

CONSULTATION RESPONSE

Clarifying the Right to Buy rules (October 2007)

Background

The Northern Housing Consortium welcomes the opportunity to contribute to the Government's proposals for minor changes to the way the Right to Buy scheme works outlined in their consultation paper 'Clarifying the Right to Buy rules'. The Northern Housing Consortium (previously the Northern Consortium of Housing Authorities 1974 - 2002) was established in April 2002. It is an independent non-party political, not for profit organisation working to improve and promote housing services across the North. Its 183 members include Local Authorities, Registered Social Landlords (RSLs), Arms Length Management Organisations (ALMOs) and other organisations involved in housing.

The Northern Housing Consortium is governed by its members, who between them manage around 90% of social housing in the North, around 1.4 million homes. These organisations are drawn from the three Northern Government Office regions - the North East, the North West and Yorkshire & Humberside, as well as the Housing Corporation (North) area for RSLs.

Summary

Our response is set out below and explores the Northern Housing Consortium's (NHC's) position in relation to the specific questions asked on each of the proposals and our views on the Impact Assessment (IA). We have taken into account the views expressed by some of our members in compiling this response. The NHC supports the majority of the Government's proposals which are designed to reduce regulation, widen the range of options that landlords can offer to assist their leaseholders, improve the administration of the scheme and clarify the interpretation of the Right to Buy rules.

The NHC broadly supports the Government's proposals that tenants who are subject to "postponed" possession orders should not be able to exercise the right to buy. We also favour moves to empower local authorities to offer loans on equity share terms and fully support the proposal that the district valuer should be able to withdraw a determination of value, and replace it with a correct determination if the facts on which it is based can be shown to be faulty.

Nevertheless, some of our members have expressed concerns with some of the Government's proposals. In particular, empowering local authorities to buy shares in properties. Furthermore, whilst we support the Governments' suggestion that landlords should be able to charge administrative expenses

when offering equity loans, we do not agree that this should be limited to £100.

Northern Housing Consortium's response

The Northern Housing Consortium has considered the proposals within the consultation paper and broadly supports the majority of the Government's proposals. The NHC comments on each proposal are detailed below.

Circumstances in which the Right to Buy cannot be exercised – possession orders:

1. Do you agree that tenants who are subject to 'postponed' possession orders – ie, orders which do not initially specify a date for possession – should not be able to exercise the right to buy?

Yes. The NHC agrees with this proposal. It seems reasonable that the Government should address this area of legislation in this way, by preventing tenants who have seriously breached the terms of their tenancy agreement, through non payment of rent, or Anti Social Behaviour, from being able to buy their Council property at a discount. We also believe that tenants whose tenancy is reinstated has some restrictions applied preventing them from immediately applying for the right to buy.

We also favour this proposal because the recent changes described regarding 2 stage postponed possession orders would compromise a local authority's ability to address tenants whose conduct has breached the terms of their tenancy agreement, especially in cases of Anti Social Behaviour.

Moreover, due to the affordability issues in the North illustrated by the recent increase in the number of repossessions, we feel that this proposal should be introduced as soon as possible. The increasing affordability issues in the North is evidence by a growing gap between peoples income and house prices The ratio of median house price to median income in the North in 2006 were as follows:

NE	5.52
NW	5.62
YH	5.81

(Source: CLG)

These figures have increased considerably in the last 10 years and in some local areas of the North affordability is as much as 7 or 8 times income.

Furthermore, recent repossession data in the North gives us an indication of the impact of the increasing affordability problems faced by some existing homeowners in the North. Repossession orders made in the last quarter of 2006 stood at 734 in the North East, up from 422 in the last quarter of 2005. In the North West there were 1,451 orders made, up from 902 and in the Yorkshire and Humberside they were 527 up from 380 in the previous years.

These figures indicate that the affordability of current mortgages is becoming an increasing problem.

Currently authorities are unable to deny the Right to Buy in cases such as rent arrears. Whilst a sale would not be completed with outstanding rent arrears the tenant is still allowed to purchase the property and where there are rent arrears, this increases the risk of attracting less responsible lenders. Generally such lenders charge higher interest rates and include large fees which puts the purchaser at a greater risk in the future of having their home repossessed and consequently resulting a homelessness presentation.

There are increasing numbers of people at risk as a result of higher interest rates and the recent turmoil in the financial markets. Yet evidence suggests that sub prime mortgages, (in which people with bad credit histories and those who are unable to pay their debts such as rent, credit card bills and mortgages and thus who are at a greater chance of defaulting on their loans) are increasingly being offered sub prime mortgages in the UK. Moreover, sub-prime mortgages are set to grow faster than mainstream mortgages. Independent market analyst Datamonitor has said that by 2011, the marketplace for sub prime mortgages would reach £31.5bn, compared with £24.6bn in 2006.

