EXPLANATORY MEMORANDUM TO

THE HOUSING (RIGHT TO BUY) (LIMITS ON DISCOUNT) (ENGLAND) ORDER 2024

2024 No. 1073

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities, and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Matthew Pennycook MP, Minister of State at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Becky Perks, Deputy Director for Local Authority Housing, Right to Buy and Social Housing Allocations at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Right to Buy team at the Ministry of Housing, Communities and Local Government. Email: RTB@communities.gov.uk, Phone: 07458 090931 can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Under Part 5 of the Housing Act 1985 ("the 1985 Act") secure tenants are entitled to purchase their home at a discount. Section 129 provides that that discount is equal to a percentage of the value of the property, calculated by reference to the period they have been a public sector tenant (Sch 4, 1985 Act). The percentage discount is however subject to maximum cash discount caps (s. 131(2)) and may not reduce the price below the cost-floor (s. 131(1)). This instrument prescribes the maximum discount that a person exercising the right to buy in England may receive. This varies by region. The maximum discounts listed below reflect the maximum discount levels that applied from 2003 until 2012, before the maximum discounts were increased in 2012. The maximum discounts will no longer increase annually by the Consumer Price Index (CPI) rate of inflation, which applied between 2014 to 2024.

4.2 The maximum discounts that will apply to right to buy applications made by notice under section 122(1) of the 1985 Act on or after the date this instrument comes into force are:

Name of Region	Maximum Discount
North East	£22,000

North West	£26,000
Yorkshire and the Humber	£24,000
East Midlands	£24,000
West Midlands	£26,000
Eastern	£34,000 Except the district of Watford (£16,000)
South East	£38,000 Except the areas of Reading Borough Council and West Berkshire Council, the districts of Hart, Oxford and Vale of the White Horse and the boroughs of Tonbridge and Malling, Epsom and Ewell, and Reigate and Banstead (£16,000)
South West	£30,000
London	£16,000 Except the London Boroughs of Barking and Dagenham and Havering (£38,000)

4.3 The instrument also increases the period used for calculating the cost floor from fifteen years to thirty years. Properties sold under the right to buy cannot be sold for less than that amount, and if the price before discount is below that amount no discount is given. The intention of this is to better ensure that the purchase price of the property does not fall below costs incurred by the landlord in respect of building, buying, repairing or maintaining the property over that period of time.

4.4 This instrument also revokes the Housing (Right to buy) (Limits on Discount) Order 2003 ("2003 Order"), the Housing (Right to Buy) (Limit on Discount) (England) Order 2012 ("2012 Order"), the Housing (Right to buy) (Limit on Discount) (England) Order 2014 ("2014 Order") and the Housing (Right to Buy) (Limit on Discount) (England) (Amendment) Order 2014 ("2014 Amendment Order").

Where does the legislation extend to, and apply?

4.5 The territorial extent of this instrument (that is, the jurisdiction(s) which the information forms part of the law of) is England and Wales

4.6 The territorial application of this instrument (that is, where the instrument produces practical effect) is England

5. Policy Context

What is being done and why?

5.1 The right to buy scheme was introduced in 1980 and gives qualifying secure tenants the opportunity to buy their rented home at a discount. Most secure tenants are tenants of local authorities however other types of body, listed in section 80 of the 1985 Act, may also grant secure tenancies. The right to buy is also available to secure tenants whose home is transferred to a body that cannot grant a secure tenancy such as a housing association. Such tenants retain their entitlement to the right to buy – this is known as the preserved right to buy.

5.2 To qualify for the right to buy, tenants must have spent at least 3 years as a public sector tenant. Once eligible, the discount rates for houses are 35 per cent of the property's value for between 3 to 5 years, which then increase by 1 per cent for each year of tenancy up to a maximum of 70 per cent. On flats the discount ranges from 50 per cent of the property's value plus 2 per cent for each year beyond the 5 years, up to a maximum of 70 per cent.

5.3 The maximum discount which a tenant can receive can be capped at an amount prescribed by secondary legislation. This statutory instrument will return the maximum discount levels for right to buy to pre-2012 regional levels, mirroring the regional maximum discount levels for right to buy that were in place between 2003 and 2012. This is to deliver a fairer and more sustainable scheme where councils are better able to preserve existing social housing stock and better able to replace sold stock. For the same reason this instrument does not make provision for uprating the maximum discounts. The Government will keep under review changes to discount levels and may make changes on an ad hoc basis to reflect future market changes.

5.4 This instrument also increases the period used for calculating the cost floor from fifteen years to thirty years. The purpose of the cost floor is to limit the right to buy discount to ensure that the purchase price of the property does not fall below costs incurred by the landlord in respect of building, buying, repairing or maintaining it over a certain period of time to protect the landlord's investment. Tenants who are eligible for the right to buy can still buy these homes, but the amount of discount available is reduced, and if the cost of works carried out over that period is greater than the market value of the home, the tenant will not receive any discount.

5.5 The Government's objective is a fair and sustainable right to buy scheme that protects existing social housing stock whilst ensuring that secure tenants who have lived in, and paid rent on their homes for many years, retain the opportunity to own their home. This statutory instrument will directly support that objective.

5.6 The terms of the right to buy scheme are otherwise unchanged by the instrument.

What was the previous policy, how is this different?

5.7 In 2012 the maximum cash discounts were increased to £75,000, and in 2013 a higher maximum discount of £100,000 was introduced in London. From 2014, the maximum cash discounts were increased in line with annual increases in the CPI. From April 2024, the maximum cash discount increased to £136,400 in London and £102,400 outside of London. Prior to introducing this statutory instrument, the average discount in monetary value terms received under the scheme was £72,000.

