# EXPLANATORY MEMORANDUM

# THE HOUSING (SHARED OWNERSHIP LEASES) (EXCLUSION FROM LEASEHOLD REFORM ACT 1967) (ENGLAND) REGULATIONS 2009

**2009 No. 2097**

**and**

# THE HOUSING (RIGHT TO ENFRANCHISE) (DESIGNATED PROTECTED AREAS) (ENGLAND) ORDER 2009

**2009 No. 2098**

**1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instruments

2.1 The above-named Regulations ("the Regulations"), which apply in relation to England only, set out the requirements and circumstances that need to be satisfied, and the conditions that must be contained in a lease of a house that is granted:

(a) by a landlord other than a housing association, in order for the house to be exempt from Part 1 of the Leasehold Reform Act 1967 (c. 88) ("the 1967 Act") which gives rights of enfranchisement (the right to acquire the landlord's interest in the house) to the tenant; and

(b) by any landlord, in order for a house situated in a designated protected area to be exempt from Part 1 of the 1967 Act.

2.2 The above-named order ("the Order"), which applies in relation to England only, lists all the areas in England that are designated "protected areas" for the purposes of paragraph 4A of Schedule 4A to the 1967 Act. Where a long lease is granted in respect of a house that is within a designated protected area, provided the lease satisfies the requirements described in that paragraph and in regulations made under that paragraph, the lease will be excluded from the operation of Part 1 of the 1967 and the tenant will be unable to exercise the right of enfranchisement in respect of the house.

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

None

## 4. Legislative Context

4.1 Part 1 of the 1967 Act confers on the tenant of a leasehold house a right to acquire on fair terms the freehold, or an extended lease, of the house and premises, if certain conditions are met, and sets out various tests that need to be satisfied in order to be able to exercise the right. "House" is defined in section 2 of the 1967 Act, and excludes maisonettes and flats.

4.2 The 1967 Act makes provision to restrict or exclude the right to enfranchise in respect of certain types of tenancy. In particular section 33A provides that Schedule 4A has effect to exclude certain shared ownership leases from the operation of Part 1[1]. These include leases granted by a housing association[2] that comply with the conditions set out in paragraph 3(2) of that Schedule.

4.3 Sections 301 and 302 of the Housing and Regeneration Act 2008 (c. 17) ("the 2008 Act") amend Schedule 4A to the 1967 Act by inserting paragraphs 3A and 4A.

4.4 Paragraph 3A of Schedule 4A provides that a lease that does not fall within paragraph 3 of the Schedule (i.e. leases that are not leases granted by a housing association that comply with the conditions set out in paragraph 3(2) of the Schedule) will be excluded from the operation of Part 1 of the 1967 Act if it meets the conditions contained in paragraph 3A(2) and any other prescribed conditions, and if they do not fall within any prescribed exemptions.

4.5 The conditions in paragraph 3A(2) of the Schedule (which are similar to those that apply in respect of leases granted by housing associations under paragraph 3) are as follows:

- The lease must be granted for a term of 99 years or more. It must not be (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture (paragraph 3A(2)(a));
- it must be a lease that was granted at a premium, calculated by reference to the value of the house or of the cost of providing it, of not less than 25 per cent (or such other percentage as may be prescribed), of the figure by reference to which it was calculated (paragraph 3A(2)(b));
- it must provide for the tenant to acquire additional shares in the house on terms specified in the lease and complying with such requirements as may be prescribed (paragraph 3A(2)(c));

[1] Section 33A of, and Schedule 4A to, the 1967 Act were inserted by section 18 of, and paragraphs 6 and 11 of Schedule 4 to, the Housing and Planning Act 1986. The Schedule was subsequently amended by the Commonhold and Leasehold Reform Act 2002

[2] Housing associations are defined in section 230 of the Housing Act 1996, by reference to the meaning given in section 1 of the Housing Associations Act 1985. In summary, they are non-profit-making societies, bodies of trustees or companies established for the purpose of, or amongst whose objects or powers include those of, providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of, housing accommodation.

- it must not restrict the tenant's powers to mortgage or charge his interest in the house (paragraph 3A(2)(d));
- if it enables the landlord to require payment for outstanding shares in the house, it must do so only in such circumstances as may be prescribed (paragraph 3A(2)(e));
- it must provide for the tenant to acquire the landlord's interest on terms specified in the lease and complying with such requirements as may be prescribed (paragraph 3A(2)(f)); and
- it must state the landlord's opinion that by virtue of paragraph 3A of Schedule 4A, the lease is excluded from the operation of Part 1 of the 1967 Act (paragraph 3A(2)(g)).

