a housing association rather than tenants of a local authority, to benefit from the same advantages that local authority tenants have long enjoyed.<sup>68</sup> In this sense, the Government presented the extension of the right to buy as a call to equity. Secondly, and more cynically, the policy might be construed as a political device aimed at expanding support for the party beyond its traditional middle class base as part of a bid to further de-toxify the Tory brand<sup>69</sup> among the working class and bolster the cause of promoting the ‘compassionate conservatism’<sup>70</sup> message. There is anecdotal evidence, for example, that the policy when first announced proved to be immensely popular among social tenants. The low take-up in the pilot schemes signals either a lack of demand for the policy, or an inability to afford to buy and, it is suggested, underlines the misplaced emphasis of the 2016 Act on homeownership.

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<sup>66</sup> P. Apps, ‘1% of tenants take up the Right to Buy’ *Inside Housing* (15 April 2016) at <http://www.insidehousing.co.uk/1-of-tenants-take-up-the-right-to-buy/7014793.article> [last accessed 7 July 2016].

<sup>67</sup> HM Government, *Autumn Statement 2016: Policy Costings* (November 2016), 18.

<sup>68</sup> A point made expressly in the Conservative Party 2015 Manifesto, n. 48, 52.

<sup>69</sup> See generally R. Hayton, ‘Conservative Party Modernisation and David Cameron’s Politics of the Family’ (2010) 81 (4) *The Political Quarterly* 492.

<sup>70</sup> See J. Norman and J. Ganesh, *Compassionate Conservatism: What It Is, Why We Need It* (Policy Exchange, 2006).

Having examined the provisions in the 2016 Act which actively promote homeownership, we move on to consider the measures that further residualise social housing, culminating in the Act's direct attack on the security of tenure enjoyed by local authority tenants: the end of so-called lifetime tenancies.

### **The ending of security of tenure for local authority tenants**

When the Bill was introduced, it contained no provisions to phase out secure tenancies.<sup>71</sup> The clauses<sup>72</sup> were introduced through a government amendment at a late stage of the Committee debates,<sup>73</sup> the Minister claiming that 'they deliver on a commitment in the July Budget to review the use of lifetime tenancies, with a view to limiting their use.'<sup>74</sup> As they were introduced, the clauses required English local authority landlords to grant fixed term tenancies of between two to five years. A further fixed term tenancy could be granted, following a review by the local authority to determine whether the tenant still needed the housing. This practice is in stark contrast to the current legal regime in which tenants are granted periodic tenancies which can last a lifetime, provided that the tenant, their household and visitors, abide by the tenancy terms.<sup>75</sup> For these secure tenancies, there is no power to end the tenancy because the tenant's circumstances have improved; for example, their income has increased.

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<sup>71</sup> Bill 75, 2015-16, 13 October 2015.

<sup>72</sup> New Clauses 32 and 33 and Schedule 4.

<sup>73</sup> HC Deb Committee Debate 16<sup>th</sup> Sitting 10 December 2015.

<sup>74</sup> *ibid*, col 649 Marcus Jones MP, Parliamentary Under Secretary of State, Department for Communities and Local Government.

<sup>75</sup> Local authority tenants first gained statutory security of tenure in the Housing Act 1980.



Fixed-term tenancies, then called flexible tenancies, were created by the Coalition's Localism Act 2011 but, in keeping with the ethos of that Act, local authority and housing association landlords were given the discretion whether to use them.<sup>76</sup> The evidence is that few local authorities chose to do so. According to official figures, only 13 per cent of tenancies granted in 2014-2015 were fixed term, up from just 9 per cent in the previous year. In a news release on the introduction of flexible tenancies, the then Housing Minister, Grant Shapps, said that the purpose of flexible tenancies was to give new tenants 'the helping hand they need for as long as they need it, rather than a single option of a home for life, ensuring more social homes are available to people who need them.' He claimed that 'for too long social housing has been seen by many as a second-class option, and these changes would restore its original purpose - to provide a flexible alternative to help tenants achieve their aspirations.'<sup>77</sup>

The idea of more flexibility in social housing had been advocated by Professor John Hills in his report into social housing.<sup>78</sup> A key recommendation was the need for a more 'varied menu' of housing choices.<sup>79</sup> He argued that households need different things from social housing; some need long-term security of tenure, while for others short-term provision may be more appropriate.

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<sup>76</sup> Localism Act 2011 s 154 inserted new s 107A into the Housing Act 1985.

<sup>77</sup> Department for Communities and Local Government, 'New rules will help end prejudices about social housing' (23 November 2011) at <https://www.gov.uk/government/news/new-rules-will-help-end-prejudices-about-social-housing--2> [last accessed 7 July 2016].

<sup>78</sup> J. Hills, *Ends and Means: The Future Roles of Social Housing in England* CASEreport 34 (London: ESRC Research Centre for Analysis of Social Exclusion, February 2007).

<sup>79</sup> *ibid*, 193.

In yet other cases, low cost homeownership may be the best solution. In other words, his principal message is that one size does not fit all and he emphasised greater choice and more variety as the key requirements for the future of social housing.

As mentioned, the government's rationale for flexible tenancies was expressed in terms of tenants' needs and explicitly claims that such tenancies would help them to achieve their aspirations. However, it should be observed that the flexibility is one-sided: it has been the local authority's decision whether to use fixed-term tenancies and tenants have had no recourse against this decision, other than to seek a review of the length of the tenancy.<sup>80</sup> The 'aspiration' to which Shapps referred is, presumably, to become an owner occupier. The more plausible justification for fixed-term tenancies is to give local authorities greater flexibility in managing their – usually limited – housing stock. Indeed, this is the rationale most frequently cited for their use, according to research conducted by the Chartered Institute of Housing.<sup>81</sup>

Introducing the clauses for mandatory fixed-term tenancies into the Bill, the Minister claimed that

The new clauses will significantly improve landlords' ability to get the best use out of social housing by focusing it on those who need it most for as long as they need it. That will ensure that people who need long-term support are provided with more appropriate

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<sup>80</sup> Housing Act 1985, s 107(B)(2).

