

Research Briefing

Abolition of the Right to Buy and Associated Rights (Wales) Bill

- Bill Summary
- Summary of Stage 2 changes
- Welsh Glossary



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.


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Research Briefing

Abolition of the Right to Buy and Associated Rights (Wales) Bill

This briefing is provided to support the Assembly's scrutiny of the Abolition of the Right to Buy and Associated Rights (Wales) Bill. The Bill will restrict, and then ultimately end, the Right to Buy (including the Preserved Right to Buy and Extended Right to Buy) and the Right to Acquire in Wales.

The Welsh Government's stated purpose of the Bill is to safeguard Wales' social housing stock for people who are unable to acquire homes through the housing market. It considers that this approach is based on the sustainable development principle of the Well-being of Future Generations (Wales) Act 2015, and will also encourage local authorities and housing associations to invest in new social housing.

In addition to the Bill and Explanatory Memorandum, the Welsh Government has published two research studies referred to in the Explanatory Memorandum and a range of impact assessments. These are all available on the Welsh Government's website.

This Bill Summary takes account of amendments made at Stage 2 of scrutiny. References to the Explanatory Memorandum are to the version revised after Stage 2.



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1. Introduction

This briefing is intended to be read in conjunction with the [Stage 1 Report](#) from the Equalities, Local Government and Communities Committee.

Right to Buy (RTB) has simultaneously been one of the most popular and controversial housing policies of the last four decades.

While now largely identified as a key policy of the Conservative government led by Margaret Thatcher, the policy was a commitment in the Conservative's October 1974 election manifesto when Edward Heath was leader. That manifesto committed to allow council tenants to purchase their homes with a one-third discount off market value. Even before the introduction of the RTB, some tenants were able to buy local authority homes, but this was on a voluntary basis at the discretion of the local authority. In 1979, the year before the statutory RTB was introduced, 1,187 local authority dwellings were sold in Wales.

Nearly 140,000 properties in Wales have been purchased through RTB and Right to Acquire (RTA). The vast majority have been sold under RTB. This includes the preserved Right to Buy which affects housing associations created following stock transfer. A statistical breakdown is provided in Part 8 of this paper. In that period home ownership has increased from slightly over 62% in 1981 to 70% in 2015-16. However, since 1980, when RTB was introduced, the total stock of social housing has fallen from over 300,000 to around 227,000 in 2016. The Explanatory Memorandum notes in paragraph 3.13 that 45% of the social housing stock **in 1981** has been sold under Right to Buy. While new social homes have been built, almost exclusively by registered social landlords (more usually called housing associations), they have not been built in sufficient numbers to replace the stock that has been sold. Social housing waiting list information is not collected centrally in Wales, but Welsh Government commissioned [research](#) suggests that between 3,500 and 5,000 homes are needed in the "social sector" each year. That definition includes both traditional social housing, and homes in the private rented sector where Housing Benefit is used to help pay the rent. To put that in context, the latest [affordable housing provision statistics](#) from the Welsh Government show that 2,400 new affordable homes were delivered in 2015-16 across Wales.

Sales of social housing do not generally have an immediate impact on the amount of social housing available to let. This is because tenants who purchase their homes will, in many cases, continue living in their home, so the property would not have been available for re-letting. However, there will be an impact on re-lets at some point in the future if that stock is not replaced. There has been some [research](#) on this issue, highlighted by Professor Steve Wilcox when he gave evidence to the Assembly in 2010 in relation to the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010. That research, based on data for England, suggested purchasers remained in their home for a further 16 years.

Although RTB has generated significant capital receipts, local authorities were not able to invest all of those receipts into new housing. Further detail is in part 6 of this briefing. The Right to Buy has had very little or no impact on the ability of local authorities to invest in new social housing over the last ten years according to the Welsh Government's own research (see section 6 of this briefing). More significant factors that have affected the ability of local authorities to build new homes identified in the research were the Housing Revenue Account Subsidy (HRAS) System and expenditure to meet the Welsh Housing Quality Standard. Now that all 11 local authorities in Wales with housing stock have left the HRAS System, some have started to build new homes again and others have plans to do so. However, the number of new homes likely to be delivered by local authorities is still modest, and

likely to remain so for some time. Most new affordable housing will continue to be delivered by housing associations.

The Explanatory Memorandum addresses whether capital receipts could be used to replace existing stock in paragraph 6.10. It notes that “retaining the Right to Buy and Right to Acquire but ensuring the receipts from sales is directed towards the construction or replacement of social housing was considered.” It goes on to state:

...the argument for using receipts from Right to Buy discounted sales to build more social housing is undermined by the fact the finances mean they only allow the building of a lower number of replacement dwellings due to the cost of replacement social homes being higher than the value of sales. The net impact would therefore be a continued reduction in the social housing stock.

