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The Right to Buy

The Government considered the Right to Buy as part of its Comprehensive Spending Review with the result that it implemented changes to the cost floor rules and the maximum discount level on 11 February 1999. It is also proposing to provide a financial incentive for councils to buy back homes from leaseholders or others in difficulty.

This paper gives background information on the Right to Buy and its impact and goes on to discuss the Government's new measures.

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Summary of main points

The statutory Right to Buy was introduced on 3 October 1980 in England, Wales and Scotland. Since its introduction local authorities, new town corporations and housing associations have sold over 2.2 million properties. Some 30% of tenants have exercised their Right to Buy and research findings indicate that the majority of these have benefited from the process. The volume of sales and the capital receipts raised from the sale of council housing stock has exceeded expectations.

During a period of falling investment in social housing the Right to Buy has contributed to the process of social change on council estates. More affluent tenants have bought and moved out of the sector so that those that remain come from a narrower social base and a higher proportion of them are low-income households or are reliant on welfare benefits. The Right to Buy has resulted in the best council properties being sold to the most affluent tenants.

Against this background the Government announced that it intended to continue the Right to Buy but wanted to improve its value for money. The measures designed to achieve this aim include:

- Reducing the maximum discount that can be claimed under the Right to Buy and introducing regional variations on this maximum discount.

- Tightening up the cost floor rule. This rule involves limiting the discount that a tenant can get when he or she exercises the Right to Buy where a landlord has recently spent large amounts on buying, improving, or building the property concerned.

In addition, the Government intends to assist people who are experiencing difficulties after exercising the Right to Buy by introducing a financial incentive for authorities to buy back these properties.

The new maximum discount limits in England came into force on 11 February 1999 along with some changes to the cost floor rule. Changes to the maximum discount and the cost floor rule in Wales came into force on 11 March 1999. Amendments to the cost floor rule in Scotland will come into effect on 1 April 1999. Changes to the cost floor rule where tenants have a 'preserved Right to Buy' (this arises when a council transfers its stock and tenants retain their Right to Buy) are due to come into force in April 1999. The buy back scheme will also come into operation on 1 April 1999.

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I Background

A. Before the Right to Buy

Most secure tenants of local authority houses in England and Wales gained the Right to Buy their homes at a discount with the enactment of the *Housing Act 1980* (in Scotland the relevant legislation was the *Tenants' Rights, Etc (Scotland) Act 1980*). Local authorities had been able to sell their homes before this; indeed, permission to sell houses with Ministerial consent was granted in the *Housing Act 1936* and in the 1950s a general consent was given enabling councils to notify the Minister on completion of a sale. Between 1957 and 1964 some 16,000 council houses were sold in England.[1] In 1968 a circular was issued imposing a limit on the proportion of stock to be sold annually in the major conurbations[2] and the general consent was replaced with a quota system. The restrictions imposed in 1968 were overturned by the incoming Conservative Government in 1970.

In the 1970s the issue of council house sales grew in political prominence as the Conservative Party was increasingly identified with policies designed to encourage council tenants to purchase their homes. The number of council houses sold in England grew from under 7,000 in 1970 to almost 46,000 in 1972. The February 1974 Conservative Manifesto made a commitment to introduce the Right to Buy, subject to an appeal on specified grounds. In October 1974 the Manifesto promised legislation to give secure tenants of three or more years' standing the Right to Buy at one third less than market values with a five-year pre-emption clause.[3] By 1979 the Conservative Manifesto placed considerable emphasis on housing issues and promised a Right to Buy with discounts ranging from 33% to 50%.

The arguments advanced by the Conservatives in favour of the Right to Buy arose partly from concern about the high costs of council housing. Owing to high interest rates, inflation, high levels of subsidy to council housing and low rents relative to management and maintenance costs, council housing appeared to be particularly uneconomic.[4]

B. The *Housing Act 1980*

Very soon after the Conservatives took office in 1979 the general consent on sales was amended to enable authorities to make sales at the discounts promised in the Manifesto. The main plank of the 1979 Housing Bill was the introduction of the Right to Buy. The Labour Party opposed the Right to Buy. Its introduction was surrounded by controversy

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1 Alan Murie, *The Sale of Council Houses: A Study in Social Policy*, 1975 p 46

2 Circular 42/68

3 Selling within five years of purchase would result in the claw-back of some or all of the discount received.

4 'Britain's crazy housing', *Observer*, 25 May 1975

over the financial consequences and the overriding of local discretion, as well as the effect on the remaining tenants. The main features of the legislation were:

- A statutory Right to Buy for most council tenants and tenants of non-charitable housing associations of three years' standing, with exceptions for elderly and disabled tenants and other minor categories.

- Strict statutory procedures on the implementation of the Right to Buy, including powers for the Secretary of State to intervene.

- Discounts on the market value ranging from 33% after 3 years' tenancy to 50% after 20 years. A cost floor applied to prevent dwellings built after 1974 from being sold at less than the cost of providing them.

- Right to a mortgage from the local authority, with the Secretary of State having powers to determine multiples of income and age limits for mortgage qualification.

- Repayments of discount where a resale occurred before 5 years, and pre-emption clauses in designated rural areas.

The Right to Buy came into effect on 3 October 1980.