<sup>81</sup> Chartered Institute of Housing, *New Approaches to Fixed Term Tenancies* (February 2014) 5.

tenancies as their needs change over time and will support households to make the transition into home ownership where they can. In future, ... local authority landlords ... will be required to use tenancy review points to support tenants' move towards home ownership where appropriate.<sup>82</sup>

It is notable that in one short passage the Minister refers twice to social tenants making the transition into homeownership, clearly reflecting the government's policy to move even low income households into ownership. As we have already outlined and will discuss further below, evidence has shown that for the majority of social tenants, owner occupation, even via low-cost or shared ownership schemes, is beyond their means. In reality, therefore, it is much more likely that tenants denied a renewal of their local authority tenancy will end up living in the privately rented sector, with at least part of their rent being paid by Housing Benefit.

As will be analysed in more detail below, the clauses encountered significant opposition during the Bill's passage through Parliament. There was criticism that, because they had been introduced at such a late stage, there had been no consultation and an impact assessment had not been carried out. Particularly with regard to the localism agenda, it is notable that there was no consultation with local authorities or tenants, or more widely, although the Minister assured the committee that local authorities would be consulted on the various regulations for which provision is made in the

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<sup>82</sup> HC Deb Committee Debate 16<sup>th</sup> Sitting col 650 10 December 2015.

Act.<sup>83</sup> Thus, local authorities are to be consulted on matters of detail but not on the most important issues of the principle of being required to grant fixed-term, rather than indefinite, periodic tenancies, and the duration of those fixed-terms.

Following sustained criticism from MPs, housing charities and the LGA, the government conceded that local authorities be permitted to grant longer fixed terms than those originally provided for. Accordingly, the Act<sup>84</sup> inserts new sections 81A and 81C into the Housing Act 1985 which provide that local authorities may, generally, only grant new secure tenancies for a fixed term of between two to 10 years.<sup>85</sup> Where a child under nine lives in the property, the fixed-term may be until the child reaches 19.<sup>86</sup> Current secure tenants are unaffected by these provisions and thus their tenancies continue to last indefinitely. Equally, where a tenant is offered a new tenancy of a different property, but has not asked to move, the authority must grant an old-style secure tenancy.<sup>87</sup> The Act also provides regulation making powers to the Secretary of State to stipulate circumstances in which local authorities may grant an ‘old-style secure tenancy’.<sup>88</sup> The Minister indicated that such circumstances are likely to include where tenants ask to move in order to downsize, or to take up employment opportunities.<sup>89</sup>

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<sup>83</sup> *ibid.*

<sup>84</sup> Housing and Planning Act, s 118 introduces new Sched 7, para 4.

<sup>85</sup> Housing and Planning Act 2016, Sched 7, para 11 inserts new s 86A into the Housing Act 1985.

<sup>86</sup> Housing Act 1985, s 86A(3).

<sup>87</sup> Housing Act 1985, s 81B(2).

<sup>88</sup> Housing and Planning Act 2016, Sched 7, para 4 inserts new s 86B into the Housing Act 1985.

<sup>89</sup> HC Deb Committee Debate 16<sup>th</sup> Sitting col 650 10 December 2015.

Local authorities must ‘have regard to’ any guidance issued by the Secretary of State when deciding the length of tenancy to grant.<sup>90</sup> The issuing of statutory guidance on local authorities’ allocations policies<sup>91</sup> and homelessness functions<sup>92</sup> has been a long-standing feature of the central-local government relationship. Flexible tenancies were not subject to statutory guidance and the Localism Act 2011 which introduced them did not reserve regulation making powers to the Secretary of State to specify how these tenancies should be used. The requirement to have regard to guidance is less directive than the ability to make binding regulations. Lord Denning expressed the view that: ‘The code [of guidance] should not be regarded as a binding statute. The council, of course, had to have regard to the code ... but, having done so, they could depart from it if they thought fit.’<sup>93</sup> Despite this conclusion, the government has said that ‘there will be clear expectations on what the local authority should consider when making decisions’ about the length of tenancies and ‘they can be held to account if they fail to follow the guidance.’<sup>94</sup>

Tenants may request a review of the decision concerning the length of the fixed term,<sup>95</sup> but it is limited to considering whether the length of the tenancy offered accords with the landlord’s policy.<sup>96</sup> This provision mirrors the position with flexible tenancies.<sup>97</sup> These types of internal

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<sup>90</sup> Housing Act 1985, s 86A(5).

<sup>91</sup> Housing Act 1996, s 169.

<sup>92</sup> Housing Act 1996, s 182.

<sup>93</sup> *De Falco v Crawley Borough Council* [1980] 2 WLR 664, 673.

<sup>94</sup> HL Deb col 1175 27 April 2016 Baroness Evans of Bowes Park.

<sup>95</sup> Housing Act 1985, s 81D.

<sup>96</sup> Housing Act 1985, s 81D(2).

<sup>97</sup> Housing Act 1985, s 107B(3).

review process have been used increasingly frequently for local authority housing decisions,<sup>98</sup> and their common feature is a reduced judicial role. Unlike the ending of a secure tenancy, where the court has a wide discretion to assess the reasonableness of making a possession order,<sup>99</sup> a court must make an order for possession if satisfied that the landlord authority has followed the correct procedure.<sup>100</sup> In common with the ending of a flexible tenancy,<sup>101</sup> the 2016 Act makes provision for the court to refuse an order if it considers that a decision of the landlord was wrong in law.<sup>102</sup> It is likely that this provision was included to accommodate the Supreme Court decision in *Manchester City Council v Pinnock*<sup>103</sup> which decided that, to ensure compatibility of the ending of demoted tenancies with article 8 of the European Convention on Human Rights, it was necessary

. . . . where a court is asked to make an order for possession of a person's home at the suit of a local authority the court must have the power to assess the proportionality of making the order, and, in making that assessment, to resolve any relevant dispute of fact.<sup>104</sup>

This decision represented a watershed moment in housing law, as it marked the end of a long-running dispute between the European Court of Human Rights and the Supreme Court.<sup>105</sup> Until

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<sup>98</sup> For example, Introductory and Demoted Tenancies.

<sup>99</sup> Housing Act 1985, s 84.

<sup>100</sup> Housing Act 1985, s 86E(2).

<sup>101</sup> Housing Act 1985, s 107D(6).

<sup>102</sup> Housing Act 1985, s 86E(3).

