

ABOLITION OF THE RIGHT TO BUY AND ASSOCIATED RIGHTS (WALES) ACT 2018

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 which was passed by the National Assembly for Wales on 5 December 2017 and received Royal Assent on 24 January 2018. They have been prepared by the Education and Public Services Group of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

OVERVIEW OF THE ACT

Background information

2. The “right to buy” is a scheme established by Part 5 of the Housing Act 1985, to enable eligible local authority tenants to buy their home at a discount. To qualify for the right to buy, a tenant must be a secure tenant. Most local authority tenants will be secure tenants. Other criteria for eligibility are set out in Part 5 of the Housing Act 1985.
3. The “preserved right to buy” is a continuation of the right to buy. If a local authority has sold a property to another landlord (like a housing association) at a time when a secure tenant was living there, the tenant may have the right to buy the property from the new landlord despite not being a secure tenant. This right is known as the preserved right to buy.
4. The preserved right to buy can also apply if a tenant in the position described above subsequently moves to another property owned by the new landlord. Detailed provisions about the preserved right to buy are set out in sections 171A to 171F of the Housing Act 1985.
5. The “right to acquire” is a scheme established by section 16 of the Housing Act 1996. It enables tenants of registered social landlords and private registered providers of social housing to buy their home at a discount. To qualify for the right to acquire, a tenant must be a secure tenant or an assured tenant. Most housing association tenants will be assured tenants.

6. Other provisions about the right to acquire, including criteria for eligibility, are set out in sections 16 to 17 of the Housing Act 1996, and in Part 5 of the Housing Act 1985 (as it applies to the right to acquire). The Housing (Right to Acquire) Regulations 1997 (SI 1997/619) specifies how Part 5 of the Housing Act 1985 applies to the right to acquire.

Main provisions

7. The Act makes provision for the following:
 - (a) Provision to abolish the right to buy and the preserved right to buy. The section that abolishes these rights cannot be brought into force earlier than one year after the Act received Royal Assent.
 - (b) Provision to abolish the right to acquire. The section that abolishes this right cannot be brought into force earlier than one year after the Act received Royal Assent.
 - (c) Provision to restrict a tenant's ability to exercise the right to buy, the preserved right to buy and the right to acquire until those rights are abolished, if a tenant moves into a home that is new social housing stock. The sections that restrict the exercise of these rights are brought into force two months after the Act receives Royal Assent and are subject to certain exceptions. They are intended to encourage social landlords to build or to acquire new homes for rent even before complete abolition of the rights.

COMMENTARY ON SECTIONS

Section 1 – Overview

8. Section 1 provides an overview of the main provisions of the Act.

Section 2 – Restriction on exercising the right to buy

9. This section amends the Housing Act 1985. It inserts a new section 121ZA into that Act to restrict the right of secure tenants to exercise the right to buy homes in Wales in certain circumstances.
10. As a result of section 2, as a general rule, the right to buy is not exercisable in relation to a home in Wales unless the home has been let under one of the social tenancies listed in section 121ZA(2) at some point during the six months before section 2 came into force. The Act calls a home that has been let under any of the listed social tenancies a dwelling-house that is “from previously let social housing stock”. There are exceptions to this general rule, which are set out in section 121ZB, inserted into the Housing Act 1985 by section 3 of this Act .

11. The effect of the amendment made by section 2 is that a tenant who moves into a home that is new to the social housing market cannot exercise the right to buy in respect of that home.
12. But time spent in such a home will still qualify for the purposes of the right to buy if the tenant later moves into another home in relation to which the right to buy can be exercised (so long as that happened before the right to buy was abolished by section 6). In those circumstances, the tenant's right to buy discount won't be affected by the fact that the tenant has spent time in a home in relation to which the right to buy couldn't be exercised.
13. Subsection (3) amends section 171B of the Housing Act 1985 to restrict the right to exercise the preserved right to buy where a home is new to the social housing market.

