House of Commons

Committee of Public Accounts

Extending the Right to Buy to housing association tenants

Thirty-eighth Report of Session 2015–16

HC 880

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Report, together with formal minutes relating to the report

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The Committee of Public Accounts

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Summary

The policy of extending Right to Buy discounts to tenants of housing associations, funded by the sale of high-value council housing, has potentially significant impacts for both local authorities and tenants of social housing, especially in areas where house prices are high. Despite the implications and complexity of this policy, the Department has not published a detailed impact assessment to inform Parliament's consideration of its legislative proposals. Many key policy details have not been clarified, with the Department offering only vague assurances as to how this policy will be funded, without producing any figures to demonstrate that additional funding from central or local government will not be required. Other concerns remain, including the extent to which the new homes funded by this policy will be genuine replacements for those sold, and whether there will be sufficient controls to prevent abuse of the scheme given the significant discounts proposed for housing association tenants wishing to buy.

Introduction

The Department for Communities and Local Government (the Department) has announced its intention to:

- give 1.3 million tenants of housing associations—through voluntary agreement with the housing association sector—the opportunity to buy their home at Right to Buy levels of discount;
- finance this policy through the sale of high-value council homes as these fall vacant, with the funding to be obtained from local authorities through an annual payment; and
- ensure a new home is provided for each one sold by housing associations on at least a one-for-one basis, as well as ensuring additional homes are provided for those sold by local authorities, with at least two additional affordable homes provided for each one sold in London.

Provisions in the Housing and Planning Bill 2015–16 (the Bill) will enable the voluntary agreement to be implemented.

Conclusions and recommendations

1. **The Department has presented Parliament with little information on the potential impacts of the legislation required to implement this policy.** The Department's published impact assessment does not provide a detailed assessment of the full impact of extending the Right to Buy to housing associations and the sale of higher-value council homes or detailed information on the financial implications of this policy. While the Department says that key details—such as the definition of a high-value council home—will be set out in secondary legislation, the practical effect of legislating in this manner will be to limit Parliamentary scrutiny of what is proposed. The importance of proper scrutiny of the Department's proposals is underlined by the concerns raised by expert stakeholders that this policy would lead to those in need of social housing suffering greater overcrowding. Equally, concerns have been raised about how the policy may have particular impacts in different areas, notably in London and in rural areas.

   Recommendation: ***The Department should publish a full impact assessment containing analysis in line with the guidance on policy appraisal in HM Treasury's*** *Green Book,* ***to accompany the proposed secondary legislation, setting out the:***

   - ***impact of this policy on Housing Benefit and Universal Credit;***
   - ***financial impacts on local authorities, how these vary geographically, and the financial transfers between local authority areas, showing net flows of money between local authorities making payments, and areas where the funding is financing the construction of new homes.***

2. **It is not clear how this policy will be funded in practice, or what its financial impacts might be.** The Department's intention is for this policy to be fully funded by local authorities, but it was unable to provide any figures to demonstrate that this would be the case, with the risk that additional funding from central government will be required. More widely, an even bigger risk will fall on those local authorities required to sell housing stock to fund the policy, as those assets will in effect be transfered to central government. But the Department did not appear to have a good understanding of the size of these risks, or to have any plans for mitigating them.

   Recommendation: ***The Department should, by the time of the Autumn Statement in 2016, publish a full analysis showing how this policy is to be funded, provide a clear statement of where financial and other risks lie, and spell out its contingency plan if its policies prove not to be fiscally neutral.***

3. **The commitment to replace homes sold under this policy on at least a one-for-one basis will not ensure that these will be like-for-like replacements as regards size, location or tenure.** Experience of the reinvigorated Right to Buy for council tenants, introduced in 2012, shows that meeting such one-for-one replacement targets can be difficult: achieving that target will require a five-fold acceleration in housing starts and acquisitions from current levels. Moreover, replacement homes can be in different areas, be a different size, and cost more to rent. Neither do they need to be new homes: under the Department's rules, local authorities are allowed to buy existing homes from the market, which can include former council housing

they have previously sold at a discount under the Right to Buy. Where new homes are built in different areas, or are let at higher rents or sold as Starter Homes, the Department's policy of extending the Right to Buy could mean a long-term reduction in homes for social rent in some areas.

