Incentivising the Right to Buy (RTB)

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Author: Wendy Wilson

Section Social Policy Section

In October 2011 the Prime Minister said he wanted to "raise Right to Buy discounts to a level which will make the scheme attractive again and rejuvenate the housing stock." This note summarises various changes to the Right to Buy (RTB) in England and reactions to those changes.

With effect from 2 April 2012 the Government increased the maximum cap on the Right to Buy discount to £75,000. This change was implemented by the *Housing (Right to Buy) (Limit on Discount) (England) Order 2012* (SI 2012/734). DCLG published guidance on the changes for local authorities, *Reinvigorating the Right to Buy and one for one replacement: information for local authorities.* The Government anticipated that some 20,000 additional Right to Buy sales would take place over the following 3 years as a result of the restoration and increase in the national maximum discount cap.

As part of Budget 2013 the Chancellor announced that the maximum discount in London would rise to £100,000 with effect from 25 March 2013. This was introduced by the Housing *(Right to Buy) (Limit on Discount) (England) Order 2013* (SI 2013/677). Measures have been included in the *Deregulation Bill 2013-14* (carried forward to the current session) to reduce the qualifying period for the Right to Buy from five to three years.

The Autumn Statement 2013 saw the Chancellor announce an intention to appoint RTB 'Agents' to "help buyers complete their home purchase" and "provide £100 million to establish a fund to increase Right to Buy sales, by improving applicants' access to mortgage finance."

On 3 January 2014 the Secretary of State, Eric Pickles, announced an intention to increase the maximum discount on a house under the RTB from 60% to 70% of its value, together with an intention to increase the discount caps on an annual basis by the Consumer Price Index. A draft SI, the *Housing (Right to Buy) (Maximum Percentage Discount) (England) Order 2014* has been published. This draft SI contains provisions which will, in due course, increase the maximum discount in respect of a house to 70%. *The Housing (Right to Buy) (Limit on Discount) (England) Order 2014* (SI 2014/1378) will increase the maximum discounts (currently £75,000 and £100,000 in London) from 21 July 2014 and provides for annual increases by CPI from April 2015.

Background on the RTB and previous reforms can be found in Library Research Paper 99/36, The Right to Buy and Library Note SN/SP/1983. Note that most tenants of housing associations do not have the Right to Buy – see Library note *Housing association tenants: right to buy* SN/SP/648.

Contents

1 Overview of the 2012 changes to the Right to Buy

Since its introduction in 1980 almost 2 million households have exercised their Right to Buy (RTB). Prior to the 2012 changes sales were running at around 2,600 a year representing an all-time low in take-up. Various factors influenced this decline, such as the economic downturn, the challenge of obtaining mortgage finance and the introduction of regional caps on the maximum discount available by the last Labour Government. The measures introduced by Labour were aimed at improving value for money under the RTB.

The draft impact assessment described why Government intervention was believed to be necessary:

> Right to Buy sales have been in long term decline and minimal in most recent years. A more generous discount will allow a greater number of social tenants to take up their Right to Buy and meet their home ownership aspirations, support social mobility and will help create and sustain mixed communities. Housing need remains high and building replacement homes for affordable rent will help us to meet this need.

Housing construction output and jobs have suffered during the recession with construction amongst the hardest hit sectors, accounting for a fifth of the 7.1% decline in GDP from peak to trough. So the replacement programme will help to support the sector and contribute to economic growth.[1]

1.1 Discounts and caps

Most secure public sector tenants of five years standing can buy the home in which they live at a discount.[2] The discount levels are calculated in the following way:

- for houses: 35 per cent of the property's value plus 1 per cent for each year beyond the qualifying period up to a maximum of 60 per cent (but see **section 5** below for proposals to increase this to 70 per cent);
- for flats: 50 per cent plus 2 per cent for each year beyond the qualifying period up to a maximum of 70 per cent.

Discount calculations are also subject to an overall maximum or 'cap.' Up to 2 April 2012 this maximum varied regionally:

£38,000 in the South East, unless the home was in the local authority areas of:

Chiltern

Epsom & Ewell

Hart

Oxford

Reading

Reigate & Banstead

Tonbridge & Malling

Vale of the White Horse

West Berkshire

In these local authority areas the maximum discount was £16,000.

£34,000 in the Eastern Region (unless the property was in Watford where the maximum discount was £16,000).

£30,000 in the South West

£26,000 in the North West, and the West Midlands

£24,000 in the East Midlands, and Yorkshire and the Humber

£22,000 in the North East

£16,000 in Wales

1 CLG, *draft impact assessment*, page 1

2 There are some exceptions to this, for example where the property is particularly suitable for occupation by an elderly person.

> £16,000 in London (unless the property was in Barking and Dagenham or Havering, where the maximum discount was £38,000).

The regional caps produced an average discount rate in England of around 25% - ranging from 13% in London to 32% in the North West.[3]

In *Reinvigorating the Right to Buy and one for one replacement* the Government proposed to raise the cap to £50,000 throughout England. The Government expected that this measure would increase the take-up of the RTB "substantially."

Following consideration of the consultation responses the Government announced that the cap would be raised to £75,000 throughout England from 2 April 2012.[4] The *Housing (Right to Buy) (Limit on Discount) (England) Order 2012* (SI 2012/734) implemented this change.

Whether or not a council tenant benefits from the increase in the discount cap to £75,000 depends upon the percentage discount they are entitled to and the value of their home.

In March 2013 the Housing Minister, Mark Prisk, hailed the move as a success in increasing RTB sales:

> Since April, tenants looking to buy have been eligible for up to £75,000 off the value of their property - quadrupling the discount in many areas.
>
> This has led to a surge in interest, with 3,500 Right to Buy sales nationally since April - a third more than in the whole of the previous year and the highest number of sales since 2007.[5]

Information on increases to the maximum discount in London (to £100,000) can be found in section **3** of this note.