C. Further legislation on the Right to Buy

The *Housing and Building Control Act 1984* and the *Tenants' Rights Etc, Amendment (Scotland) Act 1984* extended the Right to Buy to tenants of properties held on a long lease by public authorities. The residence qualification was reduced to two years and discounts began at 32% and increased to 60% after 30 years. Tenants gained the Right to Buy on shared ownership terms and the Secretary of State's power to intervene where a landlord was considered to be obstructing the Right to Buy was increased.

The *Housing Act 1985* was a consolidation measure; the Right to Buy legislation is now found in this Act. In Scotland the relevant Act is now the *Housing (Scotland) Act 1987.*

The *Housing and Planning Act 1986* and the *Housing Act (Scotland) 1986* increased the discounts on the purchase of flats to 44% after two years, increasing up to a maximum of 70% after 15 years. The resale penalties were altered so that discount had to be repaid only on re-sales within 3 years.

The *Housing Act 1988* altered the cost floor provision so that it only applied to dwellings provided less than 8 years before the date of sale. It also removed restrictions on the sale of dwellings for the disabled (sheltered schemes remained exempt), and introduced a scheme to compensate tenants whose landlords delayed unreasonably in implementing the Right to Buy.

The *Local Government and Housing Act 1989* removed restrictions on the sale of dwellings for the elderly where these were first let after January 1990 (sheltered housing remains exempt).

The *Leasehold Reform, Housing and Urban Development Act 1993* abolished the right to a mortgage from a local authority; the right to acquire on shared ownership terms; and the right to defer completion for up to two years while the price payable for the property remained fixed. As an alternative, to encourage people who wished to buy but could not obtain appropriate finance, it introduced the right to acquire on rent to mortgage terms.[5]

Since 1 April 1996 all registered housing associations, excepting fully mutual co-operatives, Abbeyfield societies, almshouses and co-ownership societies, have been able to offer discounts to assured[6] tenants to assist in the purchase of the home they currently occupy. The scheme involves the issue of a Voluntary Purchase Grant (VPG) of between £9,000 and £16,000, depending on the location of the property, to tenants in order to assist them in buying their homes. Where a tenant occupies an exempt property, such as one originally built or acquired using private funds in the form of donations from individuals or charitable trusts, an association may, at its discretion, offer a discount on an alternative vacant property within its stock. This is a discretionary scheme; if an association decides not to take part its assured tenants will not have the right to buy their home.

The *Housing Act 1996*, which received Royal Assent on 24 July 1996, contains provisions that give assured tenants of housing association dwellings built with public finance (Social Housing Grant) after 1 April 1997 a statutory right to buy (the Right to Acquire), subject to certain exclusions.

II The impact of the Right to Buy

A. The number of dwellings sold

Between 1979 and the end of 1996 local authorities, new town corporations and housing associations recorded over 2.2 million house sales.[7] Sales rose dramatically in the early years and peaked in 1982. Following this, sales fell to a relatively low level in 1986 before rising to a new peak in 1989 which was slightly lower than that of 1982. Subsequently sales have levelled out at a rate below that of any year before 1981 but higher than in any period in which the discretionary policy operated before 1979.

5 This enables tenants to buy their homes on a mortgage with repayments at around the same level as their rents.

6 Broadly, tenants of housing associations who entered into their tenancy agreements after 15 January 1989 (the enactment date of Part I of the *1988 Housing Act*).

7 Joseph Rowntree Foundation Findings, *Reviewing the Right to Buy,* December 1998

By the end of 1995 24 local authorities in Great Britain had sold less than 20% of their stock and 38 had sold 40% or more. On future sales, Jones & Murie (assuming current trends) have predicted that by 2010 in some regions (Yorkshire and Humberside, the North West and Greater London) about 70% of the 1980 stock will remain in local authority ownership. On the other hand, they predict that the biggest impact will be in Scotland where over 50% of the stock will have been sold.[8] The suggested explanation for the pattern of sales in Scotland is that there may have been a 'lagged response' in Scotland 'reflecting the historic high level of council housing and the more stable housing market in the 1980s'. It is also suggested that the predicated higher rate of sales in Scotland 'may also be a consequence of the lower opportunities to buy on the open market.[9]

Table 1

Sales of local authority, housing association and New Town dwellings
Great Britain

	Dwellings sold to owner-occupiers			Of which Right to Buy		
	Local authority	New Towns	Housing Association	Local authority	New Towns	Housing Association
1979	41,915	1,628	-	-	-	-
1980	84,474	6,292	-	568	227	-
1981	111,642	5,598	7,263	79,430	2,427	547
1982	214,882	6,601	17,431	196,430	3,963	2,003
1983	151,119	7,044	16,464	138,511	3,638	2,140
1984	115,044	6,069	12,565	100,149	2,655	1,965
1985	103,257	4,596	9,520	92,230	2,113	3,985
1986	98,493	4,016	10,500	89,251	1,656	4,949
1987	112,582	5,215	10,990	103,309	2,277	5,454
1988	169,817	7,204	14,881	160,569	3,275	10,123
1989	189,962	8,841	12,990	181,370	4,608	9,972
1990	132,496	4,351	9,560	126,215	2,522	7,014
1991	77,253	2,741	8,430	73,548	1,501	4,610
1992	70,811	1,726	7,093	63,986	1,182	3,456
1993	65,662	1,592	9,391	60,256	1,192	3,187
1994	68,454	1,838	9,196	65,174	1,417	3,557
1995	51,678	1,649	10,728	49,298	1,309	2,815
1996	46,953	516	10,070	44,729	126	2,350
1997	58,838	-	8,124	56,663	-	..
Total 1980-97	1,965,332	77,517	185,196	1,681,686	36,088	68,127