<sup>103</sup> *Manchester City Council v Pinnock (Secretary of State for Communities and Local Government and another intervening)* [2010] UKSC 45; [2011] 2 AC 104.

<sup>104</sup> *ibid* at [49].

<sup>105</sup> D. Cowan and C. Hunter, 'Yeah but, no but' – Pinnock and Powell in the Supreme Court' (2012) 75(1) MLR 78.

*Pinnock*, successive cases<sup>106</sup> had denied the necessity for the courts to be able to assess in every instance the proportionality of a public landlord's application for possession of a person's home.<sup>107</sup> Despite the apparently mandatory nature of the statutory provision in *Pinnock*,<sup>108</sup> the court nevertheless held that the legislation could be read compatibility with the Convention right under article 8.<sup>109</sup> Subsequently the Supreme Court extended the reasoning to other instances of mandatory possession orders<sup>110</sup> and, consequently, it is highly likely that the procedure to end the new fixed-term tenancy would be Convention compliant. Despite the requirement to include a proportionality challenge within the legislative scheme, it is beyond doubt that a successful challenge based on article 8 will be rare. *Pinnock* rejected a test of exceptionality<sup>111</sup> but the bar is set high to allow local authorities to comply with their broader housing management functions,<sup>112</sup> with Lord Hope in *Powell* saying that it is to be assumed that local authorities are acting lawfully.<sup>113</sup> Identifying potentially successful article 8 challenges is by no means straightforward, and *Southend-on-Sea v Armour* stands as a rare example.<sup>114</sup> Nevertheless, the possibility of a

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<sup>106</sup> For example, *Harrow LBC v Qazi* [2003] UKHL 43; [2004] 1 AC 983; *Kay v Lambeth LBC*; *Leeds CC v Price* [2006] UKHL 10; [2006] 2 AC 465; *Doherty v Birmingham CC* [2008] UKHL 57; [2009] 1 AC 367.

<sup>107</sup> For an excellent summary, see S. Nield, 'Clash of the Titans: Article 8, Occupiers and Their Home' in S. Bright (ed), *Modern Studies in Property Law* (Oxford: Hart, 2011).

<sup>108</sup> Housing Act 1996, s143D.

<sup>109</sup> *Manchester City Council v Pinnock*, n. 103, [79] and [104].

<sup>110</sup> *Hounslow LBC v Powell*; *Birmingham CC v Frisby* [2011] UKSC 8; [2011] 2 AC.

<sup>111</sup> *Manchester City Council v Pinnock*, n. 103, [51]-[52].

<sup>112</sup> *ibid*

<sup>113</sup> *Hounslow LBC v Powell*, n. 110, [37].

<sup>114</sup> *Southend-on-Sea BC v Armour* [2014] EWCA Civ 231; [2014] HLR23. For an early success see *Ghaidan v Godin-Mendoza* [2004] UKHL 30; [2004] 2 AC 557.

proportionality assessment affords tenants significantly less protection, compared with an ‘old-style’ secure tenancy. The justification conventionally cited for this disparity in judicial protection from eviction is based on deference: that Parliament has vested local authorities with statutory duties in respect of housing and has deliberately put in place legal regimes, like that of the demoted tenancy, to achieve specific policy objectives.<sup>115</sup> Latham, however, accuses the court of adopting a managerial approach which fails to analyse the situation from the point of view of the occupier as rights-bearer.<sup>116</sup>

Consequently, while *Pinnock* may rightly be hailed as a victory for principle, its practical reach is very limited. The decision to incorporate a mandatory repossession procedure clearly signals the government’s prioritisation of implementing a scheme that is relatively quick and inexpensive to operate, over a procedure that allows for a more forensic examination of the merits of the decision. Thus, while the procedure for ending a fixed-term tenancy may provide greater procedural safeguards than the notice only ground of repossession that applies to private rented sector tenancies,<sup>117</sup> in practice there is likely to be little difference between the two in terms of outcome. As we discuss further below, the imposition of mandatory fixed-term tenancies, together with a termination process that minimises judicial oversight, provide clear evidence of the government’s intention to further residualise social housing.

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<sup>115</sup> *London Borough of Harrow v Qazi*, n. 106, 997.

<sup>116</sup> A. Latham, ‘Talking without speaking, hearing without listening? Evictions, the Law Lords and the European Court of Human Rights’ (2011) PL 730, 740.

<sup>117</sup> Housing Act 1988, s 21.



The new mandatory fixed-term tenancies apply only to English local authority landlords. During the parliamentary debates, the Minister expressed his wish for ‘housing association landlords and tenants to reap the benefits from shorter-term tenancies as well.’<sup>118</sup> Nevertheless, the government is currently dealing with the reclassification by the Office for National Statistics of housing association landlords as ‘Public Non-Financial Corporations’,<sup>119</sup> with the consequence that their debt will count as public borrowing.<sup>120</sup> The government has committed to deregulating the housing association sector to reverse the ONS classification,<sup>121</sup> and the Minister indicated that the government would ‘consider changes to lifetime tenancies’ in the context of that work.<sup>122</sup>

As explained above, the fixed-term provisions encountered significant opposition in Parliament. While the government was forced to concede to the length of the term, the principle of granting a fixed term, rather than an indefinite tenancy, remains. During the debates, concerns were voiced about the effect of fixed-term tenancies on communities,<sup>123</sup> and attention drawn to the disjunction with the government’s policy on owner occupation:

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<sup>118</sup>HC Deb Committee Debate 16<sup>th</sup> Sitting col 652 10 December 2015.

<sup>119</sup> Office for National Statistics, Classification announcement: “Private registered providers” of social housing in England’ (30 October 2015).

<sup>120</sup> H. Spurr, ‘Housing associations reclassified as public sector’ *Inside Housing* 30 October 2015 at <http://www.insidehousing.co.uk/housing-associations-reclassified-as-public-sector/7012511.article> [last accessed 12 July 2016].

<sup>121</sup> Department for Communities and Local Government and The Rt Hon Greg Clark MP, ‘Housing associations and housebuilding’ speech to the Placeshapers Conference, delivered on 5 November (6 November 2015). The 2017 White Paper reiterates this commitment; n. 1, para 3.26.

<sup>122</sup> HC Deb Committee Debate 16<sup>th</sup> Sitting col 652 10 December 2015.