Recommendation: ***The Department should publish data on where replacement homes are built, what size and type of tenure they are, and when they are completed (not merely started) for:***

- ***housing association homes sold under the extended Right to Buy;***
- ***higher-value council homes sold to finance the extended Right to Buy; and***
- ***homes sold under the reinvigorated Right to Buy.***

4. **Increases in the value of discounts available under Right to Buy have increased the risk of abuse.** Risk of fraud has existed since the Right to Buy was established in 1980. But increases in the level of discounts since 2012 from £30,000 to some £100,000 (after adjusting for inflation) have increased the risk of abuse. In 2014 the Audit Commission estimated Right to Buy fraud had increased five-fold to reach £12.3 million per year. In addition to fraud, Right to Buy discounts attract third party funders, who in return for helping those entitled to the discounts to buy their home, may subsequently claim a share of the discount or even ownership of the property. Local authorities have sought to vet Right to Buy applications to mitigate these risks, but already report finding it difficult to cope with expanding workloads since discounts were increased in 2012.

Recommendation: ***The Department should write to us within six months:***

- ***providing estimates of the amounts of public money lost through fraud and other sharp practice since 2012 under the reinvigorated Right to Buy, and the amounts at risk under the new policy of extending the Right to Buy;***
- ***providing an assessment of the capacity of, and costs on, local authorities and housing associations to vet all Right to Buy applicants effectively; and***
- ***setting out its plans for tackling fraud and abuse to protect public money.***

1 Parliamentary scrutiny and financial risk

1. On the basis of a memorandum by the Comptroller and Auditor General, we took evidence from the Department for Communities and Local Government (the Department) on its plans for implementing its policy of extending the Right to Buy to housing association tenants.[1] We also took evidence from Lord Kerslake, President of the Local Government Association and Chair of the Peabody housing association; David Orr, Chief Executive of the National Housing Federation and Terrie Alafat, Chief Executive of the Chartered Institute of Housing.

2. Our evidence session was unusual, in that the policy in question had not yet been implemented, and at the time the relevant legislation was still being debated in Parliament. We were mindful, however, of both the potential impacts of the policy on a large number of individuals, and the significant amount of public money likely to be involved. We therefore wanted to look at this policy early in order to help the Government shape its approach in the most effective way.

Introduction

3. Since 1980, tenants of council housing have enjoyed a statutory Right to Buy their homes at a discount, leading to sales of 1.8 million council properties by 2013–14. Partly as a result, the number of social housing units owned by local authorities has declined substantially over this period.[2] As a general rule, tenants of housing associations have, in contrast, not had the Right to Buy on the same terms (aside from those whose homes have been transferred from local authorities to housing associations, who enjoy a preserved Right to Buy).

4. In May 2015 the Department announced plans to bring forward legislation to extend Right to Buy discounts to 1.3 million housing association tenants, on the same basis as those available to council tenants. It also announced that there would be a one-for-one replacement of the homes sold with new affordable homes. Funding for the discounts would be obtained from local authorities, by requiring them to sell high-value council homes as these fell vacant.[3] Following concerns raised by housing associations about the prospects of such legislation for their status as independent bodies, in October 2015 the Department concluded an agreement with the sector, via the National Housing Federation, to implement the policy on a voluntary basis.[4]

5. In October 2015 the Department introduced the Housing and Planning Bill 2015–16 (the Bill). While this does not itself provide housing association tenants with the Right to Buy—as this is being implemented through the voluntary agreement with the sector—it contains a provision to enable the Department to transfer funding to housing associations, and thereby cover the costs of the discounts offered to tenants. It also contains provisions

1 C&AG's memorandum, *Extending the Right to Buy*, March 2016.
2 Ian Cole, et al, *The Impact of the Existing Right to Buy and the Implications of the Proposed Extension of the Right to Buy to Housing Associations*, Sheffield Hallam University, October 2015, p 7.
3 "Over a million more people given the chance to own their own home", Department for Communities and Local Government press release, 26 May 2015.
4 "Historic agreement will extend Right to Buy to 1.3 million more tenants", Department for Communities and Local Government press release, 7 October 2015.

