

Consultation: Reforming the Right to Buy

Response from ARCH, NFA and CWAG

About ARCH, NFA and CWAG

165 councils in England own nearly 1.6 million homes, either managing them directly or through Arms Length Management Organisations (ALMOs). ARCH represents councils that have chosen to retain ownership of council housing and manage it directly. Its 65 members manage over 700,000 homes. The Councils with ALMOs Group (CWAG) and the National Federation of ALMOs (NFA) are the membership bodies for local authorities with ALMOs. The NFA represents 15 ALMOs managing around 172,000 properties across England. CWAG represents 15 stock owning local authorities where council housing is managed by ALMOs. CWAG is a special interest group of the Local Government Association.

Together our members manage over one million local authority homes.

Summary of our response

Our members have diverse and strongly-held views on the Right to Buy, including some who would like to see it abolished or curtailed more drastically than the Government proposes. They have the opportunity, which many will take up, to submit their own responses directly. We have, however, prepared this joint response with two principles in mind. First, we recognise that the Government wishes to retain the Right to Buy but reform it to deliver a fairer and more sustainable scheme. We have not sought to challenge this principle. Second, we have striven to prepare a response that reflects as far as possible a consensus across our memberships. This has made it possible to give a clear and definite answer to most questions, but in a few cases we have argued for further examination of policy alternatives to better understand the trade-offs between them before any final decisions are made.

Members have also suggested to us a number of reforms to the detailed administration of the scheme, which raise issues not directly addressed by the consultation paper. We have not tried to fit all of these into the response, but trust that there will be a further opportunity to review in full the primary and secondary legislation governing the scheme before Parliament is asked to amend it.

We recognise that the Government is aiming for a reformed Right to Buy scheme that is fair to tenants but sustainable in that it allows for replacement of sold homes. We accept that social tenants who have rented a home in their local community for many years, and perhaps adapted and improved it to meet their own needs and preferences, should not be forced to move if they wish to become homeowners. We also agree that their home should be made available at a discount that reflects the rent they have paid as tenants. But for the scheme to be sustainable the discount must not be so great as to compromise the ability of the council to replace sold homes as necessary to meet local housing need.

We judge that a maximum percentage discount of 20%, as recommended by the Housing Forum, strikes the right balance between making purchase more affordable to a tenant buyer, recognising the rent contribution they have made, and ensuring that the sale proceeds are sufficient to ensure one-for-one replacement of sold homes. The current cash caps should be reviewed to determine whether they remain necessary to address regional variation in house values and replacement costs. We believe that 10 years tenancy should be required before a tenant becomes eligible for the Right to Buy, and that the initial discount should be 10%, rising by 1% a year to 20% after 20 years tenancy.

We argue that the current exemptions applied to certain types of home should be retained; in some cases the wording of the exemption needs to be updated to reflect changes in practice or unexpected interpretation by the courts. We also argue that the case for further exemptions, including of bungalows and large (4+ bedroom) homes, particularly in areas where these are in very short supply and particularly difficult to replace.

We believe that new homes should be exempted from the Right to Buy for at least 30 years after construction, in line with the duration of the existing cost floor provisions. This would be a simpler and clearer way of mitigating the adverse financial impact of their sale than further amendment of the cost floor. A similar approach could be used to exempt for an appropriate period homes subject to major improvement or energy conservation works.

We argue that the consultation paper wrongly dismisses the option proposed by the Joseph Rowntree Foundation that a discount should apply on resale of a RTB property. We believe it is entirely feasible to adapt and extend to all sales the approach that currently applies to the resale of homes sold in designated rural areas. The consultation paper says that this would be a significant departure from the current Right to Buy model; our response is that it would help stop profiteering and go a long way towards returning the scheme to its original purpose.

We also argue that there is a case for resales to include a covenant prohibiting or restricting reletting. In the case of leasehold sales we would like to see the inclusion of lease conditions making letting out conditional on the freeholder's agreement, and perhaps subject to good management by the leaseholder.

Councils should retain the full proceeds from Right to Buy sales, to be used as they decide, with the minimum of centrally imposed restrictions. There should be a broad presumption that sold homes should be replaced one-for-one, but councils should remain free to determine the tenure, size and location of replacement homes in line with local housing need priorities.

Question 1: How long do you think someone should be required to be a secure tenant before qualifying for the Right to Buy?

10 years.

Question 2: Should someone be prevented from exercising the Right to Buy if they have already benefitted from the Right to Buy or if they own another property?

