



# Right to Buy – the use of discretionary powers on repayment of discount

## Guidance to local authorities, housing associations and other registered social landlords

### Introduction

1. Under section 155 of the Housing Act 1985, former social tenants who dispose of a property within a specified period after purchasing it under the Right to Buy scheme have to repay upon demand by the former landlord all or part of the discount they received on purchase, unless it is an exempted disposal. Section 155 and section 155B also apply to the Rent to Mortgage scheme.<sup>1</sup>

2. Section 185 of the 2004 Act clarifies that former landlords have discretion not to demand that former social tenants should repay part or all of the discount they received. This note offers guidance on when in the Government's view it might be appropriate to exercise this discretion.

### Operational date

3. Section 185 came into force on 18 January 2005. Most of the changes it made apply only to cases where the tenant's notice claiming to exercise the right to buy under section 122 of the Housing Act 1985 was served on or after 18 January 2005. However, in relation to a disposal which takes place on or after 18 January 2005, and which triggers repayment of discount (regardless of when the property was bought), the requirement that a person is liable to pay an amount to the landlord 'on demand' is to be read as his being liable to pay to the landlord so much of that amount (if any) as the landlord may demand. This means that landlords will have discretion as to whether or not to demand repayment of the full amount of discount for any disposal which takes place on or after 18 January 2005, and which triggers repayment of discount.

<sup>1</sup>the closing date for applications under this scheme was 17 July 2005

## **Situations where it may be appropriate to use discretionary powers**

4. It is for each landlord to decide whether the circumstances in any particular case would justify the exercise of discretion under section 155 of the Housing Act 1985. However, the Government considers that this is most likely to be justified in circumstances where repayment would lead to demonstrable personal hardship. But it may also be justified in other circumstances.

5. Examples of circumstances where discretion might be justified include the following. In each case, it will normally be necessary to establish both the Facts justifying a move, and that such a move could not take place unless part or all of the repayable discount were to be waived.

(a) where an owner of the property wishes to move because otherwise he or she and/or other family members (especially children) face a demonstrable threat of violence or of significant harm; for example, due to:

- relationship breakdowns involving actual or threatened domestic violence
- racial, religious, homophobic or any other kind of harassment
- extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property

(b) where the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds;

(c) where an early move is essential to return to employment; for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work, either:

- after long term unemployment; or
- after having been made redundant, when his/her skills are such that there is no prospect of getting another job locally.

(d) where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons.

## **Consideration of requests for the exercise of discretion**

6. It is envisaged that this power will only be used in exceptional circumstances, and that landlords will have procedures in place to consider and decide requests that discretion should be exercised. The consideration process should be open, fair and transparent, bearing in mind that decisions may be subject to judicial review and/or to scrutiny by the Local Government Ombudsman or Housing Ombudsman.

7. It will be for landlords themselves to decide what procedures to use, and whether or not such decisions should be subject to review and, if so, by what means. Requests could be determined by means of written representations, or by a formal hearing of the parties (in which case the applicant should have the option of appearing with a representative or advisor).

8. Landlords will also wish to bear in mind the need for clear and objective evidence; for example, from local police, a doctor or psychiatrist, or an employer.

### **Financial implications**

9. It is envisaged that former landlords will only exercise their discretion in cases where the former tenant cannot afford to repay part or all of their discount.

10. In most cases a decision by a former landlord not to demand repayment will lead to a net cost to the public purse. Landlords must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. In cases where the former landlords are registered social landlords (for example, where the former tenant bought under the Preserved Right to Buy), they should bear in mind that, under the Homes and Communities Agency's regulatory code, they are required to protect public money.

### **Further information**

This publication supersedes earlier guidance issued in January 2005. It is only available online.

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January 2010

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ISBN: 9781 4098 2169 4