While there are no official statistics for how many repossession hearings across the UK are down to sub prime lending, Julian Joyce in his recent article 'UK borrowers hit by credit crunch' cites recent research which looked to find out how many of the 7,000 or so repossession hearings of the last three months involve banks and building societies who specialise in sub prime mortgages, or offer sub prime loans as part of their business. Sub prime loans currently make up just 8% of the home mortgage markets but the research found that banks and building societies who offer sub prime lending are involved in 70% of those repossessions.

Those targeted with sub prime mortgages tend to be the most vulnerable, that is, those on very low wages and/or those on state benefits whose low levels of income mean that they are unable to pay back the loan. The Financial Services Authority (FSA), recent review of the UK sub prime market, said some mortgage lenders and brokers offered loans to people who should not have been given them because they would not be able to afford them. We have concerns about the increase in the take up of such mortgages in the North because many people in the region are on state benefits.

Claimant count with rates – September 2007

Government office region	Number	Rate
North East	46,725	2.9
North West	107,392	2.5
Yorkshire and the Humber	77,993	2.4
West Midlands	99,790	3.0
London	141,277	2.8
Wales	38,991	2.2
Scotland	71,504	2.2

Northern Ireland	23,810	2.2
East Midlands	56,190	2.1
East	57,628	1.7
South East	67,494	1.3
South West	39,094	1.3
Column Total	827,888	2.2

(Source: ONS Crown Copyright Reserved from Nomis on 31 October 2007)

It is those who are on state benefits, those who are in low paid jobs and those who have rent arrears and debt who are the poorest and most likely to be affected by an increase in sub prime mortgages. We therefore believe that as well as introducing the proposal that tenants who are subject to 'postponed' possession orders should not be able to exercise the right to buy, it is imperative that the government also looks at how best to tackle further growth in sub prime lending in the UK to prevent vulnerable people from being targeted by sub prime lending and to protect the UK housing market and economy. Lessons from the collapse of the sub prime housing market in the United States illustrates how sub prime mortgages not only puts vulnerable people at a greater risk of increased debt and having their home repossessed as house prices slow down and the impact of higher interest rates become evident in higher mortgage rates, but also poses a serious threat to house prices, the housing market and the wider UK economy.

Approved lending institutions:

2. Do you agree that approval of lenders for Right to Buy purposes should transfer to the Financial Services Authority (FSA)?

Partially. To some extent, the NHC agrees that approval of lenders for Right to Buy purposes should transfer to the FSA. We feel that unifying the regulation of lenders for Right to Buy purposes within the FSA will reduce the administrative burden on lenders. However our support for this change is based on the assumption that the FSA has the legislative powers to address the less responsible lenders and ultimately remove them from any approved list. We would also need reassurances that adequate procedures are put in place to prevent less responsible lenders from obtaining approval. We also feel that it is imperative that the FSA adopts a process by which concerns of Local Authority and RSL landlords are considered when matters are referred to them concerning any particular lender.

We understand that currently ALI status is determined by the Secretary of State for Communities & Local Government (CLG), based on information provided by the Office of Fair Trading, Companies House and the CLG Accounting Division to ensure that applicants are properly constituted, adequately resourced and likely to conduct their business in a responsible manner. To determine this, information is requested on the company's status, activities, exclusions, regulator and complaints procedures. To fully agree to the Government's proposal that the FSA regulates ALI status for Right to Buy purposes, we would need reassurance that the information obtained and checks carried out under the current approval system are continued as part of the FSA process.

3. If yes:

i do you agree that lenders who are authorised to carry on business regulated by the Financial Services Authority should automatically be approved lenders for Right to Buy purposes as defined by section 156 of the Housing Act 1985? Or

ii do you think that FSA authorised lenders should have to apply for a separate approval under section 156? If so, why?

We feel that this proposal should only go ahead, if such lenders have already had their status determined in line with the existing Right to Buy ALL procedure because this should streamline applications and provide better scrutiny. Assuming that the FSA applies similar structures to the “vetting” and “approval” of lending institutions and that these meet the previous requirements applied by the CLG, the NHC feels that if lenders are FSA authorised and regulated by the FSA they should automatically be approved lenders for Right to Buy purposes as defined by section 156 of the Housing Act 1985 and should not have to apply for separate approval. We feel that this option makes the most sense if the proposal is to transfer the responsibility to the FSA.