<sup>123</sup>*ibid* cols 656-8.

I do not understand why the Government are so set on making a distinction between the aspirations of people who can afford to buy and those of everybody else. I do not understand why the Government are bent on denying people on lower incomes the stability of knowing that they can live in their community for the long term; that they can send their children to the local school for as long as they need to be there; that they can invest in that community and play an active role in supporting their neighbours and in giving back.<sup>124</sup>

A further issue of contention was the centralising features of the Bill. As one Labour MP observed:

What kind of localism is it that says to a local authority, “Here is a power that you can use if you decide, as a democratically elected local authority, that the housing needs in your area demand it, but if you don’t use it, we are going to take it away, make you look at it again and force you to use it”? That is not localism. As the Conservative party has championed localism, I thought that the Government might have thought about this measure a little more carefully.<sup>125</sup>

We analyse the implications of the switch to fixed-term tenancies below through an examination of the residualisation of social housing. As far as the mandatory nature of fixed-term tenancies is

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<sup>124</sup> *ibid* col 662.

<sup>125</sup> *ibid* col 664 Matthew Pennycook . See also, col 658 Dr Blackman-Woods.

concerned, this curtailment of authorities' freedom to manage their housing stock is highly controversial and, as we develop in greater detail below, signals a radical departure from the commitment to the ideological localism espoused by the Coalition government. The health of the central-local government relationship has been forensically analysed, particularly since the time of Margaret Thatcher's premiership which is generally agreed to signal a low point.<sup>126</sup> The imposition on local authorities in 1980 of the right to buy – and the draconian enforcement powers granted to the Secretary of State – clearly significantly impacted the supply of housing stock and thus indirectly affected local authorities' ability to manage. Yet, on issues of day-to-day management, local authorities have consistently retained a significant amount of discretion.<sup>127</sup> For example, authorities are given wide flexibility in formulating their housing allocations policy and the Localism Act 2011 gave local authorities the power to specify categories of people who were ineligible to join the housing waiting list.<sup>128</sup> There has been long-standing recognition from both central government and the judiciary that, in matters of detail, local authorities are best-placed to respond.<sup>129</sup> Indeed, the consultation that preceded the Localism Act 2011 is replete with references

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<sup>126</sup> M. Loughlin, *Legality and Locality: The Role of Law in Central-Local Government Relations* (Oxford: Clarendon, 1996); H. Butcher, I. Law, R. Leach and M. Mullard, *Local Government and Thatcherism* (London: Routledge, 1990); A. Cochrane, *Whatever Happened to Local Government* (Buckingham: Open University Press, 1993); P. John, *Recent Trends in Central-Local Government Relations* (London: Policy Studies Institute, 1990).

<sup>127</sup> E. Laurie, 'Filling the accountability gap in housing allocations decision making' (2011) 31(3) *Legal Studies* 442.

<sup>128</sup> Localism Act 2011, s 146 inserted new s 160ZA into the Housing Act 1996.

<sup>129</sup> *R (Ahmad) v London Borough of Newham* [2009] UKHL 14; [2009] HLR 31 at [60]; *Manchester City Council v Pinnock* n. 103, [54] citing with approval Lord Bingham in *Harrow London Borough Council v Qazi* [2004] 1 AC 983, 997.

to the virtues of devolving significant power to local authorities in respect of their housing management functions.<sup>130</sup>

We argue that the 2016 Act marks a return to the techniques of governance employed by Margaret Thatcher's administrations, whereby local opposition is overridden by centrally imposed provisions. Thus, as we have discussed, local authorities are effectively compelled to sell-off high value stock to fund right to buy subsidies for housing association tenants. However, arguably the most radical feature of the Act is that, for the first time, mandatory powers are employed to interfere with authorities' day-to-day management practices. Not only do fixed-term tenancies override authorities' ability to make policy to suit their locality – thereby contradicting the localist agenda – the necessity to conduct end-of-tenancy reviews imposes a significant administrative burden on them. We contend that this unprecedented intervention at the micro level of management is intended to support the government's macro aim of further enhancing the attractiveness of owner occupation at the expense of social housing.

Having explored the three central housing policy measures of the 2016 Act, we turn now to consider their implications and consequences. In so doing, we explore two intertwined trajectories: first, the further erosion of social housing and, secondly, the shift from the logic of localism to the logic of homeownership.

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<sup>130</sup> DCLG, n. 15.

## **The 2016: the intensification in the residualisation of social housing**

The residualisation<sup>131</sup> of social housing is not a new phenomenon: it can be traced back to the right to buy which resulted in the sale of around two million houses and flats,<sup>132</sup> significantly depleting the stock of publicly owned housing. Nevertheless, those who have been able to gain access to local authority housing have, since 1980,<sup>133</sup> benefited from significant security of tenure:<sup>134</sup> a feature that has differentiated these tenancies so markedly from those available in the privately rented sector since its deregulation in 1988.<sup>135</sup> It is precisely this security of tenure which is now so clearly under attack under the 2016 Act with the ending of lifetime tenancies.

More recently, this erosion has taken the form of introducing conditionality to the sector to tackle anti-social behaviour. As Fitzpatrick and Watts argue, ‘successive governments have sought to utilise enhanced conditionality within social housing tenancies to influence the behaviour of social tenants considered “anti-social”, “welfare dependent” or otherwise “deviant”’.<sup>136</sup> Thus, new forms

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<sup>131</sup> Spicker defines a residualised service as one which acts as a safety net, rather than as a universal or institutional service; P. Spicker, *Social Housing and the Social Services* (London: Longman for the Institute of Housing, 1989) 12. See also R. Forrest and A. Murie, *Selling the Welfare State: The Privatisation of Public Housing* (London: Routledge, 1988).

<sup>132</sup> House of Commons Library, *Extending a voluntary Right to Buy to housing association tenants (England)* Briefing Paper No. 07224 (July 2016) 3.

<sup>133</sup> Statutory security of tenure was introduced by the Housing Act 1980.

<sup>134</sup> Housing Act 1985, s 82 .

<sup>135</sup> Housing Act 1988, s 19A.