Yes, if they own another property. The Right to Buy is intended to allow tenants to acquire a first home, not a second one.

Yes, in general, if they have already benefitted from the Right to Buy, but councils should have discretion to consider applications in exceptional circumstances arising, for example, from marital breakdown or domestic abuse.

Question 3: Do you have any other views on criteria to determine eligibility for the Right to Buy?

Tenants should have had a clear rent account for at least one year prior to their application to buy and no legal action taken against them for rent arrears or anti-social behaviour within the previous 5 years.

Question 4: What level should the percentage discount for an eligible tenant start at and what level should the maximum percentage discount be?

The discount should range from a minimum of 10 to a maximum of 20 per cent.

Question 5: Do you agree that the same rules governing percentage discounts should apply to flats and houses, and that the discount should increase by 1% for every extra year that an individual has been a public sector tenant, up to the maximum?

Yes.

Question 6: Do you agree that cash caps should be retained alongside discounts capped at a percentage of the market value of the home?

Yes, but the level of the caps should be reviewed and updated. Cash caps may be necessary to address regional variation in house values and replacement costs, although the need for them will be much reduced if the maximum discount is set at 20% as we propose. The consultation paper states that cash caps are necessary to avoid 'excessive discounts in high value areas' but gives no criteria for deciding what counts as a high value (as opposed to a higher value) area or an 'excessive' discount. It is difficult to interpret paragraph 46 of the consultation paper without information on the dispersion of RTB house prices in each region, but from the information given it would appear that a maximum percentage discount of 20% could largely eliminate the need for the current cash caps in the Midlands and further North, but not in the Southern regions, and particularly in London. However, the rationale for setting the cash caps at these levels is not explained and is, in any event, at least 14 years old. We would suggest that the method used to calculate the cash caps is reviewed and updated. We assume that they should be derived by applying common principles to the calculation for each region. On that basis, and a decision about the

maximum percentage discount, it should be possible to determine whether they continue to be necessary for all, some, or no regions.

Question 7: Do you agree that the current exemptions to the Right to Buy should be retained? If yes, please outline any changes that need to be made to the exemptions.

Yes, but the wording of the exemptions needs to be reviewed and, where necessary, updated. For example, the current exemption of one of a 'group of homes particularly suitable for elderly people and let to a person aged 60 or over' requires also that 'the services of a warden are provided'. Current practice often delivers support to the residents of such homes without relying on the services of a warden. There are also cases where the courts have interpreted the wording of exemptions in ways that, we would argue, are contrary to the intention of the legislation.

We also believe there is a case, on grounds similar to those used to justify exempting homes in designated rural areas, for exempting bungalows and/or large homes (4+ bedrooms) in areas where these are in very short supply and particularly difficult to replace.

Question 8: Should newly built social housing be exempt from the Right to Buy? If yes, please explain why the existing cost-floor provisions are insufficient?

Yes. The case for exclusion is not simply a financial one. The example of the Stirling Prize-winning Goldsmith Street development given in the consultation paper demonstrates this. These are not just new homes of high quality but a crucial contribution to restoring the reputation of council housing as a whole, and of councils as aspiring and capable providers of homes that match the best. To lose even one of these precious examples of what councils can do is dispiriting and a disincentive to further development. If in ten years' time, say, a third of a council's housing stock were of comparable quality it might be less demoralising to lose some, but even then the financial implications would need to be adequately addressed.

The financial case for exempting newly built homes, put simply, is that the sale receipts will normally be insufficient both to pay off the outstanding debt and finance a replacement home. The cost floor protects the historic cost of provision, but, given the normal expectation of inflation in building costs, provides no guarantee that the net receipt will be sufficient to finance a replacement. In principle, the cost floor provisions could be indexed to reflect inflation, but we believe it is simpler and clearer to exempt new homes for an appropriate period after construction.

Question 9: If yes, how long after construction should newly-built social housing be exempt from the Right to Buy?

For at least 30 years, in line with the duration of the current cost floor provisions. After this time, a home would not generally be regarded as new. Under current financial conditions, authorities are not aiming to repay debt taken on to finance new homes for at least 30, and more often 50 years. Consequently, the net receipt a council can expect from sale of a new

home will not grow as debt is paid off but is largely dependent on the uncertain rate of house price inflation. Under these circumstances, we would want to see the sale of new homes restricted for as long as is reasonable. However, RTB receipts are only one source of funding for the construction of new homes, and there is a potential trade-off between the duration of this exemption and the grant rates available for new home construction. We argue that the Government should look at these two issues together, recognising their interdependency.