Sources: Housing and Construction Statistics: Great Britain, June Quarter 1998 Part 2 and earlier editions, TSO

8 ibid
9 *Reviewing the Right to Buy,* Jones & Murie, January 1999, p 61

B. Capital receipts

Capital receipts are sums received by authorities when they sell property, such as land and buildings. Section 58(1)(a) of the 1989 *Local Government and Housing Act* defines capital receipts as: 'sums received in respect of the disposal of any interest in an asset, expenditure on the acquisition of which would count as capital expenditure'. Also included are repayments of grants and loans, if the making of them would amount to capital expenditure;[10] and repayments of investments, other than 'approved investments'.[11] If the total sum received in respect of a disposal does not exceed £6,000 it is not treated as a capital receipt.

Not surprisingly, the majority of housing capital receipts have arisen from the sale of the housing stock. Although local authorities could, and did, sell housing assets prior to 1980 it was not until the implementation of the Right to Buy that receipts from council house sales became a significant item for authorities. The sale of council housing in the UK has raised more that any other government privatisation to date. It was estimated that English and Welsh local authorities had around £7.6 billion in reserved capital receipts at the end of 1996/97.[12]

Since 1 April 1990, under section 59 of the *Local Government and Housing Act* 1989, local authorities have been required to set-aside 75% of receipts raised from the sale of council houses;[13] these receipts are referred to as 'reserved receipts' and also 'Provision for Credit Liabilities'[14] (PCLs) and may only be used to redeem debts or pay off credit agreements.[15] Once an authority becomes debt free it is not normally required to set-aside capital receipts. The remaining 25% of 'useable receipts' can be used at any time to finance capital expenditure on any aspect of local authority services. Useable receipts may also be set aside as provision for credit liabilities. Most non-housing capital receipts have a reserved part of 50% but different rates have been applied in a number of cases.

Since the introduction of the statutory Right to Buy in 1980, the local authority associations and other housing commentators have demanded that capital receipts gained from sale of council houses should be immediately available to councils to replace lost stock. The Conservative Governments of 1979-97 rejected these demands on the grounds that if councils were allowed to spend all their receipts they would have to borrow again and this would result in increased public expenditure.

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10 s.58(1)(c) & (d) of the 1989 *Local Government and Housing Act*

11 ibid s.58(1)(b)

12 *Boosting Housing Investment Through Capital Receipts,* Chartered Institute of Housing, June 1996, para 305

13 Aside from occasions on which the rules have been relaxed.

14 Although PCLs also include other items such as sums set-aside from revenue for debt redemption.

15 s.64 of the 1989 Act

The new Labour Government introduced the *Local Government Finance (Supplementary Credit Approvals) Act 1997* under which it is implementing its Capital Receipts Initiative.[16] The Act allows set-aside capital receipts to be taken into account when authorities are issued with Supplementary Credit Approvals;[17] a total of over £800 million is due to be released under the Capital Receipts Initiative.[18] Despite this, local authorities have still questioned the need for continued limits on their ability to reinvest the proceeds from Right to Buy and land sales:[19]

> **Dr. Lynne Jones**: To ask the Chancellor of the Exchequer if he will set out his reasons for his decision to allow local authorities to reinvest most proceeds of asset sales and his reasons for continuing to limit reinvestment of the proceeds of council housing and associated land.
>
> **Mrs. Liddell**: [holding answer 21 July 1998]: The government want to encourage local authorities to sell surplus assets to help pay for new investment. Allowing reinvestment of most of the proceeds of non-housing assets provides authorities with the right incentives to identify and dispose of such assets. However, sales of housing assets mainly arise as a result of tenants exercising the Right to Buy, not because of active asset management by Councils, and produce substantial proceeds which do not accrue in a pattern that reflects need to spend. Because this is a national scheme, we have to have regard to the capacity of the economy and of the construction industry to cope with substantial levels of reinvestment, and to bear in mind the distributional impact. For all these reasons, we will continue to limit reinvestment of new Council housing sale proceeds.

C. Council housing stock

1. Re-lets

Possibly the most obvious impact of the Right to Buy has been the depletion of council housing stock and the knock on effect this has had on the ability of authorities to re-house homeless households and those registered on housing waiting lists.

Sales to sitting tenants do not have an immediate impact on the amount of council accommodation available because most purchasers continue to occupy their dwellings for a number of years and thus their accommodation would not have been available to new tenants. However, when ex-council properties come on the market they are likely to be occupied by people other than those who would have been allocated such dwellings had they remained council stock. Moreover, the effect of the Right to Buy on the availability

[16] See Library Research Paper 97/74 for a detailed explanation of how this initiative operates.
[17] A credit approval permits an authority to pay for capital expenditure using credit, rather than cash.
[18] Cm 3906, DETR Annual Report 1998 p 16
[19] HC Deb 28 July 1998 c 210W

of affordable rented social housing has been exacerbated by the reduction in investment in social housing[20] over the period since its introduction.

