EXPLANATORY MEMORANDUM TO

THE HOUSING (RIGHT TO BUY OR ACQUIRE) (DESIGNATED RURAL AREAS ETC.) (ENGLAND) ORDER 2024

2024 No. 1309

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, Minister of State for Housing and Planning, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rebecca 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 Primary contact: Kurt Horder, Senior Policy Advisor, Right to Buy Team, Ministry of Housing, Communities and Local Government. Email: Kurt.Horder@communities.gov.uk.

3.2 Secondary contact: Neil Riddell, Head of Right to Buy Team, Ministry of Housing, Communities and Local Government. Email: Neil.Riddell@levellingup.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument enables landlords selling houses or flats under Part 5 of the Housing Act 1985 ("the 1985 Act") (the Right to Buy) to impose restrictions on any resale by a purchaser if the property is in one of the parishes within the County of Herefordshire designated as rural areas by this instrument. A rural designation also allows local authorities to amend planning obligations to require affordable housing contributions from developers for small developments of 5 homes or fewer (the standard threshold is 10 or more).

4.2 This Order also corrects the spelling of the parish of Moulton which is designated as a rural area in the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the North West and Merseyside) Order 1997 (the "1997 Order") in which the Right to Acquire does not apply.

Where does the legislation extend to, and apply?

4.3 The territorial extent of this instrument is England and Wales.

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

5. Policy Context

What is being done and why?

5.1 A rural designation enables a council to place restrictions on the resale of properties sold under the Right to Buy, so that they are only resold to local people or back to the former landlord (i.e. usually the council that sold the property under the Right to Buy scheme). Since 2019, rural designation has also been used for planning purposes. The National Planning Policy Framework ('NPPF') sets out a general affordable housing threshold of 10 or more homes. This means that developments of fewer than 10 homes should generally not be required to provide or contribute to affordable housing. However, in designated rural areas, the NPPF sets out that local planning policies may provide for a lower affordable housing threshold of 5 homes or fewer. This instrument will therefore allow Herefordshire Council the flexibility to deliver affordable housing on sites of fewer than ten units in rural areas as part of their emerging Local Plan 2021-2041, and to restrict the resale of properties bought under the Right to Buy to local people or local social housing landlords. In doing so, this will help to limit the number of people who are not from the local area from buying those properties as second homes and help to create affordable housing for local residents.

5.2 The Government is aware of concerns about the impact of the Right to Buy on the availability of affordable housing in rural areas. Each parish in an application for designation as a rural area is assessed against set criteria. Parishes with more than 3,000 inhabitants are ineligible for designation as a rural area and population density must normally be two persons or less per hectare.

5.3 Section 157 of the Housing Act 1985, along with the later 1997 housing (Right to Acquire or Enfranchise) (Designated Rural Areas) Orders, were introduced to protect former Right to Buy homes as well as housing association homes in rural areas, which are often more difficult to replace once sold.

What was the previous policy, how is this different?

5.4 This instrument will allow Herefordshire Council the flexibility to deliver affordable housing on sites of fewer than ten units in rural areas as part of their emerging Local Plan 2021-2041, and to restrict the resale of properties bought under the Right to Buy to local people or local social housing landlords. If the areas in question were to remain undesignated, it would deter the local authority from delivering affordable housing on sites with fewer than 10 units in those areas as part of their emerging Local Plan 2021-2041 and enable the general resale of properties bought under the Right to Buy.

6. Legislative and Legal Context

How has the law changed?

6.1 Concern about the impact of the Right to Buy in rural areas was first expressed when the Housing Act 1980 (which gave secure tenants the Right to Buy) was passed. The concern was that 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 of the 1985 Act responded to these concerns by enabling landlords in National Parks, areas of outstanding natural beauty (AONB) and certain rural areas designated by the Secretary of State to protect the stock of affordable housing in those areas by imposing restrictions on their resale (unless the resale is an exempted disposal). Landlords can either: (i) impose a restriction requiring the seller's consent for any further sale of the property (consent cannot be withheld if the sale is to a person who

has for at least the previous three years had their only or principal home or place of work in a designated region, which or part of which, is within the National Park, AONB or designated rural area); or (ii) reserve the right of first refusal (subject to consent from the Secretary of State or, if the seller is a private registered provider of social housing, the Regulator of Social Housing).