1.2 Protections for tenants exercising the RTB

The consultation paper asked whether any additional information should be provided to prospective RTB purchasers. There are already requirements in relation to estimated service charges for major works that are planned within five years of the purchase.

Some family members can join in a RTB purchase. There is anecdotal evidence of family members encouraging tenants to exercise their RTB and then persuading them to sell in order to realise the asset. This can leave the ex-tenant homeless and in need of re-housing. The consultation paper asked whether further steps could be taken to improve prospective buyers' understanding of the implications of ownership.

The Government updated the guidance literature for tenants:

Your right to buy your home: Summary

Your Right to Buy Your Home: A guide

Thinking of buying your council flat?

Additional information can be found on the Department for Communities and Local Government's website.

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[3] DCLG, *Reinvigorating the Right to Buy and one for one replacement*, December 2011, para 9

[4] DCLG, *summary of responses to the consultation and the Government's final response*, March 2012

[5] DCLG Press Release, 25 March 2013

1.3 RTB receipts: loss of Housing Revenue Account income

Local authorities with housing stock had to prepare for the dismantling of the Housing Revenue Account (HRA) subsidy system and for the introduction of self-financing from April 2012.[6] The valuations used in calculating the self-financing settlement payments included a forecast of lost surplus income arising from future RTB sales.[7] As it was expected that RTB sales would increase after the discount cap was raised to £75,000 the Government proposed that a part of the RTB receipt should be used to pay down the housing debt supportable from lost income from these additional sales.[8]

In *summary of responses to the consultation and the Government's final response* the Government confirmed its intention to implement the approach proposed in the consultation paper for estimating the loss to the HRA from RTB sales and for compensating authorities for this loss. On repaying debt the Government said:

> The Government does not propose to require councils to use this part of the receipt to repay loans. We instead plan to use mechanisms related to the Housing Revenue Account ring-fence to ensure that the Housing Revenue Account receives the benefit of this compensation. We intend to achieve this through a change to the definition of the Housing Revenue Account Capital Financing Requirement (now set out in the Limits on Indebtedness Determination 2012). This will require a local authority to reduce the Housing Revenue Account Capital Financing Requirement by this amount, but would leave the local authority free to make treasury management decisions about how the receipt is used. The Government will consult local housing authorities and relevant professional bodies on the changes to the Limits on Indebtedness Determination.[9]

1.4 Local authority transaction and administration costs

Previously, councils could deduct their actual administration and transaction costs from the RTB receipts of successful sales. The Government proposed that authorities would be able to deduct and retain a flat-rate sum (based on the 40th percentile of costs achieved by councils in that region over the last three years) per successful sale.

This flat-rate approach was confirmed. Authorities now also retain an amount in recognition of the administrative costs of withdrawn RTB applications.[10]

1.5 Improvement costs

The Government proposed to remove the ability of councils to claim any costs they have incurred in improving a property subject to the RTB in the last three years from RTB receipts. The Government's view was that the cost of the improvement would, in most cases, be reflected in the market value and (at a discounted rate) in the RTB receipt.

This approach was confirmed in *summary of responses to the consultation and the Government's final response*.

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6 Full information on this can be found in Library note SN/SP/4341

7 DCLG, *The Housing Revenue Account Self-financing Determinations Consultation,* November 2011

8 More information is contained in Annex 3 to the consultation paper.

9 DCLG, *summary of responses to the consultation and the Government's final response*, March 2012

10 *ibid*

1.6 Protecting council and Government projected shares of receipts

Previously a council with housing stock could retain from the RTB receipt the sale costs plus any costs incurred in improving the property in the last three years. They then had the option of using some of what was left over to buy back former council homes. After this, 75% had to be paid to the Exchequer (pooled) and 25% was retained by the local authority to use on any capital expenditure.

As part of the move to self-financing from April 2012 councils were required to estimate future RTB receipts over the spending review period (up to 2014-15) using current discount rates. The Government said it intended to "implement arrangements to protect that income stream." There was also an intention to protect central Government's projected share of RTB receipts.

There was an expectation that RTB applications would be withdrawn and re-submitted to take advantage of the increased discount cap after April 2012. The Government adjusted for the loss of RTB receipt income to local authorities in 2011-12 by increasing their assumed income estimate for 2012-13. Full details can be found in Annex A to *Reinvigorating the Right to Buy and one for one replacement*.

This approach was confirmed in *summary of responses to the consultation and the Government's final response*.

1.7 Buyback

As noted previously, councils have the power to buyback former council properties using RTB receipts to cover part of the cost. The Government considered whether to continue to allow the use of RTB receipts for this purpose:

> The Buyback allowance, as currently proposed, is relatively high at 50 per cent of the cost to authorities of buying back former council homes and its extensive uptake by councils would reduce funding available for replacement homes. Some homes bought under Buyback are added to the council's rental stock, but others are bought for demolition under estate regeneration schemes. Where the local authority lets a property bought under Buyback and commits to its long term use as social housing, then this would contribute to the one-for-one replacement numbers.[11]

The Government asked authorities to provide information on the number of buybacks that had been brought back into rental use or demolished.

In *summary of responses to the consultation and the Government's final response* the Government said it would retain Buy Back "but in an amended form:"

> Local authorities will be allowed to fund up to 50% of the cost of re-purchasing a former council home, up to a maximum of 6.5%[12] of any additional net receipts (i.e. receipts available to support one-for-one replacement).[13]

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11 DCLG, *Reinvigorating the Right to Buy and one for one replacement*, December 2011, para 57

12 6.5% is around the average level of Right to Buy receipts retained by local authorities for Buy Back over the last three years.