Local authority housing investment declined to £2.13 billion in 1996/97 from a peak of over £12 billion in 1974/75 (at 1994/95 prices). Housing investment programme allocations in the current financial year will total £769 million with an additional £570 million from the Capital Receipts Initiative. During the early 1990s the reduction in council housing investment was partly offset by increased investment by housing associations; however, the Housing Corporation's Approved Development Programme[21] (ADP) saw successive reductions in each Budget under the previous Administration from November 1995.

In the 1995 Budget Statement the then Chancellor announced that the Housing Corporation's 1997/98 ADP would be cut by £250 million; in the 1996 Budget Statement further cuts of £260 million were announced so that the gross ADP for 1997/98 stood at £680 million. When forward commitments were taken into account, this left £230 million available for new schemes in 1997/98 compared with £512 million in the previous financial year. In February 1998 the new Housing Minister approved the Housing Corporation's £611.5 million ADP for 1998/99. The ADP for 1999/2000 has been set at £626 million, £46 million higher than under the previous Government's plans.

At the time of the *1980 Housing Act* the effect of the Right to Buy on the number of 're-lets' in the 1980s was a matter of great controversy. The Environment Select Committee Report on *Council House Sales*[22] contained a chapter on the loss of re-lets that cast doubt on the DoE's assertion that 30-40 years would typically elapse before there was an effect on the number of houses vacant and available for letting to new tenants.[23] The Committee estimated that over the first 10 years the loss of re-lets would be 26,000 given an annual sales rate of 100,000, ie that 2.6 re-lets would be lost for every 100 sales.

Forest & Murie in *Selling the Welfare State: The Privatisation of Public Housing,*[24] adopted the Committee's 2.6% to make the following calculation:

> The calculation of the loss of re-lets relates to council house sales completed in England and Wales since 1960. If the figures for losses are staggered by one year to avoid overstatement, they suggest that by 1987 the loss of re-lets was almost 28,000. The real decline in opportunities to rent is indicated by this loss of re-lets which by 1987 is greater than the rate of new council building. In these terms the combined effect of the sale of council houses and cuts in the rate of new building has had the same effect as would the termination of new council building in the absence of any council house sales.

[20] Council and housing association stock.
[21] Which finances RSL's capital expenditure.
[22] HC 366 1980/81
[23] *Appraisal of the Financial Effects of Council House Sales* (prepared for the passage of the Housing Bill)
[24] 1988

The impact of sales has varied considerably from region to region. Murie et al noted in *The Consumer Implications of the Housing Act 1988* that in the North West region total new lettings had remained relatively stable throughout the 1980s.[25] In other areas, such as the Southern shire districts, up to 40% of stock had been sold and the shortage of new lettings had already developed. In 1996 the assistant director of housing at Nottingham City Council noted that it had sold almost 15,000 properties (27% of its stock) and that it was taking up to five years for a high priority family to get a transfer to a two-bedroom home.[26]

In 1990 the Audit Commission attributed the decline in local authority lettings in England and Wales to the reduction in local authority building programmes and the long-term effect of sales under the Right to Buy.[27] This was found to be particularly true of family sized accommodation.

The Right to Buy has had a particular impact on rural areas where the original stock of council houses was small and high house prices make owner occupation inaccessible for low-paid rural workers. In 1990 the Rural Development Commission noted that in some cases the re-sale of former council homes had placed them beyond the means of local buyers.[28] A recently published DTZ Pieda report on housing in rural areas concluded that, despite development by housing associations, rural housing stock had fallen dramatically over the previous 15 years because of the Right to Buy.[29] The report predicts an ongoing problem of obtaining affordable housing in rural areas.

The position of rural communities was taken into account by the previous Government when it introduced a Right to Acquire under the *Housing Act 1996*. Dwellings in rural communities with a population of less than 3,000 are exempt from this scheme 'because of the particular difficulties in providing replacement properties'[30]

2. Residualisation and stability

Several commentators in the 1980s claimed that the Right to Buy had transformed council housing from housing for the working classes to housing for the poor as the relatively better-off tenants were drawn into home ownership. Forrest & Murie pointed out in *Selling the Welfare State,*[31] that as private renting had declined there had already been a steady trend through the 1970s for those dependent on social security benefits to become council tenants. However, the Right to Buy may have speeded up this process of

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25 p 28
26 'The wrongs of the Right to Buy', *Housing Association Weekly,* 16 February 1996
27 *Housing the Homeless: the local authority role*, 1989
28 *Affordable Rural Housing*
29 *The Nature of Demand for Housing in Rural Areas*, 1998
30 HC Deb 15 January 1996 c 369W
31 1988, p 67

'residualisation' by removing large numbers of economically active households from council housing and by diminishing the stock of desirable housing.

In *Reviewing the Right to Buy*[32] Jones & Murie conclude:

> The operation of the Right to Buy has added to the process of social change associated with council housing. As more affluent tenants have bought properties and left the sector, so the sector which remains has a narrower social base with a higher proportion of low-income households and those dependent on welfare benefits. It has become more strikingly a tenure of younger households and older people. The traditional role of council housing in housing families with children has become less evident. The social rented sector as a whole is now smaller and has a different geography than in the past. Regionally and locally, social rented housing is most plentiful in areas where there has been a loss of employment and where demand for labour is low.