Whilst we feel that as Regulator, the FSA should have sufficient power to ensure it regulates the activities of lenders we feel it is imperative that there is a clear process for making complaints to the FSA regarding concerns with the activity of such lenders as it may be appropriate to remove their Right to Buy lending status.

Empower local authorities to buy shares in properties:

4. Do you agree that local authorities should be able to buy shares in properties in order to give assistance with payment of major works bills? If not, why not?

Partially. Whilst the NHC believes that this proposal would assist leaseholders/home owners to meet high major works service charges, enabling them to remain in their property, we feel that there are other options available, through the provision of loans and through loans on Equity Share terms proposed in the consultation paper which may be more appropriate.

Some of our members have indicated that whilst consultation has not been undertaken with leaseholders, they feel that the proposal is likely to be unpopular. The aim of the Right to Buy is to give tenants the opportunity of home ownership and this proposal would remove this. The proposal seems to contradict the government’s wishes and drive to increase home ownership.

5. If you do agree, what practical issues might arise?

The NHC feels that if the ability of LA’s to purchase shares in properties is based on formats for other equity loan products such as the old Homebuy

scheme then there should be minimal or no practical issues. However, the NHC also believes that there are a number of potential issues that might arise that need careful consideration. These are as follows:

- A decision will need to be taken on who is responsible for maintenance and repairs.
- Would the tenant/owner pay a rental charge for that proportion of the property owned by the landlord?
- Would such a situation trigger the contravention of an existing mortgage arrangement for the home owner, and risk possession proceedings and/or penalties?
- Where there is an existing mortgage, what would the priority charges be on the property?
- What would the terms of redemption of the landlords share be?

Empower local authorities to offer loans on equity share terms:

6. Do you agree that local authorities should be able to offer loans on which no interest is paid, but instead the lender receives a share of the value of the property when it is sold ('equity loans')? If not, why not?

Yes. The NHC favours this option because it places no financial burden on a homeowner/leaseholder. Due to rising interest rates many people in the North are struggling to meet their mortgage payments and as has been seen the number of repossessions in the North has risen recently. Keeping up with mortgage payments is especially a problem for those whose circumstances change for the worst for instance where a person or family finds themselves with much reduced incomes. This proposal offers a sensible solution for those who have acquired their home and whose circumstances have changed considerably, causing them to struggle to meet their mortgage payments.

Whilst we accept that existing legislation can be interpreted to already provide landlords with the option of providing equity loans especially the Service Charge Loans Regulations (1992 and 2000) and the Regulatory Reform Order 2002, we feel that regularising the provision of Equity Loans would remove any uncertainty or ambiguity with this.

Nevertheless, some of our members have expressed concerns with buying shares in properties and loans on equity share terms because they are experiencing a number of cases now where tenants who bought many years ago from the local authority are asking for full buy backs in order to release capital. If this was extended to part buy backs this would restrict local authorities' ability to buy back under the First Right of Refusal and perhaps reclaim discount. Moreover, if the property does not go on the market for some considerable years this causes the problem of tying up local authorities funds.

7. If you do agree, are there any practical issues which the Government should take into account in legislating?

Yes. The NHC believes that there are a number of practical issues which the Government should take into account in legislating. These are as follows:

- The provision of the loan should be at the discretion of the landlord. Existing legislation currently places restrictions on Local Authorities such as legislation in respect of Leasehold Service Charges concerning interest rates (Service Charge Loans Regulations 1992 and 2000).
- Loans of this nature should only be targeted at those people who are least able to pay.
- The loan should be secured by means of a charge on the property.
- The landlord should be able to add a reasonable administrative fee to the loan.
- The landlord should be able to recover all reasonable legal fees incurred, including Land Registry fees.
- The issue of priority under Section 156 of the Act needs careful consideration.
- Where an owner/leaseholder is outside the discount repayment liability period, local authorities should have some security regarding their loan.
- It is important that the products are simple to understand for customers, easy to access and simple to administer.

8. Should landlords be able to charge administrative expenses when offering equity loans? If so, should these be limited to £100, as specified in the Housing (Service Charge Loans) Regulations 1992?

Yes. The NHC believes that it is wholly reasonable that landlords should be able to recover administrative expenses when offering equity loans. In relation to the administrative cost charged, we feel that the fee should be kept to a minimum to be fair; nevertheless, we do not consider the charge should be limited to £100, as specified in the Housing (Service Charge Loans) Regulations 1992 but should reflect the reasonable costs incurred by the local authority. We also feel that the maximum limit should be increased a little because the charge has not increased since the original legislation was introduced. To prevent the need for future legislation to re-assess the level of administrative expenses, the NHC recommends that this charge is linked to the retail price index to allow Councils to 'automatically' adjust this figure in future years.