13 DCLG, *summary of responses to the consultation and the Government's final response*, March 2012

1.8 Cost-floor

The Government asked for views on section 131 of the *1985 Housing Act* – this section operates to ensure that the properties are not sold at less than it cost to build them or improve them within a given time period.

In *summary of responses to the consultation and the Government's final response* the Government confirmed its intention to retain section 131 and extend the time period over which it operates from 10 to 15 years for new properties built by local authorities from 1 April 2012.

1.9 Apportioning RTB receipts

Where receipts are sufficient to cover all allowable costs and local authority and Government assumed income the Government proposed that councils should apportion RTB receipts as follows:

> from the receipt the council may deduct:
>
> - housing debt supportable from the income on additional sales
> - transaction and administration costs on all sales
> - local authority assumed income
>
> the council pays to central government:
>
> - government assumed income
>
> 61. The remaining receipt is available to support funding for replacement homes. The treatment of the remaining balance will depend on decisions on Buyback and the delivery model implemented for replacement homes.
>
> 62. Our estimates of take-up for Right to Buy over the spending review period indicate that receipts are very likely to be sufficient to cover all allowable costs and local authority and government assumed income and to provide sufficient additional funding to secure one for one replacement on additional sales. However, in the event that receipts fall short, after debt and costs, the receipts would be shared between the council and government in proportion to their respective assumed incomes.[14]

Additional information is in Annex D to the consultation document.

The Government proposed to remove the requirement under the *Local Authority (Capital Finance and Accounting) Regulations 2003* to pool RTB receipts. Instead, a calculation would be made to apportion RTB receipts as set out above.

The *summary of responses to the consultation and the Government's final response* confirmed that the approach set out above would be implemented.

1.10 Replacing homes sold under the RTB

The Government proposed one-for-one replacement of houses sold under the RTB. The houses built as replacements would be let on an "affordable rent" i.e. at a rent of up to 80% of market rents.[15]

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[14] DCLG, *Reinvigorating the Right to Buy and one for one replacement*, December 2011, paras 60-62

[15] For more information on the affordable rent scheme see Library note SN/SP/5933

The consultation document advised that take-up of the RTB is greatest in areas of high housing need. It was recognised that RTB receipts generated locally "will not necessarily secure one-to-one replacement in each area":

> For example, on average, our estimates suggest that receipts in the North West may be insufficient to support the funding required for one-for-one replacement while in London the receipt from a single sale could support more than one Affordable Rent replacement home.[16]

A range of possible delivery models for managing the replacement programme were outlined in the consultation paper. Under all the possible models it was recognised that RTB receipts would need to be supplemented by borrowing, provider contributions in the form of land, or other funding.

The proposed delivery models

The following sections summarise the four delivery models described in *Reinvigorating the Right to Buy and one for one replacement*.

Local model

Receipts would be left with the local authority for investment in local priorities including new homes at affordable rents. Authorities would manage the development themselves or develop in partnership with neighbouring councils, housing associations or other registered providers. In some areas priority would be given to estate regeneration or improving the condition of the existing stock. It would be unlikely that all available receipts would be used for replacement homes and "so would be unlikely to deliver one-for-one replacement at the national level."[17]

Local model with direction

As above but with a requirement that receipts raised be used for investment in new affordable rent homes.

> One way of directing local authorities to use available receipts for replacement homes would be to specify the uses of available receipts in the Local Government Capital Finance Regulations. Compliance could be checked by the local authority's auditor and failure to meet it would result in clawback. This Department would administer scrutiny and clawback arrangements (with consequent administration costs) and funds clawed back would be reinvested in Affordable Rent homes through the Homes and Communities Agency and the Greater London Authority.[18]

Although it was expected that more replacement homes would be developed under this model, the consultation paper still noted that one-for-one replacement across England would be unlikely.

Local model with agreement

Receipts would be left with the local authority subject to the Secretary of State's agreement, including agreement on the contribution to replacement costs that the council would make from its own resources. The consultation paper suggested that the Secretary of State's agreement could depend on a local funding plan for the delivery of new affordable homes:

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16 DCLG, *Reinvigorating the Right to Buy and one for one replacement*, December 2011, para 70

17 *Ibid* para 75

18 *Ibid* para 78

The plan would set out proposed borrowing, contributions the council would make from its own resources (land and funds) and a “maximum contribution” from available Right to Buy receipts. The maximum contribution would be agreed at a level intended to secure one-for-one replacement at a national level. The plan should also demonstrate that the council can secure value for money in its use of funding and is addressing need in the area. Under this model some areas would not be able to replace all additional Right to Buy sales while for others replacements would exceed sales.[19]

National model

Receipts for replacement homes at affordable rents would be surrendered to DCLG who would pass them to the Greater London Authority and the Homes and Communities Agency (HCA) to manage replacement programmes in London and elsewhere in England. There could be potential for councils to bid for replacement funds for use in their areas on a continuous basis. The HCA could give priority within their five investment areas (from April 2012) to areas with the highest volume of RTB sales.

This approach would allow some redistribution of funding between council areas and provide an open and efficient procurement process through continuous market engagement. It is probably best placed to achieve one for one replacement nationally but would have less local support from councils than Local Models.[20]

The consultation document asked for local authorities’ views on their preferred model. The criteria against which the models were tested was the extent to which they:

- could secure competition and value for money in commissioning replacement homes
- provide assurance that, for England as a whole, one-for-one replacement is secured
- secure replacement in a reasonable timeframe
- deliver replacement homes in areas of higher housing need, and
- were administratively simple and transparent[21]

The preferred model for one-to-one replacement

After considering the cases made by respondents the Government decided to implement a version of the Local Model with Agreement. Guidance for local authorities produced by DCLG describes how one-for-one replacement is delivered:

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

[19] *Ibid* para 82
[20] *Ibid* para 88
[21] *Ibid* para 96

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.

