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A voluntary Right to Buy for housing association tenants in England

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The statutory Right to Buy (RTB) and housing association tenants

The statutory Right to Buy (RTB) was introduced in October 1980. To date, around 2 million council properties in England have been sold. As a rule, assured tenants of housing associations (aside from those who were previously secure council tenants with a "preserved" RTB) **do not** have the RTB on the same terms as council tenants.

A commitment to extend the RTB to assured tenants in England

The Conservative Party's 2015 Manifesto included a commitment to "extend the Right to Buy to tenants in Housing Associations to enable more people to buy a home of their own." Subsequently, the 2015 Queen's Speech announced that a *Housing Bill* would be introduced to "dramatically extend the Right to Buy to the tenants of Housing Associations – putting home ownership within the reach of 1.3 million more families."

While welcomed by housing association tenants who have long sought the RTB, the measure is controversial and generated strong reactions from social landlords. Local authorities were concerned that, as originally envisaged, the measure would be partly paid for by the sale of their most valuable (vacant) stock. Commentators questioned whether sales of vacant council stock would generate sufficient funding to pay for an extended RTB. Housing associations questioned the legitimacy of legislating to force the sale of assets owned by charities/not-for-profit companies.

Agreement to extend the RTB on a voluntary basis

The National Housing Federation (NHF), the representative body of housing associations, put an offer to Government in September 2015 in which it proposed the implementation of an extended RTB on a **voluntary basis**. The offer was described as a compromise with a view to securing the independence of housing associations and the best deal on compensation (for discounts) and flexibilities (the ability to refuse the RTB in relation to certain properties). During his speech to the Conservative Party Conference on 7 October 2015, then-Prime Minister, David Cameron, announced that agreement had been reached on the NHF's offer, and that the first housing association tenants would be able to buy their homes in 2016. During the Autumn Statement and Comprehensive Spending Review 2015, the Chancellor announced that the extended RTB would be piloted by five housing associations. The pilots completed their work and a report on findings was published in January 2017.

The NHF took part in detailed negotiations over the implementation of the voluntary RTB. An Implementation Advisory Board was established to make recommendations. On 5 April 2016 the NHF published two briefing papers: one setting out the key principles of the agreement to implement the voluntary RTB scheme and another on the policy development process. This document clarified that decisions over which properties may be exempt from the voluntary RTB would be left up to each housing association's board. August 2016 saw the publication of Voluntary Right to Buy: Scheme Design.

The Housing and Planning Act 2016

Paying for the discounts

Given the agreement to proceed on a voluntary basis, the Housing and Planning Act 2016 **does not** contain measures to implement a statutory RTB for housing association tenants. The Act does, however, contain measures that would have required English local authorities to make an annual payment to Government in respect of expected sales of "higher value" vacant stock over the year. The intention was to use these payments to compensate housing associations for selling housing assets at a discount to tenants. The social housing Green Paper, A new deal for social housing (August 2018), announced that the Government **would not "bring the Higher Value Assets provisions of the Housing and Planning Act 2016 into effect"**. This left unanswered the question of how discounts on sales of housing association properties under an extended RTB scheme would be funded. The discounts offered under the Midlands pilot scheme (see below) were reimbursed by the Ministry of Housing, Communities and Local Government (MHCLG).

The Midlands pilot scheme

The Autumn Statement 2016 announced Government funding for "a large-scale regional pilot of the Right to Buy for housing association tenants." After some delay, Autumn Budget 2017 confirmed that a regional pilot would go ahead in the Midlands in 2018. **The pilot was launched on 16 August 2018 –** those interested had to register online before midnight on 16 September 2018. Applicants who were successful in the ballot had to apply direct to their landlord to continue the process. Landlords carried out additional eligibility checks.

Guidance for associations taking part in the Midlands pilot scheme was published in May 2018. The pilot was particularly focused on two aspects of the voluntary agreement that the original pilots did not cover, namely:

- one-for-one replacement; and
- portable discounts.

The Conservative Party's 2019 Manifesto said:

> We will also maintain the voluntary Right to Buy scheme agreed with housing associations. Following the successful voluntary pilot scheme in the Midlands, we will evaluate new pilot areas in order to spread the dream of home ownership to even more people.

An evaluation of the midlands pilot scheme was published on 8 February 2021. At 30 April 2020 there had been 1,892 sales. Findings from the pilot scheme are included in section 2.3 of this paper.

The Government said that the impact of the pilot would be assessed before deciding on the next steps for the voluntary RTB.

Replacing the sold properties

The 2015 Government said that properties sold under the voluntary scheme would be replaced on a one-for-one basis. This raised questions around how replacements would be financed; the timing of replacement (there will always be a time-lag); and where the replacements would be built. In London, in certain circumstances, there is a requirement to secure the development of two affordable homes for each dwelling sold.

Comparisons have been drawn with the existing commitment to replace properties sold since RTB discount levels were increased on 1 April 2012. RTB sales increased from around 3,700 in 2011/12 to around 18,100 in 2016/17. There were around 15,300 Right to Buy sales in 2019/20. The Right to Buy one-for-one additions policy allows for replacement of the homes sold within three years of the date of sale. The replacement properties are not like-for-like and there is no requirement for the properties to be built in the same area.

The Government's March 2018 statistical release noted for the first time that housing starts were "falling short" of the commitment to replace additional RTB sales within three years. The latest statistical release, published in January 2021, confirms that RTB replacements continue not to keep up with sales.

The previous Housing Minister, Dominic Raab, responded to the March 2018 release saying: "we believe there is a case for greater flexibility on the use of receipts from Right to Buy sales."

August 2018 saw the launch of a consultation exercise on Use of receipts from Right to Buy sales with submissions accepted up to 9 October 2018. The outcome of the consultation exercise is outstanding. The Government's response (October 2020) to one of the recommendations in the Housing, Communities and Local Government (HCLG) Select Committee's report, Building more social housing (July 2020) noted "The Government is considering its response to the receipts consultation which will be published in due course".

The Midlands VRTB pilot scheme identified the key barriers to replacing the homes sold as land availability and insufficient funding raised from sales.

Select Committee inquiry 2015-16

The extension of the RTB to housing association tenants was the subject of an inquiry by the Communities and Local Government Select Committee over 2015-16. The Committee expressed support for the Government's aspiration to extend home ownership and increase housing supply, but concluded that there were "unresolved issues" and that the Committee "remain concerned that the Government's policies could have a detrimental effect on the provision of accessible and affordable housing across all tenures."

No roll-out date announced

No implementation date for the extended RTB has been announced. As previously noted, The Government has said that the impact of the Midlands pilot would be assessed before deciding on the next steps for the voluntary RTB.

1. Right to Buy: background

1.1 RTB timeline

The 1979 Conservative manifesto included the following commitment:

> In the first session of the next Parliament we shall therefore give council and new town tenants the legal right to buy their homes, while recognising the special circumstances of rural areas and sheltered housing for the elderly. Subject to safeguards over resale, the terms we propose would allow a discount on market values reflecting the fact that council tenants effectively have security of tenure. Our discounts will range from 33 per cent after three years, rising with length of tenancy to a maximum of 50 per cent after twenty years.[1]

This commitment was implemented by the ***Housing Act 1980;*** the statutory Right to Buy came into effect on 3 October 1980. Successive Conservative Governments made several changes to extend eligibility and amend the discounts available.

Housing and Building Control Act 1984: RTB was extended to leasehold property; minimum qualification period reduced from 3 to 2 years; maximum discount increased to 60% after thirty years.

Housing Act 1985: Consolidating act. Right to Buy legislation is found in this Act (as amended).

Housing and Planning Act 1986: Discounts for flats of minimum 44% up to 70% after 15 years introduced; preserved Right to Buy introduced (applies to council tenants following a large scale voluntary transfer of the landlord's stock to a housing association).

Housing Act 1988: 'Delay notices' introduced to compensate tenants whose landlords delayed in implementing the policy; cost floor for discount limited to properties less than 8 years old.

Local Government and Housing Act 1989: Required local authorities to reserve 75% of capital receipts from RTB sales for debt redemption.

Leasehold Reform, Housing and Urban Development Act 1993: Abolition of rights: to a local authority mortgage; to defer completion at a fixed purchase price; and to a shared ownership lease.

Housing Act 1996: Right to Acquire for housing association tenants introduced. Tenants qualify after 2 years but to much lower discount levels than under the RTB. Only applies to properties built with Social Housing Grant after April 1997.

The Labour Government came to power in 1997 supportive of the principle of the RTB, although a series of measures reduced its scope and made it easier for authorities to reinvest capital receipts raised for investment in council housing:

Local Government Finance (Supplementary Credit Approvals) Act 1997: Allowed set-aside capital receipts to be taken into account when

[1] Margaret Thatcher Foundation, Conservative General Election Manifesto 1979

issuing Supplementary Credit Approvals to local authorities. This enabled the phased release of reserved capital receipts.

Statutory Instrument 1998/2997: Introduced regional maximum discounts for new applications ranging from £22,000 in the North East to £38,000 in London;[2] and extended the application of the cost-floor from 8 to 10 years.

Statutory Instrument 2003/498: Reduced the maximum discount in some London, Eastern and South Eastern boroughs to £16,000.

Local Government Act 2003: Allowed local authorities to use some capital receipts to buy back RTB properties, after which 75% was returned to the Treasury.

Housing Act 2004: Increased the qualifying period as a tenant from 2 to 5 years; gave a right to refuse the RTB to tenant with an ASBO; introduced a right of first refusal (local authority can buy back RTB on market within 10 years); exemption from RTB for properties set to be demolished; small increase of minimum discount for houses and flats; extended the repayment of discount period to 5 years.

Statutory Instrument 2005/1735: Landlords required to provide certain information on RTB to tenants.

The 2010 Government set out its intention to 'reinvigorate' the Right to Buy in a 2011 consultation document, which was followed by a number of legislative and policy changes:

Statutory Instrument 2012/734: Reintroduced a national maximum discount at an increased level of £75,000; and extended the cost-floor from 10 to 15 years.

This was accompanied by a commitment to 'one-for-one' replacement (at a national level) of all additional homes sold because of the increased maximum discount.

Statutory Instrument 2013/677: Increased maximum discount in London to £100,000.[3]

Autumn Statement 2013: Announced the introduction of Right to Buy Agents; £100m fund to increase access to mortgage finance for RTB applicants.

Statutory Instrument 2014/1915: Maximum percentage discount increased to 70%.

Deregulation Act 2015: Reduced qualifying period for RTB from 5 to 3 years with effect from 26 May 2015.

2015 Conservative manifesto: Committed to extend the Right to Buy to housing association tenants. To date, there have been two pilot schemes of a voluntary RTB. No date for an extended roll-out has been announced.