Question 10: How can council investment in retrofitting or improving homes to a high standard be protected under the Right to Buy scheme?

The problem here arises principally because the cost of such improvements is not matched by an increase in the valuation of the home. We agree that this is a major problem which will increase in importance as councils invest to ensure homes to meet the new Decent Homes and higher energy conservation standards. Our members have proposed different suggestions for dealing with the problem of protecting council investment in retrofit, including adjusting the sale price and exempting properties for a defined period. As there is not a consensus in this tricky area, we think the Government needs to carry out further work to develop and evaluate alternative options, to which we would be keen to contribute.

Question 11: Would exemptions to market rent homes have a significant impact in allowing for more cross-subsidy for the building of affordable housing?

No, they would not be likely to have a significant impact. However, this is because, as far as we are aware, providing market rent housing in the HRA is rare and, arguably, contrary to the Housing Act 1985, which stipulates that Part V housing should be let at below-market rents. For this reason, most market-rent housing of which we are aware is provided through arms-length vehicles outside the HRA and let on assured tenancies. As such, it is not subject to the Right to Buy. Nor, in the cases of which we are aware is it appropriate that it should be; in these cases housing is provided to meet a shortage of good quality accommodation on a relatively short-term basis for people who can afford a market rent, such as key workers or visiting academics.

Question 12: Should the time period in which the council has the right to ask on the sale of the property for repayment of all or part of the discount received be increased from 5 years to 10 years?

Yes, on the assumption that the council would be able to ask for 90% of the discount if the property were sold in the first year, reducing by 10% for each year before the home is sold. But we would prefer a requirement that the discount should be passed on in perpetuity on sale of the property.

Question 13: Do you have any other views on restrictions that might apply to a property following its sale under the Right to Buy?

We believe the consultation paper wrongly dismisses the option proposed by the Joseph Rowntree Foundation that a discount should apply on resale of a RTB property. We see no difficulty in requiring that, as with First Homes, future purchasers must be first-time buyers. There is also a case for allowing councils to buy back homes at the discounted price, whether by providing a right of first refusal, or the opportunity to step in when there is a shortage of eligible buyers. Councils could also be given discretion to disapply the requirement for resale at a discount, as currently applies in the case of homes sold in designated rural areas. These measures might be a significant move away from the current Right to Buy model, as paragraph 74 states, but they could go a long way to returning the scheme to its original purpose of enabling longstanding tenants to buy the home they live in and remain in the communities they have become part of, and putting an end to the blatant profiteering that has damaged the reputation of the scheme in recent decades.

On the question of letting restrictions, we believe there is a case for treating houses and flats differently. We believe there is a case for freehold sales to include a covenant prohibiting re-letting or making it subject to good management of the letting. In the case of leasehold sales, the case is even stronger. In blocks of flats what happens in an individual dwelling is more likely to impinge on other residents, and residents make much more intense use of common parts than with neighbours who share only a street. Building safety reforms since the Grenfell tragedy have highlighted the obligations of residents to contribute to keeping their homes safe; in flats this extends to keeping common parts and other flats safe, too. As responsible persons for ensuring block safety, councils generally have more difficulty in ensuring compliance with these obligations by residents who are tenants of absentee leaseholders. Making a Right to Buy leaseholder's right to let out their home contingent on meeting conditions on the good management of their property, including but not confined to the example given, would help address this problem. A more general restriction on letting out, such as that presupposed by paragraph 72 of the consultation paper, could be relaxed in the examples mentioned by giving the freeholder a discretion to allow letting out under prescribed circumstances that could not be unreasonably refused.

Question 14: Should there be a target for all council homes sold under the Right to Buy to be replaced, as far as possible, with a home of the same size, tenure and/or location as the home sold?

No. The acute shortage of social rent homes in nearly all areas implies that in those areas sold homes should be replaced one-for-one with new social rent homes, but in areas where social and affordable rents are not far apart it may be justified to replace them with affordable rent homes, and there may be some areas where a case can be made for low cost home ownership. Demographic change implies change in the dwelling mix needed to meet local needs; many authorities find that a large percentage of sales are of 3-bed family homes while current demand prioritises smaller 2-bed or larger 4-bed homes. Practical considerations such as the availability of land may prevent replacement in the same locality, even in the unlikely event that there is general agreement on what 'same locality' means. Too rigid an insistence on one-for-one replacement could lead to councils inappropriately prioritising the construction of smaller, cheaper units to meet a numerical target but not the highest priority local needs. These considerations suggest that local authorities should be

free to match replacement programmes to the current pattern of local need with an assumption of broad compliance with the one-for-one principle.