which would require local authorities to make annual payments to the Government, based on the higher-value council homes which they would be expected to sell as they fall vacant. The Government also made a commitment that for each of these council homes sold, an additional affordable home would be provided on at least a one-for-one basis (and at least two-for-one in respect of council homes sold in London). The Department's expectation is that the sales of high-value council homes would pay for the extended Right to Buy discounts, thus making the policy fiscally neutral. The Department states that key details, such as the definition of high-value council homes, will be set out in secondary legislation to follow the passage of the Bill.[5]

Parliamentary scrutiny

6. The National Audit Office found that the impact assessment produced by the Department to accompany the Housing and Planning Bill was, when compared with good practice guidance published in HM Treasury's *Green Book*, weak in several key respects. Notably, there was no consideration of alternative options, no quantification of costs or benefits, and no justification of the assumptions made.[6] The Department agreed with the evaluative criteria used by the National Audit Office in its review, but said it was not appropriate to apply them to its impact assessment, as this was an "outline impact assessment" and not intended to contain a high level of detail. The Department maintained that in line with guidance from the Regulatory Policy Committee it had not produced a more detailed impact assessment because "there are no impacts on the private sector here, and in the case of housing associations it is a voluntary deal".[7]

7. In addition, the Department said it had sought advice from the Cabinet Office, which had also supported its approach.[8] However, the Cabinet Office's published guidance states that impact assessments to accompany bills should include a full assessment of economic and social impacts, covering costs and benefits, and associated risks, not merely present the high-level intentions behind a policy.[9]

8. The fact that the Department has not published a full impact assessment means Parliament has had to consider this legislation without detailed information. Lord Kerslake observed that, although the Bill was already well advanced in the House of Lords, no one was able to provide answers to key questions such as the likely cost of the discounts. In his view, this lack of information had impacted on the ability of Parliament to scrutinise the Bill's proposals properly.[10] The Department said it was important to recognise that the Bill simply contained an enabling power, with precise details to be set out in the secondary legislation which would follow it.[11] Lord Kerslake, however, told us that peers were very uncomfortable with the prospect of only being able to deal with the details of the policy at the secondary legislation stage.[12]

5 C&AG's Memorandum, paras 1.6-1.8.
6 C&AG's Memorandum, paras 3.17-3.29.
7 Q 88.
8 Qq 89–90.
9 Cabinet Office, *Guide to Making Legislation*, July 2015, pp 107–111.
10 Qq 10, 45.
11 Q 60.
12 Q 10.

9. The importance of proper scrutiny of the Department's proposals is underlined by the concerns we heard as to the policy's potential impacts. The Chartered Institute of Housing noted that there could be a reduction of 300,000 homes for social rent by 2020, leading those in social housing need to suffer greater overcrowding.[13] The National Housing Federation told us that there would be different impacts in different areas, with certain neighbourhoods more profoundly affected, and a net flow of funding from areas with higher house prices towards other areas.[14] We are also aware of particular concerns raised about the potential impacts in rural areas, for instance that landowners would become more reluctant to make land available for housing, where there was a risk such housing would not remain in the affordable rented sector.[15] The Department told us it had carried out a range of internal analysis, in line with the Treasury's *Green Book* principles, including examining potential impacts on existing social tenants, the geographical impacts in different areas, intergenerational and equality impacts, and potential impacts on housing benefit; but the results of this work have not been published.[16]

Financial risks

10. The Department's Accounting Officer told us it was her responsibility to ensure that the policy represented value for money.[17] In this context, we were concerned by analysis from the Chartered Institute of Housing which suggested both that the policy would cost up to £2 billion per year and that it was likely there would be a funding gap, as sales of high-value council homes would not cover this amount.[18] When we pressed the Department on whether there might be a funding gap, it could only reply that it was the Government's intention that the policy would be fiscally neutral. The Department was unable to say whether it had presented any evidence to the Office for Budget Responsibility to demonstrate this would be the case.[19]

11. Even if the policy does prove to be fiscally neutral, the Department confirmed this would only be so for central government, not the public sector as a whole: for local government it would mean a net loss, with councils required to sell their assets and make payments to central government, a proportion of which would then be transferred to housing associations.[20] The Department said it was looking carefully at the implications for local authorities, but was unable to answer whether this forced sale of their assets would undermine their balance sheets.[21] Nor was the Department able to say what would happen if sales of higher-value council homes did not raise enough money to cover the costs of a council's annual levy payments.[22]

12. The Department sought to assure us that its policy would in all events represent value for money, as it would both lead to the provision of new housing and increase home ownership, the Government's two strategic objectives for housing.[23] We heard suggestions