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2 A national maximum discount of £50,000 had applied prior to this change.
3 SI 2014/1378 increases the maximum discount annually in line with the Consumer Price Index

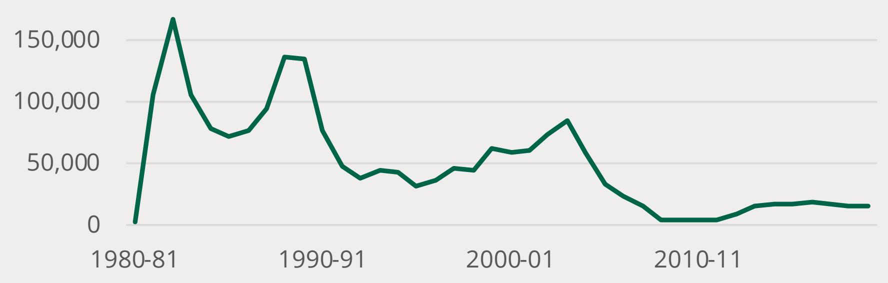
While Governments since 2010 have supported action to reinvigorate the RTB in England, the Scottish and Welsh Governments have abolished it. The Northern Ireland equivalent will be abolished for housing association tenants in August 2022.[4] There is an intention to consult on the Housing Executive House Sales Scheme (for council tenants) to "address the need to protect social housing stock and deal with the inequity in the social housing."[5]

1.2 Data on RTB sales

There have been **1.98 million Right to Buy sales** in the period between the start of the scheme in 1980 and the end of March 2020. Sales have declined since the start of the scheme – they peaked in 1982/83 at around 167,100, followed by smaller peaks at the end of the 1980s and in the mid-2000s. The Coalition Government made several policy changes intended to 'reinvigorate' the Right to Buy, implemented between 2012 and 2015 (see section 1.1). Right to Buy sales increased somewhat following these measures, from around 3,700 sales in 2011/12 to around 18,100 in 2016/17. There were around 15,300 Right to Buy sales in 2019/20.

The long-term trend in Right to Buy sales

Total Right to Buy sales per year, England, 1980/81 to 2019/20



Source: MHCLG, Live Table 678, 23 February 2021

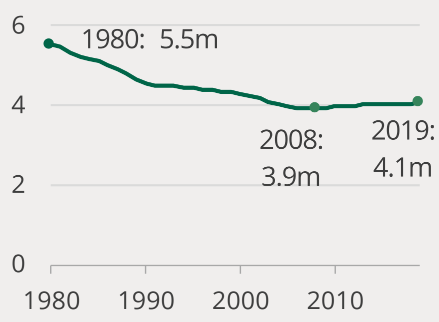
Right to Buy has had a substantial impact on the mix of tenures in England. At the time of its introduction in 1980, around 31% of all homes in England were rented from a social housing provider (around 5.5 million homes). By 2019, the proportion had fallen to 17%, or around 4.1 million homes.

4 In NI both council and housing association tenants are eligible for the House Sales Scheme.

5 Department for Communities, Housing Statement from Communities Minister Caral Ní Chuilín, 3 November 2020

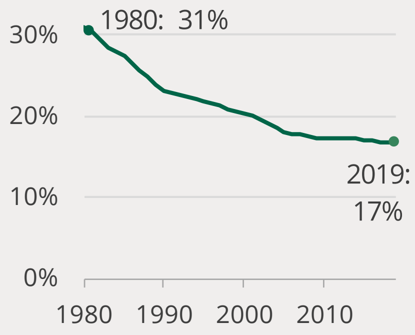
Fewer homes are rented from social providers...

Homes rented from LAs and PRPs, England, millions



...and the percentage of total stock is lower

Percent of all homes rented from LAs and PRPs, England, millions

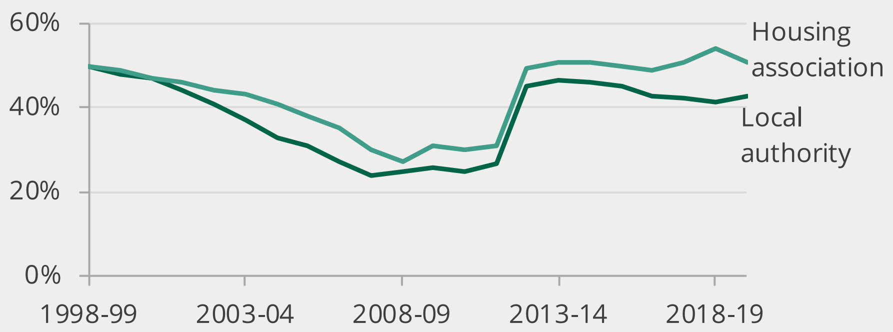


Source: MHCLG, Live Table 104, 21 May 2020

The introduction of regional discount caps in 1998 saw a significant decrease in discounts as a percentage of market value. The average discount for local authority sales reached a low of 24% in 2007-08. The Coalition Government's removal of regional caps and reinstatement of a national maximum discount[6] (in 2012 and 2013) led to discounts increasing again. By 2013/14, local authority discounts had reached 47% on average, while housing association discounts had reached 51%. Local authority discounts declined slightly to 43% by 2019/20, with housing association discounts still at 51%.

Right to Buy discounts increased after 2012

Average discount as % of average market value, 1998-99 to 2019-20



Source: MHCLG, Live Table 682, 23 February 2021

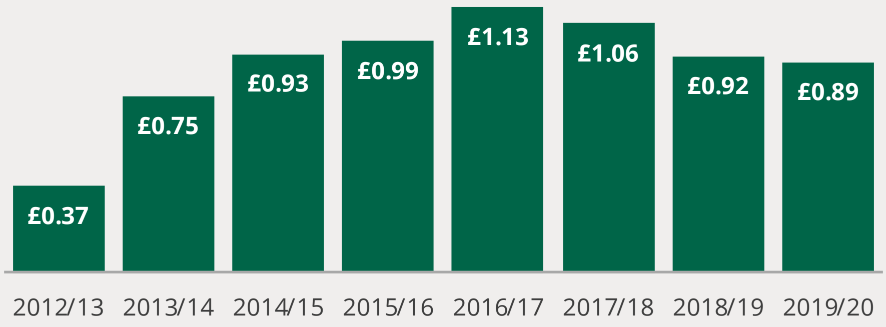
Despite larger discounts, local authorities' initial receipts from Right to Buy sales also increased after 2012 because of the increase in sales volumes. Local authority receipts were £367 million in 2012/13, and increased to a peak of £1.13 billion in 2016/17. Receipts have since fallen along with sales volumes, and were at £895 million in 2019/20.

6 With a higher maximum discount in London.

Local authorities do not necessarily retain all receipts – this is discussed in the next section.

Local authority receipts peaked in 2016-17

Local authority receipts from Right to Buy sales, £ billion



Source: MHCLG, Right to Buy sales in England: July to September 2020, Table 2. 21 January 2021

1.3 Replacing the sold stock

The single most contentious aspect of the RTB has been the failure to replace the sold stock. By the end of June 1996 around 1.6 million council homes had been sold in the UK generating, at that point, some £28 billion in capital receipts.[7] The RTB has raised more than any other Government privatisation initiative.[8]

There was no commitment to replace the sold homes when the RTB was introduced in 1980.

When the statutory RTN was introduced in 1980 there was no commitment to replace the sold homes. Restrictions were placed on the use of capital receipts raised from sales from the scheme's inception. Prior to April 1990, the Government's intention was to limit authorities to using only 20% of receipts raised from sales. However, the ability of authorities to cascade receipts from year to year, together with the application of restrictions to only to prescribed expenditure, meant that local authority expenditure and debt exceeded the Government's intended levels. In response, more stringent controls were introduced in April 1990.

After 1 April 1990, under section 59 of the *Local Government and Housing Act 1989*, local authorities were required to set-aside 75% of receipts raised from the sale of council houses.[9] These receipts could only be used, unless an authority became debt-free, to redeem debts or pay off credit agreements.[10] The remaining 25% of 'useable receipts' could be used at any time to finance capital expenditure on any aspect of local authority services. Useable receipts could also be set aside as provision for credit liabilities.

7 Sums received by local authorities when they sell property, such as land and buildings.
8 Chartered Institute of Housing (CIH), Boosting Housing Investment Through Capital Receipts, June 1996, para 204
9 Aside from occasions on which the rules were relaxed.
10 Section 64 of the 1989 Act.

By the late 1980s local authority housing investment was running at £4-5 billion per annum; it had reached a peak of £12 billion in 1974/75 (at 1994/95 prices). Local authorities and housing commentators actively campaigned for the removal of restrictions on the re-use of capital receipts as a way of making up this 'shortfall' in housing investment. In response, the Conservative Governments of 1979-97 argued that if councils could spend all their receipts they would have to borrow again, ultimately resulting in increased public expenditure.

The April 1997 Labour Party Manifesto included a commitment to allow the phased release of housing capital receipts for reinvestment in new build and renovation. On 14 May 1997, the Queen's Speech included the following commitment:

> Measures will be introduced to enable capital receipts from the sale of council houses to be invested in housebuilding and renovation as part of my Government's determination to deal with homelessness and unemployment.

The *Local Government Finance (Supplementary Credit Approvals) Act 1997* allowed set-aside capital receipts to be taken into account when issuing Supplementary Credit Approvals to local authorities; this had previously been prohibited.[11] The Explanatory Memorandum to the Bill said the measure would "allow the controlled release of reserved receipts from the sale of council houses."

Subsequently, the capital receipts pooling mechanism was introduced by the *Local Government Act 2003* (and associated regulations) with effect from April 2004. Under this mechanism councils were required to pool 75% of the receipts raised from the sale of council houses. Housing authorities could use the remaining 25% of capital receipts for any capital purpose, including investment in new social housing. The pooled capital receipts were redistributed back to local authorities by Government to enhance capital spend according to need – there was no requirement that these receipts be spent on housing capital expenditure:

> RTB sales reduce public sector net borrowing and since receipts are cash and therefore interchangeable with all other capital receipts, they are not hypothecated to any particular spending at any particular time.[12]

On 30 June 2009 then-Housing Minister, John Healey, announced:

> …from today we will exclude all new-build council housing from the HRA subsidy system which means that councils will retain in full the rent and capital receipts from these homes.[13]

The *Localism Act 2011* provided for the abolition of the Housing Revenue deficit subsidy system with effect from April 2012. At this point local housing authorities in England moved to a self-financing

[11] A credit approval permits an authority to pay for capital expenditure using credit, rather than cash. Credit compromises borrowing and credit arrangements, e.g. leasing. Basic Credit Approvals can be used in relation to any kind of capital expenditure whereas a Supplementary Credit Approval can only be used for capital expenditure of the kind specified in the approval.

[12] HC Deb 21 February 2008 c906-7W

[13] HC Deb 30 June 2009 WS14

regime following a one-off redistribution of 'debt' between local authorities. The self-financing settlement included an assumed annual receipt from RTB sales. Some authorities (136) took on more debt while others had their debt levels reduced or they became/remained debt free.[14] Under this system capital receipts raised from the sale of council homes is split between the Government and the local authority.[15] The split was initially set at 75/25% but is now 70/30%.

When the Coalition Government made changes to the maximum RTB discounts to 'reinvigorate' the RTB, a different approach to the treatment of receipts raised over and above those already assumed in the self-financing settlement was adopted. This approach is explained in the following section.