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).[22]

The Government provided the following explanation for rejecting the national and local models:

Why has the 'local model with agreement' been adopted, rather than the national or purely local?

As the consultation paper made clear, the Government is seeking a solution that supports the localist agenda while achieving one-for-one replacement (for England as a whole) and ensuring value for money. Against these criteria, Ministers have concluded that the best option is a version of the 'Local Model with Agreement'. Of the other models: the 'Local' and 'Local with Direction' models do not give sufficient assurance of one-for-one replacement for England as a whole; and the 'National' model does not support the localist agenda.[23]

1.11 Housing association tenants

There were (and are) no proposals to extend the RTB to housing association tenants who have the Right to Acquire, or to housing association tenants without a right to purchase:

Henry Smith: To ask the Secretary of State for Communities and Local Government what his policy is on extending tenant right-to-buy to housing association homes; and if he will make a statement.

Mr Prisk: The Government is keen to help social tenants achieve their aspiration for home ownership where this is affordable and sustainable for them. All social tenants have priority for Government funded affordable home ownership schemes, for example, shared ownership and the FirstBuy equity loan scheme, to help them into home ownership. These schemes can be of particular benefit to those without a right to purchase. Landlords may also offer voluntary sales schemes to assist their tenants to purchase their rented home.

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

[23] *ibid*

> We are open to representations on how we can further support home ownership.[24]

It is estimated that around 620,000 housing association tenants have a "preserved Right to Buy." These tenants used to be council tenants (with a RTB) before ownership of the stock transferred to a housing association.

Arrangements for distributing capital receipts raised from preserved RTB sales depend on local arrangements made with transferring councils.

The Government does not intend to mandate what housing associations, as independent bodies, can do with the receipts they retain. However, there is a desire to consider whether further steps could be taken to "incentivise the use of surplus receipts for replacement."[25]

In *summary of responses to the consultation and the Government's final response* the Government proposed a number of measures to incentivise the reinvestment of capital receipts by housing associations:

> - For providers who are not developing under the main Affordable Homes Programme, the Homes and Communities Agency will offer to broker working with an investment partnership.
> - All other things being equal, associations who are recycling their own receipts into new affordable housing will be prioritised when we consider any bids for Right to Buy receipts which have been returned to the centre.
> - Government will also consider bids for additional freedoms and flexibilities for Housing Associations, where this would help ensure funds were recycled into new affordable housing.[26]

2 Comment on the 2012 reforms

A fully summary of the responses received by DCLG can be found in the *summary of responses to the consultation and the Government's final response*.

2.1 Caps and discounts

Respondents to the consultation exercise made the point that a return to a national cap on discounts of £50,000 would take no account of regional variations in house prices. The draft impact assessment suggested that take-up of the RTB would be greatest in high value areas, such as London, where, up to 2 April 2012, the cap had been fixed at £16,000 in most areas. However, tenants in these higher value areas would still have had to fund a significant mortgage commitment (£150,000 on a property valued at £200,000 after applying the maximum discount cap). This compares with a mortgage of £32,000 on a house valued at £80,000 with a maximum discount entitlement of 60% (£48,000). The logical conclusion was that raising the national cap on discounts to £50,000 might result in higher take-up in low value areas.

The National Housing Federation (NHF) carried out some indicative modelling of the number of tenants with a preserved RTB who could afford to buy their home with the discount cap raised to £50,000. The NHF concluded that the cap is "too low for tenants in high value areas

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[24] HC Deb 6 March 2013 c1016-7W

[25] DCLG, *Reinvigorating the Right to Buy and one for one replacement*, December 2011, para 103

[26] DCLG, *summary of responses to the consultation and the Government's final response*, March 2012

to exercise their RTB and too high for low value areas to generate enough funding from sales receipts to replace homes."[27]

Raising the cap to £75,000 clearly improved the viability of RTB purchases in higher value areas. In the example above, the tenant with a 60% discount entitlement on a property valued at £200,000 would have to raise a mortgage of £125,000 instead of £150,000.

The Building Societies Association (BSA), while welcoming the Government's initiative to encourage RTB purchases, highlighted the "risky" nature of RTB mortgages:

> Despite the discount, lending on right to buy properties is perceived by the regulator risky for lenders. Statistics published as part of the FSA's mortgage market review show that 40% of right to buy mortgages have a record of payment problems with 9% currently in arrears of two payments or more. The proportion of right to buy mortgages with payment issues rises massively when combined with other factors; for example 87.6% of right to buy mortgages to credit impaired and self employed borrowers have experienced payment difficulties.
>
> For the reasons set out above, mortgage lenders may approach right to buy mortgages with a caution. Tenants need to be aware that they will not automatically be granted a mortgage on their property and will need to undergo a level of scrutiny into their financial affairs. It would assist lenders to assess the affordability of the mortgage if local authorities and social landlords would be willing to share details of rent payments made (providing the tenant has consented to this).[28]

The BSA asked for improvements to the information provided to prospective RTB purchasers and for the requirement to pay back a proportion of the discount (where the property is sold within five years of purchase) to be relaxed where the mortgagor is experiencing financial difficulties. The Government published a specific fact sheet for lenders on reinvigorating the Right to Buy.[29]

The NHF response highlighted a need to clarify homeowners' responsibilities for repairs and maintenance.[30]

Several representative bodies of local authorities and housing providers, including the Northern Housing Consortium and the Local Government Association (LGA), called for a "localist" approach to caps and discount levels:

> The LGA believes that discounts should be determined locally to take account of local housing markets, build costs and demand for right to buy properties. A single national discount rate will not result in the optimum level of receipts that can be used to support new provision - that will require local discretion over the discount. By enabling councils to set the discount it would have most impact locally in terms of stimulating demand for Right to Buy as well as providing enough receipts for one for one replacement and housing stock improvements.
>
> The consultation's Impact Assessment offers a number of different models. Through consultation with councils it is clear that different models would produce optimal levels of demand for right to buy and receipts for re-supply in different areas. This reinforces the argument that councils are best placed to set the discount locally. We would be