4.6 By paragraph 5 of Schedule 4A, (as amended by section 302(2) of the 2008 Act) the appropriate national authority has power to make regulations to prescribe matters by regulations.

4.7 Section 302 of Schedule 4A provides that any lease that does not fall within paragraph 3 or 3A will be excluded from the operation of Part 1 if it meets the conditions mentioned in paragraph 4A(2). These conditions are similar to those in paragraph 3A(2)(a) to (e) and (g), but the lease does not need to provide for the tenant to acquire the landlord's interest, as is required under paragraph 3A(2)(f). Additionally paragraph 4A(1) requires that any provision in the lease for the tenant to acquire the landlord's interest must provide for the tenant to acquire the interest on such terms specified in the lease and complying with such requirements as may be prescribed. The lease must also meet any other prescribed conditions, it must not fall within any prescribed exemptions and must be in a protected area.

4.8 Paragraph 4A(3) gives the appropriate national authority power to make an order designating an area as a protected area if it considers it appropriate to do so to support the provision in the area of houses, or descriptions of houses, which are available for occupation in accordance with shared ownership arrangements. Paragraph 4A(4) requires the appropriate national authority to publish the criteria for the time being in force which are to be taken into account by it in deciding whether to designate an area as a protected area, and under paragraph 4A(5), before making an order it must take such steps as it considers to be reasonable to consult those likely to be affected by the order. The criteria and details of the consultation are explained in section 7 of this memorandum.

4.9 By paragraph 7 of Schedule 4A (inserted by section 302(3) of the 2008 Act) "the appropriate national authority" means the Secretary of State, in England, and the Welsh Ministers, in Wales.

4.10 This is the first time that any of the powers in paragraphs 3A or 4A are being exercised. In so far as they are not already in force, sections 300 to 302 of the 2008 Act will come into force on the same date as these instruments come into force.

## 5. Territorial Extent and Application

This instrument applies to England.

## 6. European Convention on Human Rights

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

## 7. Policy background

- ***What is being done and why***

7.1 Shared ownership schemes, such as the Government's New Build HomeBuy scheme, play a vital role in helping first-time buyers into home ownership. Since 1997, the Government has helped over 110,000 households into home ownership through both shared ownership and equity loan schemes. Under shared ownership, purchasers buy an initial share (minimum 25%) in a home, usually provided by a housing association, and pay rent on the remainder. The provider retains the freehold and grants the purchaser a long lease. Gradually further shares may be purchased (a process known as "staircasing") and the property may eventually be owned outright. Although the property is then lost to the affordable housing sector, the housing association will reinvest the receipts to help other households.

7.2 Generally, the Government wants tenants of shared ownership leases to be able to increase their equity stake over time and move to full ownership when they can afford to do so. But in some cases the loss of shared ownership homes may not be desirable, for example in rural areas, where replacement would be difficult. In such areas, land may not be brought forward for development unless the land owner can be assured that the affordable housing will remain affordable in perpetuity for the benefit of the community. Newer shared ownership leases usually include a right of first refusal to enable the housing association to repurchase properties at market value when their owners who have increased their equity stake to 100% wish to sell. But funding for buy-back needs to be available at the right time. The Homes and Communities Agency prioritises the repurchase of properties funded under its rural programme for grant funding if the housing associations' own funding options are not available, for example, if the housing association is a very small or new organisation and does not have recycled capital grant available or is unable to raise additional private finance. But this funding cannot be guaranteed and therefore this option does not always provide sufficient assurance for land owners.

7.3 An alternative option is to restrict the share which tenants of shared ownership leases can buy, for example, to 80% so that properties remain affordable for people who cannot buy on the open market. However, until the introduction of the 2008 Act enfranchisement provisions, if housing associations did this, they ran the risk, in certain circumstances, of early enfranchisement, i.e. the tenant acquiring the freehold under statutory rights in

leasehold legislation before they had paid for 100% shares in their home, resulting in financial loss to the provider. This is because, under the 1967 Act, shared ownership leases for houses are exempt from enfranchisement if certain conditions are met. The conditions require that tenants must be able to "staircase" up to 100%. So if a housing association wants to restrict "staircasing", they lose this protection.

