

**EXPLANATORY MEMORANDUM TO**  
**THE HOUSING (RIGHT TO BUY)(SERVICE CHARGES)(AMENDMENT)**  
**(ENGLAND) ORDER 2008**

**2008 No. 533**

**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. Description**

Landlords of tenants who bought their homes under the Right to Buy provisions of the Housing Act 1985 (“the 1985 Act”) are entitled to payment in respect of service charges incurred for works including repairs and improvements. In the first five years from the grant of the lease, the amount of service charge a tenant can be required to pay is restricted to the figure contained in the estimate issued by the landlord at the time of the grant of the lease, plus an inflation allowance. The Secretary of State can by order specify the method of calculation of the inflation allowance by reference to published statistics and for this purpose made the Housing (Right to Buy)(Service Charges) Order 1986 (SI 1986/2195)(“the 1986 Order”). This Order amends the 1986 Order to take account of a change in the arrangement for the publication of the statistics.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None

**4. Legislative Background**

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 C 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)(England) (Amendment) Order 2007 (SI 2007/384) 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**

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 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 liability of RTB purchasers in respect of such costs in their first five years of ownership.

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 notice 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 applied to the repair and improvement costs is calculated in accordance with the index figure in the edition of the BERR<sup>1</sup> Quarterly Construction Price and Cost Indices Online, which is current at the time the section 125 notice is issued.

7.5 The BERR publication is available at a cost online at <http://www.bcis.co.uk/BCISWEB/ProductSearch/ProductSearch.aspx?next=product&productid=156>. In addition, there is an obligation on the landlord to 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.

---

<sup>1</sup> Department for Business, Enterprise and Regulatory Reform

7.7 This Order amends the definition of “index figure” in the 1986 Order because, although the same index continues to be produced, the title of the index has changed and it is now published by BERR.

7.8 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.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

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

## **9. Contact**

Jackie Barker at the Department for Communities and Local Government. Tel: 020 7944 3427 or e-mail: [Jackie.barker@communities.gsi.gov.uk](mailto:Jackie.barker@communities.gsi.gov.uk) can answer any queries regarding this instrument.