<sup>136</sup> S. Fitzpatrick and B. Watts, Initial findings: fixed-term tenancies in social housing (February 2016) at <http://www.welfareconditionality.ac.uk/publications/first-wave-findings-social-housing/> [last accessed 16 September 2016].

of tenure have been created with restricted security<sup>137</sup> aimed at controlling the behaviour of tenants.<sup>138</sup> New powers to seek possession for various forms of anti-social behaviour have also been introduced: most recently, a mandatory ground where a tenant, or a person residing in or visiting the tenanted home has been convicted of a serious criminal offence.<sup>139</sup> These measures contribute to the general stigmatisation of social housing and, as we discuss below, legitimate viewing it as a site of moralisation. Nevertheless, for the majority of tenants, social housing continued to offer the chance of a long-term home.

The Localism Act 2011 heralded a new approach by introducing fixed-term tenancies – so-called flexible tenancies – for the first time.<sup>140</sup> These tenancies represented the first serious attempt to curtail security of tenure for reasons ostensibly unrelated to behaviour,<sup>141</sup> and signalled that a social tenancy may be transitory, rather than permanent. In keeping with the localist agenda under the Coalition government, local authorities could decide whether to use them. As we have explained, the 2016 Act makes fixed-term tenancies mandatory. The provision of temporary, safety net housing has long been a feature of social housing for people housed through the homelessness

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<sup>137</sup> The Introductory Tenancy created by the Housing Act 1996, s 124 and the Demoted Tenancy: Housing Act 1996, s 143A added by the Anti-social Behaviour Act 2003, Sched 1 para 1.

<sup>138</sup> C. Hunter, 'Anti-Social Behaviour and Housing – can law be the answer?' in D. Cowan and A. Marsh (eds.) *Two Steps Forward: Housing Policy into the New Millennium* (The Policy Press, 2001) and House of Commons Library, *Anti-social behaviour in social housing (England)* Standard Note: SN/SP/264 (3 March 2015).

<sup>139</sup> Housing Act 1985, s 84A added by the Anti-social Behaviour, Crime and Policing Act 2014, s 94(1).

<sup>140</sup> Localism Act 2011, s 154 inserted new s 107A into the Housing Act 1985.

<sup>141</sup> Flexible tenancies could be used to control behaviour: see Fitzpatrick and Watts, n. 136.

provisions.<sup>142</sup> Nevertheless, there has been a distinction between the homeless and households housed via the waiting list.<sup>143</sup> The 2016 Act blurs that distinction. As will be discussed below, the implication is that any form of social housing is a safety net to be provided on a time-limited basis – as an ‘ambulance’ service<sup>144</sup> – until someone is able to achieve their ultimate aspiration of becoming a home owner.

### **The 2016 Act: from the logic of localism to the logic of homeownership**

We have argued that, taken together, the key housing policy measures of the 2016 Act represent both an intensification in the process of residualisation of social housing in Britain and a prioritisation and championing of homeownership above all other housing tenures. From the starter homes scheme to the extension of the right to buy to housing association tenants, homeownership is portrayed as the aspirational and stable housing choice. At the same time, through the forced sale of high value properties and the ending of lifetime tenancies, the social housing sector is eroded both in numerical terms and in the degree of housing stability it provides. The 2016 Act therefore demonstrates a marked shift in the housing policy narrative from a call to the logic of localism, espoused by the Coalition Government under the Localism Act 2011, which explicitly recognised social housing as a ‘valuable national asset which matters to millions of people’,<sup>145</sup> to an appeal to the logic of homeownership. We explore the significance of this shift here.

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<sup>142</sup> Housing Act 1996, Part 7.

<sup>143</sup> Housing Act 1996, Part 6.

<sup>144</sup> S. Fitzpatrick and H. Pawson (2013) 29(5) ‘Ending security of tenure for social renters: transitioning to ‘ambulance service’ social housing?’ *Housing Studies* 597-615.

<sup>145</sup> DCLG, n. 15, section 1.1.

Under the Coalition Government, housing policy was driven by what we might call ‘ideological’ or ‘political localism.’ The localist agenda was built upon a representation of Britain as ‘broken’ and in crisis. Leading up to the 2010 General Election, Britain was repeatedly depicted as a country in a state of moral hazard and in the grip of a crisis of worklessness, joblessness and lack of aspiration which needed to be ‘fixed.’ Big government was portrayed as the cause of social ills and centralisation was frequently lambasted as having failed.<sup>146</sup> The antidote, according to the government, was localism dispatched via the Localism Act 2011 which was said to deliver ‘the most radical reform of social housing in a generation.’<sup>147</sup> The government claimed that the Act devolved greater power to local authorities to allocate and manage their social housing stock in order to ‘drive down waiting lists’ and to meet the needs of local people<sup>148</sup>. However, the Localism Act 2011 did not represent a whole scale devolution of power to local authorities or, indeed, to local communities. As to the former, as Stoker observes, ‘until local government gets access to a wider variety of revenue raising sources and funds more of its own services, it is

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<sup>146</sup> Department for Communities and Local Government, *Decentralisation and the Localism Bill: an essential guide* (2010), 4; see also House of Commons, Communities and Local Government Committee, *Localism: Third Report of Session 2010-12*; D. Cameron Conservative Party Conference 2009, Leader’s Speech.

<sup>147</sup> Department for Communities and Local Government, The Rt Hon Grant Shapps, Press Release, 22 November 2010 at <<https://www.gov.uk/government/news/a-fairer-future-for-social-housing>> [last accessed 16 September 2016].

<sup>148</sup> Department for Communities and Local Government, ‘A fairer future for social housing’ Announcement (22 November 2010) at <https://www.gov.uk/government/news/a-fairer-future-for-social-housing> [last accessed 14 September 2016].



difficult to say that localism has arrived.’<sup>149</sup> Bevan, too, has noted that the form of localism is hollow.<sup>150</sup> And, as Jacobs and Manzi explore, this period was ‘more concerned with presentation and legitimacy than a willingness to transform decision-making processes,’ and the localist narrative was ‘an attempt to throw a veil of legitimacy over what otherwise would be seen as a highly divisive ideological programme.’<sup>151</sup> Thus, localism was far from a semantically neutral or innocent term<sup>152</sup> and was used to vindicate policy interventions which, in large measure, undermined the role of local government rather than strengthened it.