7.4 It is possible in some circumstances for housing associations to rely on "the low rent test" to avoid early enfranchisement. , Under the Leasehold Reform Act 1967, tenants have the right to enfranchise if they have a long tenancy at a low rent. There is a complex formula in the Act which sets out the criteria for determining whether a tenancy is at a low rent. Some landlords have set rents above the thresholds set out in legislation to avoid the risk of enfranchisement. but this is an old mechanism which is gradually being phased out and around which there is some confusion. Non-housing association providers of shared ownership houses had no protection from early enfranchisement if they offered shared ownership houses. Some built houses and sold properties on to a housing association or build flats instead. There is anecdotal evidence that more providers will offer shared ownership houses, and thus providing more choice for purchasers, now that the risk of early enfranchisement has been removed by the 2008 Act. The provisions in S300-302 enable the Secretary of State to designate areas as protected where shared ownership houses need to be retained for future shared owners; allow all providers (both housing associations and non-housing associations) to restrict the equity share which purchasers can buy as a mechanism for retaining the homes as shared ownership properties and allow non-housing associations (in addition to housing associations) to offer shared ownership leases for houses without the risk of early enfranchisement, subject to terms and conditions to be prescribed in regulations.

7.5 The policy objectives behind sections 300-302 of the Housing and Regeneration Act 2008 are to retain shared ownership houses for future shared owners in areas where replacement would be difficult; and to remove the risk of early enfranchisement and thereby increase the provision of shared ownership houses by non-housing associations.

7.6 The effect of the Order is to designate rural areas in England as protected areas. These are locations where shared ownership homes would be difficult to replace, either through new-build schemes, because of justifiable planning controls or the severely limited supply of land, or through buying a suitable existing property because of the small size of the housing market. They are the same rural parishes, parts of parishes and unparished areas which are already exempt from the Right to Acquire scheme (i.e. those areas where housing association tenants are not eligible to buy their social rented home at a discount) in order to retain social rented accommodation in perpetuity and the same areas covered under the Rural Exception Site policy (Planning Policy Statement No 3: Housing). By applying protected area status to these areas, the Government ensures consistency in the rural housing retention policy; gives greater assurance to those land owners who are considering bringing

land forward for affordable housing in these rural areas that the properties will be retained and simplifies delivery of the rural affordable housing programme.

- ***Consolidation***

Not applicable. This is the first use of these powers.

## 8. Consultation outcome

8.1 The Government consulted on the detailed proposals for implementation of the provisions for 12 weeks from October 2008. 43 responses were received from a variety of organisations, including local authorities, housing providers, and bodies representing rural, legal, lenders and leasehold interests. The majority of respondents (over 80%) were supportive of the proposals.

8.2 The Government made clear in Parliament during the passage of the Bill that it intended that areas designated as protected would be small and would be areas where shared ownership housing would be difficult to replace if lost to the market when the shared owner purchased 100% share either through new build because of the severely limited supply of land in these areas or through buying a suitable existing property because of the small size of the housing market. Therefore in the consultation document the Government confirmed its intention to designate those small rural settlements as protected which are already exempt from the Right to Acquire (i.e. those areas where housing association tenants are not eligible to buy their social rented home at a discount) in order to retain the social rented accommodation in perpetuity and the same areas covered under the Rural Exception Site policy (Planning Policy Statement No 3: Housing. There were no objections to the proposed designation of the small rural areas as protected in the responses to the consultation.

8.3 In addition, the Government also sought views on the criteria which it will take into account in designating areas other than small rural settlements as protected in future. As explained in the consultation document the Government does not propose to designate further protected areas at this time but sought views what the criteria should be for designation if at some time in the future the Government chose to invite local authorities to put forward proposals for the designation of other areas. Considerations include the availability of land for housing developments in the particular locations and the existing available stock; the availability of shared ownership housing (and the size and type); the level of need for shared ownership housing and the affordability of housing (i.e. average income versus lower quartile house prices. Local authorities collect evidence on these matters already as part of their Strategic Housing Land Availability Assessment and Strategic Housing Market Assessment.

8.4 77% of the respondents agreed with the criteria. Some respondents suggested additional criteria, for example, reference to the Development and Local Community Plans for the area, parish needs survey data, high levels of

second and holiday homes and mention of marginal rural areas that are not included in the protected areas. The Government does not consider it necessary to list these suggestions as the proposed criteria already cover availability of land and the level of need for shared ownership which will be informed by the evidence in a local authority's Local Development Framework, Strategic Housing Land Availability Assessment (SHLAA) and Strategic Housing Market Assessment (SHMA). While the Government expects the SHLAA and SHMA to be the key source of data, local authorities may supplement this with other evidence, for example, parish needs surveys, where available. The criteria are available on the Communities and Local Government website.]

