

**EXPLANATORY MEMORANDUM TO THE  
HOUSING (RIGHT OF FIRST REFUSAL) (ENGLAND) REGULATIONS**

**2005 No. 1917**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The instrument prescribes the conditions for the right of first refusal covenant which must be inserted into the conveyances or grants of leases of properties bought under the Right to Buy, Right to Acquire and Preserved Right to Buy schemes, and also for properties bought at a discount under the powers of voluntary disposal from local authorities, registered social landlords and housing action trusts. The requirement to insert such a covenant was introduced by the changes to the Right to Buy scheme made by the Housing Act 2004.

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

3.1 None

**4. Legislative Background**

4.1 These regulations are made under the powers in sections 36A, 156A and 171C of the Housing Act 1985, paragraph 2A of Schedule 11 to the Housing Act 1988, and sections 12A and 17(2)-(5) of the Housing Act 1996. It is the first use of the powers in sections 36A and 156A of the Housing Act 1985, paragraph 2A of Schedule 11 to the Housing Act 1988, and of section 12A of the Housing Act 1996 - these sections were all inserted by the Housing Act 2004.

4.2 Owners wishing to dispose of properties bought under the schemes mentioned in paragraph 2.1 above are required to comply with the terms of the right of first refusal covenant inserted into their conveyance or grant. The covenant requires that, during the first ten years after purchase, before being permitted to dispose of the property (unless the disposal is an exempted one, for example disposals to certain family members) the owner must first offer the property in accordance with these regulations to prescribed social landlords, for purchase at full market value.

4.3 These regulations set out the procedures for owners to follow in offering their properties to social landlords, and also for social landlords in accepting such offers.

**5. Extent**

5.1 This instrument applies where a right of first refusal covenant has been imposed in relation to a dwelling-house situated in 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**

7.1 In responding to the draft Housing Bill published in March 2003, a number of stakeholders, including the Local Government Association, the Association of London Government, and the National Housing Federation (representative bodies for many social landlords) requested a mechanism whereby social landlords which had sold homes under the Right to Buy scheme should have the opportunity to buy them back at market value when owners wished to resell them. The Government agreed and also accepted a suggestion that this should only be required during the first 10 years after the Right to Buy sale. The Bill included provision for such a 'right of first refusal', by requiring the imposition of a covenant into conveyances and grants of leases, the limitation under which is a local land charge. A restriction will be placed on the register of title reflecting the limitation, and so cannot be overlooked. The initiative was extended to other schemes which mirror the Right to Buy and under which properties are sold at a discount, namely the Preserved Right to Buy (where the Right to Buy of tenants whose homes are transferred from a local authority landlord to a registered social landlord is preserved by statute), the Right to Acquire (the right of some tenants whose landlords are registered social landlords to buy their homes), and voluntary disposals of properties which take place at a discount made by local authorities, residential social landlords and housing action trusts.

7.2 The legislative provisions listed at 4.1 above give power to the Secretary of State to prescribe the details in regulations for conferring on former landlords, or other specified persons, the right of first refusal. The other persons specified are all social landlords. This is to make provision firstly for circumstances where transfers of stock have occurred, for example, many local authority landlords may subsequently transfer some or all of their remaining housing stock to registered social landlords after a tenant has bought a property from the local authority landlord. When that tenant purchaser comes to dispose of the property, the local authority landlord, having disposed of its stock in that area, is unlikely to wish to buy back the property. However, the transferee landlord may be interested in purchasing it. The regulations are also designed to allow the maximum opportunity for properties to be recovered as units of social housing. Where a social landlord wishes to purchase the property, this will often be in the interests of the homeowner, as the sale is likely to be more secure than if there was an open market buyer, and of course there will also be no chain involved in the sale.

7.3 The Secretary of State is also empowered to make provision for appropriate procedures and timescales. These seek to balance social landlords' 'right of first refusal' with safeguards for home owners who wish to resell, by providing for time limits within which offers must be accepted, and for the circumstances in which the right of first refusal will lapse. To summarise, a

homeowner wishing to dispose of a leasehold property must serve an offer notice on the former landlord (if it is still the landlord under the lease) or, if it is not, upon the new landlord under the lease. A homeowner wishing to dispose of a freehold property must serve an offer notice upon the former landlord, if that person still exists, or if not (eg in cases where the former landlord was a registered social landlord which has ceased business), upon the local housing authority for the area.

7.4 Recipients of a valid offer notice must serve acknowledgements of receipt, recording the date that they received the notice, and explaining the procedure for the rest of the process to the homeowner. Recipients have 8 weeks from the date that they received the notice in which to either (i) accept the offer themselves; (ii) nominate another social landlord to buy the property; or (iii) reject the offer entirely. If the recipient rejects the offer, or does not accept the offer (either itself or by way of nomination), then the homeowner is free to dispose of the property as he sees fit. However, if the homeowner does not dispose of the property within a 12 month period, but then subsequently wishes to do so, he must serve a fresh offer notice.

7.5 If however an offer is accepted (by way of an acceptance notice in accordance with the regulations), the purchasing social landlord (who will be either the recipient of the offer notice or a nominee named in the acceptance notice) must enter into a binding contract for purchase with the homeowner either within 12 weeks, or within 4 weeks of the owner's notification that he is ready to complete, whichever is the longer. Otherwise, the owner is free to dispose of the property as he sees fit, and will be subject to no further restrictions.

7.6 The instrument reflects the views of stakeholders in response to the Government's consultation paper issued in March 2004.<sup>1</sup> In particular, opinion on the proposed timescales was fairly evenly divided between those who considered that these were too short and were therefore inconvenient for landlords, and those who believed that they imposed undue delay on would-be sellers. The Government concluded that its proposals represented a reasonable balance between these two points of view. It also responded to calls for clarification on the involvement of the District Valuer by providing that if either side requests a determination of value under section 158 of the Housing Act 1985, the time taken by the District Valuer to issue his decision should be excluded from the time limit for completion of purchases specified in the instrument.

7.7 However, the Government did not accept the suggestion that properties should only be offered to the former landlord, which should be responsible for managing the process. The former landlord may have ceased to exist, or may have disposed of neighbouring stock, and may have no interest in re-purchase. The prescribed recipients of offer notices have been devised to target those social landlords most likely to have an interest in purchase. For freehold properties, where the former landlord has ceased to exist, the local housing authority has

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<sup>1</sup> *The Right to Buy and Right to Acquire schemes, and voluntary sales to social tenants: right of first refusal for social landlords to buy back homes offered for resale - a consultation paper* (Office of the Deputy Prime Minister, 26 March 2004)

been chosen as the recipient as a default option, because of its strategic housing function.

7.8 A 'right of first refusal' in respect of homes sold under the Right to Buy or through voluntary disposals by local authorities is precedented. It has been available as an option for many years to social landlords in National Parks, Areas of Outstanding Natural Beauty, and areas designated as 'rural' for Right to Buy purposes by the Secretary of State under section 157 of the Housing Act 1985. In such areas, it is an alternative to imposing a requirement that owners of homes sold under the Right to Buy scheme or through voluntary sales may resell them only to people who have lived or worked locally for at least three years. This right of first refusal can only be imposed with the consent of the Secretary of State, but General Consents have been issued both in respect of the Right to Buy, and voluntary disposals by local authorities.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is two-fold. The instrument provides a procedural framework to help social landlords exercise effectively their new power (the principle of which they support) to bring back into social ownership homes previously sold under the Right to Buy and Right to Acquire schemes and voluntarily. This procedural framework is likely to involve some additional administrative cost, but this is expected to decline as landlords become familiar with the new system.

## **9. Contact**

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