One-for-one replacement mechanism: the 'invigorated' RTB from 2012/13

Alongside the commitment to 'reinvigorate' the RTB by increasing the discount levels, the Government also committed to one-for-one replacement of the sold properties. It was recognised that RTB receipts would need to be supplemented by borrowing, provider contributions in the form of land, or other funding to achieve one-for-one replacement.

One-for-one replacement of the sold properties has been in place since 2012. One-for-one is not like-for-like.

Following a consultation exercise on the proposed process for the replacement mechanism[16] the Government published guidance for local authorities:

> Local authorities will be able to retain the receipts for replacement housing – provided they can sign up to an agreement with Government that they will limit the use of the net Right to Buy receipts to 30% of the cost of the replacement homes. The way this will work is explained in a bit more detail below.
>
> After discussion with local government, the Government has decided that receipts from Right to Buy sales will in future be applied as follows:
>
> - the council may deduct certain costs, namely: an amount to cover the housing debt supportable from the income on the additional Right to Buy sales; transaction and administration costs; and an amount which reflects the income the council might reasonably have expected from Right to Buy sales prior to the new scheme;
> - the council must also pay the Government an amount which reflects the income which the Treasury expected from Right to Buy sales prior to the new scheme;
> - once these costs are deducted, the remaining receipts (the 'net receipts') are available to fund (and must be applied to) replacement affordable rented homes.

14 The debt settlement was intended to allow each council, from rental income, to manage and maintain its stock in a good state of repair for 30 years, or replace it where necessary, with enough left over to meet debt interest and repay the debt over the same period.

15 Labour's model for self-financing had proposed that councils would retain 100% of their capital receipts and interest derived from investing the receipts.

16 DCLG, Reinvigorating the Right to Buy and one for one replacement, December 2011

> The Government expects that, if it were to retain the net receipts from Right to Buy sales, it would be able to provide – at a national level - one-for-one replacement affordable rented homes, while restricting the contribution made from the net Right to Buy receipts to 30% of the cost of the replacement homes. Where a local authority is satisfied that it can match this rate (in other words, apply the remaining receipt to new affordable rented housing, while restricting the contribution made from the net Right to Buy receipts to 30% of the cost of the replacement homes), the Government will be prepared to enter into an Agreement that the authority may retain the remaining receipts. We will publish further details of the way in which this will operate shortly. Where authorities do not wish to enter into such an Agreement, the remaining receipt will be returned to the Department for Communities and Local Government, and re-distributed for new affordable rented housing by the Homes and Communities Agency (or, in London, the Greater London Authority).[17]

Replacement of the sold properties is at a national level and the new properties built are let at affordable rents of up to 80% of market rents, as opposed to social rent levels of around 50% of market rents.

When the Government announced its preferred delivery model for replacing sold properties, commentators expressed doubts as to whether the model would deliver one-for-one replacement. Their concerns focused on:

- Whether sales would generate sufficient capital receipts to replace the sold homes, particularly in low value areas.
- Whether the borrowing caps placed on local authorities (as part of the April 2012 self-financing settlement) would impede their ability to find the additional funding needed to supplement the capital receipts raised. The borrowing caps were removed at the end of October 2018.
- Whether one-for-one meant like-for-like, i.e. could a 3-bed home be replaced with a one bed flat?
- There were tensions between those seeking a localist solution to replacing sold properties and those who argued for national pooling of receipts.

How does the Government measure progress?

In short, the Government looks at the number of additional sales that have been replaced within three years, at a national level. The number of 'additional' sales is determined by subtracting the estimated number of sales that would have happened without the RTB enhancement from the number sold. A more detailed explanation of the methodology is as follows:

- The Government has committed to replacing 'additional' dwellings sold under the enhanced RTB (rather than all RTB sales).
- An estimate of expected sales *without* the enhanced RTB was made in early 2012, for financial years 2012/13 onwards. This was part of the Housing Revenue Account Self-financing

[17] DCLG, Reinvigorating the Right to Buy and one for one replacement: information for local authorities, March 2012

Determinations (calculations supporting a new financial framework for local authorities being implemented at the time).[18]

- Since the above estimate was made, some local authorities have transferred their stock to housing associations. Local authorities without housing stock are identified using other MHCLG data[19] and removed from the estimates for each year.
- The estimated sales for each year can be divided by four to produce a quarterly estimate. Quarterly estimates are subtracted from actual quarterly sales to determine the number of 'additional' sales.
- The additional sales within a quarter need to be replaced within three years for the Government to meet its commitment. Replacements are any affordable property started or acquired by the local authority, the Homes England (previously the Homes and Communities Agency) or the Greater London Authority (GLA).

Replacements are failing to keep track

In its March 2018 statistical release, the Government stated for the first time that housing starts are "falling short" of the commitment to replace additional sales within three years.[20] Prior to the March 2018 release, the Government's position was that additional properties sold were on track to be replaced. [21]

The latest release, published in January 2021, confirmed that replacements continue not to keep up with sales:

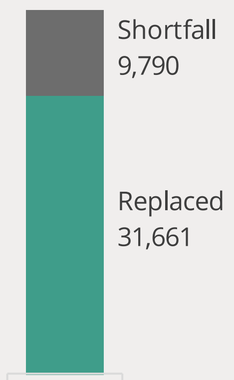
> Between Q1 2012-13 and Q2 2020-21 there were 31,661 additional affordable properties started or acquired, falling short of the three years' replacement commitment. This is measured against the replacement target 41,541 (i.e. the number of additional sales between Q1 2012-13 and Q2 2017-18).[22]

In other words, there have been 41,541 additional Right to Buy sales which should have been replaced by the end of September 2020 in line the Government's three-year replacement policy. Only 31,661 replacement starts and acquisitions have occurred, leaving a replacement shortfall of 9,980 homes.

It is worth noting that all replacement starts and completions so far are being counted towards the replacement of these sales. There have been no replacements for sales after September 2017. A further 31,115 Right to Buy sales have taken place since then[23] – not all of which will be

24% of sales haven't been replaced on time

Additional sales up to Sept 2017, replaced by Sept 2020



[18] The projections are available in the 'self-financing model', a spreadsheet made available as part of the Housing Revenue Account Self-financing Determinations (DCLG, 2012). The projections are in the tab labelled 'main workings', from row 35 onwards.
[19] MHCLG's Live Table 691 identifies local authorities which do not hold any social housing stock.
[20] MHCLG, Right to Buy Sales in England: October to December 2017, p8
[21] See MHCLG, Right to Buy Sales in England releases published 24 March 2016 through to 13 December 2017.
[22] MHCLG, Right to Buy sales in England: July to September 2020, 21 January 2021, p11
[23] MHCLG, Right to Buy sales in England: July to September 2020, Table 1. 21 January 2021

'additional' sales in need of replacement, but a proportion will be. It therefore seems likely that the trend of "falling short" will continue.

Commentary on the RTB replacement policy

A joint report prepared by the Chartered Institute of Housing (CIH), Local Government Association (LGA) and the National Federation of ALMOs (2015) considered reasons for the shortfall in replacing sold homes:

> Since April 2012 the government has increased the discounts available for council tenants who buy their home using RTB. DCLG statistics show that there has been a rise in purchases from 2,638 in 2011/12 to 5,944 in 2012/13 and 11,261 in 2013/14, in a recovering housing market. The government has committed in-principle to using the receipts from these sales to replace the homes that have been sold on a 'one-for-one' basis. However in practice this commitment has not been able to deliver to its intended potential as:
>
> - much of the revenue from sales goes to the Treasury and to debt repayments, with only a proportion being retained locally for reinvestment
> - it does not include homes which local authorities had already projected that they would sell before the increased discounts were announced, or housing association properties sold under the preserved RTB
> - it is a national target which does not aim to ensure all homes sold are replaced in the same area for replacement.[24]

NAO and Public Accounts Committee 2016

A memorandum prepared by the National Audit Office (NAO) for the Public Accounts Committee, Extending the Right to Buy (March 2016) highlighted the need for a substantial increase in starts and acquisitions in order to avoid missing the replacement target.

The Public Accounts Committee held an oral evidence session on 9 March 2016 during which Melanie Dawes, Permanent Secretary at DCLG (now MHCLG), was questioned on the need to accelerate completions to meet the commitment for one-for-one replacement:

> **Chair:** Right; you are on track. But looking at the projections, paragraph 2.12 lays this out so I will not repeat it all, but the last sentence says, "This would be a five-fold increase on the 423 starts and acquisitions recorded in the second quarter of 2015-16, the most recent quarter for which figures are available." That is quite a big increase in the number of starts required. Are you confident that that is possible?
>
> ***Melanie Dawes:*** Well, we have been working with local authorities for several years now. Most of the stock-holding authorities—all but two, in fact—have agreements with us to replace their Right to Buy homes and to build replacement homes. Some of them are doing that through housing associations and some have actually given the money back to the Homes and

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24 CIH, LGA & National Federation of ALMOs, Keeping Pace – replacing Right to Buy sales, 2015, p2

> Communities Agency or the GLA in London to do the replacements in another way, which is fine.
>
> Of course, you are right that we do need to see an acceleration of the profile. We would expect that. This started off slowly and it is building up. It is something that we do take very seriously, though. I myself commissioned an analysis of this from the Implementation Unit last summer so that we can remain on top of it, and I said earlier that in some areas the costs are quite high and the replacement is more difficult, and that is something that we are very alive to and do take very seriously.[25]

The London Borough of Haringey's position was raised during an oral evidence session on 9 March 2016:

> **Chair:** I am sorry, I am paraphrasing you, but you said something about it all being fine when money goes back to the Department. If you are Haringey Council that has put £15 million back because, in that window of three years, you could not recycle the money locally, that may be fine for the Department and—dare I say it—for somebody in Sleaford who might get a home built because the Department recycles the money through the Homes and Communities Agency to another constituency, but it is not fine for people in Haringey who are on the waiting list for a home. They cannot afford to rent in the private sector, they cannot afford to buy and there is a net loss of housing as a result of the right to buy.
>
> I am not talking about the policy, whatever our views on the policy might be. This just doesn't seem to be value for money for taxpayers in that area, because there will be an increase in costs for the local authority, which will probably have to rehouse somewhere in the private sector that family who might have got a home, at cost to housing benefit. The circular story doesn't work for the taxpayer.
>
> ***Melanie Dawes:*** Well, for a local authority to have decided already, within the three-year time period, that they want to give the money back to central Government—or, in the case of Haringey, to the GLA—rather than to replace it themselves, is in line with the policy. That is what I meant. That is the policy that the Government set out. In some places, the Homes and Communities Agency is replacing homes directly, which is proving to be an effective route in some cases.[26]

The report of the Committee's inquiry was published in April 2016.[27] The report made specific recommendations regarding data on replacement homes:

> The commitment to replace homes sold under this policy on at least a one-for-one basis will not ensure that these will be like-for-like replacements as regards size, location or tenure. Experience of the reinvigorated Right to Buy for council tenants, introduced in 2012, shows that meeting such one-for-one replacement targets can be difficult: achieving that target will require a five-fold acceleration in housing starts and acquisitions from current levels. Moreover, replacement homes can be in different areas, be a different size, and cost more to rent. Neither do they need to be new homes: under the Department's rules, local authorities are