27 NHF response to Reinvigorating the Right to Buy, February 2012
28 BSA *response to Reinvigorating the Right to buy*, February 2012
29 DCLG, *Reinvigorating Right to Buy and one-for-one replacement – fact sheet for lenders*, March 2012
30 NHF response to Reinvigorating the Right to Buy, February 2012

> willing to discuss with government options for providing local discretion and assurance to government that their policy objectives would still be met under this approach.[31]

On learning of the intention to restore a national cap on discounts and raise it to £75,000 the Chartered Institute of Housing (CIH) said:

> CIH along with other professional and trade bodies, had argued for the continuation of a more locally based discount policy but this has been rejected by government with at least one of the reasons being given relating to accessibility and understanding of the scheme by tenants. At a high level, there are therefore risks that the receipts generated locally in many areas of the country (and not just in low value areas in the north and midlands) might be insufficient to replace on a one-for-one basis.[32]

The Local Government Association echoed these concerns:

> Responding to the Government's announcement on right-to-buy, Cllr David Parsons, Chairman of the LGA's Environment and Housing Board, said:
>
> Increasing the number of tenants taking up the right-to-buy can help those wanting to join the housing ladder. However, the centralised way it is being implemented means that the Government has missed an opportunity to make sure it delivers the investment needed.
>
> A centralised right-to-buy cap of £75,000 fails to take into account local housing demand and the cost of building new homes. This means that in some areas the one-for-one replacement of homes that the Government has promised may not be delivered.
>
> As the level of discount may not leave enough funds to build a replacement home, some areas in need of more affordable homes may actually be left with fewer.
>
> While beneficial for tenants wanting to join the housing ladder, the public purse will have suffered because councils will have had to sell houses off at a price lower than needed to increase take up of right-to-buy. That delivers poor value for public money at a when we should be squeezing maximum value from every pound.
>
> The LGA lobbied for councils to keep 100 per cent of right-to-buy receipts and this announcement leaves open that possibility. However, given this can only be used to meet 30 per cent of new build costs; in practice keeping the receipts may not be possible for many councils.
>
> However, the Government was being urged to allow local places to decide right-to-buy discounts themselves, which hasn't transpired. This approach would have tackled the concerns that some areas now may end up with fewer affordable homes than before.[33]

The CIH's briefing paper contained an assessment of the impact of raising the maximum discount to £75,000. It concluded that the effect would be to a) encourage more sales in London and high value areas and b) extend discounts in middle-high value areas where some sales might have been caught by the £50,000 cap. In lower value areas a flat with a gross sale price of £60,000 could sell for £18,000 (with a 70% discount entitlement) compared to £36,000 (under the previous maximum discount cap of £24,000). The CIH highlighted two issues arising from this:

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31 LGA *response to Reinvigorating the Right to Buy*, February 2012

32 CIH *Briefing Paper on Reinvigoration of the Right to Buy and one-for-one replacement within local authorities,* 16 March 2012

33 LGA, Press Release, 12 March 2012

- selling a local authority asset for £18,000 could be viewed as representing poor value for money; and
- the difference in the retained receipt of £18,000 represents a significant loss to the authority in terms of local re-provision of housing.[34]

2.2 One-for-one replacement

The Government's recognition of the need to replace social housing stock sold under a reinvigorated RTB was welcomed. There were (and are), however, significant concerns around one-to-one replacement as opposed to like-for-like replacement. The intention is for replacement housing to be let at an affordable rent of up to 80% of market rents – the District Councils' Network (DCN) pointed out that this "will prove more expensive in many areas." The DCN also questioned where the replacement housing would be built:

> The Network does, however, have concerns that it will take some of the best social stock away from district councils in some of the better areas. Lack of available land near to town or urban centres could lead to homes being built on land away from services such as shops, schools, GPs etc. Social housing should not be pushed away from the town centres and its associated community support networks.[35]

Commentators asked whether, under one-to-one replacement, a family home could be replaced with a one bedroom flat.[36]

Respondents expressed considerable concerns around whether one-to-one replacement of the properties sold would actually be delivered. In low value areas the Chartered Institute of Housing (CIH) believed that the increase in the cap to £50,000 would make the RTB attractive but would not provide a sufficient capital receipt to fund one-to-one replacement. High value areas might produce larger capital receipts but take-up may be more restricted. The CIH suggested further consideration of a move "to a discount rate that is proportionate to the sales price in order to offer a more equitable approach around the country before determining the discount policy going forward."[37]

There were tensions in the responses between those with a desire for a "localist" response to one-to-one replacement and those who argued for national pooling of receipts. The "localists" wanted RTB receipts to be retained and applied locally whereas others, including the NHF, argued that only a national pooling mechanism has the capacity to deliver one-for-one replacement:

> Whilst we have sympathy for the 'localist models', they simply would not be able to generate sufficient funds for making the one-to-one policy financially sustainable in many individual local authority areas. Whilst some areas in London and the south-east of England may be able to 'out-perform' the policy and deliver more than a one for one replacement, it is likely that the policy will not be deliverable for the rest of England. Instead the localist models would place an unfair and undeliverable financial burden upon many local authorities in a difficult fiscal environment.
>
> Instead, if receipts are pooled nationally, housing associations and other providers will be able to access sufficient funding to deliver housing schemes at sufficient scale to

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34 CIH *Briefing Paper on Reinvigoration of the Right to Buy and one-for-one replacement within local authorities*, 16 March 2012