Section 3 – Exceptions to the restriction on exercising the right to buy

14. This section amends the Housing Act 1985. It inserts a new section 121ZB into that Act, which sets out the cases in which the right to buy can still be exercised in relation to a home which isn't from previously let social housing stock, i.e. new social housing stock. If any of the cases apply, or have applied, in respect of a home, the right to buy can be exercised by an eligible tenant despite the restriction in section 2.
15. The first case applies where, after the date on which section 2 came into force, a court has ordered a tenant with the right to buy to give up possession of their home on certain specified grounds, the tenant has moved into a new home (which is new social housing stock), and the new home is considered suitable alternative accommodation for the purposes of the court order (section 121ZB(1)). The grounds for possession that apply for the purposes of the first case are generally ones where tenants are ordered to give up possession of their home through no fault of their own (e.g. a house is being demolished, or is subject to a redevelopment scheme).
16. The second case is similar to the first case, except that it relates to the preserved right to buy: it applies where, after the date on which section 2 came into force, a court has ordered a tenant with the preserved right to buy to give up possession of their home on the grounds that there is suitable alternative accommodation available, the tenant has moved into a new home (which is new social housing stock), and the new home is considered suitable alternative accommodation for the purposes of the court order (section 121ZB(2)).
17. The third case addresses a specific scenario that can arise in relation to the preserved right to buy under section 171B(6) of the Housing Act 1985.

18. Under section 171B(6), it is possible for a tenant to continue to have the preserved right to buy if he or she moves home, so long as the landlord remains the same. But section 2(3) of the Act inserts a new subsection (7) into section 171B of the Housing Act 1985 to restrict the tenant's ability to exercise the preserved right to buy in those circumstances. As a result of section 2(3), as a general rule, if a tenant moves into a home that isn't from previously let housing stock, he or she won't be able to exercise the preserved right to buy even if section 171B(6) applies.
19. The third case (in section 121ZB(3)) provides an exception to that general rule where the tenant moves into the new home after the date on which section 2 came into force, and the new home has been let by a registered social landlord or a private registered provider of social housing under an assured tenancy (other than a long tenancy) at some point during the six months before section 2 came into force.
20. This provision places tenants with the preserved right to buy who wish to move home in a similar position to tenants with the right to buy or the right to acquire who wish to move home. Further cases in which the right to buy can be exercised in relation to homes that are not from previously let social housing stock can be added by regulations.

Section 4 – Restriction on exercising the right to acquire

21. This section amends the Housing Act 1996. It inserts a new section 16B into that Act to restrict the right of secure or assured tenants to exercise the right to acquire homes in Wales in certain circumstances.
22. As a result of section 4, as a general rule, the right to acquire will not be exercisable in relation to a home in Wales unless the home has been let under one of the social tenancies listed in section 16B(2) at some point during the six months before section 4 came into force (the home is "from previously let social housing stock"). As with section 121ZA in the context of the right to buy, there are exceptions to this general rule, which are set out in section 16C, inserted by section 5 of this Act.
23. The effect of the amendment made by section 4 is that a tenant who moves into a home that is new to the social housing stock cannot exercise the right to acquire in respect of that home.
24. But time spent in such a home will still qualify for the purposes of the right to acquire if the tenant moves into another home in relation to which the right to acquire can be exercised (so long as that happened before the right to acquire was abolished by section 6). In those circumstances, the tenant's right to acquire discount won't be affected by the fact that the tenant has spent time in a home in relation to which the right to acquire couldn't be exercised.

25. Section 4(4) amends section 21 of the Housing Act 1996 to add a new subsection (2A). Under section 21(2) of the 1996 Act, the Welsh Ministers are under a duty to make a grant to reimburse a registered social landlord or a private registered provider of social housing in circumstances where the landlord has given a discount to a tenant who has purchased a property which was not subject to the right to acquire, if that tenant was entitled to exercise the right to acquire in relation to another property owned by the landlord.
26. The effect of the new section 21(2A) is that the Welsh Ministers are not under a duty to make a grant to reimburse such a discount unless the property is from previously let housing stock, or is caught by one of the exceptions set out in section 16C.
27. This means that, if a social landlord has given a tenant a discount voluntarily in relation to a home that is new social housing stock, the Welsh Ministers are not required to reimburse the landlord even if the tenant had the right to acquire with respect to another property. This brings the provisions in section 21 in line with the provisions to restrict the exercise of the right to acquire with respect to new social housing stock.