Question 15: Do you have any evidence to demonstrate the impact of increased flexibilities around spending of Right to Buy receipts in accelerating and boosting replacement homes?

In response to this question and the next we would argue that the policies needed to enable local authorities to respond to the high volume of receipts expected over the next year because of the rush of Right to Buy applications in the period between the Autumn Budget and 21 November may be different from the policies needed in the longer term. These receipts are a windfall councils could not have anticipated, and few will have enough over-ready development schemes to make full use of them. They need adequate time to expand their development plans and implement them. At the same time, as we have argued in our response to the consultation on future rent policy, expenditure pressures on most council HRAs are so intense that the additional costs of servicing additional debt used to finance new homes may be too great for their HRAs to bear. Many councils may prefer to meet 100% of the costs of new provision from a combination of capital receipts and grant, and permitting this may be the only way for Government to ensure its ambition of the biggest increase in social housebuilding in a generation. The additional flexibilities announced in July 2024 may well need to last beyond the initial two years proposed.

Arrangements necessary for the longer term will depend on the volume of ongoing receipts they need to handle, which in turn depends on the decisions Government has yet to make, following this consultation, on eligibility and discounts under the scheme. Giving the Secretary of State the power to make a general determination on the use of capital receipts from Right to Buy sales would enable a decision on the necessary arrangements to be made once the rules governing the new scheme have been decided and their impact is clearer.

Question 16: Do you have any evidence to demonstrate that combining receipts with grant would accelerate and boost delivery of affordable housing and how the risk of double subsidy would be mitigated?

As argued above, additional borrowing to fund new development may be difficult for local authorities to service given other HRA challenges in the next few years. Allowing them to combine grant and receipt funding will help to ensure that new housebuilding does not take second place to unavoidable investment in the existing stock. Under these circumstances, forcing authorities to choose between grant and receipts on the grounds that some new homes would receive too much subsidy would be counterproductive; the outcome would not be to enable more homes to be built, but fewer.

Question 17: How long should councils have to spend their one-for-one receipts?

10 years. The best way to ensure that councils spend their receipts as quickly as possible is to encourage and support their acquisition and housebuilding programmes. However, it must be recognised that housing developments, particularly large ones involving the assembly and purchase of new land or the provision of infrastructure, can take significant

time to begin construction. We are also opposed to an automatic requirement for return of the receipt if it is not spent within the defined period; councils should be able to make a case to Homes England or the relevant Mayoral authority to retain the receipt if there are clear and feasible plans for its reinvestment.

Question 18: Should unspent replacement receipts be returned to the relevant Mayoral Combined Authority as happens currently with London Boroughs and the GLA?

Yes, but we would prefer that councils should have a period to spend their receipts long-enough to make this provision unnecessary.

Question 19: Should the local authority share and buy-back allowance be incorporated within replacement receipts?

Yes.

Question 20: Do you agree that the total attributable debt should be calculated by multiplying the average attributable debt of each authority's housing stock?

Yes.

Question 21: Should the requirement to return 75% of mortgage repayments that relate to pre-2012 sales be ended?

Yes.

Question 22: Should the Secretary of State be provided with a power to set the rules governing the use of Right to Buy receipts by general determination?

Yes.

Question 23: Should ALMOS be permitted to use Right to Buy receipts to deliver new affordable housing?

Yes. The current restriction that allows councils to provide new housing by passing their receipts to virtually any delivery vehicle apart from a council-owned company or ALMO, has no defensible rationale, and is preventing councils from enabling organisations well-placed to make a significant contribution to building the new social homes we need to play their full part.

Question 24: Do you have any views on the rules governing Right to Buy receipts that have not been covered by the questions above?

Since the additional exemptions we have proposed to the Right to Buy may involve a degree of rough justice in individual cases, there may be a case for allowing councils a discretion to

offer a 'portable' discount to enable a tenant to buy another property, in the form of a deposit funded from receipts.

Question 25: Do you believe any of the proposals set out in this consultation document could negatively or positively impact individuals who have a protected characteristic?

Yes. It can be argued that some tenants with protected characteristics may be negatively impacted by denial or restriction of their right to buy their home. However, we believe these are more than compensated by positive impacts, particularly in the longer term, on applicants with protected characteristics whose chances of a suitable home are substantially improved.