

**EXPLANATORY MEMORANDUM TO
THE HOUSING (RIGHT TO BUY) (SERVICE CHARGES) (AMENDMENT)
(ENGLAND) ORDER 2010**

2010 No. 2769

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 Tenants who buy their homes under the Right to Buy (RTB) may be required to pay service charges for works carried out by their landlord, including repairs and improvements. The amount the tenant can be required to pay in the first five years after they have bought their home is limited to the figure given in the landlord's estimate, plus an inflation allowance. The Secretary of State specifies how the inflation allowance should be calculated; this Order provides details of a change to the publication of the statistics which are used in this calculation.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Part 5 of the 1985 Act (which derived from equivalent provisions in the Housing Act 1980) provides for the right of secure tenants to buy their home from their landlord at a discount, subject to conditions and exclusions.
 - 4.2 Schedule 6 to the 1985 Act deals with the conveyance of the freehold and grant of a lease, and Part 3 of that Schedule specifically addresses leases.
 - 4.3 Paragraph 16 of Part 3 sets out the tenant's covenants to the landlord which will, unless contrary agreement between the parties has been made, be implied into the lease. Paragraphs 16B and 16C specify the implied conditions which will apply to the tenant's liability to the landlord for service charges in respect of repairs (16B) and improvements (16C) in the initial period of the lease and enable the landlord to add an 'inflation allowance' to the amount due.
 - 4.4 Paragraph 16D was inserted into the 1985 Act by section 4(4) and (6) of the Housing and Planning Act 1986, and enables the Secretary of State to prescribe the method by which the inflation allowances for the purposes of paragraphs 16B and 16C are to be calculated (by reference to published statistics).
 - 4.5 The Secretary of State exercised this power by making the Housing (Right to Buy) (Service Charges) Order 1986 (SI 1986/2195) which prescribed that inflation allowances would be calculated by reference to the "Public Sector Housing Repair

and Maintenance Cost Index” in the “Housing and Construction Statistics” published by Her Majesty’s Stationery Office.

4.6 The Housing (Right to Buy) (Service Charges) (Amendment) (England) Order 2008 (SI 2008/533) amended the definition of “index figure” in the 1986 Order to take into account changes in the title of the index.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Right to Buy (“RTB”) scheme was introduced in 1980 to give secure tenants the right to purchase their home from their landlord at a discount.

7.2 It was recognised that tenants who chose to purchase their flat might be put at a disadvantage compared to tenants who purchased houses, because of their contractual obligations to reimburse their landlord for the costs of repairs and improvements. A provision was therefore introduced in legislation limiting the amount a RTB purchaser would have to pay in respect of these costs for the first five years after they bought their home.

7.3 It was also recognised that it would not be reasonable to expect landlords to give a definitive figure for the costs of repairs and improvements carried out in the first five years after the RTB sale. The legislation therefore provides for an inflation allowance to be added over this period and for the method by which the allowance is to be calculated to be prescribed by order made by the Secretary of State.

7.4 The figure for the costs of repairs and improvements is given by the landlord in the section 125 notice¹ which also provides the tenant with information on the value of their home, the discount to which they are entitled and the price at which they may purchase the property. The inflation allowance which can be added to these costs is calculated in accordance with the index figure in the edition of the BIS² Output Price Index for Direct Labour: Public Housing Repairs and Maintenance, which is current at the time the section 125 notice is issued.

7.5 The BIS publication is available at a cost online at <http://www.bcis.co.uk/online>. In addition there is an obligation on the landlord to

¹ Section 125 of the Housing Act 1985, which requires a notice containing certain particulars to be served on the person exercising the right to buy, once that right has been established.

² **Department for Business, Innovation and Skills**

provide the tenant with written evidence of the index which had been used, if so requested.

7.6 In this way, the legislation provides protection for both the RTB purchaser and landlord.

- ***Consolidation***

7.7 The Order makes an amendment because the name of the publication containing the index has changed its name. It is not considered necessary or appropriate to consolidate the legislation in this circumstance.

8. Consultation outcome

8.1 It was not considered necessary to carry out a consultation in relation to this Order as it simply amends the source from which interested parties can obtain the index figure. There is no change to the index figure itself, or to the way in which its application impacts on landlords or tenants.

9. Guidance

9.1 Housing authorities will be notified that the Order has come into force.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no adverse impact on the public sector. This amendment ensures that the appropriate information continues to be available to allow i) a housing authority to correctly calculate the inflation allowance and ii) a RTB purchaser to check this calculation.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 It is not considered necessary to monitor or conduct a review of the impact of this Order as it simply amends the way in which the inflation index is published.

13. Contact

Jackie Barker at the Department for Communities and Local Government. Tel: 0303 444 3799 or e-mail: Jackie.barker@communities.gsi.gov.uk can answer any queries regarding the instrument.