8.5 In order to retain shared ownership houses in protected areas for future tenants, the Government proposed to specify in the Regulations that shared ownership leases for houses in protected areas only must include a condition to the effect:

EITHER

- that the tenant may only acquire a maximum level of 80% equity shares;

OR

- that once the tenant has acquired 100% of the shares, the tenant must sell those shares back to the landlord.

8.6 The vast majority (87%) of respondents to the consultation supported this proposal, with some favouring one option over the other depending on their circumstances and experiences. Many (48%) also recommended the inclusion of both requirements in the lease, so that if 80% was unaffordable for people on the waiting list the provider could buy back the property and offer it for resale on shared ownership terms at a lower initial level e.g. from 25%. In response the Regulations prescribe that providers must include one or other of the requirements above in their leases. However, providers may nevertheless make provision requiring the tenant to sell their shares back to them even where the tenant is restricted in the amount of shares the tenant may acquire in the house.

8.7 The vast majority (85%) of the respondents were also supportive of the terms and conditions proposed for non-housing association leases and welcomed a level playing field between affordable housing providers. A very small minority of respondents considered the terms and conditions too inflexible. These respondents wanted to take the opportunity offered by the new protection from early enfranchisement to offer a shared ownership product charging market, rather than a subsidised rent, aimed at a wider client group than traditional affordable housing shared ownership schemes and using institutional investment. Such respondents wanted to prevent their tenants buying further shares too soon or at too frequent intervals in order to satisfy the financial return to institutional investors.

8.8 The Government does not wish to preclude future innovation and private sector investment in housing but remains concerned about the confusion for purchasers arising from a proliferation of schemes under the shared ownership banner. Lenders have also voiced concern about the number of variations, which can add to their reluctance to lend on the affordable housing shared ownership product. The Government therefore considers that some standardisation is required and also wants to protect purchasers from potential abuses, for example, providers requiring the purchase of further equity shares in too small percentages so that conveyancing and administrative costs are very high for tenants, or in too high percentages which are unaffordable to tenants. Although a conveyancing solicitor should explain all the conditions before a purchaser commits to buying a shared ownership house, in practice there is a high risk of purchasers not understanding all the consequences of certain conditions until they try to increase their equity share or sell.

8.9 The Government has offered some modest additional flexibility. For example, not allowing tenants to increase their equity stake in the first 12 months unless the lease specifies otherwise. This will prevent tenants from increasing their equity stake too quickly for private investors who expect market returns based on a mix of income and capital growth. For all shared ownership schemes that are grant-funded by the Homes and Communities Agency, leases will not include that first 12 months restriction. Purchasers will be subject to affordability checks and encouraged to buy the maximum share they can afford, but leases will be able to allow for the purchase of a further share in the first 12 months, catering for a change in the tenant's circumstances. While grant-funded and housing association leases include a mortgagee protection clause which is designed to cover the lender's loss if the tenant defaults on the mortgage and the lender takes possession, non-housing association providers will be able to negotiate their own arrangements with lenders.

8.10 The Government has also included some additional conditions to protect the tenant in the event that the landlord fails to fulfil his obligation to buy back the property. These include provision for the landlord to nominate a housing association or a registered social landlord to buy back if the landlord is unable to do so at the time and, as a last resort, provision for the tenant who could become trapped if they can only sell to the landlord, to sell on the open market if the landlord fails to buy back within the timescale specified i.e. 6 months from the date the tenant confirms their intention to sell. .

8.11 A summary of views of respondents to the consultation, and the Government's response is available on the Communities and Local Government website.

## 9. Guidance

The Homes and Communities Agency will be up-dating its guidance for registered social landlords to explain the effect of the provisions and the Department will be advising local authorities of the Regulations and Order and explaining their effect before they come into force

## 10. Impact

10.1 The impact on business, charities and voluntary bodies is positive. The Regulations and the Order do not impose new burdens. Housing associations, including charitable ones, and non-housing associations who choose to offer shared ownership houses, will be able to do so without risk of the tenant acquiring their freehold before they have increased their equity stake to 100%. In rural areas, providers and land owners will have greater assurance that shared ownership houses will be retained as affordable housing.

10.2 The impact on the public sector is minimal in expenditure terms and positive in terms of retaining shared ownership homes in areas where they would be difficult to replace. The Homes and Communities Agency already funds both housing associations and non-housing associations to provide shared ownership homes through the Affordable Housing Programme.

10.3 An Impact Assessment is attached to this memorandum.

## 11. Regulating small business

The legislation applies to small business (e.g. small housing providers) but only if they choose to offer shared ownership homes. If they so chose, they will be able to do so without risk of early enfranchisement. .