Under the 2016 Act, the housing policy narrative has changed. Freed from the necessity to appease their liberal coalition partners, the housing policy of the first majority Conservative Government since the Major years of 1992-1997 asserts a logic of homeownership. If localism does survive in any sense, we might term this ‘individualistic localism’<sup>153</sup> in so far as citizens are encouraged to enter the housing marketplace as individual, independent and responsabilised actors. The Conservatives are re-branded as ‘the party of homeownership’<sup>154</sup> and where Coalition housing policy reflected an appeal to the ‘apple pie’ logic of localism, espousing the superior decision-making ability of local communities over the centralised state,<sup>155</sup> the 2016 Act reflects a deeper,

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<sup>149</sup> G. Stoker, ‘If town halls don’t pay the piper then they can’t really call the tune’ (2011) *Parliamentary Brief* 17 January 2011.

<sup>150</sup> Bevan, n. 14.

<sup>151</sup> K. Jacobs & T. Manzi, ‘New Localism, Old Retrenchment: The “Big Society”, Housing Policy and the Politics of Welfare Reform’ (2013) 30(1) *Housing, Theory and Society* 42.

<sup>152</sup> As argued by D. Harvey, *Justice, Nature and the Geography of Difference* (Oxford: Blackwell, 1996).

<sup>153</sup> *Ibid*, 33.

<sup>154</sup> Conservative Party, n, 48, 51.

<sup>155</sup> For a critique of localism see M. Purcell and J. Brown, ‘Against the local trap: scale and the study of environment and development’ (2005) 5 *Progress in Development Studies* 279-297; M. Purcell, ‘Urban

more profound call to that powerful, primal, visceral, human desire for ownership as captured in the Latin *meum* ‘this is mine’.<sup>156</sup> The language of ‘fixing’ remains,<sup>157</sup> but today homeownership is offered up as the medicine to cure the country’s housing crisis. Homeownership has, of course, always figured prominently in Conservative policy but the 2016 Act promotes it as the only long-term housing solution and simultaneously relegates social housing to a safety net service.

Crucially, just as the Coalition’s localist narrative is susceptible to challenge on the basis of the so-called ‘local trap’<sup>158</sup> namely, the over-simplistic assumption that the local is necessarily the site of better decision making, so too must the homeownership narrative be interrogated. As Kemeny famously identified in the 1980s, homeownership has become eulogised in much of the common law world as the ideal housing tenure and regarded with an almost ‘mystical reverence.’<sup>159</sup> Kemeny located the ‘implicit – or sometimes only thinly veiled – assumption that home-ownership is inherently desirable and naturally superior to other forms of tenure and that given accessibility and adequate resources, all households would choose to own.’<sup>160</sup> Kemeny’s words are as pertinent

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Democracy and the Local Trap’ (2006) 43 *Urban Studies* 1921-1941; Bevan, n. 14; A. Layard, ‘The Localism Act 2011: what is “local” and how do we (legally) construct it?’ (2012) 14(2) *Environmental Law Review* 134.

<sup>156</sup> See K. Gray, ‘Property in Thin Air’ (1991) 50 C.L.J., 252-307; K. Gray and S. Gray, ‘The Idea of Property in Land’ in S. Bright and J. Dewar (eds), *Land Law: Themes and Perspectives* (Oxford University Press, 1998), 15; L.M.G. Clark, ‘Women and John Locke; or, Who Owns the Apples in the Garden of Eden?’ (1977) 7 *Canadian Journal of Philosophy* 699.

<sup>157</sup> The 2016 Act forms a key constituent of the Government’s ‘Productivity Plan’ n. 25.

<sup>158</sup> M. Purcell, ‘Urban Democracy and the Local Trap’ (2006) 43 *Urban Studies* 1921-1941.

<sup>159</sup> J. Kemeny, *The Myth of Home Ownership: Private versus Public Choices in Housing Tenure* (London, Routledge, 1981), 272.

<sup>160</sup> *Ibid*, 4.

today as they were in the 1980s if not more so. For just as localism is ‘a normative claim that requires justification,’<sup>161</sup> and ‘does not just happen’<sup>162</sup> neither does homeownership just happen. The championing of homeownership as the only stable and aspirational housing tenure gives rise, we argue, to the potentiality of a ‘homeownership trap.’ In interrogating this ‘homeownership trap’, two key aspects must be explored: first, the incoherence inherent in the message; and, secondly, the profound moralisation at the heart of the 2016 legislative scheme.

As we have explained, policies aimed at increasing rates of homeownership are nothing new, particularly from the Conservative Party. Yet, what is new is that the 2016 Act presents a strikingly narrow vision for housing policy in Britain; something on which Barlow has called out the government, arguing that we are witnessing the:

pressing [of] the panic button in an increasingly desperate attempt to come up with the solutions to the UK’s housing needs ... the [housing policy] debate is marked by a paucity of new ideas and empty rhetoric.<sup>163</sup>

Whilst Britons have long enjoyed a love affair with homeownership and the attraction of owning a home is a clear vote-winner, a legislative scheme that promotes homeownership above all and, in fact, to the detriment of other housing tenures is naïve in suggesting that owning a home is

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<sup>161</sup> Layard, n. 155.

<sup>162</sup> R. Schragger, ‘The Limits of Localism’ (2002) 100 *Mich L Rev* 373, 374.

<sup>163</sup> J. Barlow ‘Why the UK doesn’t need a property owning democracy’ Imperial College Business School Research Blog (14 April 2015) at <<https://wwwf.imperial.ac.uk/business-school/intelligence/research-blog/why-the-uk-doesnt-need-a-property-owning-democracy/>> [last accessed 16 September 2016].

necessarily an egalitarian ideal and open to us all.<sup>164</sup> In reality, homeownership is not accessible to all citizens, as we explain below, and, in its effects, can actually serve to further entrench inequality rather than displace it. Levels of homeownership in Britain reached a record high of 70.8 per cent in 2003 but have since fallen to a record low of 63.8 per cent in February 2016 despite a series of initiatives introduced to stimulate home-buying.<sup>165</sup> This decline brings rates of homeownership to levels not seen in Britain since 1986 and falling at a faster pace than they rose in the late 1980s and early 1990s when the right to buy was at its peak. At 63.8 per cent, the British ‘property owning democracy’ is now out-stripped by many other European countries including France, Italy, Sweden and Belgium.<sup>166</sup> Now Germany, a country with a long-standing predilection for private renting, is the only Western European state with a lower rate of homeownership than Britain. Across the wider EU as a whole, the UK is 23<sup>rd</sup> out of the 28 countries in terms of ownership.<sup>167</sup> Stalling homeownership rates have long been depicted as a particularly London-centric problem. However, recent work by the Resolution Foundation<sup>168</sup> dispels this myth, with the sharpest drop in homeownership rates being observed in the large urban centres outside of London. The greatest decline is seen in Greater Manchester where homeownership has slumped from 72.4 per cent in April 2003 to 57.9 per cent in February 2016, with private renting in the city

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<sup>164</sup> J. Gregory, ‘How not to be an egalitarian: the politics of homeownership and property-owning democracy’ (2016) 16(3) *International Journal of Housing Policy*, 337.