Section 5 – Exception to the restriction on exercising the right to acquire

28. This section amends the Housing Act 1996. It inserts a new section 16C into that Act, setting out an exception to the restriction on exercising the right to acquire. If the exception applies, or has applied, in respect of a home, the right to acquire can be exercised by an eligible tenant even if the home is new social housing stock.
29. The exception applies where, after the date on which section 4 came into force, the court has ordered a tenant with the right to acquire to give up possession of their home on certain specified grounds, the tenant has moved into a new home (which is new social housing stock), and the new home is considered suitable accommodation for the purposes of the court order.
30. Further exceptions in which the right to acquire can be exercised in relation to homes that are not from previously let social housing stock can be added by regulations.

Section 6 – Abolition of the right to buy and the right to acquire

31. This section abolishes the right to buy (including the preserved right to buy) and the right to acquire in respect of dwellings in Wales.
32. This section also provides for the repeal of the provisions of this Act which restrict the exercise of those rights, and brings Schedule 1 into effect, which makes consequential amendments.

Section 7 – Removal of power to make grants in respect of discounts

33. This section repeals section 21 of the Housing Act 1996. The effect of the repeal is that the Welsh Ministers no longer have the power to make grants to registered social landlords and private registered providers of social housing in respect of discounts given by them to tenants who purchase their homes, unless the tenant was exercising the right to acquire.

Section 8 – Information for tenants and prospective tenants

34. This section makes provision for information to be provided to tenants about the effect of this Act.
35. The Welsh Ministers must publish information which they think will help tenants to understand the effect of the Act within one month of the coming into force of this section. The Welsh Ministers must take all reasonable steps to provide every qualifying landlord and other relevant bodies with a copy of the information. In turn, qualifying landlords must provide all of their relevant tenants with a copy of the information, or with any of the information they consider to be relevant to their tenants. Qualifying landlords must provide the information to tenants within two months of the coming into force of section 8, or within one month of receiving the information published by the Welsh Ministers, whichever is earlier.

Section 9 – Consequential amendments etc.

36. This section gives the Welsh Ministers power to make any supplemental, incidental, consequential, transitory, transitional or saving provision considered necessary or expedient in consequence of, or for the purpose of giving full effect to the provisions of this Act. Regulations made under this section can amend, repeal or revoke provisions made in legislation, including provisions of this Act, and can make amendments that are considered necessary as a result of the Renting Homes (Wales) Act 2016 having been brought into force. For example, once the Renting Homes (Wales) Act 2016 provisions have been brought into force, certain tenancies will cease to exist in Wales, and references in legislation to secure tenancies, assured tenancies etc. will need to be amended to refer to secure contracts.

Section 10 – Regulations

37. This section provides for regulations made under section 9 to be made by statutory instrument. Regulations which amend primary legislation will need to be made by the affirmative procedure. Other regulations will be made by the negative procedure (apart from orders which bring provisions of this Act into force, for which no procedure applies).

Section 11 – Coming into force

38. This section provides that section 8 (information for tenants), amongst others, comes into force on the day this Act received Royal Assent.

39. This section also provides for sections 2 to 5 (which restrict tenants from exercising the right to buy, the preserved right to buy and the right to acquire unless the dwelling is from previously let social housing stock) to come into force 2 months after the Act received Royal Assent.
40. Section 6 (which abolishes the right to buy, the preserved right to buy and the right to acquire, and makes relevant consequential amendments) and section 7 (which removes the Welsh Ministers' power to make grants to reimburse voluntary discounts) are to be brought into force by order, but they cannot be brought into force sooner than 12 months after the Act received Royal Assent.

Section 12 - Short title

41. The short title of the Act on becoming an Act will be 'the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018'.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

42. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at:

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=17260>

Stage	Date
Introduced	13 March 2017
Stage 1 - Debate	18 July 2017
Stage 2 Scrutiny Committee - consideration of amendments	5 October 2017
Stage 3 Plenary - consideration of amendments	28 November 2017
Stage 4 Approved by the Assembly	5 December 2017
Royal Assent	24 January 2018

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