The Abolition of the Right to Buy and Associated Rights (Wales) Bill was introduced to the Assembly on 13 March 2017. In his **statement** to the Assembly on 14 March, the Cabinet Secretary for Communities and Children, Carl Sargeant AM said:

The Bill will protect the social housing stock for rent by people who are unable to buy or rent a home via the private market. This includes many vulnerable people who benefit greatly from the safe, secure and affordable homes that our social housing provides. In summary, the Bill will abolish the right to buy, the preserved right to buy and the right to acquire for social housing tenants. The rights will end for new homes not previously let in the social housing sector two months after the Bill receives Royal Assent. To ensure that tenants are aware of the effect of the Bill, abolition of rights on existing properties will not take place until at least one year after the Bill receives Royal Assent. All affected tenants of social housing will be informed in writing within two months of Royal Assent, and the Bill complements the Welsh Government's wider aims of a more prosperous and fairer Wales. It will assist in tackling poverty and it will help to preserve a stock of safe, secure and affordable housing for use by people on modest incomes or who are vulnerable.

In addition to the Explanatory Memorandum, the Welsh Government has also published:

- a statement of policy intent which outlines the policy intent of the powers delegated to Welsh Ministers within the Bill;
- Two research reports that are referred to within the Explanatory Memorandum; and
- A range of impact assessments.

The statement of policy intent is available on the Bill's homepage on the Assembly's [website](#). The research reports and impact assessments are available on the Welsh Government's [website](#).

2. Overview of the Bill's provisions

The primary purpose of the Bill is to protect social housing stock by removing the obligation on social landlords to sell their properties under the Right to Buy and Right to Acquire. The Bill abolishes the Right to Buy and Right to Acquire in a graduated way: firstly, by restricting the rights of tenants to purchase any houses that are new to the social housing stock (this will commence 2 months after Royal Assent) and then, at least 1 year after Royal Assent, abolishing those rights completely. The Bill also contains provisions to ensure that tenants, and prospective tenants are made aware of the changes.

Section by section guide of the Bill as introduced

The Bill contains 12 sections and 1 Schedule. The explanatory notes in appendix 2 of the explanatory memorandum (pages 72 to 77) give an overview of what each section does.

- Section 1 provides an overview of the main provisions of the Bill.
- Sections 2 to 5 of the Bill are described as restricting the right of tenants to buy homes. However, in reality, they remove those rights, where the home in question is regarded as a new addition to the stock of social housing. The Bill does provide for exceptions to those “restrictions” – i.e. circumstances in which the right to buy/right to acquire can still be exercised, until full abolition. These exceptions include instances where the tenant has no real choice about moving to the dwelling in question because a court order has been made and has identified the new home as suitable alternative accommodation.
- Section 6 of the Bill then wholly abolishes the right of tenants to exercise their rights to buy or acquire homes. This section repeals sections 2 to 5 of the Bill – i.e., the sections that abolished rights in relation to new social housing stock – as these will, clearly, no longer be necessary once the rights are wholly abolished. It also repeals Section 8, which relates to the provision of information to tenants and prospective tenants about the legislation. Notably, Section 6 only comes into force on a day appointed by the Welsh Ministers in an Order. The appointed day must be at least 12 months following the day on which the Bill receives Royal Assent. This means that tenants will have at least 12 months to exercise their right to buy/acquire after this Bill is passed as an Act of the Assembly.
- Section 7 removes the power of Welsh Ministers to make grants to registered social landlords and private registered providers of social housing in respect of discounts given by them to tenants “otherwise in pursuance of the right to acquire”. This repeals Section 21 of the Housing Act 1996. No grants have been made under that section for a number of years. Similarly to section 6, this comes into effect by Order of the Welsh Ministers but will not come into effect until at least 12 months have passed following the day on which the Bill receives Royal Assent.
- Section 8 of the Bill places a duty on Welsh Ministers to publish information that will help tenants understand the effect of the Bill and the time limits that will apply to them if they wish to exercise their right to buy or acquire. This information must be published within one month of the Bill receiving Royal Assent. The Welsh Ministers must take all reasonable steps to provide this information to all qualifying landlords. In turn, all landlords must provide all of their relevant tenants with a copy of this information within two months of the Bill receiving Royal Assent or within one month of receiving the information from Welsh Ministers, whichever is earlier.

- Section 9 gives the Welsh Ministers powers 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 Bill. It is notable that consequential amendments to the Housing Act 1985 have not been included in the Bill’s schedule. However, a draft of the anticipated consequential amendments to the 1985 Act were provided in a letter from the Cabinet Secretary to the Equalities, Local Government and Communities Committee dated 21 June 2017.
- Section 10 is a standard section, which says that Regulations made under this Bill must be made by statutory instrument and any making changes to primary legislation will be subject to the affirmative scrutiny procedure.
- Section 11 lists when sections come into force. Section 8 (information for tenants), amongst others, will come into force the day the Bill receives Royal Assent. Sections 2 to 5 come into force 2 months after Royal Assent. Section 6 and 7 are to be brought into force by order, but cannot be brought into force sooner than 12 months after the Bill receives Royal Assent.
- Section 12 provides that on becoming an Act, the short title of the Bill will become “the Abolition of the right to buy and associated rights (Wales) Act 2017.