## 12. Monitoring & review

A review of the policy and its impacts will be carried out in 2-3 years by the Homes and Communities Agency as part of the review of the Affordable Housing Programme 2008-11.

## 13. Contact

Carole Wendland at the Department for Communities and Local Government Tel: 0207 944 3634 or email: Carole.Wendland@communities.gsi.gov.uk can answer any queries regarding the instrument.

# Summary: Intervention & Options
## ANNEX D

| Department /Agency: | Title: | |
|---|---|---|
| **Communities and Local Government** | **Impact Assessment of Shared Ownership and Leasehold Enfranchisement and Designation of Protected Areas** | |
| **Stage: Implementation** | **Version:** 1 | **Date:** March 2009 |
| **Related Publications:** Shared Ownership and Leasehold Enfranchisement consultation | | |

Available to view or download at:
http://www.communities.gov.uk/publications/housing/sharedownership

**Contact for enquiries:**
Leaseholdenfranchisement@communities.gsi.gov.uk

What is the problem under consideration? Why is government intervention necessary?

There is a need to retain shared ownership houses for future purchasers in areas where replacement would be difficult, for example in some rural areas. There is also a risk that shared owners of houses may circumvent the terms of their shared ownership lease and acquire the freehold under statutory rights in the Leasehold Reform Act 1967 early i.e. before they have paid for 100% shares in their home, resulting in a financial loss to the provider. The potential risk can discourage provision of shared ownership houses by private developers.

What are the policy objectives and the intended effects?

(1) to allow all providers to offer shared ownership houses without the risk of early enfranchisement; (2) to enable certain areas to be designated as "protected" where shared ownership houses may be retained for future purchasers on a shared ownership basis and (3) to enable all providers to restrict the equity share which shared owners can buy in protected areas, and prevent the purchaser from acquiring the freehold interest, even if he has bought a 100% share in his house. The intended effect is to encourage non-housing association providers to offer shared ownership houses, increasing competition and choice for purchasers, and to retain shared ownership houses for future purchasers where replacement is difficult.

**What policy options have been considered? Please justify any preferred option.**

1) Do nothing.
2) Designate small rural settlements as protected areas i.e. those already designated as rural for the purposes of the Right to Acquire and exempt from the scheme and consult on the criteria to be taken into account in, exceptionally, designating other areas as protected. Also, apply similar terms and conditions to non-housing association providers of shared ownership houses as currently apply to housing associations, plus additional conditions.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? A review of this policy and its impacts will be carried out in 2-3 years as part of the review of the Affordable Housing programme 2008-11 by the new Homes and Communities Agency.

**Ministerial Sign-off** For SELECT STAGE Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Rosie Winterton

..... Date: 6th August 2009

Key: **Annual costs and benefits:** **(Net) Present**

# Summary: Analysis & Evidence

| Policy Option: 2 | Description: Designate small rural settlements as protected areas and apply housing association conditions to other |
|---|---|

**COSTS**

| ANNUAL COSTS | Description and scale of **key monetised costs** by 'main affected groups' |
|---|---|
| **One-off** Yr | There will be some one –off administrative costs for housing providers who choose to offer shared ownership houses and need to familiarise themselves with the legislative changes and local authorities. It is not possible to estimate the cost of this |
| £ | |
| **Average Annual Cost** (excluding one-off) | **Total Cost** (PV) £ |
| £ | |

Other **key non-monetised costs** by 'main affected groups'

**BENEFITS**

| ANNUAL BENEFITS | Description and scale of **key monetised benefits** by 'main affected groups' It is not possible to estimate the scale of the benefits because we are not aware of cases where early enfranchisement has happened. It is a potential risk but a deterrent to providers wanting to offer shared ownership houses |
|---|---|
| **One-off** Yr | |
| £ | |
| **Average Annual** | **Total Benefit** (PV) £ |
| £ | |

Other **key non-monetised benefits** by 'main affected groups' To help maintain and increase provision of shared ownership houses; to help bring more land forward for affordable housing in rural areas by giving landlords greater guarantees that properties will remain affordable for future purchasers; and to encourage more

Key Assumptions/Sensitivities/Risks

| Price Base | Time Period | **Net Benefit Range** (NPV) £ | **NET BENEFIT** (NPV Best estimate) £ |
|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | | England | |
| On what date will the policy be implemented? | | | | April 2009 | |
| Which organisation(s) will enforce the policy? | | | | N/A | |
| What is the total annual cost of enforcement for these | | | | £ N/A | |
| Does enforcement comply with Hampton principles? | | | | Yes | |
| Will implementation go beyond minimum EU requirements? | | | | No | |
| What is the value of the proposed offsetting measure per | | | | £ N/A | |
| What is the value of changes in greenhouse gas emissions? | | | | £ N/A | |
| Will the proposal have a significant impact on competition? | | | | No | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large | |
| Are any of these organisations exempt? | No | No | N/A | N/A | |