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25 Oral Evidence Session, Public Accounts Committee, Q111, 9 March 2016
26 Oral Evidence Session, Public Accounts Committee, Q112, 9 March 2016
27 Committee of Public Accounts, Extending the Right to Buy to housing association tenants, HC 880 2015-16, April 2016

> allowed to buy existing homes from the market, which can include former council housing they have previously sold at a discount under the Right to Buy. Where new homes are built in different areas, or are let at higher rents or sold as Starter Homes, the Department's policy of extending the Right to Buy could mean a long-term reduction in homes for social rent in some areas.
>
> **Recommendation**: The Department should publish data on where replacement homes are built, what size and type of tenure they are, and when they are completed (not merely started) for:
>
> - housing association homes sold under the extended Right to Buy;
> - higher-value council homes sold to finance the extended Right to Buy; and
> - homes sold under the reinvigorated Right to Buy.[28]

The Government's response was published in July 2016. There was agreement on publishing data on the replacement of homes sold under the voluntary RTB "after the first sales have taken place."[29]

Comment during the passage of the Housing and Planning Act 2016

During the Committee Stage of the *Housing and Planning Bill* in the House of Lords, Lord Kerslake referred to the NAO's memorandum when expressing doubts about the achievement of one-for-one replacement of properties sold under the existing and extended RTB:

> Having read the analysis, my personal view is that the barriers in the current model will prevent the delivery of one for one even under the current reinvigorated right-to-buy policy, and most certainly in relation to the extension of right to buy to housing associations. I shall explain why. Under the current policy, local authorities do not get the full value, or the full cost, of the one-for-one replacement; in fact, they get a third of the value of the property sold, and borrow the balance to make up the difference. In some local authorities that is possible; others either hit the cap of their right-to-buy borrowing or have other investment plans for using that funding to fund the maintenance of existing stock. Many local authorities have told me that they already have practical difficulties in delivering one for one. Indeed, a number have handed the money back to government after the three-year period. So unless we can be confident about the financial mechanism that genuinely gives local authorities the wherewithal to replace the property, we are setting this policy up to fail. This is a crucial point for me.[30]

Local Government Association (LGA) analysis 2020

The LGA said that one-for-one replacement would not be possible unless authorities could keep 100% of the receipts raised.[31] The LGA's submission to the Autumn 2017 Budget included the following request:

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[28] Ibid.
[29] Cm 9323, July 2016, p13
[30] HL Deb 10 March 2016 c1413
[31] *Inside Housing*, "Barwell under pressure over £800 million right to buy receipts kept by Treasury," 2 March 2017 [subscription required]

> Councils should also be allowed to use 100 per cent of the receipts from Right to Buy sales to invest in new homes.[32]

In March 2020, analysis of the RTB by the LGA was widely reported. The LGA identified that the national discount meant homes were being sold with an average discount of 42% off the market value. They estimated that tenants had benefited from £4.9 billion in discounts since the increase in April 2012. Given the difficulties councils face in replacing homes, the LGA called again for councils to be free to set local discount levels and to retain 100% of capital receipts:

> The LGA says that the loss of social rented housing risks pushing more families into the private rented sector, driving up housing benefit spending and rents and exacerbating the homelessness crisis.[33]

The LGA has previously argued that the RTB is "unsustainable". An analysis of the RTB carried out by Savills for the LGA (2018) found:

The LGA says that the RTB has become unsustainable.

> - Two thirds of councils will have no chance of replacing homes sold off under Right to Buy on a one-for-one basis in five years' time unless a significant restructuring of the scheme takes place.
> - Around 12,224 homes were sold under RTB last year. Faced with ongoing borrowing restrictions and based on the levels of sales remaining consistent, the analysis estimates that in 2023 councils would only be able to replace approximately 2,000 of these homes.
> - Less than a third of councils would be able to sustain any kind of one-for-one replacement of homes sold under the scheme in five years' time.[34]

Chartered Institute of Housing (CIH) 2018

On publication of the June 2018 statistical release Terrie Alafat, then-chief executive at the CIH, called for the suspension of the RTB:

> Since right to buy discounts were increased in April 2012 66,647 homes have been sold, while 17,911 have been started or acquired to replace them
>
> Chartered Institute of Housing chief executive Terrie Alafat CBE said: "It cannot be right that not only are we not building enough homes for social rent, we are losing them at a time when we need them more than ever. Our analysis shows that we have lost more than 150,000 social rented homes between 2012 and 2017 due to right to buy and other factors, and that figure will reach 230,000 by 2020 unless we take action now.
>
> "We support the principle of helping tenants move into home ownership but it cannot be at the expense of other people in need. We need to look at fairer ways to help tenants into home ownership, because this is clearly not the way to do it."
>
> "We are calling on the government to suspend the right to buy to stem the loss of social rented homes, remove the barriers stopping

32 LGA Budget Submission Autumn 2017
33 Localgov, "Council chiefs worry £5bn Right to Buy discounts 'threaten' scheme", 4 March 2020
34 LGA, Sustainability of Right to Buy, April 2018

> councils from replacing homes sold under the scheme and look at more effective ways to help people access home ownership."[35]

Suspending the RTB also formed one of the recommendations of the CIH's report, Rethinking Social Housing (June 2018).

Housing, Communities and Local Government (HCLG) Select Committee 2020

The Committee considered the RTB during its inquiry into the long-term delivery of social and affordable rented housing 2019-21. The resulting report, Building more social housing (July 2020) recommended:

> Local authorities should receive 100 per cent of Right to Buy receipts. The time limit for using these receipts to fund a replacement should be extended to five years, rather than three. Councils should also be allowed to combine receipts with other pots, like grant funding, to maximise flexibility. Receipts must be used to fund like-for-like tenure replacements: a sold social rent home should be replaced with a new social rent home. Without these changes, Right to Buy will make achieving the development of the desired 90,000 properties per annum unachievable.[36]
>
> The Government must keep a careful watch on the rate of replacements. If, despite these reforms, replacements are still below a one-for-one rate, the Government must intervene further. The Government should fully disaggregate its quarterly Right to Buy data by tenure for sales and replacements, and publish a full review of the Right to Buy scheme by the end of this Parliament, assessing a full range of options for its future.[37]

The Government response (October 2020) is discussed in the section below.

The Government response to missing the one-for-one replacement target

On publication of the March 2018 statistical bulletin then-Housing Minister, Dominic Raab, issued a Written Statement commenting on the failure to meet the three-year replacement target:

> Our record on the provision of affordable housing is a strong one with over 357,000 affordable homes delivered since 2010. This included 257,000 homes for rent. Whilst 69,000 local authority homes have been sold since 2010, there have been 127,000 new homes provided for social rent during the same period.
>
> The Government is committed to a step change in council house building. However, statistics released today show that while the number of homes available for social rent has increased, some local authorities have not been building enough Right to Buy replacements to match the pace of their sales. It is clear that local authorities need to increase their rate of delivery of new homes.[38]

The Statement referred to additional funding announced in Autumn Budget 2017 and went on to raise the possibility of additional flexibility on authorities' use of capital receipts:

35 CIH Press Release, 28 June 2018
36 HC 173, Session 2019-21, July 2020, para 125
37 Ibid., para 135
38 Social Housing Update: Written Statement – HCWS614, 29 March 2018

> To help councils build more homes, we believe there is a case for greater flexibility on the use of receipts from Right to Buy sales. We will consult further with the sector on providing greater flexibility around how local authorities can use their Right to Buy receipts, and how to ensure that we continue to support local authorities to build more council homes. We will consider social housing issues as part of our work on the forthcoming Green Paper.[39]

August 2018 saw the publication of a consultation paper: Use of receipts from Right to Buy sales, submissions were accepted up to 9 October 2018. The paper set out ideas aimed at changing the rules on local authorities' use of money raised from RTB sales "in order to make it easier for them to build more homes."[40] Possible changes could include:

- Allowing authorities to hold receipts they **currently retain** for five years instead of three to give them longer to spend the receipts they already have. Together with other flexibilities the Government is proposing, this could "help make it easier for both existing and future receipts to be used.[41]
- In response to authorities struggling raise the 70% of funding that cannot be met through RTB receipts, the Government suggested:
    a. an increase in the cap from 30% to 50% for social rent homes where authorities meet the eligibility criteria of the Affordable Homes Programme and can demonstrate a clear need for social rented homes over affordable rent; and
    b. allowing authorities to top-up insufficient RTB receipts with funding from the Affordable Homes Programme up to 30% of build costs for affordable rent, or up to 50% of build costs for social rent where a need is demonstrated, with bids for top-up to be submitted to the Affordable Homes Programme.
- Consideration of restrictions on authorities' ability to use receipts for acquisitions as opposed to new build:
    a. By introducing a price cap per dwelling on average build costs at Homes England and GLA operating area level.
    b. Allowing acquisition in certain areas only, e.g. where average build costs are more than acquisition costs.
- Consideration of flexibility to use receipts for shared ownership development as well as affordable and social rent to assist with viability in certain areas.
- Relaxation of the restrictions on the use of certain General Fund land to allow gifting to the Housing Revenue Account at zero cost to make it easier to use this land for housing delivery.
- Allowing the transfer of RTB receipts to an arm's length management organisation (ALMO) or local authority housing company where appropriate. Residents would have to be offered an opportunity to become home owners.

39 Ibid.
40 MHCLG, Use of receipts from Right to Buy sales, August 2018, para 1
41 Ibid., para 12

- A temporary suspension of the requirement to pay interest on returned receipts for a "short window of time".

Comments on the above proposals were invited together with any other suggestions.

In addition to these flexibilities, the consultation paper also revisited the replacement commitment:

> The national target has now been missed for the last two quarters. This trend is set to continue. However, the measurement of the number of homes sold or acquired and the replacements built which count towards the commitment does not currently include:
>
> - Homes sold by councils within the baseline forecast for Right to Buy sales from 2012
> - Homes sold under the preserved Right to Buy
> - Council homes sold other than through the Right to Buy
> - Homes built by local authorities with grant and other funding
> - Affordable homes built by housing associations
>
> The current target focuses on the effects of one policy and does not take into account Government's other efforts to increase the net supply of social and affordable housing. The Government has a strong record of supporting the building of new social housing, which includes the £9 billion Affordable Homes Programme. As such, since 2012, the number of homes provided for social and affordable rent is 159,000, compared to local authority Right to Buy sales of 66,000. Taking into account the total net change in social and affordable rented housing stock, including the Preserved Right to Buy, other sales and losses due to demolitions, there has been a net increase of 49,000 social and affordable rented homes since 2012. Therefore, the Government is consulting on whether it would be preferable to measure the overall effects of Government policy on social housing stock, instead of narrowly measuring it against the Right to Buy target.
>
> One option would be for the Government to drop the current target and to focus on a broader measurement that takes into account all the social and affordable housing that has been sold or lost against the total number of additional social and affordable housing so that it is clear whether there has been an increase rather than loss overall. This would mean that all properties sold under the Right to Buy would be included rather than just those above the baseline forecast in 2012, as well as new social housing bought or built by local authorities and housing associations, regardless of how this has been funded.[42]

The outcome of the consultation exercise is awaited. The Government response to the HCLG Committee's report, Building more social housing, was published in October 2020 and included reference to the publication of an outcome "in due course":

> The Government wants to support local authorities to build more affordable homes. The consultation on the Use of Receipts from Right to Buy Sales (receipts consultation) invited views on options

[42] Ibid., paras 34-36

to change the rules around these receipts to make it easier for councils to build more homes. The Government is considering its response to the receipts consultation which will be published in due course. On the type and tenure of replacement homes, the Government considers that local authorities are best placed to determine the housing needs of their local communities; and authorities have the freedom to do this under the terms of the agreements which they signed to keep the Right to Buy receipts.[43]

The Government has closely monitored the rate of Right to Buy replacements and will continue to do so. The Government is conscious that, while the overall number of homes available for social rent has increased, local authorities have not been building enough replacements to match the pace of Right to Buy sales; and the commitment that every additional home sold would be replaced on a one-for-one basis nationally is not being met.