As set out above, sections 2 and 4 of the Bill will prevent tenants from exercising their Right to Buy or Right to Acquire a dwelling which is regarded as new social housing stock. Section 6, when in force, will abolish these rights completely. These provisions will have the effect of depriving individuals of the opportunity to exercise their right to buy or acquire. Any provision that deprives an individual of their property will engage Article 1 of Protocol 1 to the European Convention on Human Rights (“A1P1”).

Human Rights

The Explanatory Memorandum notes:

The abolition of the Right to Buy potentially engages the European Convention on Human Rights. A minimum notice period of one year is designed to allow tenants time to take advice and to apply to exercise their rights if they wish to do so. The Welsh Government considers this period strikes the necessary fair balance between the rights of the tenant and the wider public interest in safeguarding the stock of social housing available for rent by people on modest incomes who require affordable accommodation. In addition, if the Bill is passed by the National Assembly, there are provisions to ensure tenants are fully informed about abolition and its effect.

Consultation

The Minister for Communities and Tackling Poverty published a [White Paper](#) proposing reform or abolition of both RTB and RTA in 2015. The consultation paper noted that while the social housing stock was under pressure, properties were continuing to be purchased through RTB/RTA. The purpose of the proposals in the paper was therefore to protect the existing social housing stock from further reductions.

The proposals were:

- Reduce the maximum discount to £8,000; and
- Develop new legislation to abolish the RTB and RTA, i.e. repeal the existing legislation.

The White Paper suggested both steps could be taken, with reducing the discount as a short-term measure to reduce the number of sales. That was the approach the Welsh Government subsequently took.

A [summary of responses](#) to the consultation was published in May 2015. Ninety-four responses were received. Thirty came from tenants in social housing, 21 from housing associations and 9 from local authorities. Other responses came from representative bodies, owner occupiers and professional bodies. Fifty-two of respondents were clearly in favour of ending the Right to Buy and Right to Acquire, with 31 opposed.

Some of the key issues raised in **support** of the proposal were:

- Protecting the social housing stock for those who need it was considered more important than the loss of ability to purchase their homes by tenants;
- The length of housing waiting lists point to the need for action to help people in need of social housing;
- There was a feeling the private sector cannot adequately step in to replace the diminished social housing stock;
- The proposals are considered fairer for tenants in social housing. A uniform policy across Wales is more acceptable than suspension of the Right to Buy and Right to Acquire in specific Local Authority areas

Comments **opposed** to the proposals included:

- It was felt removing Right to Buy/Right to Acquire makes no difference to the immediate availability of the stock of affordable homes because the sitting tenant remains in occupation. There is no immediate net gain to the supply of social housing;
- The principle of Right to Buy was seen as good but the scheme is considered to be flawed, principally revolving around the failure to reinvest income from sales in replacement new social/affordable homes. There were calls for the rules to be changed to overcome this;
- There was a concern high house prices and the level of private rents preclude the majority of social renters from home ownership. It was suggested longer-term (qualifying) tenants should retain the Right to Buy or greater priority for the entitlement. It was pointed out only a small proportion of homes are 'lost' from the affordable housing sector currently each year via Right to Buy/Right to Acquire;
- The shortage of supply was identified as the major single factor in the lack of affordable housing provision. The means of addressing housing need more effectively than at present was highlighted and was not felt to be tackled by the proposals

In addition to formal consultation, the Explanatory Memorandum notes a range of informal engagement with stakeholders in paragraphs 4.9 to 4.23.

Financial costs and benefits

The Finance Committee considered this Bill on 29 March 2017 and took evidence from the Cabinet Secretary on 3 May 2017. The Finance Committee's report is available on the Assembly's [website](#).

The Regulatory Impact Assessment outlines costs associated with the Bill under various scenarios. The scenario that reflects the provisions in the Bill is option 5.

3. What is the Right to Buy?

The Right to Buy and the associated rights covered by this Bill allows tenants to buy their home at a discount providing they meet the qualifying criteria for each scheme. A brief overview of those criteria, and main restrictions, is provided below:

The Right to Buy

RTB gives qualifying **secure tenants** the statutory right to buy their home at a discounted price. A 'secure' tenancy is a particular type of tenancy that is granted by public sector landlords. It provides tenants with long term security of tenure, providing they adhere to the conditions of the tenancy. RTB was introduced in 1980. Some properties are exempt, and the tenant must also meet certain qualifying criteria. Most secure tenants will have a local authority as their landlord, but other public-sector organisations can also grant secure tenancies. In the past, housing associations were also able to grant secure tenancies, but this has not been the case since January 1989.

The Preserved Right to Buy

This primarily affects housing association tenants whose home previously belonged to a local authority. These tenants are also likely to have the Right to Acquire.

If a tenant has become an assured tenant of a housing association following a large scale voluntary transfer (usually referred to as stock transfer) their right to buy under the Housing Act 1985 will be preserved, even though they no longer have a secure tenancy. This is the **Preserved Right to Buy**. 'Assured' tenants have very similar rights to secure tenants, and have long-term security of tenure. This is in contrast to assured shorthold tenancies, which provide little security of tenure. Most housing association tenants will have assured tenancies.