13 Qq 15, 38, 40.
14 Qq 2, 9, 13, 42-44.
15 Communities and Local Government Committee, Second Report of Session 2015–16, *Housing associations and the Right to Buy*, HC 370, paras 31–34.
16 Qq 56–7, 61–62, 88, 99, 102–3, 134, 146, 153; Department for Communities and Local Government (RTB0006)
17 Q 145.
18 Q 41
19 Qq 136–145.
20 Qq 148–9.
21 Qq 114–56.
22 Q 85.
23 Qq 48, 101, 145

from the National Housing Federation and other witnesses that there were alternative policy designs that could provide better value for money, for example by delivering both more housing and home ownership for the same cost.[24] The Department said it had not considered any alternative options for policy design, as it had a manifesto commitment to implement the policy as it stood.[25] Even on its own terms, however, the Department did not know the size of the costs and benefits it expected from the option it had chosen. The Department revealed it did not yet "have a feel" for how many housing association tenants would take advantage of the extended Right to Buy, and thus did not know how big a contribution this policy would make to either of its strategic objectives.[26]

24 Q 18.
25 Q 116.
26 Qq 106–10.

2 Replacing homes sold with new affordable housing

13. The Government has made a commitment that each home sold under this policy will be replaced as affordable housing on at least a one-for-one basis within three years, with those high-value council homes sold in London replaced at a ratio of at least two-for one.[27] The Government first introduced a similar one-for-one commitment to replace homes sold in 2012, under an initiative known as the reinvigorated Right to Buy.[28] We were interested in the Department's progress in meeting that commitment since 2012. The Department reported it was "on track", on the strength that it had met its first year's target, with all homes sold in 2012–13 replaced by the end of 2014–15.[29] However, as the NAO demonstrated in its Memorandum, the rate of replacements would need to accelerate five-fold in order to meet the target for 2014–15.[30]

14. The Department's replacement target under the reinvigorated Right to Buy is that construction on a new home has to be *started* within three years of the previous home being sold. We asked how many new homes had been *completed*, ready for a household to move in, since 2012. The Department told us that by the end of 2014–15 it stood at 1,104, only just over a third of the number of sales attributed to the reinvigorated Right to Buy in 2012–13.[31] Another feature of the Department's target is that local authorities can meet it, not just through building new homes, but through acquiring existing homes.[32] Reports in the media have suggested that some local authorities have in this way bought back ex-council homes at market price which had previously been sold at a discount under the Right to Buy.[33]

15. The National Housing Federation was confident that replacement on at least a one-for-one basis under the new policy of extending the Right to Buy could be achieved in respect of those homes sold by housing associations. However, it acknowledged that new housing would often be built in a different area to that where homes had been sold.[34] The Department concurred, saying it was harder for some London boroughs to build new affordable housing, owing to local land values.[35] Indeed, the Department was clear that one-for-one replacement did not mean like-for-like; as with the reinvigorated Right to Buy, new homes can be a different size and in a different area, and may cost more to rent.[36] In addition, under the Department's new policy, the replacement homes can also be built for sale, for example as Starter Homes (costing up to £250,000 or £450,000 in London, to be available at a 20% discount to first-time buyers who meet certain criteria).[37]

27 C&AG's Memorandum, paras 1.1 and 1.5.
28 C&AG's Memorandum, para 2.1.
29 Q 110; C&AG's Memorandum, para 2.11.
30 C&AG's Memorandum, para 2.12.
31 The Department implied this was an understatement, as homes built by the Homes and Communities Agency and Greater London Authority ought to be added to this total, but did not provide any figures. Qq 175–6.
32 C&AG's Memorandum, para 2.5.
33 "Councils spend £27m of RTB funds buying back homes", Inside Housing, 11 February 2016.
34 Qq 2–3.
35 Q 55.
36 Qq 49, 81–2; C&AG's Memorandum, paras 2.6–2.7.
37 C&AG's Memorandum, para 1.5.