As set out in the response to recommendation 2, the department already publishes a wide range of data on local authority stock. It may be possible to collect data on the last tenure of a property prior to its sale but this would involve a likely New Burden for local authorities. Data on the tenure of replacements is likely to be more difficult to collect as the tenure could change before units are completed or before they are rented. Units may also change tenure through time as tenants change, which is likely to lead to the data being less reliable. In the receipts consultation, the Government has proposed options for flexibilities to enable local authorities to build more replacement homes. In addition, the consultation sought views on introducing a broader measurement that took into account all the social and affordable housing that had been sold or lost against the total number of additional social and affordable homes provided, so that it is clear whether there has been an increase rather than loss overall. This would include all properties sold under the Right to Buy, rather than solely additional sales above the baseline forecast in 2012; together with all new social housing, regardless of how this had been funded. The Government is considering its response to the receipts consultation which will be published in due course.[44]

43 CP 299, October 2020, p9
44 Ibid., pp10-11

2. RTB and housing associations

2.1 Current position

Housing association tenants who entered into their tenancy agreements after 15 January 1989 are assured tenants whose rights are governed by the *Housing Act 1988.* As a rule, assured tenants of housing associations **do not** have the Right to Buy the home in which they live on the same terms as council tenants.[45]

The *Housing Act 1988,* which introduced the assured tenancy regime for housing associations, also introduced a mixed-funding regime. A key aim of the Conservative Government of the day was to attract more private finance into social housing development. Under the mixed-funding regime associations bid for public funding for new housing development in the form of grant from Homes England. The remaining scheme costs are usually met from private finance in the form of loans secured on an association's asset base (i.e. their housing stock) and rental stream. The rationale for exempting assured tenants from the Right to Buy is based on the need for associations to provide security for private lenders. If tenants were able to buy their homes, the value of an association's asset base would gradually be eroded and their rental stream reduced; it was recognised that, in turn, this would make lenders cautious about backing them.

Although they may not have the Right to Buy, some housing association tenants will have a statutory Right to Acquire. The *Housing Act 1996* introduced the Right to Acquire – like the RTB it is a statutory right for tenants of housing associations to acquire their homes at a discount to the open market value. The right applies to eligible tenants of associations who live in eligible properties or new lettings provided with Social Housing Grant (or transferred to a housing association) after 1 April 1997. The Right to Acquire works in the same way as the RTB, subject to some important differences, for example:

- Associations may sell the tenant an alternative property (i.e. a property other than that to which the tenancy relates and which is the subject of the tenant's claim).
- The discount offered to tenants is significantly less generous than that offered under the Right to Buy (maximum £16,000). The discount is a flat rate (i.e. it does not vary depending on the number of qualifying years as a tenant).

2.2 A voluntary Right to Buy (VRTB)

The Conservative Party's 2015 Manifesto contained the following commitment:

> We will extend the Right to Buy to tenants in Housing Associations to enable more people to buy a home of their own. It is unfair that they should miss out on a right enjoyed by tenants in

[45] The key exception to this is where the tenant was previously a secure council tenant at the point at which ownership of the property was transferred to a housing association – these tenants have a 'preserved' Right to Buy.

> local authority homes. We will fund the replacement of properties sold under the extended Right to Buy by requiring local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant. We will also create a Brownfield Fund to unlock homes on brownfield land for additional housing.[46]

In the wake of this announcement significant concerns were raised within the housing association sector about the implications of extending the RTB to assured tenants. A number questioned the legitimacy of legislating to allow the sale of assets owned by charities/not-for-profit companies and the implications this might have for associations' status as independent private bodies.

The NHF offer to Government

On 24 September the National Housing Federation (NHF) announced details of an offer to Government to establish a *voluntary* RTB.[47] A letter from David Orr (then-CEO of the Federation) sent to housing associations described the offer in the following terms:

> …following intensive negotiations with the government and discussion with members, we have made a formal offer to the government that sets out an alternative way for the housing association sector to deliver the extended Right to Buy.
>
> […]
>
> These three factors – independence, a new relationship with the government, and the best deal on compensation and flexibilities – will help to ensure that you and your board retain the freedom to make your own future and choices. We believe that this offer is the very best possible compromise achievable for the sector.[48]

The key points of the offer for associations, as set out in David Orr's letter, included:

- You will get the full market value of the properties sold, including repayment for the discount the tenant receives.
- You will maintain your independence with control over which individual homes you sell, establishing an important principle and reducing the risk of reclassification of housing associations as public sector, with the implications for your future as an independent business that this would entail.
- In most circumstances, you will be expected to sell the tenant their current home. However, if you have a good reason not to, you can work with the tenant to find an alternative home. The final decision about whether to sell an individual home to a tenant will rest with your board.
- There are some circumstances, such as in rural areas or with certain types of homes, where it will be made clear to the tenant that they shouldn't expect to be able to buy their current home, and you will work with them to find them somewhere else to buy with their discount should they choose to do so.

46 Conservative Party's 2015 Manifesto, p54
47 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
48 "Sector to vote on 'voluntary' deal on Right to Buy," *Inside Housing,* 24 September 2015 [subscription required]

- There will be a national commitment to replace each home sold on a one for one basis, but the type and location of replacement is flexible – you can build a new one for social or affordable rent or shared ownership, or, in certain limited circumstances, you can buy one on the open market or bring an empty home back into use. The replacement home does not need to be in the same area as the home you sold.[49]

Housing associations were asked to vote on the offer with a deadline of 2 October 2015. David Orr's letter made it clear that legislation to introduce a statutory RTB for housing association tenants could only be avoided if a majority of associations voted in favour of the voluntary alternative:

> The legislative timetable means that the timings for this sign-up process are very tight. The government has had to set a deadline of Friday 2 October to ensure that the deal can be agreed before the Housing Bill is published later in October. If we do not meet that deadline, then the government will proceed with legislation as planned to extend the Right to Buy to housing associations.[50]

The Secretary of State at that time, Greg Clark, set out his position on the offer during his speech to the NHF conference on 24 September 2015:

> Taken together, this is a proposal which offers the chance of a new partnership between housing associations and the government. It's one that would respect the independence and the voluntary ethos of the sector. And it provides for both for the extension of the Right and for other ownership opportunities, and critically for the expansion of home building.
>
> It is a proposal that if it were put to the government by the whole sector and agreed it would make it unnecessary to take legal measures to extend the Right to Buy.
>
> But of course, that is for you collectively to decide.[51]

Inside Housing reported the outcome of the vote:

> In total, 323 National Housing Federation (NHF) members voted to back the proposal, with 37 voting against. Eleven housing associations responded to the poll with an abstention while 213 did not reply at all.
>
> The 37 housing associations which voted no control a combined 111,500 homes. It remains unclear whether, or how, these organisations will be compelled to sell their homes if the 'voluntary' proposal is accepted by government.
>
> The 323 members who voted in favour of the proposal own a total of 2.26m homes, which the NHF says represents 93% of total housing association stock.[52]

During his speech to the Conservative Party Conference on 7 October 2015 the then-Prime Minister announced agreement *had*

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49 Ibid.
50 Ibid.
51 "Greg Clark speech to NHF conference," *Inside Housing*, 24 September 2015 [subscription required]
52 "Number that voted no to RTB deal revealed," *Inside Housing*, 6 October 2015 [subscription required]

been reached on the NHF's offer and that the first housing association tenants would be able to buy their homes in 2016.[53]

The Housing and Planning Act 2016

The 2016 Act gained Royal Assent on 12 May 2016. It **does not** contain measures to introduce a statutory RTB for housing association tenants. However, the Act does provide for grants to be paid to housing associations to compensate them for selling their housing assets at a discount.

Part 4 of the Act provides a mechanism through which local housing authorities would have been required to make payments to the Secretary of State based on the value of 'higher-value' social housing which was expected to become vacant in the year ahead. It was expected that these payments would be used to make grants to housing associations in respect of RTB discounts. However, The social housing Green Paper, A new deal for social housing (August 2018), announced that the Government **would not bring the Higher Value Assets provisions of the Housing and Planning Act 2016 into effect:**

> Many councils have told us that without knowing for certain whether this policy might be implemented in future years, it is difficult to make long term investment decisions. The Government remains committed to the principle that councils should use their housing assets effectively and should consider selling high value homes and using the funding to build more affordable housing. However, this should be a decision to be made locally, not mandated through legislation and we understand that the uncertainty around the future of this policy could prevent councils from building. Therefore to increase councils' confidence to plan ambitious house building programmes, we are confirming in this Green Paper that the Government will not bring the Higher Value Assets provisions of the Housing and Planning Act 2016 into effect. We will look to repeal the legislation when Parliamentary time allows. [54]

This leaves unanswered the question of how tenants' discounts under the voluntary RTB will be funded. In October 2020 the Government reiterated a commitment to reimbursing associations:

> On the Voluntary Right to Buy, the Government has been clear that – in line with the 2015 voluntary agreement with housing associations - it will reimburse housing associations for the cost of the discounts.[55]

The Act provides that, where the Government makes an agreement with a local authority outside London about building new homes, at least one new affordable home will be provided for each dwelling that is assumed to be sold. Inside Greater London agreements of this type must provide for two affordable properties to replace each one sold.[56]

The Act also provides for housing associations' compliance with the voluntary RTB to be monitored. The Secretary of State will publish

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53 DCLG Press Release, Historic agreement will extend RTB to 1.3 million more tenants, 7 October 2015
54 MHCLG, A new deal for social housing, 14 August 2018, para 153
55 CP 299, October 2020, p10
56 Section 74 of the *Housing and Planning Act 2016*

"home ownership criteria" against which associations will be monitored by the Regulator of Social Housing.

When will the VRTB be introduced?

