EXPLANATORY MEMORANDUM TO

THE HOUSING (SHARED OWNERSHIP LEASES) (EXCLUSION FROM LEASEHOLD REFORM ACT 1967AND RENT ACT 1977) (ENGLAND) REGULATIONS 2021

2021 No. 212

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 Her Majesty.

2. Purpose of the instrument

2.1 The Leasehold Reform Act 1967 and Rent Act 1977 prescribe that Shared Ownership leases involve a minimum purchase of at least a 25% of the property. The purpose of this instrument is to reduce the initial minimum share prescribed to 10% of the property. This is to bring it in line with the Government's new model for Shared Ownership and to ensure current exemptions for Shared Ownership within the aforementioned acts continue to apply.

3. Matters of special interest to Parliament

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

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England.

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 The Leasehold Reform Act 1967(Schedule 4A)(1967 Act) excludes Shared Ownership leases from the right to enfranchise. Enfranchisement gives leaseholders the right to purchase the freehold of their property, which gives them outright ownership of their home. The reason for excluding Shared Ownership leaseholders from enfranchisement is to prevent them from using this right to acquire the whole of the property while only owning a share of the home. This exclusion protects the

landlord's share (which in the new model will be up to 90%). Therefore extending this exclusion to the new model is fundamental to the provision of new Shared Ownership homes. Shared ownership leaseholders gain enfranchisement rights once they have staircased to 100% ownership.

6.2 Section 5A of the Rent Act 1977 (1977 Act) exempts Shared Ownership leases from qualification as a protected tenancy. Shared owners are therefore not entitled to the same statutory protections as protected tenants i.e. the right to register a fair rent or restricting the rent that can be charged by a landlord. Section 5A of the 1977 Act excludes Shared Ownership leases from the 1977 Act provided certain conditions were met when the lease was granted. However Shared Ownership rents are governed by the lease and government funding guidance. Initial rents are set at a maximum of 3% of the landlord's share and the lease has a fundamental Rent Review clause which caps annual increases at RPI + 0.5%, protecting shared owners from unexpected increases.

6.3 The 1967 and 1977 Acts cite specific statutory criteria that Shared Ownership leases must meet to be exempt, including a condition in relation to the minimum percentage share. The Acts prescribe the requirements of the minimum percentage share condition as involving a purchase by the leaseholder of "at least a 25% minimum share of the property, or such other share as may be prescribed".

6.4 This instrument is being made to implement the new criterion for the minimum percentage share of Shared Ownership leases in Schedule 4A paragraphs 3(2)(b), 3A(2)(b) and 4A(2)(b) to the 1967 Act and section 5A(2)(b) of the 1977 Act. The instrument will change the minimum share from 25% to 10%. This will bring it in line with the latest government policy for affordable housing, Shared Ownership schemes.

6.5 These Regulations apply in relation to England.

7. Policy background

What is being done and why?

7.1 Shared Ownership is an affordable housing product that offers an affordable route into homeownership. It enables purchasers to buy a share of a home and then pay a subsidised rent to their landlord on the remainder. The provider will retain the freehold and will grant a long lease to the purchaser.

7.2 On October 17, 2019 the government confirmed the new Right to Shared Ownership which will give tenants of new grant funded social homes the right to buy a share of their home from as little as 10%, using the Shared Ownership model. On September 8, 2020 the government confirmed the new model for Shared Ownership as part of the £11.5bn Affordable Homes Programme 2021 – 2026. This new model reduces the initial minimum share from 25% to 10%.

7.3 Leases under the new Shared Ownership model will enable purchasers to buy a 10% initial share. This is lower than what is prescribed in the 1967 and 1977 Act, and if not amended, could create a loophole which would provide purchasers of homes under the new Shared Ownership model lease with the right to purchase the freehold of their home, prior to 100% staircasing. If exploited, this could put provider's equity at risk. If not addressed, this is likely to lead to fewer providers engaging with the Affordable Homes Programme 2021 - 26 to deliver the new Shared Ownership, meaning fewer homes for Shared Ownership might be delivered.

7.4 To ensure providers have the confidence to deliver the new model and that some Shared Owners are not unfairly advantaged, it is necessary to close this loophole. This will require us to change the percentage referred to in the 1967 and 1977 Act definition from 25% to 10%.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 There has been no public consultation on this instrument.

11. Guidance

11.1 Guidance is not required for this instrument. Not applicable

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because a full impact assessment has been carried out for the Affordable Homes Programme 2021 – 2026.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by some Housing Associations and housing providers which are considered to be small businesses. There is no requirement for providers to deliver Shared Ownership or bid into our funding programmes.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause

15. Contact

15.1 Tim Elligot at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 3123 or email: Tim.elligot@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kerry Mac Hale, Deputy Director for Affordable Housing, Regulation and Investment, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Christopher Pincher at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.