The Extended Right to Buy

The **Extended Right to Buy** extends the Right to Buy to a property where there is more than one interest. In addition to the interest of the landlord, there must be an interest belonging to another public sector body. This could be applicable in relation to leasehold property.

The Right to Acquire

Most housing association tenants will have assured tenancies, although a small number of tenants will have secure tenancies. Some will also have assured shorthold tenancies – primarily new tenants. Assured and secure housing association tenants will have the **Right to Acquire (RTA)** if certain conditions are met. RTA is based on the Right to Buy, but there are some differences, namely:

- To be eligible, the dwelling must have been provided with public money on or after 1 April 1997 and remained in the social rented sector or have been transferred from a local authority on or after 1 April 1997 to an RSL;
- Properties in prescribed rural areas are exempt from the RTA.

Other qualifying conditions that the tenant must meet are the same as those that apply to the RTB. While maximum cash discounts under RTA and RTB are now the same (£8,000), RTB discounts have in the past been much higher. This has made RTB far more attractive to tenants.

Another key difference with from RTB is that under RTA, the landlord may offer the tenant an alternative property to buy.

4. Incentives and restrictions

Discounts

Under Right to Buy, tenants were initially entitled to a substantial discount off the market value: a minimum of 33% where they had been a secure tenant for at least three years and up to 50% if they had been a secure tenant for four years or more (depending on how long they had been a secure tenant). The discount was initially capped in cash terms at £25,000. The average price of a home in Wales in 1980 was £19,000. By the end of the first quarter of 1981 28,000 people in Wales had applied to buy their own home.

The *Housing and Building Control Act 1984* extended RTB to tenants of properties held on a long lease by public authorities and reduced the qualification period from two to three years. Discounts were increased to a maximum of 60% after 30 years as a tenant.

The primary incentive to buy a home through RTB and RTA has been the right to a discount on full market value. The maximum discount has gradually been reduced, and now stands at £8,000.

The maximum cash discount available under the Right to Buy was as high as £50,000 between 1989 and 1999. The maximum cash discounts for Right to Buy have been set out in secondary legislation, and were as follows:

- Housing (Right to Buy) (Maximum Discount) Order 1980: From 3 October 1980 (the scheme's inception) **£25,000**;
- Housing (Right to Buy) (Maximum Discount) Order 1986: From 7 January 1987, **£35,000**
- Housing (Right to Buy) (Maximum Discount) Order 1989: from 11 April 1989, **£50,000**;
- Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999: From 11 March 1999, the discount was set at **£24,000**; from 2 April 2003, **£16,000**; from 14 July 2015, **£8,000**;

The *Housing (Right to Acquire) (Discount) (Wales) Order 1997* set the maximum discount for a purchase under RTA at 25% or a maximum of £16,000. From 14 July 2015, the discount has been £8,000.

The precise level of discount depends on how long the purchaser has been a public sector tenant and whether the property is a house or a flat.

Restrictions in Rural areas

Tenants in certain rural areas can either face restrictions when exercising Right to Buy or, in the case of Right to Acquire, will not be able to exercise that right at all. The areas affected are listed in the *Housing (Right to Acquire and Right to Buy) (Designated Rural Areas and Designated Regions) (Wales) Order 2003*. These restrictions also apply to properties in National Parks, and Areas of Outstanding Natural Beauty.

Under Section 157 of the *Housing Act 1985*, properties in any of these areas may be sold subject to a covenant limiting the freedom of the tenant (including any successor in title of his and any person deriving title under him or such a successor) to dispose of the dwelling-house. This restriction means that the property may only be sold or let to a person who either lives or works in the local area. Alternatively, the landlord may require that if the property is to be sold within 10 years, it is first offered for sale to them or another social landlord under the Right of First Refusal (see below).

Right of first refusal

If a property is purchased under RTB or RTA and the owner subsequently wishes to sell it within 10 years, it must first be offered to the property's former landlord, or to another social landlord in the area at full market value. This applies in all areas, not just rural areas and it also applies to voluntary sales where a discount is given. This provision was introduced in 2005.

Types of dwelling exempt from the schemes

Exemptions are set out in Schedule 5 to the *Housing Act 1985*, and include tenants of certain:

- Sheltered accommodation;
- Dwellings that have been adapted for use by disabled people are only exempt if:
 - it is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by physically disabled persons, **and** a social service or special facilities are provided in close proximity to the group of dwelling-houses wholly or partly for the purpose of assisting those persons.
- Properties let in connection with someone's employment.

Repayment of discount

A purchaser may (there are some exemptions) have to pay back an amount to their former landlord if they sell the property within five years of it being purchased. The precise amount to be repaid depends on how soon they sell their home, the percentage discount they received when they made the purchase and the current value of their home. In the early years of RTB, the repayment period was two years, for RTA it was three years. This was increased to five years by the *Housing Act 2004* for both schemes.

Certain sales or transfers are exempt from the requirement to repay discount, e.g. transfers between certain family members. In addition, if a home owner would face hardship by having to repay the discount and their circumstances justify it, their former landlord may decide not to ask them to pay some or all of what they owe.