3 Risks from fraud and abuse

16. The availability of publicly-funded discounts has provided an incentive for fraud and abuse since the original Right to Buy was introduced in 1980.[38] An example of fraud would be an applicant lying about their identity or eligibility for a discount, for instance by claiming to have lived continuously at a property, having in fact been illegally sub-letting it. Abuse includes third party lenders providing finance to eligible tenants to enable them to access the discount, and then taking over ownership of the property, potentially leasing back the property to the original tenant.[39] The Department observed that it was difficult to draw a dividing line between sharp practice and outright fraud, and said that any such forms of exploiting the system were not easy to eliminate.[40]

17. We heard evidence that these risks had grown in recent years, along with the size of the discounts under the reinvigorated Right to Buy: the bigger the discount, the bigger the incentive to profit from it dishonestly. Lord Kerslake estimated that, taking account of inflation, the real value of a Right to Buy discount had risen from £30,000 for a house in 1980 to up to £103,900 today.[41] The Chartered Institute of Housing said fraud was a big and growing problem, stating that in 2014 the Audit Commission had estimated the losses at £12.3 million per annum, a five-fold increase since 2009–10.[42]

18. The Department said that work had been done to address fraudulent applications, and that it had worked with the Financial Conduct Authority to clamp down significantly on sale and lease-back arrangements with third party lenders.[43] The Department added that it was looking to the current pilots of the extended Right to Buy to provide more information about this situation, and what could be done to deal with it, including estimating how much was being lost to people exploiting the system.[44] Other witnesses paid tribute to the pilots as a valuable and constructive exercise, with the National Housing Federation discussing a series of application checks that were being developed.[45] At the same time, Lord Kerslake stressed that the vetting processes being developed, including interviews with each applicant, could make demands on the capacity of housing associations, and that whatever processes were finalised would have to work at scale once the scheme went live.[46] The Chartered Institute of Housing agreed that vetting procedures were resource-intensive, and said its members were already struggling to cope with the increase in applications under the reinvigorated Right to Buy.[47]

38 Q 34.
39 National Housing Federation (RTB0005) paras 1.1–2.3.4; Q 33.
40 Qq 124–5.
41 Qq 8–9, 35.
42 Q 29.
43 Qq 121–2.
44 Qq 126, 132.
45 National Housing Federation (RTB0005) paras 3.1–4.2; Q 13.
46 Qq 22–23, 31.
47 Qq 30–31.

Formal Minutes

Monday 25 April 2016

Members present:

Meg Hillier, in the Chair

Mr Richard Bacon	David Mowat
Deidre Brock	Stephen Phillips
Caroline Flint	John Pugh
Mr Stewart Jackson	Karin Smyth
Nigel Mills	Mrs Anne-Marie Trevelyan

Draft Report (*Extending the Right to Buy to housing association tenants*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 18 read and agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Thirty-eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 27 April 2016 at 2.00 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 9 March 2016

	Question number
David Orr, Chief Executive, National Housing Federation, **Lord Kerslake**, and **Terrie Alafat**, Chief Executive, Chartered Institute of Housing	Q1–47
Melanie Dawes, Permanent Secretary, Department for Communities and Local Government, and **Peter Schofield**, Director General, Housing and Planning, Department for Communities and Local Government	Q48–180

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

RTB numbers are generated by the evidence processing system and so may not be complete.

1 Department for Communities and Local Government (RTB0002)

2 Department for Communities and Local Government (RTB0006)

3 Locality (RTB0004)

4 National Audit Office (RTB0001)

5 National Housing Federation (RTB0003)

6 National Housing Federation (RTB0005)

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All publications from the Committee are available on the publications page of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

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Second Report	Disposal of public land for new homes	HC 289 (Cm 9170)
Third Report	Funding for disadvantaged pupils	HC 327 (Cm 9170)
Fourth Report	Fraud and Error Stocktake	HC 394 (Cm 9190)
Fifth Report	Care leavers' transition to adulthood	HC 411 (Cm 9190)
Sixth Report	HM Revenue & Customs performance 2014–15	HC 393 (Cm 9190)
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Fourteenth Report	General Practice Extraction Service	HC 503 (Cm 9220)
Fifteenth Report	Economic regulation in the water sector	HC 505 (Cm 9237)
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Eighteenth Report	Automatic enrolment to workplace pensions	HC 581 (Cm 9237)
Nineteenth Report	Universal Credit: progress update	HC 601 (Cm 9237)
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Twenty-fourth Report	Services to people with neurological conditions: progress review	HC 502
Twenty-fifth Report	Corporate tax settlements	HC 788
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