In the 1980s proponents of the Right to Buy thought that mixed tenure estates would contribute to stability on council estates. Murie & Jones's recent research concluded that there were 'a wide range of doubts' about the extent to which council house sales can be deemed to stabilise estates.[33] They note that the stability associated with neighbourhoods where the Right to Buy has been high is associated with sitting tenant purchasers who formed a stable element irrespective of tenure. In the short run the Right to Buy appears not to increase or decrease stability but in the longer term, as properties come on to the market, council estates have tended to become transitional neighbourhoods where people buy with a view to moving on quite quickly. On estates that are not well connected with to the labour market and wider economy Murie & Jones note that 'the problems of managing and stabilising these neighbourhoods may be greater than they were within the council sector.'[34]

In a recent piece for *Housing Magazine* Alan Murie wrote:[35]

> In the context of concern about the residualisation of social rented housing, low demand, high turnover and the need for strategies for renewal and investment to build long-term commitment to neighbourhoods, the relevance of the Right to Buy is uncertain.

D. The purchasers' experiences

The first national survey of local authority Right to Buy purchasers in England was carried out by Social and Community Planning Research for the Department of the

32 Joseph Rowntree Findings, December 1998
33 ibid
34 ibid
35 'Time to review the Right to Buy', June 1998 pp 40-41

Environment between October 1985 and February 1986.[36] The survey found that the Right to Buy had been successful in extending access to home ownership; two-thirds of buyers had not expected to own their own home prior to the introduction of the scheme. Almost all the purchasers were pleased that they had bought, primarily as they felt it represented a good investment and provided a sense of security.

A wide variety of accommodation had been purchased but houses were over-represented while flats were significantly under represented. Properties in suburban and rural areas appeared to sell more readily than those in urban areas. Former tenants who had exercised the Right to Buy were a diverse group but were not representative of tenants as a whole. Buyers were disproportionately drawn from the middle aged and better off. Most were in full-time work with more than one wage earner in the household. The majority of buyers had made improvements to their homes since purchase and their record of maintenance and repair compared favourably with owner-occupiers in general.

The survey found that there were some indications of difficulties associated with the management of mixed tenure estates and leaseholders' service charges 'appeared to be a significant source of irritation.' On balance, however, fears that ex-tenants would not maintain their dwellings and would have difficulty in meeting their mortgage commitments were deemed to be unfounded.

In the 1990s attention on the Right to Buy has tended to focus on problems experienced by the owners of ex-council properties, particularly in blocks of flats. On the question of whether any problems had been experienced, the DoE's 1995 report concluded:[37]

> Former council homes in general are one of a category of dwellings which may gave fallen disproportionately in value during the current recession. In that sense, purchasers of former council homes may wait longer than average for their properties to regain value. Equally, however, vendors in this study are in the main a group which bought cheap and sold in a buoyant property market and who were selling some of the best former council dwellings. Specific problems associated with ex-council home re-sales are more likely to arise with subsequent cohorts of vendors. Even in a more buoyant housing market, Right to Buy purchasers in less desirable dwellings may experience difficulties of reselling, This will be most closely associated with flats and particularly multi-storey blocks which will be among some of the lowest value properties on the market. A greater number of potential vendors may experience difficulties of reselling in the future and there may be a greater incidence of constrained mobility.

A further DETR (formerly the DoE) study found that over half of local authority leaseholders had complained about the level of charges and the standard of service they

[36] *The Right to Buy: (A national survey of tenants and buyers of council homes)*, 1988

[37] *The resale of former council homes*, p 6

receive.[38] On 19 June 1995 the then Housing Minister, David Curry, announced a package of measures aimed at assisting people who had bought leasehold flats under the Right to Buy and who were experiencing difficulties with service charges and with selling their properties.

The measures included:

- A good practice guide to help councils improve their management of service charges and to avoid leaseholders being presented with unexpectedly or unreasonably high bills;

- A more flexible form of mortgage indemnity agreement which councils can use to guarantee commercial mortgages, including lending on ex-council flats;

- An exchange sale scheme to help leaseholders that need to move from flats bought under the Right to Buy but who cannot resell owing to mortgageability problems. Under this (discretionary) scheme the council can buy back the property at the Right to Buy price and sell the leaseholder another property at a discount of up to 40 per cent.

Regulations providing for the implementation of the exchange sale scheme came into effect on the 10th July 1995.[39]

The previous Government also included measures in the *1996 Housing Act* to enable the Secretary of State to issue directions to local authorities and other social landlords in regard to leasehold service charges:

- The *Social Landlords Discretionary Reduction of Service Charges (England) Directions 1997* allow local authorities and other social landlords to reduce or waive service charges for past, current and future works of repair, maintenance or improvement carried out with assistance from estate action funds, city challenge, single regeneration budget or estates renewal challenge fund money where the assistance was applied for after 25 February 1997. Landlords are also able to waive charges for works even if they did not receive special assistance so that the total service charges do not exceed £10,000.

- The *Social Landlords Mandatory Reduction of Service Charges (England) Directions 1997* require landlords to charge no more than £10,000 for the same property over any five year period for repairs, maintenance or improvements where single regeneration budget, challenge fund or estates renewal challenge fund money is received.