Suspension of the Right to Buy

Local authorities in Wales can ask the Welsh Government to suspend the Right to Buy, and what the *Housing (Wales) Measure 2011* calls 'related rights', for a period of up to five years. This can be extended so the maximum period of suspension would be for 10 years. 'Related rights' is the term used in the 2011 Measure, although the term 'Associated Rights' is used in this Bill. They mean the same.

The purpose of a suspension is to maintain the availability of social housing while the supply of social housing is increased by other means.

Prior to submitting an application, the local authority must have carried out a consultation on its proposal to request a suspension, and that consultation must support its conclusion that the 'housing pressure condition' has been met. Local authorities are responsible for suspensions, even if they have no housing stock of their own.

The 'housing pressure condition' is that:

- within the local housing authority's area, the demand for social housing substantially exceeds its supply or is likely to do so, and

– that imbalance between supply and demand is likely to increase as a result of the exercise of the right to buy and related rights.

Stakeholders who must be consulted (Section 2 of the 2011 Measure) include providers of social housing within the proposed area of the suspension, neighbouring local authorities and bodies representing the interests of tenants. The suspension can apply to certain types of property (for example, those with more than a certain number of bedrooms or those provided by a specific social housing provider) and to specific areas within the local authority's area, or part of it. The five suspensions that have been approved so far have covered all "relevant dwelling houses" within each local authority's entire area. A "relevant dwelling-house" is one where the landlord is a social housing provider and the tenant has the Right to Buy, or a right related to the Right to Buy (such as the Preserved Right to Buy and Right to Acquire). Directions can subsequently be varied or revoked on application by the local authority. They can also be extended, but an extended direction may not have effect beyond a period of ten years from the date of the first direction.

Requests from tenants to exercise the Right to Buy or related rights served on the landlord prior to the Welsh Government considering an application for a direction will proceed in the normal way. However, section 31 of the Measure provides that requests served on the landlord after the date on which the Welsh Government decide to consider the local housing authority's application for a direction shall be "stayed".

If the Welsh Government has not granted or rejected an application for a direction within six months, beginning with the date on which they decided to consider the application, the "stay" will be lifted on the day after the end of that period.

RTB is currently (November 2017) suspended in 6 out of 22 local authority areas (Carmarthenshire, Swansea, Anglesey, Flintshire, Denbighshire and Cardiff). **Tenants in areas where a suspension is approved (or for those pending applications, where it will be approved) will not have a further opportunity to purchase their home should this Bill become law.** This contrasts to tenants in other areas, where there will be a minimum of one year's notice before abolition.

In 2012 the Welsh Government issued [guidance](#) to local authorities on applications to suspend the Right to Buy in their area.

The Directions suspending the Right to Buy and related rights were made in 2016 and 2017 and are all available to view on the Welsh Government's [website](#).

Voluntary sales

The Explanatory Memorandum notes in paragraph 6.114:

After the notice period ended, a local authority or registered social landlord [housing association] may still consider selling a home to a tenant on a voluntary basis, but this is likely to be at the full market value of the property, without any discount. This would enable local authorities and registered social landlords to manage their housing stock effectively and dispose of any properties of a type, location and/or quality where there is a compelling case for not retaining it as social housing.

5. Impact of the Right to Buy

A reduced social housing stock

As noted earlier in this briefing, the sales under RTB and RTA have made a significant impact on the social housing stock. There was no policy to replace each property sold, and there were obstacles and disincentives to local authorities investing in new homes – most of which were not related to RTB.

While developing this legislation, the Welsh Government undertook research into the impact that Right to Buy has had on the development of new homes by local authorities. The study found “No correlation between the existence of the *Right to Buy* and related Rights and the development of new social housing over the last decade.” The study also found that “The *Right to Buy* has had very little or no impact on their ability to invest in new social housing over the last ten years. Other factors, such as the economy and the availability of land and funding appear to carry greater influence.” However, of the 17 local authorities that responded to the survey that informed the study, none suggested retaining the Right to Buy, Right to Acquire and Preserved Right to Buy.

The research referred to above, [Study into the influence of the Right to Buy and related rights on the development of social housing by local authorities](#) (PDF 261KB), is available on the Welsh Government’s website.

It is important to note that local authorities have now left the Housing Revenue Account Subsidy system. This means that the financial environment for local authorities with housing stock in the coming years is very different from that over the past decade, and new social housing is being delivered (or is planned to be delivered) by local authorities in more significant numbers.

Extending home ownership

RTB, and less significantly RTA, have extended home ownership to many families. In 2015, a joint Welsh Tenants/TPAS Cymru [consultation](#) found that 60% of tenants that responded opposed abolishing RTB. However, RTB is now only one of a range of schemes available to facilitate home ownership. Other schemes primarily focus on making a mortgage more affordable, for example through an equity loan or shared ownership. The most successful scheme at the moment is [Help to Buy Wales](#). That scheme allows new-build homes to be purchased with the assistance of an equity loan. In 2016-17, [1,864 purchases](#) were completed through Help to Buy Wales.