No implementation date for the extended RTB has been announced. The Autumn Statement 2016 announced that the Government would fund "a large-scale regional pilot of the Right to Buy for housing association tenants." Autumn Budget 2017 confirmed the regional pilot would go ahead in the Midlands in 2018 and would operate for one year:

> The Budget confirms that government will proceed with a £200 million large-scale regional pilot of the Right to Buy for housing association tenants in the Midlands.[57]

When questioned on the extension of the VRTB to other areas the Housing Minister, Christopher Pincher, has said:

> The Voluntary Right to Buy Midlands pilot will complete later this year, and is being fully evaluated. The Government committed to evaluate new pilot areas, and further details will be provided in due course.[58]
>
> The final sales under the Voluntary Right to Buy Midlands pilot are due to conclude in 2021, following some delays to sales caused by the Covid-19 pandemic. The pilot is being fully evaluated, and the results of this evaluation will be published.[59]

The Conservative Party's 2019 Manifesto said:

> We will also maintain the voluntary Right to Buy scheme agreed with housing associations. Following the successful voluntary pilot scheme in the Midlands, we will evaluate new pilot areas in order to spread the dream of home ownership to even more people.[60]

An evaluation of the midlands pilot scheme was published on 8 February 2021. The findings are discussed in the following sections.

Findings from the 2018 pilot

MHCLG's final evaluation report of the pilot includes data about the properties purchased and the characteristics of the buyers (see chapter 4 of the report). At the end of April 2020, a total of 3,767 applications had been made to the scheme, of which 1,681 (44%) had led to a completed sale and 211 (6%) were still in progress. A further 1,875 (50%) were closed without a sale taking place. The data below profiles the 1,892 sales that were completed or in progress by the end of April.

Sales were more common in urban areas, with 45% of properties sold in either Birmingham, Leicester, Coventry, Leicester or Walsall. Birmingham had the highest absolute number of sales (394, or 21% of the total), while Leicester had the highest rate relative to its existing housing stock.

57 HC 587, November 2017, para 5.32
58 UIN 92916, Right to Buy Scheme: Housing Associations, 24 September 2020
59 UIN 122924, Right to Buy Scheme: Midlands, 8 December 2020
60 The Conservative and Unionist Party Manifesto 2019, p29

Size and type of property

Houses were more likely to be sold than flats: 86% of sales in the scheme were houses and 14% were flats. As MHCLG explain:

> One factor behind this may be that 60% of associations excluded at least some of their flats from the VRTB […] offering portable discounts instead to applicants from flats. [61]

The table below shows the distribution of the properties sold by size. Three-bedroom properties accounted for the majority (53%) of sales, while just 6% of sales were of one-bedroom properties. When looking at sales as a proportion of the existing stock of each size held by housing associations in the Midlands, properties with more bedrooms were more likely to be sold. One-bedroom properties were sold with a higher average discount than other properties, in part because one-beds are more likely to be flats, which are eligible for higher percentage discounts.

Homes sold by number of bedrooms

Bedrooms	% of sales	Sales per 10,000 existing dwellings	Average price paid after discount	Average discount (%)
1	6%	21	£35,015	60%
2	34%	62	£65,897	47%
3	53%	105	£81,918	44%
4	6%	126	£90,740	45%
5+	1%	256	£116,224	41%

Source: MHCLG, Voluntary Right to Buy Midlands pilot: evaluation report, Tables 18 and 20

[61] MHCLG, Voluntary Right to Buy Midlands pilot: evaluation report, p. 76. 8 February 2021.

Characteristics of buyers

Data was also collected on the demographic characteristics of households buying their home through VRTB.

Most buyers were long-term social housing tenants (three years' tenancy in the sector was necessary to be eligible for the VRTB). 71% of buyers had lived in the sector for eleven years or more, while 27% had been tenants for 21 years or more. Less than 10% of buyers had been in the sector for 3-5 years only.

The majority of buyers (62%) were multiple-adult households, while single-adult household made up 38% of purchases. As the chart on the right shows, the majority households buying were led by someone aged between 35 and 54 years (65% of the total). 16% of buyers were aged 34 or under, 15% were aged 55 to 64, and 5% were aged 65 or over.

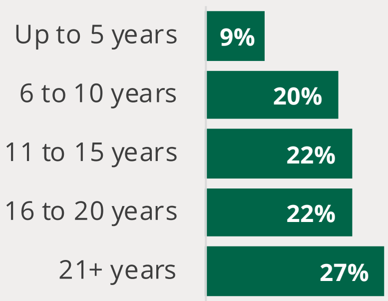
Data was also collected on the ethnicity of purchasing households. Around 66% of households were White, 19% were Asian, and 10% were Black. However, Asian households were much more likely to purchase, relative to the number of Asian households renting from housing associations in the Midlands. The evaluation report notes:

> These factors [age and ethnicity] are inter-related – 40% of single adult households are pensioners living alone. Pensioner households are also more likely to be white. Asian households were less likely to buy with a mortgage – in total 40% of Asian households were cash buyers, compared to 15% of Black and Mixed ethnicity households and 18% of White households. [62]

73% of households were buying with a mortgage, while 27% were cash buyers. The average amount borrowed via mortgages was around £72,810, while the average deposit was around £4,860 or 6% of the purchase price. Purchasing households had an average income of around £34,670.

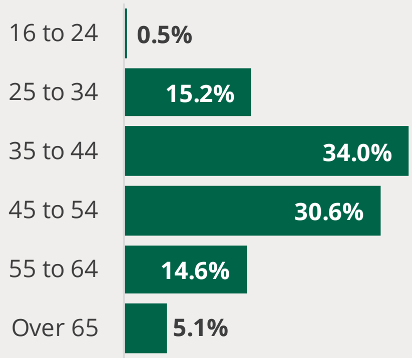
Most buyers had lived in the social rented sector for over a decade

Buyers by years in the social sector



Most buyers were between 35 and 54 years old

VRTB buyers by age group



Source: MHCLG, [Voluntary Right to Buy Midlands pilot: evaluation report](), Tables 21 and 22

2.3 Comment on the VRTB (including the Midlands pilot)

Comment is grouped under several broad headings below. The overwhelming concern amongst social housing providers is that the measure will result in further depletion of the social housing stock due to uncertainties around whether plans for one-to-one replacement will bear fruit:

62 MHCLG, Voluntary Right to Buy Midlands pilot: evaluation report, p. 80. 8 February 2021.

> Given this uncertainty, and the coalition's less-than-impressive record in delivering replacement social housing under the existing Right to Buy, there is a risk that these policies will lead to a further depletion of the social housing stock – something the proposal explicitly seeks to avoid.[63]

The Communities and Local Government Select Committee commissioned Sheffield Hallam University to consider The Impact of the Existing Right to Buy and the Implications for the Proposed Extension of Right to Buy to Housing Associations. The headline findings were published in October 2015.[64]

Number of eligible tenants

In 2015 the NHF estimated that an additional 850,000 tenants could become eligible under an extended RTB. This number took account of housing association tenants who already had a 'preserved' RTB and those tenants who had not held a tenancy for the requisite three-year qualifying period. Of the 850,000 it was estimated that 221,000 tenants would be eligible and able to afford to buy their homes:

> Based on the average length of occupancy (between nine to 12 years depending on the region), the household income required to afford a 95% mortgage after the discount varies between £14,000 and £31,000 (source: DCLG using average local authority Right to Buy sale price).
>
> Even with this discount, not every household could afford such a mortgage – the proportion of tenants varies by region from 15% to 35%. This means that across the country there are 221,000 households that are eligible for the new proposal and able to afford the mortgage.[65]

The Chartered Institute of Housing commissioned John Perry, Steve Wilcox and Peter Williams, together with four housing trusts[66] to carry out an interim analysis of the sale of high value council stock to finance the extended RTB.[67] The resulting paper included an analysis of likely sales under the extended scheme:

> Right to buy (RTB2) sales and replacements
>
> - HA tenants entitled to RTB2 will number about 1,450,000. About 1,070,000 will initially be eligible by length of tenancy with a further 125,000 or so becoming eligible annually.
> - We estimate that 10% of those eligible will buy over the first five years. Taking those currently eligible plus those becoming eligible each year, this would suggest some 145,000 sales over that period, with most sales occurring in years 2 and 3.
> - The average value of dwellings under the current right to buy (RTB1) in 2013/14 was just under £126,000, with average discounts close to 50%. Making a modest

63 IFS Briefing Note BN171, Extending Right to Buy – risks and uncertainties, 2015
64 Centre for Regional Economic and Social Research at Sheffield Hallam University, Headline Findings from Evidence Review, 2015
65 NHF, Joe Sarling, "Right to Buy extension estimated to cost £12bn", 14 April 2015
66 Affinity Sutton, Guinness, Peabody and Southern.
67 Note that the requirement to sell higher value vacant housing stock is no longer being implemented.

> allowance for house price increases and assuming an average 50% discount, 145,000 sales would have a value of some £20 billion, split evenly between achieved receipts of £10 billion and discounts of £10 billion, i.e. £2 billion per annum.[68]

Research commissioned by the Communities and Local Government Select Committee into the impact of the existing RTB, and the potential impact of an extended RTB, concluded "It is very difficult to predict the proportion of housing association households who will exercise the RTB" but went on:

> This analysis suggests that between nine per cent and 20 per cent of households might be able to afford the RTB, creating a range of between 76,500 to 170,000 existing housing association households who might be able to exercise the RTB from their own resources.[69]

The Midlands pilot measured overall demand for the VRTB and used this to estimate demand should the pilot be rolled out further – the full methodology applied is explained on pages 83-87 of the final report:

> In conclusion, this process has estimated that had the VRTB scheme been operating across the whole of England on a similar basis to the pilot that took place in the Midlands – but without a ballot process to constrain demand – 15,870 tenants would have bought their homes.[70]
>
> Demand for an open-ended VRTB scheme running along the same lines as the statutory Right to Buy (RTB) for local authority tenants is hard to predict, largely because it is hard to know the extent to which interest shown in the pilot would be sustained over a longer timescale. After drawing on a range of sources, it was estimated that a VRTB scheme where demand is not constrained would see around 32,000 sales in the first year, falling to around 17,000 sales per year 10 years on. Over the first 10 years of operation it is estimated that 223,843 homes would be sold, if no limits were placed on demand.[71]

Exemptions from the voluntary RTB

Housing associations will retain discretion to refuse to sell certain properties. This should be set out in a local policy document.

