The housing reforms and the Housing Act 1988
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In its 1987 white paper *Housing: the Government’s Proposals* the Government set out four main objectives of its future housing policy in England and Wales. These were:

- to reverse the decline in rented housing and improve its quality;
- to give council tenants the right to transfer to other landlords if they chose to do so;
- to target money more accurately on the most acute problems;
- to continue to encourage the growth of home ownership.

The Government envisages that its new policies will lead to greater private sector investment in housing, wider choice for the consumer and the concentration of resources in the places where housing need is greatest.

The Government’s objective of revitalising the private rented sector is based on the reasoning that ‘There has been too much preoccupation with controls in the private sector and mass provision in the public sector. This has resulted in substantial numbers of rented houses and flats which are badly designed and maintained and which fail to provide decent homes’.

The Government’s thinking on providing greater choice to the customer and tenant is influenced by its perception that ‘In the public sector too little attention has been paid to the wishes of tenants or to their views on how their requirements can best be met; tenants have generally not been allowed to express their choices clearly and have therefore not always found the kind of accommodation they want. In
the worst cases this has led to understandable resentment and a consequential lack of commitment to their homes’. As a result, ‘The emphasis must be on greater consumer choice and more say for tenants. This can only be achieved by offering a variety of forms of ownership and management; this will help to break down the monolithic nature of large estates’.

As well as the four key objectives in reforming housing, the Government adopted four strategies as the basis for its legislation, as K.M. Spencer states. First, to encourage more home ownership through enhanced provisions for the right to buy and providing other incentives. Second, to revive other forms of renting – bringing, for instance, housing association property more into the market by removing rent controls on new lettings and helping housing associations to restructure financially in such a way as to utilise a large proportion of private finance. Third, to provide alternative forms of tenure, thereby changing the housing role of local authorities so that their contribution as landlord and provider gradually diminishes. As the White Paper states ‘Local authorities should increasingly see themselves as enablers who ensure that everyone in their area is adequately housed; but not necessarily by them’. Fourth, to promote a more businesslike management of housing stock through the development of a new financial regime, and for the worst areas containing public housing, by introducing Housing Action Trusts similar to Urban Development Corporations.

The legislation to give impetus to most of these reforms was contained in the Housing Act 1988, with some financial measures concerning local authorities in the Local Government and Housing Act 1989.

The private rented sector
Part I of the Housing Act 1988 is aimed at transforming the private rented sector, which at present accounts for less than 8 per cent of homes in Britain. It is the Government’s intention to regenerate the sector through deregulation, stimulating its growth by removing rent controls and introducing new-style assured tenancies. Virtually all new private lettings, including housing association tenancies, will be either ‘assured’ or ‘assured shorthold’ tenancies. An assured shorthold tenancy must be for a period of at least six months and the tenant must be notified at the outset that it is a shorthold tenancy.
The main feature of assured forms of tenancy is that landlords and tenants are free to devise their own rent levels through negotiation, with new tenancies no longer protected by the Rent Act. The Government believes that rent control has caused the decline in private renting and that the sector can be revived only if letting property again becomes an economic proposition.

Some commentators have argued that, even if private renting can be made profitable in the short term, private investors are, because of the past history of rent controls, unlikely to risk future investment on any scale in housing for rent. They argue that investors will avoid it in favour of more secure forms of investment.5

The Government seeks to expand the housing association sector by drawing in private finance to create ‘mixed funding’ schemes. There is, however, a conflict between the social need to provide houses at low rents, and the desire to attract private finance, which has to receive a market return. For tenants the system which emerges will often mean higher rents; and it remains to be seen how associations will, in these circumstances, be able to meet the needs of homeless and low income households. For associations it will also mean greater financial risks, along with pressures to lower standards to cut costs. It is also envisaged that there could be a move away from inner city rehabilitation to new building under the new financial regime, as rehabilitation schemes are relatively more risky. Housing opportunities for poor people in inner city areas are likely to worsen as a result.