The Private Rented Sector

The Explanatory Memorandum highlights the Welsh Government’s belief that a significant number of former social sector homes have ended up in the private rented sector. This can lead to additional costs to the public purse should the occupier claim Housing Benefit as private sector rents are higher than social rents. However, this cost does not fall upon the Welsh Government; it is the responsibility

of the UK Department for Work and Pensions. Paragraph 6.44 of the Explanatory Memorandum provides the results of some analysis of RTB sales data from eight local authority areas between 1997 and 2015. It found an estimated 2,001 former social sector properties were in the private rented sector (PRS). Full details of this research study have been published separately on the Welsh Government's [website](#) (PDF 539Kb).

Many leasehold flats purchased under RTB appear to have entered the private rented sector. This presents challenges for social landlords (as freeholders) contacting absent leaseholders to recover repair and maintenance costs.

Other issues

- The Explanatory Memorandum suggests that “There was evidence that home ownership can be detrimental in some cases where tenants purchasing under the Right to Buy and Right to Acquire had taken on commitments beyond their financial means”. This was based on housing association stakeholders and umbrella bodies knowledge of mortgage rescue applications. It is unclear whether this uptake of mortgage rescue schemes would be any higher than the home-owning population as a whole. Mortgage rescue schemes typically see a housing association either buy a property outright, or take an equity share in the property so a homeowner struggling with mortgage payments can stay in their home.
- The Financial Services Authority (FSA) has previously referred to RTB as being ‘higher risk’ because FSA data shows that RTB customers have been the borrower type most likely to experience arrears and payment problems. In the most recent [Mortgage Market Review](#) from 2012 (most of which was implemented from 2014), the FSA noted that:

While the enhanced sales standards will protect RTB customers, several respondents, including trade bodies and some lenders, noted that perhaps a bigger question for RTB customers is whether they should exercise their right-to-buy at all, or remain as tenants, which falls outside the remit of mortgage advice. They therefore felt that customers should receive further advice and support in making this decision. Some lenders also felt that it should be made clear in the advice process that mortgage advice is about the loan rather than the decision to exercise the right-to-buy.

- The cost of repairs to blocks of ex-local authority leasehold flats purchased through RTB has recently received significant media coverage in both England and Wales. In some cases, these bills had been far higher than many leaseholders had expected. The Welsh Government has recently published [guidance](#) for both landlords and tenants in this area to help resolve disputes.
- In 2003, the House of Commons’ [Select Committee on Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions](#) found evidence that RTB has been abused for profit in some areas. The Committee found some newly purchased properties were being leased by ‘incentive companies’, then after a period of time, the ownership transferred to the company. This was to avoid having to repay the discount if it was resold.

The Housing Act 2004 inserted Section 163A into the *Housing Act 1985*. This is intended to address deferred resale agreements and means that if a tenant enters into such an agreement they may still have to repay their Right to Buy discount.

The Welsh Government's [guidance for tenants](#) (PDF 154KB), which was updated in March 2017, warns against these types of agreement and notes that "some tenants have found themselves homeless after agreeing to such deals".

6. Use of capital receipts

Local authorities

Local authorities have faced a number of obstacles that has meant capital receipts from RTB have generally not been invested in new housing. Various restrictions on what proportion of receipts can be spent, and what they can be used for, have been in place since RTB was introduced.

Since 2004, the powers relating to capital receipts in Wales (Sections 9 to 11 of the *Local Government Act 2003*) have been devolved.

Between April 2004 to March 2015 the *Local Authorities Capital Finance and Accounting Regulations 2003*, as amended, (the 2003 Regulations) set out the rules which apply to capital receipts and include:

– Use of Capital Receipts

The 2003 Regulations stipulate that capital receipts may only be used to meet capital expenditure, repay debt, pay borrowing premiums or cover qualifying credit arrangements.

– Housing Capital Receipts

Properties used for housing purposes (which includes homes to be disposed of under RTB) are held within the local authority's ring-fenced Housing Revenue Account (HRA). The Regulations stipulate capital receipts received in respect of the HRA must only be used for HRA purposes.

– Pooling of Receipts from Disposal of Housing Land

The 2003 Regulations include a requirement to pool some HRA capital receipts where a local authority had a debt free HRA. The pooling arrangements have not been implemented in Wales as none of the authorities with housing stock became HRA debt free.

Impact of HRAS

HRAS resulted in approximately £73 million of local authorities' rental income being paid to HM Treasury each year. The HRAS was one of the restrictions which discouraged local authorities from building new council homes. An increase in housing stock numbers would have resulted in an increase in the HRAS amount paid to HM Treasury each year.

In addition, the calculation of HRAS included a notional assumption that 75% of RTB receipts were set aside to repay debt. While there was no statutory requirement for setting aside capital receipts, it became common practice for authorities to set aside 75% of RTB receipts for repayment of debt.