5.8 The reduced maximum discount levels introduced by this instrument will not increase in line with annual increases in the CPI. This will better ensure that stock is preserved and that councils remain able to replace housing stock sold under the right to buy scheme.

5.9 The cost floor (which takes account of relevant expenditure spent on a property and ensures the purchase price does not fall below that amount), is being increased from fifteen years to thirty years to better protect council investment in new and existing stock.

6. Legislative and Legal Context

How has the law changed?

6.1 This maximum discounts prescribed by this instrument apply to a claim to exercise the right to buy made by notice under section 122(1) of the 1985 Act served on or after the date this instrument came into force. The maximum discount levels prescribed by this instrument will not apply to a claim to exercise the right to buy made by notice under section 122(1) of the 1985 Act before this instrument came into force.

6.2 It also specifies the period of time used in the calculation of costs incurred for the purpose of calculating the cost floor (which takes account of relevant expenditure spent on a property and ensures the purchase price does not fall below that amount), which is to be increased from fifteen years to thirty years.

6.3 This instrument revokes the 2003 Order, 2012 Order, 2014 Order and the 2014 Amendment Order.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government reviewed the increased right to buy discounts introduced in 2012 and published the findings in 'A review of the increased Right to Buy discounts introduced in 2012'. The Government's review was informed by stakeholder views and external analysis and reports, as well as through engagement with councils and tenants' groups. The review was published on 30 October 2024 and can be found at: https://www.gov.uk/government/publications/a-review-of-the-increased-right-to-buy-discounts-introduced-in-2012/a-review-of-the-increased-right-to-buy-discounts-introduced-in-2012.

8. Applicable Guidance

8.1 Housing Authorities and Registered Providers, which represent the majority of landlords of secure tenancies, will be notified that this instrument has come into force. Landlords of secure tenancies have a statutory duty under section 121AA of the 1985 Act to provide information to tenants about such matters which the Secretary of State specifies by secondary legislation. This includes any changes to the maximum right to buy discount, to help tenants to decide whether to exercise their right to buy (if eligible). Under section 121B of the 1985 Act, landlords must also make such information available in accordance with the requirements set out in section 121B such as, at their principal offices or other places which they consider appropriate. The Ministry of Housing, Communities and Local Government will also publicise the changes and issue information and guidance for tenants and social landlords.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the main impact will be on local authorities, who are public sector bodies. The changes will

only have a small impact on businesses, for those housing associations who have stock which is subject to the preserved right to buy.

9.2 Alongside this SI the Government published a full review into the Right to Buy discount levels, including the impact on Right to Buy sales of returning to pre-2012 maximum cash discounts, which can be found at https://www.gov.uk/government/publications/a-review-of-the-increased-right-to-buy-discounts-introduced-in-2012/a-review-of-the-increased-right-to-buy-discounts-introduced-in-2012.

9.3 Reversing the 2012 increase in discounts is estimated to reduce Right to Buy sales by circa 25,000 over 5 years, meaning that those homes will stay within the social rented sector and the sector will be larger as a result. The lower discounts will result in fewer replacements in total compared to the current discounts (since fewer homes will be sold) but where homes are sold, councils will be in a stronger position to replace them. The overall net impact on social housing stock will therefore be positive. An estimated 1,700 tenants a year will be able to buy their home.

9.4 The new, lower maximum cash discounts will vary by region, with maximum discounts in some areas within the London, South-East and Eastern regions differing from their wider regions, as they did pre-2012. The factors affecting a tenant's decision to buy their home will also differ across regions – such as average house prices and earnings. It is expected that Right to Buy sales will therefore also continue to vary between regions. Increasing the cost floor period from 15 years to 30 years means that a period of 30 years will now be used in the calculation of costs incurred by the landlord in respect of building, buying, repairing or maintaining the property. The way that the cost floor is calculated has not changed, only the period over which it is calculated. This increase to the cost floor period will apply to all homes regardless of when a tenant's home was built or acquired by the landlord.

Impact on businesses, charities and voluntary bodies

9.5 The impact on business, charities or voluntary bodies is on housing associations that sell properties under the preserved right to buy, although any impact will be minimal.

9.6 This legislation may have a small impact on small or micro businesses. The definition of small or micro business is 50 employees or less, and many housing associations and other registered providers are of this size. It will, however, only affect such organisations where they have assured tenants with the preserved right to buy, and the preserved right to buy will mainly apply to larger housing associations, where large-scale stock transfers from local authorities have previously taken place (preserved right to buy sales in 2022-23 were in total 2,700). The impact will therefore be low, and it will be a positive impact for those housing associations, as the number of sales is expected to reduce due to the reduction in discounts, which will support housing associations to retain their social stock and also reduce administrative costs.

9.7 The impact on the public sector is that councils and other landlords under secure tenancies will be required to process fewer right to buy applications, resulting in lower administrative costs and reducing the volume of stock lost under the scheme. As discounts will be lower, councils and other relevant landlords will also receive larger receipts from the homes that are sold, which can be used for replacement homes.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation will be reviewed at an appropriate point to determine whether its effect is still required and proportionate. The Ministry for Housing, Communities and Local Government will continue to collect and publish figures annually on the numbers of right to buy sales. We will keep the impact of this instrument under review and the Government will consider changes to discounts on an ad hoc basis to reflect market changes.

10.2 The instrument does not include a statutory review clause (and, in line with requirements in the Small Business, Enterprise and Employment Act 2015) the Minster of State (Minister for Housing and Planning) has made the following statement:

10.3 'This instrument does not include a statutory review clause as a review would be disproportionate when taking into account the small economic impact of the instrument on housing associations and private sector bodies that are the landlords of tenants who have the preserved right to buy.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").