6.2 This Order lists the parishes to be designated as rural areas and provides for the County of Herefordshire to be a designated region in relation to housing situated within those rural areas. As such, any Right to Buy properties sold within one of the designated rural areas may be subject to one of the restrictions outlined in paragraph 6.1.

6.3 This Order also makes provision under section 184(1)(b) of the Housing and Regeneration Act 2008 ("HRA 2008") which gives the Secretary of State the power to designate rural areas where the rights of tenants of private registered providers or registered social landlords to acquire their homes do not apply. It amends an instrument originally made under section 17 of the Housing Act 1996 ("HA 1996"). Section 17 HA 1996 was the predecessor power to that in section 184 HRA 2008 and originally applied to England and Wales. It was, however, amended and confined to Wales by section 62 of the HRA 2008. Section 184 of the HRA 2008 (as originally enacted) applied the power in section 17 of the HA 1996 to England as amended but with modifications. When the National Assembly for Wales (as it was then) repealed section 17 of the HA 1996 (see paragraph 3(5) of Schedule 1 of the Abolition of the Right to Buy Associated Rights (Wales) Act 2018 ("2018 Act")), section 184 of the HRA 2008 was re-stated as a consequential amendment to ensure that the law, as it applies to England, was maintained (see paragraph 6(6) of Schedule 1 to the 2018 Act). The 1997 Order, in which this Order corrects an error, is therefore still in force in relation to right to acquire by virtue of section 17(2)(b) of the Interpretation Act 1978.

Why was this approach taken to change the law?

6.4 This is the only possible way of designating an area as rural.

7. Consultation

7.1 ***Summary of consultation outcome and methodology***

No consultation is carried out by the Ministry of Housing, Communities and Local Government on the making of individual rural designation orders, but authorities that apply for designation are asked to provide evidence that they meet the required criteria and explain why they consider that designation would be appropriate, which could include evidence of consultations. The Ministry of Housing, Communities and Local Government have engaged with the County of Herefordshire and Herefordshire have evidenced that they meet the required criteria.

8. Applicable Guidance

8.1 As local authorities apply for designation individually, and landlords of properties in rural areas have discretion over whether to impose one of the permissible restrictions to any properties they sell under the Right to Buy within the relevant areas, the Ministry of Housing, Communities and Local Government does not issue guidance.

8.2 The Department publishes information on its website, in a hard copy booklet and through its Right to Buy Agent service to inform tenants of the terms that may apply when buying their home under the Right to Buy, including information about the restrictions that may be applied in designated rural areas.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 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.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is on those housing associations, local authorities and other landlords that have tenants who have a Right to Buy or a Preserved Right to Buy. By using this restriction when they sell homes to tenants exercising their Right to Buy or Preserved Right to Buy, such social landlords will be able to better protect properties to meet the future housing needs of their communities.

9.3 The legislation does impact small or micro businesses. The definition of small business is 50 employees or less, and many housing associations and other private registered providers are of this size. This legislation can affect such organisations in respect of any secure tenants they may have or where they have assured tenants with Preserved Right to Buy. Requiring affordable housing contributions from developers for developments of 5 homes or fewer may have some impact on smaller developers. The National Planning Policy Framework sets out that affordable housing contributions should not be sought on sites of fewer than ten units, except in designated rural areas, where the local planning authority can set policies in their development plan for lower thresholds. Herefordshire may in future seek to set a lower affordable housing threshold through a local plan review. This would be subject to viability testing and examination in public, to test the impact on the deliverability of the plan. Developers would also be able to seek site-specific viability assessments.

9.4 The impact on the public sector is that, by using this restriction, local authorities and other landlords that have secure tenants 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.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 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.

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. 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").