Although there will be a presumption that tenants can buy the home in which they live, the voluntary deal envisages that housing associations will have discretion to refuse to sell certain properties. The protection of properties in rural areas was a frequently raised concern when the extension of the RTB was first mooted. The NHF offer includes examples of circumstances in which this discretion might be exercised:

- properties in certain rural areas;
- supported housing designed for people with specific needs;
- specialist properties of historic interest (almshouses);
- properties provided through charitable or public-benefit resources or bequeathed for charitable or public-benefit purposes;
- tied accommodation;
- where the landlord is a co-operative;

68 CIH, Selling off the stock, October 2015
69 Centre for Regional Economic and Social Research at Sheffield Hallam University, Headline Findings from Evidence Review, 2015
70 MHCLG, Evaluation of Midlands Voluntary Right to Buy Pilot, February 2021, p87
71 Ibid., p11

- where the landlord does not have sufficient interest to grant a lease of over 21 years;
- properties held in a Community Land Trust; and
- where there are clear restrictive covenants in existing resident contracts around the protection of rural homes. [72]

During consideration of the *Housing and Planning Bill* in Public Bill Committee then-Minister for Housing, Brandon Lewis, confirmed that almshouses would be exempt from the extended RTB because they are exempt from the statutory RTB, but rejected attempts to amend the Bill to introduce other exemptions.[73]

The NHF briefing on the policy development process (April 2016) confirmed that decisions over whether or not a tenant will be able to buy the property in which they live will rest with the board of each housing association landlord:

> The deal states that there is a presumption that housing associations would sell the tenant the property in which they live. However, boards retain discretion over which properties to sell to tenants and which not to. The deal listed categories of housing where the tenant might reasonably expect the association to decline the sale, but these are examples, they are not the only grounds on which an association may refuse a sale. Nor are they proscriptive – an association may choose to sell a property too. Boards need to decide their policy for operating their discretion, and in due course, publish their policy.
>
> Where associations do operate their discretion not to sell, they will be expected to offer their tenants an alternative property to buy through the concept of a portable discount. They will also need to decide their portable discount policy alongside their policy on discretion not to sell.[74]

David Orr, then-chief executive of the NHF, described the ability of housing association tenants to buy their homes under the voluntary scheme as a "right to have a discount" rather than the equivalent of local authority tenants' RTB the home in which they live:

> **David Orr***:* Our members have discretion about whether or not they will sell. That is not marginal; it is absolutely central. What we have crafted is something that is not the same as the local authority Right to Buy process.[75]

Associations involved in the Midlands pilot scheme were required to publish policies setting out the circumstances under which they would not sell a property. The final evaluation report notes that there were two key drivers behind these decisions:

- Properties that they could not legally sell
- Properties that they did not want to sell because doing so would conflict with their business objectives[76]

72 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
73 PBC Deb 1 December 2015 (morning) c376
74 NHF, Voluntary right to buy: policy development process, 5 April 2016
75 09 Mar 2016 - Right to Buy - oral evidence, Public Accounts Committee, HC 880, Q17
76 MHCLG, Evaluation of Midlands Voluntary Right to Buy Pilot, February 2021, p41

Portable discounts

Where a housing association decides to refuse the RTB to a tenant, the expectation is that associations will offer those tenants the opportunity to use their discount to buy an alternative home. The NHF briefing paper setting out the key principles of the agreement (April 2016) said:

> The terms of the agreement make it clear that this must be from within the sector to ensure that government contribution to the scheme through discount compensation is retained by the sector for investment in new supply and not lost to the private market. The working assumption is that this would be a housing association new build property and help drive development. Portability is however one of the trickiest issues to work through and much work remains to be done here.[77]

One of the main reasons for establishing the Midlands pilot scheme was to test the operation of portable discounts. The Guidance for housing associations taking part in the scheme advised:

> Where you operate your discretion not to sell the property in which the eligible tenant lives (this includes circumstances in which you are prevented from selling the property – for example via planning restrictions) in line with your local policy you **must** offer the tenant the opportunity to use their discount to purchase an alternative property from either your own or another association's stock. However, it is up to you to determine the extent of that offer, depending on what is reasonable for the circumstances locally. You **must not** offer a portable discount on a property on the open market.[78]

The final evaluation report recorded higher drop-out rates where eligible applicants were offered a portable discount:

- Data was not comprehensively recorded on the proportion of stock excluded but the data there is suggests that, overall, 20% of eligible applicants were applying from homes that were excluded by their housing association.
- Most applicants wanted to buy the homes they were living in, and many dropped out when offered a portable discount. Others were willing to port but failed to find a suitable property. Overall, 12% of eligible applicants offered portability purchased (or were in the process of doing so by 30 April 2020), compared with 69% of those offered the opportunity to purchase the home they were living in.[79]

The main challenge to the attractiveness of portability was the lack of suitable homes available of the right size and location during the pilot. Efforts to help tenants port to a property owned by another association "were tricky to implement and resulted in only 5 sales (including 2 between different entities within the same housing association group)." Associations found applicants to be "more selective than they had perhaps expected, not willing to take any offer of a

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77 NHF, VTRB - Key principles of the agreement, April 2016
78 MHCLG, Voluntary Right to Buy – Midlands Pilot, May 2018, p17
79 MHCLG, Evaluation of Midlands Voluntary Right to Buy Pilot, February 2021, p8

suitable property made to them."[80] The drop-out rate led RSM Economic Consulting to conclude:

> ...the majority of tenants applying for the VRTB want to buy their current home and are not willing to take the discount to another property. This suggests that motivation for many to apply for the VRTB comes most of all from a desire to own their current home, rather than a desire for a discount, or a more affordable route to homeownership per se.[81]

Non-compliant associations

Questions were raised about compliance with the voluntary RTB by housing associations who voted against the NHF's offer to the Government. *Inside Housing,* reported lawyers' views that the Act does not contain enforcement provisions under which the Regulator would be able to sanction non-compliant associations. Section 66 of the 2016 Act, under which the Secretary of State will publish "home ownership criteria" against which associations will be monitored by the Regulator of Social Housing was described a "name and shame" provision, rather than one which could prompt a regulatory downgrade.[82] The Explanatory Notes to the Bill said that compliance with the voluntary deal "is expected to be sufficient to meet the expected level of compliance with the home ownership criteria."[83]

In Public Bill Committee, Gareth Thomas (Labour) asked about the position of associations which had voted against implementation of the NHF's voluntary Right to Buy deal. The Minister responded:

> The deal was signed and, as I understand from the comments of David Orr, all the housing associations that took part in that vote understood that it was a deal for the entire sector. Some 96% of stock is now signed up, and of those that did not have time to sign up or did not otherwise sign up, there is a fair proportion of that 4% that benefit from the right to buy for the transfer of stock anyway. It would be an extraordinarily controlling move if we were to include in the Bill restrictions on housing association decision making powers, especially as we have worked closely with housing associations to reach a voluntary agreement in the first place, particularly in the light of recent decisions by the Office for National Statistics.[84]

On 8 March 2017, responding to a Westminster Hall debate, then-Minister Gavin Barwell said:

> The threshold we set the NHF was that we wanted the overwhelming majority of housing association homes to be governed by any agreement. Nationally, 93% of housing association homes are managed by associations that have signed up to the voluntary agreement. I hope that reassures him about the comprehensiveness of the cover as far as housing associations are concerned.[85]

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[80] Ibid., pp8-9
[81] Ibid., p112
[82] "Housing Bill 'gives HCA no power to enforce RTB'," *Inside Housing*, 20 October 2015 [subscription required]
[83] Bill 75 – EN 2015-16, p27
[84] PBC Deb 1 December 2015 (morning) c376
[85] HC Deb 8 March 2017 c355WH

Fiona MacGregor from the Regulatory Committee of the Homes and Communities Agency (now the Regulator of Social Housing) told CLG Committee "it will not be our role to enforce the Right to Buy, because clearly at that point it is not voluntary, but we will gather some information around sales rates and what individual organisations are doing."[86] CLG Committee noted that the NHF offer to the Government said "if a tenant were unhappy with the alternative offered…they would be allowed to appeal to the Regulator to arbitrate."[87] The Committee called for the monitoring role of the Regulator and the appeals process for tenants to be spelled out.[88]

A requirement to replace the sold properties

The single most contentious aspect of the statutory RTB has been the failure to replace the sold stock since the scheme's inception.

Under the voluntary deal housing associations committed to deliver "replacement of at least one new home for each home sold." The aim is that replacement will be achieved within two years of sale, but the default position is that associations will achieve replacement within three years. Replacement will be at a national level (i.e. as with the current replacement scheme, properties will not necessarily be replaced in the areas in which they have been sold). Replacement will not be 'like for like' – i.e. properties let at social rents (generally set at 50% of market rents) could be replaced with affordable rented homes (let at rents of up to 80% of market rents), homes for shared ownership, and/or other part-buy part-rent models. In some circumstances it will be acceptable to fulfil the replacement requirement by bringing an empty home into use or buying a pre-existing home.[89]

To achieve one-for-one replacement the deal set out the following terms:

- Government would pay full compensation for Right to Buy discounts direct to housing associations. 70% would be paid on completion of the sale and the remaining 30% would be paid when there is evidence of a start on site or acquisition.
- The sales receipt would go back to the housing association and be available on their balance sheet to enable one for one replacement. The grant portion of any sale would be recycled through the Recycled Capital Grant Fund – or a similar fund.[90]

Housing commentators regard the achievement of one-for-one replacement of the sold properties as of paramount importance given the difficulties households face in accessing affordable housing. The Chartered Institute of Public Finance and Accountancy (CIPFA) said:

86 Communities and Local Government Committee, Housing Associations and the Right to Buy, Second Report of Session 2015-16, HC370, February 2016, para 111
87 Ibid.
88 Ibid.
89 An offer to extend RTB discounts to housing association tenants, NHF, September 2015
90 Ibid.

> There were 1.37 million households on local authority waiting lists on 1 April 2014.
>
> There is a concern that Right to Buy, unless it guarantees at least one for one replacement in the areas of highest need, will increase this shortfall. As a result a reduction in housing stock may lead to increased waiting lists and an increase in the length of time individual tenants have to wait before being housed. Even where one for one replacement is achieved, replacement of housing stock will take time to become available.[91]

Comment on progress in achieving one-for-one replacement under the current, reinvigorated RTB, can be found in section **1.3** of this paper.

A one-for-one replacement working group was established by the NHF:

> The VRTB agreement sets out that all homes sold under the scheme will be replaced by a new affordable home on a one for one basis nationwide. The one for one replacement working group looks at how to make the replacement process as rapid and efficient as possible, designing a process that works for both developing and non-developing associations, and how housing associations might work in partnership with other organisations to deliver replacements. It is also looking at how to deliver the national target of one for one replacement through new supply when some housing associations, such as those in low market areas, will not be able to deliver that as individual associations. It is specifically looking at how the discount is paid to the housing association.
>
> The group is chaired by the Federation and made up of five housing associations with specialist knowledge of development: English Rural, Great Places, Sanctuary, South Yorkshire Housing Association, and Riverside, alongside DCLG and the HCA.[92]

The Communities and Local Government (CLG) Select Committee called on the Government (February 2016) to "publish more details on how it will achieve its objective of at least one-for-one replacement of sold homes, and address factors such as the availability of land, the capacity of the homebuilding industry, including the shortage of skills, and the uncertainty of income from council home sales."[93]

The Midlands pilot scheme considered one-for-one replacement. The first sales under the scheme took place in March 2019. The evaluation report notes that no replacements had been built but this is not surprising as a 3-year replacement period is allowed. Associations in the pilot were surveyed on plans for replacing homes sold under the VRTB. In summary:

- Most planned to build the replacement homes themselves.
- There is "a high degree of uncertainty" over whether the replacement homes will be like for like.
- The total number of replacement homes planned (1,078) amongst the responding associations was less than their number of anticipated sales:

91 CIPFA, Housing associations right to buy, October 2015
92 NHF briefing on the policy development process, April 2016
93 Communities and Local Government Committee, Housing Associations and the Right to Buy, Second Report of Session 2015-16, HC370, February 2016

> This suggests either that housing associations are planning to build fewer than one for one, or have not yet made plans for the tenure of all the homes they will build

- Returns suggested that "around 6 in 10 replacement homes are likely to be at higher rent levels than those they replace (which are likely to be nearly all at social rent level)."
- Returns suggested that "replacement homes will on average be smaller than those that are sold."
- The Government intends that homes built to replace those sold under the VRTB should be additional to those that would have been built anyway. The evaluation report noted that more work is required to assess additionality:

> There is a further question as to whether all the homes built by housing associations as replacement homes are truly additional ones that would not otherwise have been built by anyone (including other housing associations and private developers). However, assessing this is beyond scope of this evaluation.