35 DCN *response to Reinvigorating the Right to Buy*, February 2012

36 *Inside Housing*, "Sale! While stocks last," 13 January 2012

37 CIH response to Reinvigorating the Right to Buy, February 2012

> make the one for one replacement a success across the whole country. Under such a model, the Government may also ask the HCA and GLA to consider the need to replace the additional homes sold within broad housing market areas. Funding could be allocated according to the number of right to buy sales in each broad housing market area. This would ensure a link between where a home is sold and where it is replaced, but it would also give providers the flexibility to deliver across a much bigger area.
>
> Importantly, national pooling of receipts can also help make one for one a success in low value areas. Under the national model, local authorities and registered providers - operating in low value areas - would be able to bid for sufficient funds from HCA to fund replacement homes in their areas, rather than rely on a severe shortage of funds (if the funds were pooled at the local authority level).[38]

The NHF argued that if receipts were to be retained locally there should be a requirement that each home sold should be replaced within three years to "ensure the supply of affordable homes is not decimated during a time of rapidly rising housing need."[39]

The LGA's response noted that the replacement programme "will require input of significant additional resources."[40] Local authorities questioned whether the caps on borrowing imposed under the new self-financing regime[41] from 1 April 2012 would restrict their ability to find the additional funding required:

> The CLG's impact assessment shows councils would need £40,000 to £50,000 in receipts from each home to fund a replacement. The average council stock price in some parts of the north is less than £70,000, which could leave councils with less than £25,000 in receipts to replace a sold home after other costs such as payment of historic debt are returned, forcing them to increase their borrowing.
>
> 'It will be a struggle for many [councils] to make it work' said David Hall, a director at housing consultancy Sector. 'there are issues that they [CLG] have not acknowledged around the borrowing cap.[42]

DCLG was reportedly of the view that councils must work within their existing borrowing limits and should work with partners and make the best use of their land, assets and other resources, instead of putting in capital or increasing borrowing in order to facilitate replacement.[43]

In *Reinvigorating the Right to Buy and one for one replacement: information for local authorities* DCLG responded to some of the issues raised by providers on the viability of one-for-one replacement:

> **How can you replace the additional homes sold on a one-for-one basis? Surely, the remaining receipt won't be large enough to cover the cost of a new home?**
>
> Drawing on evidence from the 2011-2015 Affordable Homes Programme – for which most agreements have now been signed - we are clear that that it should be possible to fund new homes let at Affordable Rent levels, with no more than 30% of the cost of the new homes needing to come from the Right to Buy receipt. As in the Affordable

38 NHF response to Reinvigorating the Right to Buy, February 2012
39 NHF response to Reinvigorating the Right to Buy, February 2012
40 LGA *response to Reinvigorating the Right to Buy*, February 2012
41 Full information on the introduction of self-financing can be found in Library note SN/SP/4341
42 *Inside Housing,* "Councils fear RTB won't deliver homes," 6 January 2012
43 *ibid*

Homes Programme, the remainder of the cost will come from borrowing against the net rental income stream from the new property, and cross-subsidy from the landlord's own resources, including (in some cases) land.

So, for instance, for a new home costing £140,000 to build, the Right to Buy receipt would contribute up to £42,000. The Right to Buy receipt would not need to cover the full cost of the new home, just as Government grant only provides a minority of the funding for Affordable Rent in the Affordable Homes Programme. (A worked example is included at annex B.)

The only way in which the funding for Right to Buy replacement differs from the main 'Affordable Rent' model is that cross-subsidy from converting re-lets of existing social rented homes to Affordable Rent will not be permitted. The 30% maximum contribution takes this into account (in the Affordable Homes Programme, Government grant only contributes around 20% of the cost of the new homes).

In our area, the remaining receipt will not be sufficient to fund one-for-one replacement. Must a council commit to delivering one-for-one replacement, to be allowed to retain the remaining receipt?

No. As we set out in our consultation paper, our aim is to deliver one-for-one replacement nationally. We recognise that the remaining receipt will not be large enough to fund one-for-one replacement in some areas, and we are not requiring councils to do so. If a council wishes to retain the remaining receipt, all it must do is spend that receipt on new affordable rented homes, making sure that no more than 30% of the cost of the new homes comes from the Right to Buy receipt. It can provide the new homes itself, or contract with another social housing provider.

Will councils be required to pay down the debt related to the sold property?

No

What do these changes mean for rural areas?

The Government proposes to retain the current restrictions on the resale of homes sold under the Right to Buy in rural areas. We understand concerns about the ability to replace homes sold under the Right to Buy in rural areas but the Government's decision to allow receipts to fund up to 30% of replacement costs will reflect any increased costs in the development of new affordable homes in rural areas.[44]

The CIH's *Briefing Paper on Reinvigoration of the Right to Buy and one-for-one replacement within local authorities* advised that providers would need to assess the financial issues and implications of re-provision with care. The paper drew particular attention to the following points:

- there will be no requirement to demonstrate one-for-one replacement locally provided no more than 30% of scheme costs are funded by additional receipts;
- there is no requirement to pay off debt with the assumed 'debt element' of the property sold, giving authorities the opportunity to cross-subsidise new homes from existing stock;

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

- the increase in discounts will increase the volume of sales need to meet the Government assumed income thresholds under self-financing and therefore reduce the potential for reinvestment from an equivalent number of sales; and

- for authorities to make significant contributions to replacement locally, other resources will be required; these are likely to come from draw-down against borrowing headroom and possibly from commitment of the reserved debt element. Alternatives include other receipts or revenue reserves built up for the purpose.

These sources are real but may be limited, particularly if the scheme operates over a long period and headroom is used up without the debt cap being raised. There are many authorities that have little or no headroom under self-financing from the start. For many authorities to make re-provision work locally over a sustained period, this will almost certainly require a commitment to secure revenue contributions (i.e. rental surpluses) from the existing stock.[45]

See section 3.1 (below) for additional comment on one-for-one replacement.