**Impact on Admin Burdens Baseline** (2005 Prices) (Increase - Decrease)

Increase £ Decreas £ **Net** £ 0

Key: **Annual costs and benefits:** **(Net) Present Value**

# Evidence Base (for summary sheets)

Background – the issue

Shared ownership schemes (including the Government's funded New Build HomeBuy product) enable first time buyers, who cannot afford to buy in the market, to get a foot on the housing ladder. Purchasers buy a minimum 25% share in a home, usually provided by a housing association and pay rent on the remainder. Gradually further shares may be purchased (at market value) until the home is owned outright. This process is known as staircasing. Shared owners are granted a long lease. In the case of a house once the shared owner has staircased to 100% the freehold may be acquired (i.e. the owner may enfranchise). In the case of a flat, the shared ownership references are removed and the lease is converted to a normal flat lease.

Although once a shared owner increases their equity stake to 100% the property is lost to the affordable housing sector, the receipts from the sale of shares are reinvested by housing associations to help other households. Newer shared ownership leases usually include a right of first refusal to enable the housing association to repurchase properties at market value when the owner who has increased their equity stake to 100% wishes to sell.

In general, Government policy is that shared owners should be able to increase their equity stake over time and move to full ownership when they can afford to do so. But in some instances the loss of shared ownership houses may not be desirable. This is particularly the case in areas where replacement would be difficult, for example in some rural areas. In areas like this land may not be brought forward for development unless land owners can be assured that affordable housing will remain affordable in perpetuity for the community.

Buy back is a possible option but the funding needs to be available at the right time. The Homes and Communities Agency prioritises the repurchase of properties funded under its rural programme for grant funding if the housing associations own funding options are not available, but this funding cannot be guaranteed and therefore this option does not always provide sufficient assurance.

An alternative option is to restrict the share which shared owners can buy, for example, to 80%, so that properties remain affordable for people who can afford to buy on the open market. However, if housing associations do this for houses, under current leasehold legislation they run the risk, in certain circumstances, of "early enfranchisement" i.e. the shared owner acquiring their freehold under statutory rights in leasehold legislation before they have paid for 100% shares in their home. (There is no problem with flats). Under the Leasehold Reform Act 1967, shared ownership leases for houses granted by housing associations are exempt from enfranchisement provided certain conditions are met. The conditions include a provision that shared owners must be able to staircase up to 100%. So if housing associations want to restrict staircasing, they lose this protection. It is possible in some circumstances to rely on "the low rent test" to avoid early enfranchisement but

this is an old mechanism which has gradually been phased out and around which there is some confusion.

Non-housing association providers of shared ownership houses have no protections from early enfranchisement in current leasehold legislation if they offer shared ownership houses. Some build houses and then sell the properties on to a housing association or build flats instead. There is anecdotal evidence that more providers would offer shared ownership houses if the risk of early enfranchisement was removed.

Consequently, the Government introduced provisions in the Housing and Regeneration Act 2008 to:-

- simplify and clarify the position around shared ownership and leasehold enfranchisement
- enable some areas to be designated as "protected", where shared ownership housing should not be lost to the market, if it is hard to replace, and where it should be retained for future purchasers
- allow housing providers to restrict staircasing as a mechanism for retaining shared ownership housing in protected areas without the risk of early enfranchisement
- allow all housing providers, not just housing associations, to offer shared ownership leases for houses with 100% staircasing without the risk of early enfranchisement.

## The options

Option 1

The "do nothing" option i.e. not implement the above provisions in the Housing and Regeneration Act 2008, which received widespread support during the passage of the Bill through Parliament, would :-

- risk the loss of shared ownership houses for future purchasers in areas where they would be hard to replace;
- risk land not coming forward for affordable housing in rural areas because of the lack of guarantee that the homes would be retained as affordable in perpetuity;
- continue to deter non-housing association providers from offering shared ownership houses. (Without implementation of the relevant provisions in the Housing and Regeneration Act 2008, such providers may instead choose not to offer shared ownership products, irrespective of demand for shared ownership properties in the area, or provide flats instead of houses as the risk of early enfranchisement does not exist in respect of flats under existing leasehold legislation).
- Fail to remove the confusion and complexity around early enfranchisement for providers.