Part II of the Act further extends the activities of housing associations to include activities which are incidental or ancillary to their main housing activity. For instance, they will be able to create or rehabilitate commercial or industrial premises. The Act also sets up a new body ‘Housing for Wales’ (Tai Cymru) to take over the functions of the Housing Corporation in Wales, and ‘Scottish Homes’ in Scotland.

Tenants’ choice
The Government’s legislation on tenants’ choice (introduced in Part IV of the Housing Act 1988) is seen as extending the rights and choices already given to council tenants since 1980 through the statutory Tenants’ Charter and the right to buy legislation in the Housing Act 1980, later extended in 1984 and 1986.
The 1988 Act allows council tenants to choose to transfer their existing homes to another landlord. In the Government’s opinion ‘The effect will be to open up the closed world of the local authority housing estates to competition and to the influence of the best housing management practices of other landlords’.  

Tenants of houses may exercise the right to choose individually, but in blocks of flats or maisonettes tenants can decide to transfer only collectively. Tenants will, however, not have to transfer to a new landlord if they do not wish to do so.

New independent landlords who have obtained prior approval as appropriate social landlords, under the conditions laid down by the Housing Corporation, may take over council housing stock if a vote of the existing tenants decides on this. The approval criteria require applicants to show viability and competence, and to commit themselves to the long term provision of housing for rent and to subscribe to the ‘tenants’ guarantee’ laid down by the Housing Corporation.

The immediate aim of tenants’ choice is to give more choice to tenants who cannot, or do not wish to, exercise their right to buy. Even where tenants do not wish to transfer to another landlord, they are still expected to benefit because, as the Government argues, ‘Exposing councils to healthy competition would contribute to a better general standard of services’. Therefore, as the Government sees it, tenants may benefit either directly through a change of landlord or through the impact of competition on their existing landlord.

A number of surveys have found majorities of tenants expressing a desire to remain with their councils. Evidence also suggests that many councils are making efforts to meet the needs of their tenants, seeking their tenants’ views and improving services. If this is so, the Act may be seen as having acted as a successful catalyst.

**Voluntary transfers**

The Housing Act 1988 spells out the ways in which councils can dispose of some or all of their housing stock to other landlords under powers in the Housing and Planning Act 1986. Many councils have explored the possibilities of voluntary transfers of their stock. Some have sponsored new associations to take over their stock. So far three authorities have succeeded in transferring their entire stock to housing associations.
Local authorities proposing the voluntary transfer of their stock must demonstrate to the Secretary of State that their proposals have the support of the tenants. The evidence of support has not been clearly specified. A number of authorities have used the balloting arrangements for tenants’s choice under the Housing Act 1988.

The use of this system has stirred much controversy. If a majority of eligible tenants vote ‘no’ under the tenants’ choice system, then the application for transfer to another landlord fails. This is clearly not a matter of a simple majority, in that an abstention is counted, in effect, as a ‘yes’ vote. At least 50 per cent of all voters have to vote ‘no’ to stop a transfer.

Torbay was one of the authorities to try this form of ballot. With 787 tenants voting in favour of transfer and 2,209 abstentions, the council declared that a majority of tenants – 2,996 (787 plus 2,209) against 2,210 – were in favour, and it decided to go ahead with the transfer. But, following protests from tenants’ groups, the Secretary of State refused permission for a voluntary transfer and the council was not able to proceed. This difficulty over the balloting system made the implementation of the policy difficult for many authorities which took the initial steps towards transfers or were considering doing so.

Other authorities have since then failed or succeeded in transferring, where there were clear votes against or in favour of such transfers. In Rochford, Salisbury, Gloucester and Arun, for example, tenants voted against the councils’ decision to transfer and therefore the councils had to retreat in the face of tenant opposition. In Chiltern, Sevenoaks and Newbury strong votes in favour of opting out enabled the councils to transfer their housing stock to newly created housing associations. In Chiltern, Sevenoaks and Newbury the existing local authority housing staff created the new housing associations and staffed them.