From April 2015 onwards

In April 2015, the eleven local authorities with housing stock successfully left the HRAS following agreement with HM Treasury; the other eleven authorities have transferred their stock to housing associations. The 2003 Regulations relating to capital receipts remain in place which means LAs retain all HRA capital receipts which remain ring-fenced for HRA purposes. Local authorities have

freedom to decide, subject to the 2003 Regulations, how they use their capital receipts. The options include investing in their existing stock, building new council houses or repaying debt.

The 2003 Regulations on pooling of HRA capital receipts remain in place. In the unlikely event a local authority ever became HRA debt free, a proportion of capital receipts would be payable to the Welsh Government. This would include 75% of RTB receipts.

Registered Social Landlords

Registered Social Landlords (RSLs, which are often called housing associations) have been able to retain Right to Buy and Right to Acquire receipts in full. Moreover, in the case of Right to Acquire, RSLs are reimbursed for the amount of the discount by Welsh Ministers, so effectively receive market value for each property sold.

RSLs are required under the *Housing Act 1996* to maintain a Disposals Proceeds Fund for replacing properties sold under Right to Acquire.

7. Policy in England and Scotland

England

The UK Government has taken steps to incentivise and expand the RTB in England. This has included substantially increasing the maximum discount.

Until April 2012, the maximum discounts in England ranged from £38,000 in the South East of England to £16,000 in many London boroughs.

Since April 2012, the maximum discount has been increased substantially. It is currently £78,600 across England, except in London boroughs where it's £104,900. It will increase each year in April in line with inflation (the consumer price index). In 2014, the maximum percentage discount for a house in England was increased from 60 to 70%. The qualifying period during which a tenant must have been a public sector tenant, was reduced from 5 years to 3 years from 26 May 2015.

Prior to the discounts being increased, the UK Government proposed that each **additional** home sold as a result of the increased discounts would be replaced by a new affordable home although the government has been **challenged** as to whether this commitment is being met.

Proposals to extend RTB to housing association tenants were included within the Queen's speech in 2015. This was subsequently taken forward on a **voluntary basis**, with statutory arrangements for housing associations to be compensated for selling their assets at a loss (because of the discount) set out in the *Housing and Planning Act 2016*.

Scotland

The Right to Buy was abolished in Scotland on 1 August 2016 when Section 1 of the *Housing (Scotland) Act 2014* was fully commenced. In general, prior to abolition, those tenants who had been in the same property since before 30 September 2002 had a preserved Right to Buy, with discounts of up to 70% in the case of flats, or 60% in the case of houses.

In the years leading up to abolition, there were numerous changes to the scheme including a reduction in discounts, the exclusion of new homes and new social housing tenants and a number of other exemptions and suspensions.

The *Housing (Scotland) Act 2001* had increased the number of years a person needed to have been a social housing tenant to qualify for RTB from 2 to 5 years. It also limited the maximum discount to 35% of the property's value or £15,000, whichever was less. These changes applied to tenancies that began on or after 30 September 2002. This was known as the Modernised Right to Buy.

The 2001 Act also allowed Scottish Ministers to designate any part of a local authority's area as a 'pressured area' on application from a local authority – this power was subsequently transferred from Scottish Ministers to local authorities. This had the effect of suspending the Right to Buy in that area, in a similar way to powers Welsh Ministers have under the *Housing (Wales) Measure 2011*. The 2001 Act extended the RTB to most housing association tenants, who previously would not have had the RTB. However, the 2001 Act made non-charitable housing associations and housing associations which received charitable status after 18 July 2001 exempt from the modernised RTB for a 10-year period until September 2012. Housing associations affected by this suspension could ask for the suspension to be extended beyond 2012.

The *Housing (Scotland) Act 2010* removed the Right to Buy from first-time social housing tenants (and those returning after a break) and tenants of new-supply social housing. This was subject to protection in the case of persons being re-accommodated by a landlord. 'New-supply' social housing in this context means housing that was not let under a Scottish secure tenancy on or before 25 June 2008 or was acquired by the landlord on or after 25 June 2008. The provisions came into force in March 2011.

The Scottish Government consulted on [The Future of Right to Buy in Scotland](#) in 2012 and proposals to abolish it were contained in a housing Bill the following year. The **Policy Memorandum** that accompanied the Scottish Government's *Housing (Scotland) Bill in 2013* cites many of the same reasons as the Welsh Government's Explanatory Memorandum for abolishing RTB. There was a period of almost two years from the legislation being commenced to the Right to Buy being abolished. Unlike the proposals in Wales, there was no specific provision in the legislation for tenants to be informed of the change. However, the Scottish Government did publish [guidance for tenants](#) (PDF 170KB) on their rights in the period leading up to abolition.

8. Statistics

RTB purchases

139,153 properties were purchased under the Right to Buy (including the preserved and extended versions) between 1980 and March 2016. The peak in sales was in 1982-83, when 15,048 dwellings were bought.

In 2016-17, the most recent year for which data is available, 251 dwellings were bought.

RTA purchases

180 dwellings were purchased under the Right to Acquire between 1997 and March 2016. In 2016-17, 23 dwellings were purchased.