Option 2

In October 2008 we consulted on our proposals for implementing the relevant provisions (S300-302) of the Housing and Regeneration Act 2008 by:-

- designating by order small rural settlements as "protected" areas where shared ownership homes need to be retained;
- publishing the relevant criteria which the Government will take into account in deciding whether to designate any other others as "protected" in future;
- prescribing terms and conditions in regulations which non-housing association providers will need to include in their shared ownership leases for houses if they wish to benefit from the same protection from early enfranchisement as housing associations.

The proposals will affect new leases only i.e. leases granted after the implementation of the provisions.

**Designating small rural settlements as protected areas**

Small rural settlements (generally with 3,000 or fewer inhabitants) are locations where shared ownership homes would be difficult to replace, either through new build because of the severely limited supply of land or through buying a suitable existing property because of the small size of the housing market. They are also the same rural areas which are already exempt from the Right to Acquire scheme (i.e. those areas where housing association tenants are not eligible to buy their social rented home at a discount) in order to retain social rented accommodation in perpetuity and the same areas covered under the Rural Exception Site policy (Planning Policy Statement No 3: Housing). Applying protected area status to these small rural settlements ensures consistency in the Government's rural housing retention policy; gives greater assurance to land owners considering bringing land forward for affordable housing in these rural areas that the properties will be retained and simplify delivery of the rural affordable housing programme. There were no objections to designating small rural settlements as protected areas arising from the consultation. The Homes and Communities Agency has a target to deliver 10,300 homes (for both social rent and low cost home ownership) in rural settlements with a population below 3,000 in their 2008-11 Affordable Housing programme.

The Government proposes to proceed to designate in an order small rural areas (i.e. those parishes and parts of parishes already exempt from the Right to Acquire) as protected areas where shared ownership homes should be retained. There were no objections to designating these areas as protected arising from the consultation.

As a mechanism for retaining shared ownership houses in these areas, we proposed in the consultation document that we would specify in regulations that shared ownership leases for houses in protected areas only must include either:-

- a requirement that the shared owner may only acquire a maximum level of 80% equity in their home

OR

- a covenant by a shared owner agreeing to sell the property back to the provider at market value when they wish to move on and a covenant by the provider to repurchase the property on resale by the tenant.

The vast majority (87%) of respondents to the consultation supported these proposals, with some favouring one option above the other depending on their circumstances and experiences. Many (48%) also recommended the inclusion of both requirements in the lease, so that if 80% was unaffordable for people on the waiting list the provider could buy back the property and offer it for resale on shared ownership terms at a lower initial level e.g. from 25%. Therefore in response to the comments received we propose to prescribe in the regulations that providers must include one or other of the requirements above but may include both, if they wish.

**Publishing of relevant criteria to be taken into account in deciding whether to designate any other as "protected" in future:**
As explained in the consultation document the Government considers that the case for retention in areas other than small rural settlements is not currently as strong but we sought views on what the criteria should be for designation if we wanted to invite local authorities to put forward proposals to us for the designation of other areas at some time in the future. 77% of the respondents agreed with the criteria.

The overriding criterion is that the location is one in which shared ownership homes would be hard to replace. In considering whether shared ownership housing in an area would be hard to replace the Secretary of State will take into account the following:-

a) availability of land for housing development in the particular location and the existing available stock

b) availability of shared ownership housing (and the size and type) in the particular location

c) level of need for shared ownership housing

d) affordability of housing, i.e. average income versus lower quartile house price.

We now plan to publish the criteria on the Communities and Local Government website in accordance with the legislative requirement to do so. The Government does not propose to invite applications for any further designations at the current time. We want to see how the protections work in small rural settlements first. A review of the policy and its impacts will be carried out in 2-3 years as part of the review of the Affordable Housing Programme 2008-11 by the Homes and Communities Agency.

**Terms and conditions for non-housing association providers**

The proposed conditions set out in the consultation document, which non-housing association providers will need to include in their shared ownership leases for houses if they wish to benefit from the same protection from early enfranchisement as housing associations, covered such matters as the entitlement of shared owners to purchase additional shares in their home at market value, a requirement that the lease should set out the level of rent and the basis on any increase; the minimum initial share which may be purchased (i.e. 25%) and the minimum size of further shares. These are similar conditions as currently apply to housing associations. Ministers indicated in Parliament during the passage of the Housing and Regeneration Act that the conditions would be similar to that already prescribed for housing associations with possibly some additional conditions to prevent abuses. For example, to prevent the landlord imposing premiums on the shared owner acquiring further shares so that the shared owner could never acquire the freehold of their home or only permitting the shared owner to acquire additional shares in small instalments which could be more costly for the shared owner.

