EXPLANATORY MEMORANDUM

THE HOUSING (RIGHT TO BUY) (DESIGNATED RURAL AREAS AND DESIGNATED REGIONS) (ENGLAND) ORDER 2022

2022 No. 1171

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Section 157 of the Housing Act 1985 ("the Act") enables landlords selling houses and flats to tenants under Part 5 of the Act (the right to buy) to impose conditions restricting resale by the purchaser where the property is in a designated rural area. This Order designates parishes in Sevenoaks and the Derbyshire Dales as rural areas. It also designates, for the purposes of section 157(3), regions in relation to these rural areas.

2.2 This Order also corrects an administrative error by substituting "Wyre" with "Wyre Forest" in both places it occurs within article 3(c) and paragraph 3 of The Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Order 2021, Number 1222.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 This instrument applies to England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Part 5 of the Act gives secure tenants the right to buy their homes from their landlords at a discount. Most such tenants are tenants of local authorities; however, tenants of housing associations also have the right to buy if they are secure tenants (applies only to tenancies granted before 15 January 1989) and the housing association is not a charity or a co-operative housing association and has never received any of the grants specified in paragraph 3 of Schedule 5 to the Act. Other housing association tenants can benefit from a preserved right to buy if their secure tenancy was brought to an end because their home was disposed of by their original landlord to a housing association, for example through a large-scale voluntary transfer of stock by a local

authority to a housing association. Within Part 5, section 157 provides that local authority and housing association landlords in certain areas can impose certain limitations on the subsequent disposal of homes acquired under the right to buy scheme.

6.2 The areas are:

- national parks;
- areas of outstanding natural beauty; and
- areas designated by the Secretary of State as 'rural' for the purposes of section 157 of the Act.

6.3 Where a tenant buys a dwelling-house in these rural areas in pursuance of rights under Part 5 of the Act, the landlord may choose to impose a covenant limiting the freedom of that person (and his successors in title) to dispose of it. There are two permissible forms of restriction that may be imposed (neither of which will apply to an exempted disposal as defined in section 160 of the Act such as disposal to a spouse or family member). Landlords can either:

- require that their written consent is obtained before a relevant disposal is made; or
- require people who have bought their home under the right to buy and wish to dispose of it within ten years of their original purchase to first offer it back to their former landlord for purchase at full market value.

6.4 Under section 157(2) and (3) of the Act, the landlord's written consent shall not be withheld if the disposal is to a local person who for the previous three years has lived or worked within a region designated by the Secretary of State which, or part of which, includes the National Park or area in which the property is situated. The requirement can be satisfied if the person has lived in a designated region for part of the period and worked in a designated region for the remainder of the period.

6.5 The alternative limitation is that for a period of ten years beginning with the date of the original conveyance or grant the landlord must first be given the opportunity to buy the property back for full market value (i.e. the right of first refusal). Section 156A(8) provides that in a case where section 157(1) applies such a covenant may be imposed as an alternative to a covenant requiring written consent to a disposal if the landlord obtains the consent of the Secretary of State[1], or where the landlord is a housing association, of the Regulator of Social Housing.

6.6 Section 37 enables a local authority to impose by covenant a limitation equivalent to that set out in section 157(2) and (3) in relation to property disposed of by them under powers contained in section 32 of the Act (disposal of land held for housing purposes) where that property is situated in a National Park, Area of Outstanding Natural Beauty or rural area designated under section 157.

[1] The Secretary of State has given a general consent for this covenant to be used by a vendor other than a housing association. A copy of the general consent can be obtained from the Department for Levelling Up, Housing and Communities: rtb@levellingup.gov.uk.

7. Policy background

What is being done and why?

7.1 The Government is aware of concerns about the impact of the right to buy on the availability of affordable housing in rural areas. Applications for designation as a rural area are assessed parish by parish. The current criteria are:

- parishes with more than 3,000 inhabitants are ineligible; and
- population density must normally be two persons or less per hectare.

7.2 Fifty orders for rural designation in England have been made since 1980.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 Section 157 of the Act enables those landlords in designated rural areas to protect the stock of affordable housing in those areas by imposing restrictions on resale by means of a covenant. Concern about the impact of the right to buy in rural areas was first expressed in 1980, the year the Housing Act 1980 (which first gave secure tenants the right to buy) was passed. The concern was that the exercise of the right to buy might cause stocks of affordable housing to dwindle, or that homes might be bought up as second homes by people not local to the area. Section 157 responded to these concerns by enabling landlords in certain rural areas to impose certain limitations in conveyances and grants regarding future disposals.

Why is it being changed?

7.4 Orders are made in response to requests for designation from relevant local authorities, subject to satisfaction of the criteria summarised in paragraph 7.1. No consultation is carried out by the Department for Levelling Up, Housing and Communities on the making of individual rural designation orders, but authorities that apply for designation are asked to explain why they consider that designation would be appropriate.

What will it now do?

7.5 Article 3(a)&(b) of this Order designates the parishes listed in the Schedule as rural areas and schedule on page 2 designate the corresponding local regions in relation to the rural areas designated in article 3(a)&(b).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 As designation is given in response to a specific request from an individual local authority or housing association, there is no necessity for a consultation process.

11. Guidance

11.1 As landlords apply for designation individually and have discretion on whether and how to apply the terms of the designation to any properties they sell under the right to buy within the relevant areas, the Department for Levelling Up, Housing and Communities does not issue guidance.

11.2 The Department publishes information on its website and in a hard copy booklet and through its Right to Buy Agents, to inform tenants of the terms that may apply when buying their home under the right to buy, including the specific conditions in designated rural areas.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that certain housing associations have tenants who have a right to buy or a preserved right to buy. By using this covenant when they dispose of homes to tenants exercising those rights, such housing associations will be able to better protect properties to meet the future housing needs of their communities.

12.2 The impact on the public sector is that, by using this covenant, housing authorities and local authorities will be able to better protect properties to meet the future housing needs of their communities. Rural designations are made in response to individual requests for designation from the local authorities affected.

12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on the private, voluntary or public sectors is foreseen. This is because the designation does not change the statutory criteria for the right to buy; nor does it impact on the ability of any eligible tenant to take up their right to buy. In addition, it does not impose any requirements on the social landlord, as the decision on whether to impose one of the covenants enabled by the rural designation is entirely at its discretion.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring

14.1 The Department will keep this aspect of right to buy policy under consideration to assess its continued relevance and application. This will be done by monitoring and seeking feedback from tenants, landlords and other relevant rural parties.

15. Contact

15.1 Steven Fletcher at the Department for Levelling Up, Housing and Communities; email: Steven.Fletcher@levellingup.gov.uk can answer any queries regarding the instrument.

15.2 Victoria Latham, Deputy Director for Social Housing policy at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer KC MP, Minister of Housing and Communities at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.