

EXPLANATORY MEMORANDUM TO
THE HOUSING (RIGHT TO BUY) (LIMIT ON DISCOUNT) (ENGLAND)
ORDER 2012

2012 No. 734

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 A person exercising the right to buy a dwelling-house under Part V of the Housing Act 1985 may be entitled to a discount equal to a percentage of the price before discount. This Order prescribes the maximum discount that person may receive as £75000 and also specifies the period of time used in the calculation of costs as fifteen years. The Order also revokes the Housing (Right to Buy) (Limits on Discount) Order 1998 [in relation to England].

3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None

4. **Legislative Context**

4.1 A person exercising the right to buy a dwelling-house under Part V of the Housing Act 1985 (the Act) may be entitled, under sections 129 to 131 of and Schedule 4 to the Act, to a discount equal to a percentage of the price before discount.

4.2 The discount may not reduce the price by more than such sum as the Secretary of State may by order prescribe nor may it reduce the price below an amount representing the costs incurred by the landlord over a specified period of time in respect of the dwelling-house in accordance with a determination by the Secretary of State made under section 131 to the Act.

4.3 This Order prescribes the maximum discount as £75000 and also specifies the period of time used in the calculation of costs as fifteen years.

4.4 The maximum discount prescribed by this Order applies to applications for the right to buy made by notice under section 122 of the Act served after the date this Order came into force and to applications where the notice under section 122 was served before the date this Order came into force

but the conveyance or grant under Part V of the Act has not taken place on or before the date this Order came into force.

4.5 The Order also revokes the Housing (Right to Buy) (Limits on Discount) Order 1998 [in relation to England] which had prescribed maximum discounts dependent upon the region in which the dwelling house was situated.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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

7.1 This Order amends the maximum discount limit for Right to Buy to £75000 across England. It also amends the period of time used in the calculation of costs to fifteen years; these costs are known as the ‘cost floor’. The Order replaces the 1998 and 2003 Orders which prescribed different discount levels in different regions of England, and prescribed the cost floor period as ten years.

7.2 The Order fulfils the Government’s commitment in the Housing Strategy published on 21 November 2011, to increase the caps on Right to Buy discounts to help more people realise their aspiration for home ownership. The Housing Strategy is available at:

www.communities.gov.uk/publications/housing/housingstrategy2011

Further background is given in the news release published on 22 December 2011 and consultation paper, *Reinvigorating Right to Buy and one for one replacement*:

www.communities.gov.uk/news/housing/2033734

www.communities.gov.uk/publications/housing/reinvigoratingrighttobuy

7.3 The Right to Buy scheme was introduced in 1980 and gives qualifying social tenants the opportunity to buy their rented home at a discount. The scheme is open to secure tenants of local authorities and non-charitable housing associations. It is also open to those assured tenants of housing associations who have transferred with their homes from a local authority as part of a stock transfer – this is known as the Preserved Right to Buy. To date, more than 1.9 million homes have been sold under the Right to Buy.

7.4 To qualify for the Right to Buy, tenants must have spent at least 5 years as public sector tenants. Once eligible, the discount rates for houses are

35 per cent of the property's value plus 1 per cent for each year beyond the qualifying period up to a maximum of 60 per cent. On flats the discount ranges from 50 percent plus 2 per cent for each year beyond the qualifying period up to a maximum of 70 per cent.

7.5 But the maximum discount which a tenant can receive is limited by secondary legislation. The 1998 and 2003 Discount Orders reduced the Right to Buy discounts across England to maximums ranging from £16,000 in most parts of London to £38,000 in parts of the South East. The effect of the caps is that the average discount rate received by buyers in England is around 25 per cent – ranging from 13 per cent in London to 32 per cent in the North West. The reduction in the discounts is a major factor in the significant fall in the number of Right to Buy sales, from 84,000 in 2003/04 to under 4,000 in 2010/11.

7.6 The Government was concerned that the low level of the discounts meant that social tenants were unable to achieve their aspiration for home ownership. And in response, announced their intention to increase discounts across England. The increased discount will allow a greater number of social tenants to take up their Right to Buy and meet their home ownership aspirations, support social mobility and will help create and sustain mixed communities.