<sup>165</sup> Including, among others, Help to Buy, Help to Buy ISAs and Shared Equity Schemes.

<sup>166</sup> Eurostat, ‘Distribution of population by tenure status, type of household and income group’ EU-SILC survey 2015 at <[http://ec.europa.eu/eurostat/web/products-datasets/-/ilc\\_lvho02](http://ec.europa.eu/eurostat/web/products-datasets/-/ilc_lvho02)> [last accessed 16 September 2016].

<sup>167</sup> Ibid.

<sup>168</sup> Resolution Foundation, ‘Home ownership struggle hits Coronation Street’ 2 August 2016 at <http://www.resolutionfoundation.org/media/press-releases/home-ownership-struggle-hits-coronation-street/> [last accessed 17 September 2016].

almost trebling over this same period.<sup>169</sup> Any suggestion that Britons are simply turning to the private rented sector in preference to owning a home is also untenable. According to the English Housing Survey's *First Time Buyers Report 2014-15*,<sup>170</sup> the desire and expectation of private renters to buy a home has remained largely unchanged since the mid 2000s. In 2014-15, 57 per cent of private renters said they expected to buy a home. Of those not expecting to become homeowners, 9 per cent said this was because they were happy privately renting with only 2.5 per cent expressing a preference for the flexibility of renting. Sixty-five per cent of those not expecting to be able to buy their own home said this was as a result of lack of affordability.

Recent studies reveal that owning a home is now more out of reach than ever. Thus, the average age of a first time buyer has increased from 30 in 1995 to 33 in 2015; nearly three-quarters of first time buyers today come from the fourth and fifth quintile income bands and, almost a third can now only fund housing deposits with assistance from friends and family.<sup>171</sup> The average first time home is now 5.1 times the average earnings,<sup>172</sup> and almost 9 out of 10 renters are unable to accumulate even enough money to cover a 5 per cent deposit on an average home purchase in Britain.<sup>173</sup> The result is that the vast majority of those renting are locked out of owning a home. The 2016 Act, with policies targeted at increasing homeownership without measures to tackle

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<sup>169</sup> Ibid.

<sup>170</sup> Department for Communities and Local Government, *English Housing Survey First Time Buyers and Potential Home Owners Report 2014-15* (2016).

<sup>171</sup> Ibid, 1, 2, 5.

<sup>172</sup> Economics Help, 'UK Housing Market April 2016' at <<http://www.economicshelp.org/blog/5709/housing/market/>> [last accessed 16 September 2016].

<sup>173</sup> The Equality Trust, 'A House Divided - How Unaffordable Housing Drives UK Inequality' (August 2016).

these clear barriers to ownership, serves to further entrench inequality by sustaining a tenure which is increasingly only accessible to the richest members of society. Whilst the private rented sector falls outside the scope of this article, there are important questions to be asked as to the inter-relationship between the growing and insecure private rented market and the realization of the homeownership ‘dream.’

The 2016 Act stirs clear echoes with the housing policies of the Thatcher years, during which time localism might be described as having exhibited the same ‘individualistic’ quality we see today. In parallel with the current housing narrative, during the Thatcher Years, governmental intervention in housing was portrayed by those in power as the cause of social problems rather than the solution<sup>174</sup> and social housing was presented as dysfunctional and as reinforcing benefit dependency.<sup>175</sup> The right to buy was introduced in the 1980s to liberate local authority tenants from the ‘serfdom’ of renting to become part of the much-vaunted ‘property owning democracy.’<sup>176</sup> As we have seen, social housing is again under assault from the 2016 Act and we might therefore construe the 2016 legislation as completing the circle on Thatcher’s neoliberal, conservative housing project. Fixating on the rhetoric of increasing homeownership, without a mass house-building plan on a scale not seen since the 1950s and 1960s, will not yield a solution to the persistent housing crisis: a crisis of supply and affordability. In Britain’s low-wage and low-

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<sup>174</sup> N. Dennis, *The Invention of Permanent Poverty* (London: Institute of Economic Affairs, 1997).

<sup>175</sup> D. Green, *Benefit Dependency: How Welfare Undermines Independence* (London: Civitas, 1998).

<sup>176</sup> P. Saunders *A Nation of Home Owners* (London: Routledge, 1990).

skill economy,<sup>177</sup> it is surely time to concede that homeownership may have reached its natural ceiling. The logic of homeownership pursued in the 2016 Act is therefore misleading, and perhaps is even politically disingenuous, in raising a legitimate expectation that all those who work hard have the chance to own a home when they patently do not.

The homeownership narrative can also be challenged on a second ground. As we have explored, homeownership is presented not only as the most desirable housing option but also the moral, aspirational choice. In advancing this message and, at the same time, residualising the social sector, the corollary is a moral hierarchy of tenures, with homeownership representing the gold-standard and social housing fixed with the stigma of the non-aspirational, marginalised and the otherwise ‘unhouseable.’<sup>178</sup> Social housing is characterised as the site of the sick, the desperate and the unfortunate; a series of ‘locales where social pathologies and problems flourish’.<sup>179</sup> This link between homeownership and moralising was evident in the Conservative 2015 Manifesto which drew a clear connection between hard work and homeownership:

Conservatives ... understand how good it feels when you have worked long hours, saved money for years, and finally take possession of the keys to your first home.<sup>180</sup>

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<sup>177</sup> The Resolution Foundation, ‘Low Pay Britain 2015 October 2015’ at <http://www.resolutionfoundation.org/wp-content/uploads/2015/10/Low-Pay-Britain-2015.pdf> [last accessed 17 September 2016].