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38 *Leaseholders and service charges in former local authority flats*, 1995

39 *Local Authorities (Capital Finance) (Amendment) Regulations 1995* [SI 1995/1526]. The exchange sale scheme provisions are now found in regulation 104 of the *Local Authorities (Capital Finance) Regulations 1997* [SI 1997/319]

III The 1999 changes

A. The cost floor rule

This rule involves limiting the discount that a tenant can get when he or she buys under the Right to Buy. It applies where a landlord has recently spent large amounts on buying, improving, or building a property.[40] Broadly, under the previous cost floor rule, if a landlord had spent more than £5,000 in the 8 years before the year in which the tenant applied to buy, the discount could not reduce the purchase price below this cost floor.[41] The Government issued a consultation paper in October 1997 in which it set out three proposals for amending the cost floor rule.[42]

The first proposal was to change the cost floor so that a Right to Buy landlord could count costs incurred during the last 10 years rather than the last eight years. The second proposal was to allow a Right to Buy landlord to count not only the cost of building, buying and improving the property, but also some repair costs. These costs would cover only major works of repair. The consultation paper proposed that a landlord should be able to count repair costs that exceed £7,500 over a ten year period ending with the start of the year in which the tenant applies for the Right to Buy, to the cost floor. The Government opted for a cost limit rather than trying to define major works as opposed to routine maintenance.

On 10 December 1998 the Government announced that the *Cost Floor Determination 1998* would extend the cost floor in England from 11 February 1999 to cover a ten year period. The cost floor will include repair and maintenance costs above £5,500.[43] Consultation with authorities revealed that they rarely spent £7,500 on repairs to dwellings over a ten year period hence the reduction in the level of the cost floor.

The *Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999*[44] has had the same effect on the cost floor rule in Wales and came into effect on 11 March 1999.

Regulations to extend the cost floor period in Scotland from 5 to 10 years were laid on 9 March 1999 and will come into effect on 1 April 1999.[45] A separate determination will also be issued that will set out how landlords should calculate the cost floor in future.[46]

The third proposal concerned the 'preserved Right to Buy,' (PRTB) ie the Right to Buy enjoyed by a secure tenant where a house or flat is transferred to new landlord (usually a

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40 section 131(1) & (3) - (4) of the *1985 Housing Act*
41 *Housing (Right to Buy) (Cost Floor) Determination 1992* (as amended)
42 *Right to Buy and Preserved Right to Buy*
43 DETR Press Release 1998/1063, 10 December 1998
44 SI 1999/292
45 SI 1999/607
46 HC Deb 9 March 1999 c 144W

housing association). The proposal was to change the preserved Right to Buy cost floor and use a formula under which the sale price of the property would be determined by the length of the tenancy and the maximum amount of debt attributable to the property at the time the tenant makes an application to buy. The aim of this new formula was to ensure that the landlord would receive sufficient proceeds from sales to pay off any outstanding debt attributable to the properties on which the Right to Buy is exercised.

These proposals were given a mixed reception by organisations involved in funding housing stock transfers. Although the main thrust of the proposed changes was welcomed, lenders' concerns focused on the proposed formula for calculating minimum disposal prices based on outstanding debt attributable to properties. Their main reservations are summarised below:

- Attributable debt levels at transfer may vary widely over time, ascending to peaks in response to post-transfer spending and descending thereafter as capital begins to be repaid. Some lenders feared that the new preserved Right to Buy rules would provide an incentive for tenants whose estates were transferred with the assistance of Estates Renewal Challenge Fund money[47] to buy their homes before attributable debt reached peak levels;
- Minimum pricing based on attributable debt may not necessarily replace long-term net income lost through the disposal. There was concern that risk-averse transfer landlords with cautious funding strategies would deliberately hold down borrowing levels so that housing investment could be funded from operating cash-flows. Also, funding strategies could involve an element of deferred interest not reflected in attributable debt calculations. These landlords and their tenants could therefore be penalised through PRTB disposals based on attributable debt levels;
- It was felt that the involvement of established registered social landlords[48] (RSLs) in partial transfers might be undermined if phased investment of their reserves in transferred housing would not qualify as 'attributable debt' for the purposes of PRTB pricing.

After further consultation on this issue the Government announced that the revised cost floor rules under the PRTB should be based on actual costs incurred by the landlord in carrying out repairs and improvements to a tenant's property.[49] It was accepted that there were 'significant difficulties' with the implications of the approach that was initially suggested.[50] The revised proposals will apply to all transfer tenants with a preserved Right to Buy who buy their homes once the regulations are in force, irrespective of when the transfer took place. It is expected that the regulations will be implemented in April 1999.

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47 ie estates with a negative value
48 Mainly housing associations.
49 *Preserved Right to Buy - Changes to the Cost Floor Rules*, DETR letter to authorities, 18 February 1999
50 ibid

Where stock was transferred with an overall positive value the new cost floor rules will be virtually the same as for tenants exercising the Right to Buy against a local authority. However, relevant costs incurred over the previous fifteen years (as opposed to ten years) will be taken into account. Also, where a tenant was/is notified under paragraph 3(2) of Schedule 3A to the *1985 Housing Act* (consultation on transfer) that certain specified works would/will be carried out to their property after the transfer, the cost of these works will be included in the cost floor calculation. This will be the case even if these costs have not been incurred when the tenant applies to buy under the PRTB regulations.

Where stock had/has an overall negative value at the time of transfer a similar approach will be used but a separate and wider range of costs, such as works to provide or improve a communal facility, will be included in order to reflect additional investment in the area.[51]

SI 1999/607 will apply the new cost floor rule in Scotland to tenants with a preserved Right to Buy from 1 April 1999.

