

8 April 2016

## Briefing:

# The EU referendum and housing associations

## Framing the debate, and posing the questions

### Summary of key points:

This briefing seeks to enable housing associations to assess the significance of the EU referendum for their businesses. In summary:

- there are five possible outcomes of the EU referendum, and each brings with it change for housing associations
- the referendum raises questions about building new homes, attracting investment, business freedoms and housing demand
- boards should be informed and equipped to determine the significance of the referendum for their organisations.

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## 1. Introduction

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On 20 February David Cameron announced that a referendum on UK membership of the European Union (EU) will be held on 23 June, giving rise to a furore of public debate. This briefing is designed to frame the debate and pose questions so that boards can assess the significance of the referendum for your businesses.

From the starting point that the UK is currently a Member State of the EU, a Brexit would bring with it both losses and gains for housing associations. In writing this briefing, the National Housing Federation assumes that if the UK leaves, the Government will look to negotiate a new relationship with the EU to restore trade. This is based on the consensus expressed in political commentary since the announcement of the referendum. We also assume that Parliament will not, in the event of a Brexit, seek to individually repeal every legal instrument which relates to EU rules. We consider this a reasonable assumption given the considerable body of legislation adopted since we joined the EU in 1973, the resource cost of individually repealing each instrument, and the understanding that a proportion of EU law is positive and desirable.

Framing the referendum debate is not straightforward. There are five key scenarios that might arise, which have differing implications for housing associations. The most likely Brexit outcome is that leaders negotiate a new relationship with Europe, limiting the internal market and returning the discretion to regulate or deregulate to Parliament.

Whatever a new arrangement looks like, there are challenges for housing associations and the impact will depend on your business models. For developers it might be more difficult to source the materials and labour to build homes. If organisations currently benefit from EU energy efficiency funding, or other EU investment, it might be more difficult to finance those elements of the business.

Brexit would put decisions about retaining, revising or repealing regulation in the hands of Parliament – it might trigger a deregulatory process but would not itself be a deregulatory act. The EU procurement procedure (OJEU) will not be affected (see section 3.3 below).

The EU treaties provide a withdrawal procedure with a two-year timeframe. There is scepticism amongst experts about the feasibility of finalising withdrawal, and new agreements, within this narrow window. Some (including [Gus O'Donnell](#)) have suggested that it could take up to a decade for a Brexit process to be completed.

## 2. Framing the debate

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The EU is a large and complex international organisation. Unpicking what its relationship with businesses looks and feels like is a challenge. In this section, we hope to equip members with information to support your boards to frame the debate appropriately, in the context of your business. The public debate frames the referendum as a clear-cut decision between 'leave' and 'stay', but the reality is more complex. If the UK votes to leave the EU, there are five potential outcomes, including outright withdrawal:

1. The UK remains in the EU
2. The UK joins the European Economic Area (EEA)
3. The Government negotiates a new ad hoc agreement with the EU
4. The UK leaves the internal market, but retains the majority of EU regulation
5. The UK repeals all Statutes and Statutory Instruments which transpose EU law.

At one end of this scale nothing substantive will change, and at the other there will be significant impact. The most likely outcome, in the event of a Brexit, sits between scenarios three and four. For associations this will mean that there are fewer EU migrants (tenants and workers), new trade arrangements, changes to funding, and the potential for deregulation.

In the event of a Brexit, all UK law which currently 'transposes' EU rules and gives them legal effect will, initially at least, remain. The majority of regulation can, and likely will, continue to apply whether or not we are a Member State. Examples include energy, employment, tax, and competition law, of which the OJEU procurement procedure is part. On the other hand, there are some key pillars of EU law which cannot exist without formal membership and/or the cooperation of other Member States. This category includes trade and migration arrangements.

There are therefore two key questions:

- what will be the definite, immediate effects of leaving the EU?
- what are the potential effects of leaving the EU, subject to Parliamentary discretion?

## 3. Posing the questions

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Whichever scenario is realised, the impact of a Brexit will differ for each housing association. In this section, we highlight themes for the sector which might pose risks or opportunities for your business: building homes, attracting investment, business freedoms, and housing demand.

### 3.1 Will boards have more freedoms over our businesses?

The OJEU public procurement procedure presents challenges for many housing associations. Instinctively, OJEU should no longer apply. But because of the way that EU law operates in the

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UK, and the relationship between procurement law and trade, even if the UK is no longer a formal Member State of the EU, OJEU is still likely to apply. Public procurement is an integral part of EU competition law, and tends to be the *quid pro quo* for trading with Europe. Both the EEA and Switzerland have to comply with OJEU. If the Government negotiates a new deal excluding OJEU, the UK will have to establish its own public procurement regime. Given that policy design is often based on previous models, or similar policy which exists in different countries, it is quite likely that this would be modelled on or similar to the OJEU procedure.

Across energy, employment, tax, and health and safety, there are plenty of EU regulations which impact on housing associations. These rules are individually recreated in UK national law. If the UK votes to leave the EU it will be down to Parliamentary discretion to determine which will be retained, revised, or repealed.