<sup>178</sup> C. Bevan and D. Cowan, ‘Uses of macro social theory: a social housing case study’ (2016) 79(1) MLR 76.

<sup>179</sup> L. Hancock and G. Mooney, ‘“Welfare ghettos” and the “broken society”: Territorial stigmatization in the contemporary UK’, (2013) 30(1) *Housing, Theory and Society* 46, 48.

<sup>180</sup> Conservative Party, n. 48, 51.

By necessary implication, other non-ownership housing tenures are for the less hard-working, the idle or feckless. This rhetoric evidences a deep moralising and stigmatisation of the social sector, which has a long history in British housing policy.<sup>181</sup> As Gregory notes, ‘whereas homeownership is presented as a means of creating virtuous citizens, social housing is increasingly depicted as creating the vice of welfare dependence.’<sup>182</sup> Owning a home is what good citizens do. Other tenures are reserved for those in short-term housing emergency<sup>183</sup> or for households who are not yet to realise the ‘dream’ of buying a home. Those who cannot own a home are therefore demoralised, degraded, perhaps even de-humanised. This deep moralisation springs from the Conservative Party’s rejection of so-called ‘moral neutrality’ in policy making. David Cameron in 2008, whilst in opposition, urged his party to reject such neutrality’:

[Politicians] prefer moral neutrality, a refusal to make judgments about what is good and bad behaviour, right and wrong behaviour. Bad. Good. Right. Wrong. These are words that our political system and our public sector scarcely dare use any more.<sup>184</sup>

This sense of moralising and rejection of moral neutrality thrives under the 2016 Act where owning your own home is offered as the ‘right’ housing choice, the responsible and moral option. By

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<sup>181</sup> Hancock and Mooney, n. 179, drawing in particular on L. Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Cambridge: Polity, 2008).

<sup>182</sup> Gregory, n. 164, 339.

<sup>183</sup> Fitzpatrick and Pawson, n. 144.

<sup>184</sup> David Cameron, ‘Fixing Our Broken Society’, Speech July 2008, Gallowgate, Glasgow at <<http://conservative-speeches.sayit.mysociety.org/speech/599630>> [last accessed 16 September 2016].



contrast renting, particularly social sector renting, is depicted as the second class, transitory, housing choice. Hancock and Mooney,<sup>185</sup> building on the work of Wacquant<sup>186</sup> into ‘territorial stigmatization’, have argued that this rejection of moral neutrality is adopted to justify judgmental, pessimistic, punitive attitudes to those in social housing. The effect is the pathologisation,<sup>187</sup> demonisation<sup>188</sup> and further problematisation of the social housing sector. There is a troubling resonance here with the Poor Law system under which there existed a clear link between property ownership and citizenship. To own property unlocked citizenship rights such as the right to vote.<sup>189</sup> Disconcertingly, it seems that the legacy of this system lives on in the moralisation of homeownership under the 2016 Act.

## CONCLUSION

The Housing and Planning Act 2016 represents the first major enunciation of the Conservative Government’s housing policy objectives and thus merits close attention. The Act provides the legislative framework to deliver the government’s promise to make all ‘hard working families’ into homeowners. We contend that this promise simply cannot be delivered and the Act’s

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<sup>185</sup> Hancock and Mooney, n. 179.

<sup>186</sup> L. Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Cambridge: Polity, 2007).

<sup>187</sup> O. Jones, *Chavs: The Demonization of the Working Class* (London: Verso, 2011).

<sup>188</sup> A. Hastings, ‘Stigma and social housing estates: Beyond pathological explanations,’ (2004) 29 *Journal of Housing and the Built Environment* 233.

<sup>189</sup> Under the Act For The Regulation of Parish Vestries, 58 Geo. III c. LXIX. See generally A. Brundage, *The English Poor Laws 1700-1930* (London: Palgrave Macmillan, 2001); P. Slack, *The English Poor Law, 1531–1782* (London: Macmillan, 1990).

provisions which attempt to achieve that objective will result in the further erosion of social housing, to the detriment of those people who are locked out of the ownership dream. An analysis of the Act's key provisions reveals the government's determination to promote homeownership above all other tenures and at the expense of socially rented housing, particularly housing owned by local authorities. Thus, local authorities are effectively forced to sell their 'high value' housing stock in order to fund the right to buy for housing association tenants. The availability of socially rented housing will consequently be further diminished. At the same time, the implementation of the government's flagship starter homes policy risks preventing the construction of other forms of affordable housing, including housing for rent. The Act not only threatens the quantity of socially rented housing available, it also diminishes the quality of local authority-owned housing, by imposing mandatory fixed-term tenancies to replace so-called lifetime tenancies. Through these provisions, an important part of social housing is re-imagined as an explicitly transitory tenure. These measures have been unambiguously linked by the government to its overriding objective of turning renters into homeowners. We argue that there is abundant evidence to cast serious doubt on whether starter homes can produce sufficient affordable housing to bring homeownership within the reach of all. Equally, recent reports reveal that the ability to exercise the right to buy remains an elusive dream for the majority of housing association tenants because of lack of affordability.

The paper examines the housing policy narrative pursued by the Act. We argue that the 'logic' of localism, espoused by the Conservative Party while in coalition government, has been abandoned in favour of a logic of homeownership. To the extent that localism still exists in any form, the article suggests that it is now more akin to the individualistic localism associated with the Thatcher

administrations. Our claim lies not only in the single-minded pursuit of homeownership, together with the further residualisation of social housing, but in the tone of the message which vilifies those unwilling or unable to realise the aspiration of ownership. We have also identified similarities in the techniques of governance used by Thatcher and under the 2016 Act, whereby local government is stripped of its ability to make local policy decisions.

We have argued that the Act promotes a ‘homeownership trap’: an unrealistic assumption that ownership is necessarily egalitarian and open to all who are willing to work hard. Furthermore, it actively undermines other forms of affordable housing. Effective housing policy is surely that which meets the diversity of Britain’s housing needs with a diversity of housing tenures. All the evidence points to the necessity for greater and not less plurality of housing solutions. More precisely, housing policy must adopt a ‘tenure neutral’ approach under which no single tenure is unduly favoured and none nor unduly depressed or stigmatised.