3 Budget 2013

The Budget 2013 Red Book set out the Government's intention to further reform the RTB:

> **1.105** The Government wants to give more social housing tenants the opportunity to benefit from home ownership. Since its introduction in the 1980s Right to Buy has helped almost 2 million households to experience the benefits of home ownership. In April 2012 the Government reinvigorated the scheme by increasing the maximum discount to £75,000. To broaden opportunity the Government will:
>
> - look at ways to simplify the application process to ensure applicants are not hampered by a burdensome administrative process;
> - reduce the qualifying period before tenants become eligible for Right to Buy from five years to three years; and
> - from 25 March raise the maximum discount cash cap in London to £100,000 where the current cap is most keenly felt.
>
> **1.106** The additional receipts from increased sales will be used to pay down housing debt and support the Government's commitment to 1:1 replacement of all additional homes sold.

The increase in the maximum discount in London was implemented by the *Housing (Right to Buy) (Limit on Discount) (England) Order 2013* (S.I. 2013/677). The then Housing Minister, Mark Prisk, explained the thinking behind the change:

> Since April, tenants looking to buy have been eligible for up to £75,000 off the value of their property - quadrupling the discount in many areas.
>
> This has led to a surge in interest, with 3,500 Right to Buy sales nationally since April - a third more than in the whole of the previous year and the highest number of sales since 2007.

45 CIH, *Briefing Paper on Reinvigoration of the Right to Buy and one-for-one replacement within local authorities*, March 2012

> But with property prices in the London higher than anywhere else in the country, council tenants there need additional help to get on the property ladder - of those 3,500 sales, only 535 were in the capital.
>
> [...]
>
> But in London, higher property prices have meant fewer council tenants have been able to benefit from this renewed deal. That's why, from today, we've increased the maximum discounts available in the capital to £100,000 - bringing home ownership within reach of even more Londoners.[46]

DCLG published a briefing note on the changes announced as part of Budget 2013.

Measures to reduce the qualifying period for the Right to Buy and Right to Acquire from five to three years were included in the *Draft Deregulation Bill*. This draft Bill was subjected to pre-legislative scrutiny by a Joint Committee of the House.[47] The Committee's report made no specific recommendations or observations on the proposal. The *Deregulation Bill 2013-14* (carried forward to the current session) is now proceeding through Parliament. The Government has said that reducing the qualification period will extend the possibility of home ownership to an additional 200,000 households.[48] An impact assessment on the reduction in the qualification period has been published.[49]

3.1 Comment

The CIH's 2013 Budget Briefing paper questioned the degree to which homes sold under the RTB were being replaced:

> ...it is still not clear whether new homes that are being bought under this scheme are being replaced on a one for one basis as government has previously promised. If they are not replaced, the number of affordable homes available for social rent will be further depleted and this will be a negative outcome for the housing industry and for tenants in need of an affordable home.

There was also concern that, in low value areas, the application of RTB maximum discounts would result in low receipts from sales with the result that authorities may not be able to re-provide locally.[50]

The National Housing Federation's response is reproduced below:

> The Federation supports giving more people the opportunity to own their own home. We have said before that the level of Right to Buy discount needs to better reflect local housing markets. Our indicative modelling, based on average incomes, lower quartile house prices and a standard affordability measure, suggests that increasing the discount to £100,000 in London means that over 8,500 Londoners in housing association homes may now be able to afford to buy their home.
>
> We are encouraged by Government's continued commitment to ensuring one-for-one replacement of homes sold. However, despite a potential rise in receipts from sales,

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46 DCLG Press Release, 25 March 2013

47 HC 925, Joint Committee on the Draft Deregulation Bill, Session 2013-14, December 2013

48 Cm 8642, p3

49 DCLG, *Reducing the right to buy qualification period for social housing tenants – Impact Assessment*, 31 January 2014

50 CIH's 2013 Budget Briefing, p9

> we are concerned that, after paying down housing debt, the greater discount will reduce the total funds available to reinvest in replacing affordable homes.[51]

Figures published by DCLG for the 2013/14 financial year provide an early estimate of 11,238 RTB sales by local authorities compared to 5,944 in 2012/13.[52] More than 30% of the sales took place in London. The sales generated £750m in capital receipts. In comparison, 2,115 replacement homes were started on site over the year.[53] *Inside Housing* has described the figures as "clear evidence" that the Government has succeeded in reinvigorating the RTB;[54] however, other reports are critical of the Government's record in relation to one-to-one replacement:

> Four out of five councils are finding it difficult to replace homes sold under Right to Buy, because the scheme is 'bureaucratic and inflexible'.
>
> Government figures show that over 10,000 homes were sold under the scheme last year (January to December). This figure is more than double that of 2012. However, 80 per cent of councils responding to a new Local Government Association (LGA) survey feel that the current system does not allow them to replace these lost homes.
>
> This hinders councils' efforts to find homes for those residents currently on their waiting lists. With almost 1.7 million households currently waiting for a home, the LGA said it is imperative that councils have the powers to replace housing sold through the Right to Buy quickly and effectively.
>
> Now the LGA, which represents almost 400 councils in England and Wales, is calling for councils to be allowed to retain 100 per cent of receipts directly from Right to Buy sales to support new housing. This would mean scrapping the current arrangements which involve time and resource-intensive form filling and restrictions on how councils use the receipts and their own land and assets to build new homes.
>
> The LGA is supporting amendments, which call for this, to the Deregulation Bill, which is currently going through Parliament.
>
> It is also supporting measures to allow councils to set the Right to Buy discount locally so that it reflects the cost of houses in the area.[55]

An *Inside Housing* article (April 2014) considered why the homes sold were not being replaced:

> So what has gone wrong? The total receipts are split three ways. First a formula-based calculation is used to estimate the sum of cash that would have been generated from sales had discounts not increased. The lion's share of this goes to the Treasury, and around a quarter is kept by councils for their general funds or paying off existing debts. Only the excess cash, following these deductions, is ring-fenced for one-for-one replacements.
>
> But where house prices are low, the increased discounts that generate a higher than planned volume of sales do not always have the same impact on the level of receipts.