We also feel that it is important that the Government considers legal costs to be separate from administrative expenses. Due to the nature of the loan, there will be legal fees in drafting the mortgage charge and registering the charge against the property. We feel that it is unfair if the landlord is made to cover these costs. We recommend that such legal costs be added to the loan at the discretion of the leaseholder and owner.

Right to Buy valuations – changes to administrative arrangements:

9. Do you agree that the district valuer should be able to withdraw a determination of value, and replace it with a correct determination, if the facts on which it is based can be shown to be faulty? If not, why not?

Yes. The NHC fully supports the proposal that the district valuer should be able to withdraw a determination of value, and replace it with a correct determination, if the facts on which it is based can be shown to be faulty.

10. If withdrawal is allowed, should there be any limits specified in legislation – for example, that the determination should stand unless it can be shown that the correct facts would vary it by at least five per cent either way?

Partially. The NHC agrees with the proposal but suggests the following is taken into account. First of all, we feel that limits should be specified in respect to timescales for a fresh determination of value. We feel that a realistic timescale such as a period of 28 days should be allowed, to enable either party to present information to the district valuer, showing that the determination had been based on incorrect information. We feel that where the valuation has been challenged and re-determined by the district valuer, it is important to take account of the revised valuation unless the variation is minimal in value. However, we do not support applying a percentage of less than 5% to the variation because it can be significant for both the customer and the public purse and may lead to extended disputes between the vendor/landlord and the purchaser.

Amend rules for ending Right to Buy when a property is due to be demolished

11. Do you agree that the power to suspend or end the Right to Buy should be available if demolition is to be carried out by a body other than the landlord?

Yes. The NHC agrees that the power to suspend or end the Right to Buy should be available if demolition is to be carried out by a body other than the landlord, if the properties in question have been transferred from the landlord to a developer in whom they are in partnership with.

Nevertheless, we agree that this should be the case within certain circumstances for instance, where a Local Authority, RSL and Private Developer are working in Partnership on a major regeneration scheme and the landlord (the Local Authority or the RSL) is not doing the demolition. RSLs are unable to claim back the cost of demolition against any value if sold to a developer and this would help put this cost onto a private developer. We feel that it is important that the boundaries of what is reasonable is defined, such as through partnership agreements.

12. Do you have any comments on how this provision introduced by the Housing Act 2004 is working?

One of our members have informed us that they have issued a number of Initial Demolition Notices and from the Councils perspective they have had no issues to address at this stage and the Council has informed us that they have not received any complaints from the tenants within the areas affected. However, the Council is conscious that these are the early stages and as yet no final demolition notices have been used.

Another one of our members informed us that they came across this issue on a large regeneration site and it created complications in the way the contract ran. The issues have been resolved and the initial demolition notices have been served. Nevertheless, this provision did complicate the process.

13. Correction of unintended addition to rules excluding from the Right to Buy properties that are particularly suitable for occupation by elderly persons.

The NHC agrees that this unintended error should be addressed. The NHC strongly supports the Government's emphasis on quality of life for older people, choice and independence outlined in their White Paper, their recent Housing Green consultation Paper and their recent consultation paper "The Future of the Code for Sustainable Homes – Making a rating Mandatory" which has put Lifetime Homes standards consistently as a top issue to increase the number of new homes that meet Lifetime Homes standards. Unless this error is addressed we feel that as more homes are built which meet the Lifetime Homes standards this would give unfair treatment to those people who reside in such homes (generally young people with disabilities and elderly persons) compared to people who live in homes which do not meet such standards.

Conclusion

There are many proposals of merit in the paper and we support the majority of these. We welcome the government's proposal that tenants facing repossession proceedings should not be eligible for RTB. We also favour the proposals to widen the range of ways in which social landlords can assist their leaseholders to pay major works bills. We also welcome the government's proposals to enable district valuers to replace determination of value that are found to be based on factually incorrect information to ensure that tenants and landlords receive fair valuations. We also agree with the government's proposals to provide that landlords may serve initial and final demolition notices when the property concerned is to be demolished by another managing body.

We do however feel that it is important that the government ensures that limits are specified in respect to timescales for a fresh determination of value and that the government ensures that adequate procedures are in place to prevent less responsible lenders from obtaining approval. We also feel that it is imperative that the government gives serious consideration as to how best to address the problem of the rise in sub prime lending in the UK.

The Northern Housing Consortium is pleased to have been given the opportunity to respond to this important consultation and will be happy to contribute to any further consultation in this area. We look forward to reading the summary of responses to this consultation.

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