B. Discounts

The DETR published a consultation paper in July 1998[52] in which it asked for views on plans to reduce the maximum Right to Buy discount; this was previously £50,000. In the paper the DETR acknowledged the successes of the Right to Buy policy but stated that these had been achieved 'at the cost of very high public expenditure, mainly to provide replacement housing to meet the needs of local people':[53]

> In 1997/98 around 40,000 homes were sold under the Right to Buy. The average home was worth around £43,000 and the average discount was 50% so the average sale price was around £21,000. While it brought in capital for the landlord the average sale resulted in a net loss of around £10,000. This reflects:
>
> - the upfront gain to the landlord (the capital receipt)
>   minus
> - the continuing loss of rent and the loss of a unit of housing that would other wise have been available, sooner or later, for re-letting to someone in housing need.

The paper concluded that the annual cost of the Right to Buy was around £400 million in 'net present value' terms[54] and that this could enable 'significant housing expenditure'. The Government stated that it wished to continue the Right to Buy with generous discounts

51 ibid
52 *Secure Tenants' Right to Buy*
53 ibid para 9
54 This is a way of expressing in today's money what something would earn or cost in the future - for example the cost of replacing a unit of housing several years from now.

but was also concerned to improve its value for money. It believed that a maximum discount of £50,000 could not be justified in public policy terms and that it did not make sense for the same cash limit to apply all over the country.

The paper proposed that the Right to Buy maximum discount would be set at around 70% of the average value of local authority houses and flats in each Government Office region, and 65% in London 'where pressure on social housing is currently greatest'. The proposed cash limits for each region were set out in the consultation paper[55] and ranged from £38,000 in London to £22,000 in the North East.

Following consultation, the Government announced that it intended to go ahead with a reduction in the maximum level of discount available and that this maximum would vary between regions.[56] The *Housing (Right to Buy) (Maximum Discount) Order 1998*, was laid before Parliament on 10 December 1998 and came into force on 11 February 1999.[57] Since the consultation paper was published in July 1998, new sales data from West Midlands local authorities had shown a reduced average value for the region. As a result, the cash limit for this area was reduced from the initial proposal of £28,000 to £26,000. At the same time values in the South East rose, but Ministers decided not to increase this limit as the margin was less than £200.[58] The limits are to be kept under review.

The *Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999*[59] came into effect on 11 March 1999. This order reduces the maximum discount available in Wales to £24,000; the previous maximum was £50,000.

The changes will affect anyone who has the Right to Buy or a preserved Right to Buy. It will also affect people who buy a property from a local authority under a local sales scheme (where authorities sell properties at a discount under General Consent powers). People applying for a grant under the Cash Incentive Scheme in London, the South East and Eastern regions, where authorities are allowed to pay grants of up to 80% of the average Right to Buy discount, may also be affected.

The Government has estimated that the measures will affect 1 in 10 buyers in England and 1 in 4 buyers in London.

The local authority associations are in agreement with the broad principles behind the Government's measures. The Association of London Government (ALG) supports the reduction in the maximum discount and introduction of regional limits.[60] There is some

[55] Para 26
[56] HC Deb 10 December 1998 c 254W
[57] SI 1998/2997
[58] DETR Press Release 1998/1063, 10 December 1998
[59] SI 1999/292
[60] ALG Response to the DETR consultation on proposals to change the maximum discount limit on Right to Buy

concern that in certain parts of London, such as central and west London, a higher proportion of tenants will be unable to exercise the Right to Buy as a result of high property prices. The ALG believes that there may be case for considering sub-regional limits for the capital where market prices are considerably above the average. The leader of Wandsworth Council has reportedly stated that the changes will put the Right to Buy beyond many first time buyers in the borough and that the Government 'was shutting down the Right to Buy through the back door'.[61]

The Chartered Institute of Housing's (CIH) response to the proposals advocated a more far reaching review of the Right to Buy arrangements. It made the case for discount levels to be related to the housing market in each area and for authorities to be able to spend 100% of the receipts raised for reinvestment in housing. In the absence of a fundamental review, the Institute believes that the maximum discount level should be set at 50% of average market values as this 'would offer better value to the tax payer but still provide a significant discount to potential purchasers'.[62] An alternative option, suggested by the CIH, was to apply the lower relative discount rate proposed for London to other areas with a particularly high demand for social housing.

The CIH and the ALG requested that the changes be made as soon as possible after a decision was reached in order to avoid 'a rush to buy'.[63]

C. Buying back ex-council flats and houses

The Government's consultation paper, *Buying back ex-council flats and houses*,[64] noted that local authorities have powers to buy back flats and houses but that their funds are limited. In order to assist people who are in difficulty after exercising the Right to Buy, for example those that cannot afford to pay the service charges or who are unable to re-sell, the Government is proposing to introduce a financial incentive for authorities to buy back these properties.

