

EXPLANATORY MEMORANDUM TO
THE HOUSING (RIGHT TO BUY) (DESIGNATED RURAL AREAS AND
DESIGNATED REGIONS) (ENGLAND) ORDER 2016

2016 No. 587

1. Introduction

- 1.1 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 instrument

- 2.1 Section 157 of the Housing Act 1985 (“the Act”) enables landlords selling houses and flats to tenants under Part 5 of the Act (the right to buy) to impose conditions restricting resale by the purchaser where the property is in a designated rural area. This Order designates parishes in Chichester, Malvern Hills, Shropshire and Wychavon. It also designates, for the purposes of section 157(3), regions in relation to those rural areas.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 The instrument applies only to England because it applies only to dwelling-houses in designated parishes in the regions of Chichester, Malvern Hills, Shropshire and Wychavon in England. The instrument does not have minor or consequential effects outside England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of: the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and, the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to housing, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of

that Act); and, the primary purpose of the subject matter of the instrument is within paragraph 11 of Schedule 7 to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

- 3.6 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 5 of the Act gives secure tenants the right to buy their homes from their landlords at a discount. Within Part 5, section 157 provides that local authority and housing association landlords in particular areas can impose certain limitations on the subsequent disposal of homes acquired under the right to buy scheme. The areas are:

- i. national parks;
- ii. areas of outstanding natural beauty; and
- iii. areas designated by the Secretary of State as ‘rural’ for the purposes of section 157 of the Act.

- 4.2 Where a tenant buys a dwelling-house in a designated rural area in pursuance of rights under Part 5 of the Act, the landlord may choose to impose a covenant limiting the freedom of that person (and his successors in title) to dispose of it. There are two permissible forms of restriction that may be imposed (neither of which will apply to an exempted disposal as defined in section 160 of the Act such as disposal to a spouse or family member). Landlords can either:

- require that their written consent is obtained before a relevant disposal is made; or
- require people who have bought their home under the right to buy and wish to dispose of it within ten years of their original purchase to first offer it back to their former landlord for purchase at full market value.

- 4.3 Under section 157(2) and (3) of the Act the landlord’s written consent to a non-exempt disposal shall not be withheld if the disposal is to a local person who for the previous three years has lived or worked within a region designated by the Secretary of State which, or part of which, includes the designated rural area. The requirement can be satisfied if the person has lived in a designated region for part of the period and worked in a designated region for the remainder of the period.

- 4.4 The alternative limitation is that for a period of ten years beginning with the date of the original conveyance or grant, where it is proposed to make a non-exempt disposal the landlord must first be given the opportunity to buy the property back for full market value (i.e. a right of first refusal). To impose such a covenant the landlord must obtain the consent of the Secretary of State or, where the landlord is a housing association, of the Regulator of Social Housing. The Secretary of State has given a general consent for this covenant to be used by a vendor other than a housing association. This restriction was formerly permitted by section 157(4) of the Act. Amendments introduced by the Housing Act 2004 repealed that sub-section and inserted section 156A which enabled such a covenant to be imposed in relation to any right to buy sale. Section 156A(8) provides that in a case where section 157(1) applies such a covenant may be imposed as an alternative to a covenant requiring written consent to a disposal.

4.5 Section 37 enables a local authority to impose by covenant a limitation equivalent to that set out in section 157(2) in relation to property disposed of by them under powers contained in section 32 of the Act (disposal of land held for housing purposes) where that property is situated in a National Park, Area of Outstanding Natural Beauty or rural area designated under section 157.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

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

7. Policy background

7.1 Part 5 of the Act gives secure tenants the right to buy their rented home from their landlord at a discount. Most such tenants are tenants of local authorities; however tenants of housing associations also have the right to buy if they are secure tenants (applies only to tenancies granted before 15 January 1989) and the housing association is not a charity or a co-operative housing association and has never received any of the grants specified in paragraph 3 of Schedule 5 to the Act. Other housing association tenants benefit from a preserved right to buy if their secure tenancy was brought to an end because their home was disposed of by their original landlord to a housing association, for example through a large scale voluntary transfer of stock by a local authority to a housing association.

7.2 Section 157 of the same Act enables those landlords in designated rural areas to protect the stock of affordable housing in those areas by imposing restrictions on resale by means of a covenant. Concern about the impact of the right to buy in rural areas was first expressed in 1980, the year the Housing Act 1980 (which first gave secure tenants the right to buy) was passed. The concern was that the exercise of 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 responded to these concerns by enabling landlords in certain rural areas to impose certain limitations in conveyances and grants regarding future disposals.

7.3 The Government is aware of concerns about the impact of the right to buy on the availability of affordable housing in rural areas. Applications for designation as a rural area are assessed parish by parish. The current criteria are:

- parishes with more than 3,000 inhabitants are ineligible; and
- population density must normally be two persons or less per hectare.

7.4 Orders are made in response to requests for designation from relevant local authorities, subject to satisfaction of the criteria summarised in paragraph 7.2. No consultation is carried out by the Department for Communities and Local Government on the making of individual rural designation orders, but authorities that apply for designation are asked to explain why they consider that designation would be appropriate.

7.5 Article 3 of this Order designates the parishes listed in the Schedule as rural areas and articles 4-7 designate the corresponding local regions in relation to the rural areas designated in article 3.

7.6 Forty orders for rural designation in England have been made since 1980.

8. Consultation outcome

8.1 As designation is given in response to a specific request from an individual local authority or housing association, there is no necessity for a consultation process.

9. Guidance

9.1 As landlords apply for designation individually and have discretion on whether and how to apply the terms of the designation to any properties they sell under the right to buy within the relevant areas, the Department for Communities and Local Government does not issue guidance.

9.2 The Department publishes information on its website and in a hard copy booklet and through its Right to Buy Agents, to inform tenants of the terms that may apply when buying their home under the right to buy, including the specific conditions in designated rural areas.

10. Impact

10.1 There is an impact on business, charities or voluntary bodies. Certain housing associations have tenants who have a right to buy or a preserved right to buy. By using this covenant when they dispose of homes to tenants exercising those rights, such housing associations will be able to better protect properties to meet the future housing needs of their communities.

10.2 The impact on the public sector is that, by using this covenant, housing authorities 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.

10.3 An Impact Assessment has not been prepared for this instrument as 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.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Department will review this statutory instrument to assess the relevance and application of the objectives that its rural designations seek to achieve, and whether the objectives and designations remain appropriate. The Department will publish a report on the review by June 2021 with subsequent reports being published at least once in every five years thereafter.

13. Contact

- 13.1 Diana Fergus at the Department for Communities and Local Government; Telephone: 0303 444 3798 or email: diana.fergus@communities.gsi.gov.uk can answer any queries regarding the instrument.