7.7 The Right to Buy discount is also limited by the cost floor. The cost floor limits the discount to ensure that the purchase price of the property does not fall below what has been spent on building, buying, repairing or maintaining it over a certain period of time. This is to ensure that the public sector can generally recoup significant expenditure on upgrading homes. The current time period is ten years. Responses to the consultation indicated that, in the view of the respondents, this period was insufficient to protect public investment. The period is therefore being increased to fifteen years for properties built or acquired after this Order comes into effect; this provides a balance between the public interest and the interests of individual tenants.

7.8 The terms of the Right to Buy scheme are otherwise unchanged.

7.9 Receipts from additional Right to Buy sales will be used to provide new affordable homes for rent. The Local Authorities (Capital Finance and Accounting) Regulations have been amended to provide for such replacement.

- Consolidation

7.10 This Order revokes the Housing (Right to Buy) (Limits on Discount) Order 1998, so there is no issue in relation to consolidation.

8. Consultation outcome

8.1 The Department consulted a range of bodies including local authorities, Registered Providers, the Local Government Association, National Housing Federation, tenant organisations, housing and lending regulators and other interested organisations. The consultation was conducted over a 6 week period from 22 December 2011 to 2 February 2012. This was to provide the opportunity for interested parties to respond to the proposals with the aim of introducing them as soon as possible, subject to the outcome of the consultation and Parliamentary approval of the changes to secondary legislation. These are changes to an existing programme and were trailed in advance in the Housing Strategy published in November 2011.

8.2 The draft impact assessment, published alongside the consultation document, explored a range of options for increasing the Right to Buy discount including maintaining existing discount ranges with a £75,000 cash cap and maintaining existing discount ranges with a £50,000 cash cap.

The draft impact assessment is available at:

www.communities.gov.uk/publications/housing/reinvigoratingrighttobuyia

8.3 Of the 281 responses to the consultation, 256 responded to the question on discount levels. These were broadly supportive of the proposals to reinvigorate the Right to Buy and increase the opportunity for homeownership for tenants.

8.4 144 responses were received to the question on the cost floor. There was an overwhelming majority in favour of retaining the cost floor with only 8 respondents against retention. Of those in favour of keeping it, a significant minority (26 per cent), wanted the period of time for the costs to be extended from the current ten years to terms ranging between twenty and thirty years to adequately protect public investment. Modelling based on long run extrapolation of house price inflation forecast from the Office of Budget Responsibility indicates that ten years will normally be sufficient to ensure that properties are not sold at less than it cost to build, renovate and repair them. However, the Government is extending the cost floor time period to fifteen years for homes built or acquired after this Order comes into effect to give social landlords a greater degree of comfort that the receipt from the property sale will cover their costs.

9. Guidance

9.1 Housing Authorities and Registered Providers will be notified that the Order has come into force. These authorities have a statutory duty under sections 121Aa and 121B of the Act to advise their tenants of the changes to the Right to Buy discount. The Department for Communities and Local Government will also publicise the changes and issue information and guidance for tenants and social landlords.

10. Impact

10.1 There is no impact on charities or voluntary bodies. The Impact Assessment which accompanied the consultation paper identified three possible areas of impact on housing associations that sell properties under the Preserved Right to Buy – i) cost of one for one replacement, ii) cost of administering sales, and iii) possible impact upon the business due to loss of assets. Our analysis, drawing on responses to the consultation, indicates that these impacts will be minimal.

10.2 The impact on the public sector is that social landlords are likely to be required to process significantly more Right to Buy applications with implications for additional administrative costs. The Government will therefore no longer require councils to make individual expenses claims. Flat allowances have been set for London, South and the rest of England. The Local Authorities (Capital Finance and Accounting) Regulations have been revised to reflect this change.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at:
<http://www.legislation.gov.uk/uksi>.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The increase in the Right to Buy discount will allow more eligible social tenants to take up the opportunity to own their home if they wish to do so. The extent to which Right to Buy is taken up depends on a large number of mainly external factors such as the general economic climate. The Department for Communities and Local Government will therefore continue to collect and publish figures annually on the numbers of Right to Buy sales. We will keep the impact of this Order under review.

13. Contact

Diana Fergus at the Department for Communities and Local Government, tel: 0303 444 3798 or email: Diana.fergus@communities.gsi.gov.uk, can answer any queries regarding the instrument.