- The main challenges to replacing the sold homes were land availability and insufficient money from sales.[94]

Paying for VRTB discounts

As noted in section 2.2, the discounts offered under the voluntary RTB were to be paid for by receipts raised from the sale of vacant "higher value" local authority owned housing. However, The social housing Green Paper, A new deal for social housing (August 2018), announced the Government **would not bring the Higher Value Assets provisions of the Housing and Planning Act 2016 into effect.** The paper said the Government would "look to repeal the legislation when Parliamentary time allows." [95]

The decision not to implement the higher value assets sales policy was widely welcomed.[96] CLG Committee had been critical of the lack of a full explanation on the anticipated costs and funding of the extended RTB, the replacement of sold council homes and the Brownfield Regeneration Fund, and called on the Government to publish this information "as soon as possible." [97] The Committee also said that, in principle, "public policy should usually be funded by central Government, rather than a levy on local authorities." [98]

Dropping the Higher Value Assets approach raises the question of how tenants' discounts under the VRTB will be funded.

The evaluation report of the Midlands pilot scheme notes:

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94 MHCLG, Evaluation of Midlands Voluntary Right to Buy Pilot, February 2021, pp28-37
95 MHCLG, A new deal for social housing, 14 August 2018, para
96 *Inside Housing*, "Government drops plans to force councils to sell higher-value stock," 14 August 2018 [subscription required]
97 Communities and Local Government Committee, Housing Associations and the Right to Buy, Second Report of Session 2015-16, HC370, February 2016, para 58
98 Ibid., para 49

> The main costs of the VRTB are borne by government in the form of reimbursements of the discounts paid to housing associations. In total, the VRTB pilot cost £124m to MHCLG.[99]

Losing social rented homes to the private rented sector

A frequently raised concern, as the 2016 Act progressed through Parliament, was the lack of controls in place to prevent properties bought under the RTB from being let out to private tenants. The CLG Committee also considered this point:

> It is clear that a significant number of properties sold under the statutory RTB are now in the private rental sector. In August 2015 *Inside Housing* published an analysis based on Freedom of Information requests to 91 councils, which found that almost 40 per cent of ex-council flats sold through the statutory RTB were now in the private rented sector.[100]

The Committee was concerned about the potential cost to the public purse as a result of housing let at social rents being turned into private lets at market rents to tenants in receipt of Housing Benefit. The Committee concluded:

> We believe that measures to limit homes sold through the RTB ending up in the private rented sector should be explored and ask the relevant stakeholders to investigate such measures as a provision that any RTB home re-sold within ten years should first be offered to local housing associations and the local authority, who could choose to buy it at market price, and a restrictive covenant requiring a minimum period of owner-occupation.[101]

Fraud

A further concern relates to the level of RTB fraud. Evidence submitted to the CLG Committee's 2015-16 inquiry referred to a growing level of fraud in the sector since the 2012 increase in RTB discounts. The NHF told the Committee:

> A report from the London Boroughs' Fraud Investigators' Group showed that there has been a sharp increase in cases of Right to Buy fraud, with cases in London more than doubling in the last year. This raises significant concerns that some tenants are being exploited by people who want to take advantage of the opportunity to purchase property at a substantial discount. It is essential that robust measures are introduced to prevent this both to protect tenants and to protect the taxpayers' money that is funding the discount.[102]

The Committee said it expected the NHF and Government to issue a joint statement setting out the agreed steps to tackle RTB fraud.[103] A working group was set up with the local government sector and others to learn from their experiences in relation to RTB fraud.[104]

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99 MHCLG, Evaluation of Midlands Voluntary Right to Buy Pilot, February 2021, p11
100 Communities and Local Government Committee, Housing Associations and the Right to Buy, Second Report of Session 2015-16, HC370, February 2016, para 45
101 Ibid., para 46
102 Ibid., para 40
103 Ibid., para 42
104 HL Deb 10 March 2016 c1590

The Public Accounts Committee also made recommendations on the issue of RTB fraud in its April 2016 report:

> The Department should write to the Committee within six months providing estimates of the amounts of public money lost through fraud and other sharp practice since 2012 under the reinvigorated Right to Buy, and the amounts at risk under the new policy of extending the Right to Buy; providing an assessment of the capacity of, and costs on, local authorities and housing associations to vet all Right to Buy applicants effectively; and setting out its plans for tackling fraud and abuse to protect public money.[105]

The Government accepted the recommendation and said the Department would "write to the Committee with the findings of the working group and its plans to further reduce fraud."[106]

All associations participating in the Midlands pilot scheme set up checks to help prevent or identify potential fraud or money laundering.[107]

The status of housing associations as private bodies

Several associations questioned the legitimacy of legislating to allow the sale of assets owned by charities/not-for-profit companies; for example, *Inside Housing* reported the following comments:

> Brendan Sarsfield, chief executive of Family Mosaic and chair of the G15, said: 'We are independent organisations trying to meet housing need. We are not agents of the state and this is treating us as if we are.
>
> It is starting to feel more about the destruction of social housing than enabling aspiration.
>
> Ian Munro, chief executive of New Charter and regional chair of the National Housing Federation in the north, added: 'It's ludicrous. We are private not-for-profit organisations and this is a sequestration by any other name.'[108]

One of the main reasons set out by the NHF for proposing to implement the extended RTB on a voluntary basis was to retain the sector's independence and reduce the risk of reclassification of associations as public bodies. In fact, an Office of National Statistics (ONS) review of housing associations was already underway and on 30 October 2015 the intention to reclassify private registered providers (housing associations) as public bodies was confirmed:

> PRPs are public, market producers and as such they will be reclassified to the Public Non-Financial Corporations (S.11001) sub-sector for the purpose of national accounts and other ONS economic statistics.[109]

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105 Committee of Public Accounts, Extending the Right to Buy to housing association tenants, HC 880 2015-16, April 2016

106 Cm 9323, July 2016, p15

107 MHCLG, Evaluation of Midlands Voluntary Right to Buy Pilot, February 2021, pp19-20

108 "Right to buy extension would hit grant free homes," *Inside Housing,* 24 April 2014 [subscription required]

109 ONS, Classification of Private Registered Providers of social housing (including registered housing associations) in England, 30 October 2015

The decision was based not on measures in relation to the VRTB but on changes introduced by the *Housing and Regeneration Act 2008* and the *Localism Act 2011.*

On 2 November 2015 the Government responded to the ONS decision with a Written Ministerial statement setting out an intention to act to return housing associations to the private sector.[110]

Subsequently, then-Housing Minister Brandon Lewis outlined a deregulation package when giving evidence to the Communities and Local Government Select Committee on 15 December 2015.

On 31 October 2017, the ONS confirmed an intention to reclassify housing associations back into the private sector:

> Further to the statement on classification of English Housing Associations that ONS made on 3 October, ONS is today publishing a provisional classification decision, communicated in a letter sent to Her Majesty's Treasury on 31 August 2017. Although ONS would not reassess the classification of the housing associations sector in England until the proposed legislation has passed through Parliament, ONS will undertake a further review of the sector if and when this happens. Any review would take place in the context of international rules laid out in the European System of Accounts 2010 and the accompanying Manual on Government Deficit and Debt 2016 and the ensuing classification decision would take effect from the point at which the legislation is passed.[111]

[110] HL Deb 2 November 2015 c

[111] NAO, Further Statement on English Housing Associations, 31 October 2017

3. Findings from the 2017 pilot VRTB schemes

An Implementation Advisory Board was established by the NHF to consider various aspects of the scheme including: eligibility, portability and regulation.

The NHF published a VRTB policy development process briefing in April 2016.

During the Autumn Statement and Spending Review 2015, the Chancellor announced that 5 housing associations would pilot the voluntary RTB for housing association tenants. The associations invited to take part were:

- Riverside
- Sovereign
- L&Q
- Thames Valley Housing
- Saffron

To be eligible, tenants of these landlords had to live within certain local authority areas and have been social housing tenants for a minimum of 10 years.

A report on findings was published in January 2017.[112] The report noted that the pilot differed from the wider programme in several respects and that "It would therefore be hazardous to transfer the lessons from the programme to a regional or national scale without any further qualification or note of caution."[113] Overall, the report stressed the need for certainty:

> The central lesson from this research for the regional pilot and the eventual national scheme is the need for as much clarity as possible at the launch of the programme on eligibility, access to discounts, the availability of funding, the prioritisation of applications, and the requirements for the portable discount. A lack of clarity will make it difficult for associations to plan effectively for all aspects of VRTB and increase the risk of widespread tenant dissatisfaction in a context of raised expectation. The imperative was summed up by one stakeholder in a single word: certainty.[114]

Some key lessons and messages included:

- The application of exclusions will be a key challenge in the national scheme. Exclusions are inextricably linked to portable discounts – housing association decisions on exclusions cannot be made until the portability issue has been determined. Overlaps in geographical areas may result in tenants in similar properties with different landlords facing different exclusion policies. Associations

[112] The Pilot Programme on the Voluntary Right to Buy for housing Associations: an action learning approach, January 2017
[113] Ibid., p72
[114] Ibid., p75

should, therefore, identify all excluded properties at the outset to avoid confusion and manage expectations.

- Associations will need to invest time and resources to identify/resolve unexpected or legal conditions and covenants.
- Consistent approaches to tenant or property eligibility helped mitigate against variable practice in the same geographical area (i.e. where more than one housing association operates in the same areas).
- Procedures for managing applications worked very well in the pilot programme areas and should be adopted as standard.
- Careful consideration should be given to the scope and timing of valuations. Indicative valuations can provide a helpful 'reality check' for tenants but may cause problems if they differ substantially from the formal valuation.
- The pilots placed significant additional demands on staff and data management systems. Associations need to have comprehensive and up-to-date information about their stock and their tenants.
- Managing tenant expectations may be 'very demanding.'
- Procedures for fraud protection need to be robust.
- The VRTB may prompt an increase in applications for the preserved Right to Buy.
- Certain property types in certain locations are likely to be over-represented in sales. Associations will need to build this into their business plans and assess the implications for the profile of their housing stock and development programme.
- VRTB may represent a financial risk for tenants. The pilots found evidence of tenants overreaching as a result of lending practices (e.g. high income to mortgage ratios, low savings, and lack of a buffer for future interest rate rises). Associations will need to think carefully about advice and support for tenants.

BRIEFING PAPER

Number 07224, 1 March 2021