This 'incentive' will replace the 'exchange sale scheme' that was introduced by the previous Government in 1995.[65] The scheme that was initially proposed in the consultation paper would have operated in the following way:

> Generally, a local authority has to set aside at least 75% of a capital receipt from selling council housing in order pay off (or pay interest on) its debts. It can use the remaining 25% for capital spending - such as building or repairing homes. Reducing the amount it has to set aside has the effect of increasing the amount it can spend on capital projects. This increases the amount of housing debt it is

61 'Right to Buy scheme to be reformed' *Housing Today*, 30 July 1998

62 CIH consultation paper response, September 1998

63 'Cash discount could cause Right to Buy glut', *Housing Today*, 8 October 1998

64 July 1998

65 see p 17

> assumed to have, when the Government calculates its Housing Revenue Account subsidy. This increases the authority's entitlement to subsidy.
>
> The new scheme would work by reducing the amount that has to be set aside from capital receipts. The relevant receipts will be those from selling any council housing, and they must be reduced by 25% of their spending on buying back ex-council houses and flats. That part of their spending would be like a pool which would be used to reduce the receipts as and when they arose.[66]

The consultation paper gave some worked examples of this system:

> 1. An authority buys back two flats and a house. Its costs (including administration) total £100,000. This gives a 'pool' of £25,000 (25% of its costs) from which it must reduce its requirement to set aside capital receipts. A few days later it sells a house for £80,000. Normally it would have to set aside at least £60,000 (75%) for this capital receipt for debt reduction, but it must now reduce its 'set-aside' by £25,000. So it only sets aside £35,000.
>
> 2. Another authority buys back five flats. Its costs total £160,000 which gives it a pool of £40,000(25%). This happens near the end of the financial year. During the remaining weeks, it does not sell any housing. So it carries its pool forward into the next financial year. A few weeks later, it sells a house for £40,000. It reduces its set-aside from £30,000 (75%) to zero. This still leaves it with a pool of £10,000. A few days later it sells another house for £40,000. It uses the remainder of its pool to reduce its set-aside from £30,000 to £20,000.

The effect of this would have been to allow authorities to reduce the amount they have to set aside by 25p for every £1 spent on buying back an ex-council property. In addition, the consultation paper pointed out that:

- The authority would regain a capital asset for re-letting;
- It would reduce the cost of managing its leasehold properties;
- In some cases it would be helping someone whom it might otherwise have to re-house.

It was proposed that authorities would be left to judge which properties to buy back, what price to offer and whether to offer the owner a tenancy in that or another property. The concession would only have applied to properties bought back from individual occupants who want to re-sell.

Local authority associations and the CIH welcomed the principle behind the proposed buy back arrangements but believed that, as formulated, the proposals would have little

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66 *Buying back ex-council flats and houses,* July 1998

impact. The main problem was seen as the need for councils to raise 75% of the cost of buying back a property from their own resources. The CIH's response cited two examples supplied by its members to highlight the difficulties that councils might face in implementing the proposals:[67]

> One of our members cited the example of buying back a three bedroom house. The count against his authorities' own resources, even taking into account the proposed incentive, would be around £45,000. In contrast, it could provide a new housing association property through local authority social housing grant for around £28,000.
>
> Another member estimated that around 50-60 applications for such a scheme would be received each year but that under the current proposals the authority would in reality be unable to buy back any of these properties.

There was concern that the scheme would raise expectations amongst Right to Buy owners that could not actually be met by authorities. The CIH believed that the scheme would have a greater impact if the incentive were increased from 25% to at least 50% of the purchase cost. The ALG's response suggested that there was a case for setting a separate and higher allowance for London even if the Government was unwilling to increase the 25% incentive at a national level. Respondents emphasised the need for authorities to develop clear criteria for those groups of people and properties that would be considered for re-purchase.[68]

A recurring theme in responses to the buy back scheme was the desire for a fundamental reform of the powers of local authorities to use receipts from council house sales. The CIH response noted:[69]

> In launching the Capital Receipts Initiative the government has recognised the justice and efficacy of reinvesting the capital receipts generated through sales back into social housing. Despite this, local authorities are still required to set aside 75% of these receipts against debt. This situation was made even more anomalous by the announcement from the Comprehensive Spending Review that authorities were no longer required to set aside non-housing receipts. The proposal to allow a proportion of receipts to be used for re-purchases is welcome. The CIH believes firstly, that local authorities should have the flexibility to use 100% of the receipts from sales, and secondly that their use should not be restricted to specific purposes, such as re-purchasing. Local authorities should have freedom to use these resources to address the most pressing housing needs in their area.

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67 CIH consultation response, September 1998
68 ibid
69 ibid

After considering the responses to the consultation paper the Government decided to increase the incentive to 35 per cent of all costs incurred by a council above a threshold of £50,000 per council per year. Announcing this change Hilary Armstrong stated:[70]

> This will target help on those areas with the greatest problems. We have also extended it in other ways - for example, to cover homes already bought back during 1998/99, and to include former New Town housing.

An Order to amend regulation 104 of the *Local Authorities (Capital Finance) Regulations 1997* was laid on 8 March 1999 and is expected to come into force on 1 April 1999.[71] Councils will therefore be able to use the financial incentive after this date.

Early reports indicate that local authorities have welcomed the increase in the incentive but there is still a question mark over whether it will be generous enough to get councils involved in the buy back process.[72]

From July 1 1999 the Right to Buy will become a matter for the Scottish Parliament and the Welsh Assembly.

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[70] HC Deb 8 March 1999 c 12W
[71] SI 1999/501
[72] 'Cautious welcome for higher buy-back rebate', *Housing Today*, 11 March 1999