We are legislating for a variety of circumstances and providers who choose to offer shared ownership houses. For example, developers may offer shared ownership through planning obligations (S106 agreements) on receipt of planning permission for residential or mixed development. Where the Homes and Communities Agency (HCA) is paying grant for a shared ownership scheme, specific grant conditions will ensure the product is affordable and purchasers are protected. Where the provider is a registered provider with the Tenant Services Authority again certain standards will be expected. However, not all schemes will receive grant funding and not all providers of low cost home ownership will be registered. Local authorities may impose some conditions to ensure protections through planning obligations but otherwise the only protection from the potential abuses mentioned above will be that which is provided for in the regulations.

The vast majority (85%) of the respondents were supportive of the terms and conditions proposed and welcomed a level playing field between affordable housing providers. A very small minority of respondents considered the terms and conditions too inflexible for private sector shared ownership provision where this may be offered as a market rather than an affordable housing product. We do not wish to preclude future innovation and private sector investment in housing but we remain concerned about the confusion for purchasers arising from a proliferation of schemes under the Government promoted shared ownership banner. Lenders have also voiced concern about the number of variations which can add to their reluctance to lend on the affordable housing shared ownership products. We consider that some standardisation is required and we want to protect purchasers from potential abuses.

Protected areas status and the terms and conditions for non-housing association providers will apply to new leases granted after implementation of the relevant provisions and will:-

- help prevent the loss of shared ownership homes to the market in areas where replacement would be difficult
- help bring more land forward for development in rural areas as landowners will have a guarantee that shared ownership houses will be available in perpetuity
- encourage more shared ownership provision by removing disincentives for non-housing association providers wishing to offer shared ownership houses

**Summary of groups affected and the costs and benefits**

| Groups Affected | Explanation |
|---|---|
| **Costs** | |
| Housing providers (e.g. housing associations and developers) | Housing providers, who choose to offer shared ownership houses, will need to familiarise themselves with the legislative changes |
| Local authorities | Local authorities will need to familiarise themselves with the new legislative changes as part of their overall responsibilities for housing and planning. |
| | |
| Groups Affected | Explanation |
| **Benefits** | |
| Landowners | Landowners will have greater guarantees when bringing land forward for affordable housing in rural areas that properties will be retained as affordable housing for future purchasers |
| Local authorities | Local authorities will have greater assurance that shared ownership homes can be retained in areas where they would be hard to replace. |
| Housing providers | Non-housing association providers will be able to offer leases for shared ownership houses without risk of early enfranchisement (i.e. the shared owner acquiring the freehold before buying 100% shares in their home).<br>All providers (both housing associations and others) will benefit from greater clarity in the law and mechanisms to retain shared ownership houses in rural areas where they would be hard to replace. |
| Low cost home ownership purchasers | First time buyers and other purchasers should have more choice and opportunity to access home ownership. |

# Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

| **Type of testing undertaken** | ***Results in Evidence Base?*** | ***Results annexed?*** |
|---|---|---|
| Competition Assessment | No | Yes |
| Small Firms Impact Test | No | Yes |
| Legal Aid | No | Yes |
| Sustainable Development | No | Yes |
| Carbon Assessment | No | Yes |
| Other Environment | No | Yes |
| Health Impact Assessment | No | Yes |
| Race Equality | No | Yes |
| Disability Equality | No | Yes |
| Gender Equality | No | Yes |
| Human Rights | No | Yes |
| Rural Proofing | No | Yes |

# Annexes

*Rural proofing*

There will be a positive impact in respect of rural areas. The current policy of maintaining shared ownership houses as affordable in perpetuity on rural exception sites will be more straightforward to implement. Non-housing associations will be able to offer shared ownership houses leading to greater choice for purchasers and increased competition. Landowners may bring more land forward for affordable housing on exception sites as they will have greater assurance that properties will be retained as affordable housing.

*Race, Disability, Gender and other Equality*

We are confident that there will not be an impact on the equality strands, as the proposals will impact on specific areas as a whole, rather than individual groups within them.

*Competition Assessment*

The policy will impact on housing providers who choose to offer shared ownership houses. Non-housing associations will be able to compete with housing associations in offering shared ownership homes offering increased choice for purchasers.

*Small Firms Impact Test*

Small firms who choose to offer shared ownership houses will be able to do so without risk of the shared owner acquiring their freehold before they have increased their equity stake to 100%.

*Other tests*

We have considered the other specific tests (i.e. competition, small firms, legal aid, sustainable development, carbon assessment, other environment and health) and found that this policy will not have an impact.