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[51] NHF's 2013 Budget Briefing, p6

[52] DCLG, Table 671: annual Right to Buy sales for England (includes chart)

[53] DCLG, Table 671: annual Right to Buy sales for England (includes chart)

[54] *Inside Housing,* "Right to Buy sales double to 11,00 in a year," 15 May 2014

[55] Local Government Association Press Release, 24 March 2014

> As Ken Lee, director of resources at 23,000-home Wigan and Leigh Housing says, this leads to a situation where hundreds of homes are sold without a penny going into new build.
>
> Fourteen of the councils responding to the survey do not have a penny for replacements, despite selling a combined 709 homes. In the starkest example, Manchester has sold 112 but has no money to replace them.[56]

When questioned on the rate of replacement the Minister, Kris Hopkins said:

> The one-for-one replacement policy applies to additional local authority sales—that is, sales above the level forecast before the changes were made—that have taken place since the reinvigoration of the right to buy in April 2012.
>
> Since the reinvigoration, local authorities have sold 10,953 homes, approximately 6,400 of which are additional. Since April 2012, 1,662 dwellings have been started on site or acquired.
>
> There will invariably be a certain time lag between the right to buy sale and the construction of the new build home, but the replacement timetable is in control of the local authority. If a council were to fail to spend the receipts within three years, it would be required to return the unspent money to government with interest. This provides a strong financial incentive for any slow-coach councils to use this new funding and get on with building more homes for local people.[57]

The Local Government Association submitted written evidence to the Public Bill Committee on the *Deregulation Bill* in which it stressed the importance of securing the replacement of properties sold given the Bill's further relaxation of the RTB eligibility criteria:

> 11. Relaxing the eligibility criteria for the Right to Buy makes it more important than ever that the system delivers replacement homes for those sold. A blanket discount cap, as is currently in place, ignores the large differences in property values up and down the country, and in some areas will not provide a discount sufficient to generate sales and vice versa. Greater flexibility should be provided to enable councils to set the Right to Buy discount locally, to reflect local housing markets and stimulate sales.
>
> 12. Under the current system, the amount of receipts kept by the Treasury is based on the predicted amount of Right to Buy sales in each authority. This means that only when the Treasury has received the predicted amount does money become available to be retained locally. The restrictive criteria which accompany Homes and Communities Agency agreements to retain receipts locally also restricts the ability of local authorities to invest in housing. For example, the agreements limit councils to funding only 30 per cent of new build costs from Right to Buy receipts, as well as limiting the use of other housing revenue account receipts as funding. The Deregulation Bill should allow for full retention of receipts and greater flexibility over how they are used. This would incentivise councils to use their assets, such as land, for replacement housing and could allow councils to bring development sites forward that may not be attractive or viable to other providers.
>
> 13. **The Government should bring forward amendments to the Bill which would allow for direct and full retention of receipts and greater flexibility over how they are used and ensure the discount could be set locally.** This would incentivise councils to use their assets, such as land, for replacement housing and could allow

56 *Inside Housing*, "The right to buy deficit", 4 April 2014

57 HC Deb 20 January 2014 cc55-6W

councils to bring development sites forward that may not be attractive or viable to other providers.

14. **The Bill represents an opportunity to alter the current arrangements to enable additional reinvestment in new affordable housing.** The changes set out above would enable councils to reinvest significantly in new homes.[58]

4 Autumn Statement 2013

The Autumn Statement 2013 (December) contained the following commitment:

> The government will further support Right to Buy by introducing Right to Buy Agents to help buyers complete their home purchase, and provide £100 million to establish a fund to increase Right to Buy sales, by improving applicants' access to mortgage finance.[59]

5 DCLG announcement January 2014

On 3 January 2014 the Secretary of State announced an intention to increase the maximum discount for a house to 70% (up from 60%). He also said that the maximum discount of £75,000 (£100,000 in London) would begin to increase on an annual basis by the Consumer Price Index.[60]

The Housing (Right to Buy) (Limit on Discount) (England) Order 2014 (SI 2014/1378) will come into force on 21 July 2014. This Order increases the maximum discount for properties in London to £102,700 and for the rest of England to £77,000 between 21 July 2014 and 5 April 2015. From 6 April 2015 the maximum discount will increase annually by the by the percentage change in the Consumer Prices Index published by the Statistics Board from the September before the previous year to the September of the previous year (rounded down to the nearest £100).

The Order sets out transitional provisions which apply where a notice has been served under section 122 of the 1985 Act (a tenant's claim to exercise the RTB) before 21 July 2014 but the conveyance has not been completed.

A draft SI, the *Housing (Right to Buy) (Maximum Percentage Discount) (England) Order 2014* has been published. This draft SI contains provisions which will, in due course, increase the maximum discount in respect of a house to 70%. The SI contains transitional provisions which will apply where a tenant has served a section 122 notice before the SI is in force but the conveyance has not been completed.

January 2014 also saw publication of *From Right to Buy to Buy to Let,* a report in which Tom Copley, Labour London Assembly Member, claimed that 52,000 of the homes sold under the RTB in London (some 36%) were being used as private rented housing.

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58 LGA written evidence to Public Bill Committee on the Degregulation Bill, 2013 (DB 13)
59 HM Treasury, Autumn Statement 2013, para 1.233
60 DCLG, Make right to buy your New Year's resolution, 3 January 2014