### **3.2 Will we be able to build new homes?**

There is a construction skills shortage in the UK. Housing associations have an ambition to significantly increase their output of new homes over the coming years. To achieve this we need a functioning construction sector. Over the longer term there is a need for a significant skills drive to address the shortage. However a skills drive will take time to have an effect on the market, and in the short term EU workers provide a vital contribution to the delivery of new homes. Between 2007 and 2014, the proportion of EU migrants in the construction sector rose from 3.65% to 7.03%. Union membership gives EU nationals an automatic right to live and work in the UK. If the UK leaves, this will be revoked. Although the Government would likely design a new immigration system which privileged people with particular skills, such as construction skills, the added burden of evidencing this in an immigration process may serve as a disincentive for some migrants.

Both the EEA and Swiss deals incorporate the free movement of people. But, the relationship between the referendum and immigration debates means that it could be politically difficult for the Government to justify a post-leave deal which reinstated free movement. Members can expect the new arrangement between the UK and the EU to limit EU migration. This may impact the construction industry and, in turn, the supply agenda. To understand what this means for your organisations, it is important to know whether and how your business relies upon EU labour.

Many of the materials used in construction are imported from Europe. According to [ONS figures](#), the total value of net imports of building materials and components from the EU was £4.9 billion in 2015. The free movement of goods is protected under the EU treaties. Member States are prohibited from charging 'customs duties on imports and exports and all charges having equivalent effect'. This keeps import costs down.

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If the UK leaves the EU, the Government will seek to negotiate a new free trade deal with Europe. They will face obstacles, including the reputational and relational cost of a Brexit. In the long term, the cost of goods is likely to stabilise.

Questions for consideration:

- what would be the scale of the impact on your workforce and your supply chain of tight controls on EU migration?
- what would be the impact on your business of increased trade tariffs on bricks, building materials, and other resources?

### **3.3 Will we be able to attract investment?**

Many housing associations have asked what effect a Brexit might have on the capital markets and, therefore, on the cost of money. The [Bank of England has said](#) "Looking ahead, heightened and prolonged uncertainty has the potential to increase the risk premia investors require on a wider range of UK assets, which could lead to a further depreciation of sterling and affect the cost and availability of financing for a broad range of UK borrowers." There is widespread disagreement and speculation in the financial sector about what the long-term impact might be. But it is clear that in the short term uncertainty surrounding new relationships has the potential to increase the cost of borrowing for associations.

There are a number of sources of EU funding available to housing associations in England. These include the European Regional Development Fund, the European Social Fund, and other finance through the European Investment Bank (EIB). Most EU funding is focused on energy efficiency and social inclusion. The sums of money available are substantial, with individual (regional) programmes frequently allocated tens of millions of Euros, and a central pot of €50 billion for energy efficiency alone. This finance is generally routed through national institutions, so members may be in receipt of EU funding unwittingly. We would encourage members to ensure that the funding you currently receive from the Government which might have been originally provided by the EU is included in any assessment of Brexit risks.

Switzerland and EEA countries cannot access EU funds, and may access finance from the EIB only for energy and transport. For those members who currently or hope to receive EU funding, this will present a challenge. For those who do not, there will be no impact.

If the UK leaves the EU, the 'State aid rules' which prohibit government grants and subsidies will no longer be binding. Social housing grants are protected under EU rules. But, in some cases, the EU Commission has taken action to prohibit grants made to housing associations. Outside the EU, the Government will be free to provide whichever grants it chooses.

There is the potential, therefore, for members to benefit from new grant funding if the State aid rules no longer apply. But the realisation of this benefit is dependent on the Government choosing to make such funding available. More importantly, outside the EU, the Government will seek to negotiate new international trade deals. And it is standard practice in World Trade Organisation agreements, and emerging multilateral deals, to prohibit State grants and subsidies *without exception*. EU State aid rules provide explicit protection for social housing grant. In the event of a Brexit, any government grant or subsidy may be prohibited by new trade deals entered into by the UK. This poses a considerable future risk for the funding of housing associations.

Questions for consideration:

- what would be the impact on your business of UK access to EU (including EIB) funding being restricted or terminated?
- what would be the impact on your business of new trade deals prohibiting the Government from making grants?

### **3.4 What will happen to housing demand?**

The final question of concern to both members and the public is what impact would leaving the EU have on housing demand. There is a relationship between migration, population and housing demand. The impact of EU migration on affordable housing demand however is minimal. If a post-Brexit deal restricts EU migration into the UK, this might reduce pressure on the housing market. But, Member States might equally restrict migration of UK nationals or UK nationals living in the EU may return to the UK.

The impact on housing demand will be determined by the way that the tension between EU-UK and UK-EU migration is reconciled. The demographic profile of EU and UK migrants who might be returned could also have an impact on the types of accommodation affected, such as homes for older people, for example. It would not be appropriate to speculate about the specifics of what this impact might be, but it is important that members are alive to the uncertainty.

## **4. Conclusion**

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With the right operating environment to enable them to do so, housing associations in England have an ambition to deliver 120,000 new homes every year by 2033. They have the aspiration to own or manage nearly six million homes, housing over 12 million people in good-quality homes across different types and tenures. Housing associations will need the right investment, skills, resources and freedoms to realise this potential.

The challenges that the EU referendum and a possible subsequent Brexit pose to this ambition will be different in substance and scale for each housing association. Determining the impact of these challenges, and the appropriate response, is a matter for individual housing association boards. We hope that this briefing will support your teams to ask questions that enable you to reach a decision about the significance of the referendum for your businesses.

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