When a voluntary transfer goes ahead, tenants who voted ‘no’ will also transfer to the new landlord. The arrangement is thus different from that with tenants’ choice. As surveys of tenants show, many tenants are wary of their new rights and of the other uncertainties involved in such transfers, and moves to opt out are progressing at a relatively slow pace nationally.

Some local groups argue that the policy undermines the rights of tenants and reduces their options. For example, the Tenants
Participation Advisory Service (TPAS) says that ‘Tenants have been railroaded into a ballot before they can take in all the issues’. 9

It is uncertain to what extent the future direction of housing will be shaped by tenants’ choice as against voluntary transfers. Much depends on the relative advantages and disadvantages of the two policies for tenants and for local authorities. It is widely believed (for instance by the Institute of Housing) that with the prevailing threats to council housing – reductions in housing investment allocations, and the effect of the Local Government and Housing Act 1989 in further restricting borrowing (as explained in the next Chapter 3) – local authorities might find it increasingly difficult to provide new housing and repair existing stock. Under such circumstances, local authorities might perhaps take a more pragmatic approach and investigate the possibilities of voluntarily transferring the stock to alternative landlords.

**Housing Action Trusts**

The Housing Act 1988 deals (in Part III) with the policy of Housing Action Trusts. Housing Action Trusts are the Government’s key weapon in its attempt to improve the most run-down council estates and, ultimately, to give tenants of these estates a choice over whether the estates should be run by local authorities, housing associations or private companies. The Government argues that the trusts, designed to tackle the special problems of concentrations of poor quality local authority housing, offer more hope of improving these estates than if they were left in the control of local councils. The trusts, to be introduced in a similar fashion to Urban Development Corporations, will have the job of drawing up comprehensive programmes of improvement and getting on with them quickly.

In deciding which areas to designate, the Government intends to concentrate on areas with a predominance of the worst local authority housing. Housing Action Trusts are expected to seek the maximum possible support from the private sector, and to involve private sector resources in the work of refurbishing stock and taking over landlord responsibilities.

It is envisaged that, as long as the trust remains the owner of the property acquired from the local authority, it will assume the functions of a local authority landlord for that property, and also for privately owned housing within the designated area. The local authority will
no longer have a direct landlord role over the property transferred to the trust, although it will continue to be responsible for housing homeless people.

The implementation of this policy has raised a number of questions about future rents, security of tenure and the ability of the local authority involved to deal with homelessness.

To date, the proposal has not met with much success. Following a report on the viability of the Government’s initial proposals for six areas, the Government has now decided that, subject to tenants’ satisfaction, the implementation of Housing Action Trusts will go ahead only in a number of areas in Lambeth, Southwark, Sunderland and Leeds. It also proposes to institute a consultants’ study in Sandwell.

The Government has been criticised for neglecting adequate consultation with tenants. Vociferous lobbying of Parliament was organised by tenant groups on the estates earmarked by the Government for HAT treatment. The response of most such groups has been that the idea of introducing Housing Action Trusts has not been in tune with the feelings of tenants, most of whom fear being taken over by a private landlord. Although it is still true that most tenants blame their councils for the deteriorating conditions on estates, their perception of councils as safe landlords still appears to be dominant.

To meet these criticisms, the Department of the Environment has recently made substantial changes to the terms on which Housing Action Trusts are granted. Most significantly, tenants will now have the opportunity to vote for a return of the ownership and management of their estates to the local authority when the HAT concludes its work.

References
2. Ibid., para 1.3.
3. Ibid., para 1.4.


8. See note 7.

9. ‘Tenants pushed into transfers, says TPAS’, *Housing Associations Weekly*, 5 May 1989, p.3.