Non-statutory sales

14,017 properties were purchased from social landlords on a non-statutory basis between 1980 and March 2016. A total of 309 were sold in 2016-17. These sales include those purchased under shared equity, intermediate rented, low cost homeownership (including shared ownership) and other

intermediate sales such as flexible tenure for the elderly and extra care housing options. Further detail is available on the [StatsWales](#) website.

9. Further reading

- Welsh Government (2017), [Your Right to Buy Your Home: A guide for tenants of social landlords in Wales](#)
- Welsh Government (2017), [The Right to Acquire: A guide for tenants](#)
- Davies, A.R. (2013), ['Right to Buy': The Development of a Conservative Housing Policy, 1945–1980](#)
- House of Commons Library, (1999), [The Right to Buy](#)
- House of Commons Library, (2017) [Comparing the Right to Buy in England, Scotland, Wales and Northern Ireland.](#)
- Murie, A. (2015), [The Right to Buy: History and Prospect](#)

10. Stage 2

[Stage 2 consideration](#) took place in Committee on 5 October 2017.

All Welsh Government amendments were agreed, while all opposition amendments were either not moved, fell, withdrawn or not agreed.

Amendment 34 was tabled by Bethan Jenkins AM and reflected recommendation 4 of the [Stage 1 Committee Report](#) that information to tenants should be provided in appropriate languages and formats. The Cabinet Secretary supported the principle of the amendment, and agreed to work with Bethan Jenkins to bring forward a redrafted amendment at Stage 3. Amendment 34 was consequently withdrawn.

The following amendments were agreed:

- Amendment 1 inserts additional wording into the overview of the Bill in Section 1. This reflects the amendment made to Section 8 which adds to the list of bodies to which the 'information for tenants' document must be sent;
- A number of technical and drafting amendments were made to the Bill. Amendments 2, 3 and 4 clarify which Act the repeals will be made to. Amendment 15 makes a minor technical change to the wording of Section 11;
- Amendment 5 inserts a new subsection into Section 8. The effect of this amendment is to place a duty on the Welsh Ministers to provide bodies representing tenants and other relevant organisations with a copy of the information for tenants' document;
- Amendments 6, 7 and 8 were agreed by the Committee and related to information for tenants and prospective tenants. Amendment 6 replaces wording in Section 8 and prescribes the minimum information that qualifying landlords must provide to all relevant tenants in order to discharge their duty under section 8(3)(a). Amendment 7 removes wording in Section 8, the effect of which is to provide that a qualifying landlord must only publish information that it considers relevant to its

tenants and prospective tenants. Amendment 8 inserts wording into Section 8 which ensures that a qualifying landlord publishes the minimum information requirements;

- Amendment 9 inserts a definition of “local housing authority”;
- Amendment 10 replaces words in Section 10 and clarifies that Section 9 of the Bill is the only regulation making power to which Section 10 applies. Amendments 11, 12, 13 and 14 all relate to the same matter.

Stage 3 consideration will take place in Plenary on 28 November 2017 to consider further amendments to the Bill.

11. Key Terms

Terms used in the Bill

Hawl i Brynu – Right to Buy

Hawl i Brynu a Gadwyd – Preserved Right to Buy

Hawl i Brynu a Estynnwyd - Extended Right to Buy

Hawl i Gaffael – Right to Acquire

Annedd - Dwelling

landlordiaid cymdeithasol cofrestredig – registered social landlords

Hawl i Brynu – Right to Buy

Hawl i Brynu a Gadwyd – Preserved Right to Buy

Hawl i Brynu a Estynnwyd - Extended Right to Buy

Hawl i Gaffael – Right to Acquire

Annedd - Dwelling

Landlordiaid cymdeithasol cofrestredig – Registered social landlords

Tenantiaeth ddiogel - Secure tenancy

Tenantiaeth sicr - Assured tenancy

Tenantiaid - Tenants

Diwygiadau canlyniadol - Consequential amendments

Rheoliadau - Regulations

Disgowntiau - Discounts

Diddymu - Abolition

Tŷ anedd cymwys - Qualifying dwelling house

Annedd wedi'i eithrio - Exempted dwelling

Stoc tai cymdeithasol a gafodd eu gosod yn flaenorol - Previously let social housing stock

Tenantiaeth hir - long tenancy

Tenantiaeth ragarweiniol - Introductory tenancy

Tenantiaeth isradd - Demoted tenancy

Les - Lease

Rhydd-ddaliad - Freehold

Landlord cymwys - Qualifying landlord

Other relevant terms

atgyweirio – repairs

budd-dal tai – housing benefit

cynnal a chadw – maintenance

cytundeb tenantiaeth – tenancy agreement

dalwyr prydlesi - leaseholders

diogelwch deiliadaeth – security of tenure

cymdeithasau tai - Housing association

Safon Ansawdd Tai Cymru – Welsh Housing Quality Standard

sylfaen costau – cost floor

tai gwarchod – sheltered housing

trosglwyddo – transfer

ymgyngoriad – consultation

hawliau confensiwn - convention rights

General terms

Aelod sy'n gyfrifol (am y Bil) - Member in charge (of the Bill)

Asesiad Effaith Rheoleiddiol - Regulatory Impact Assessment (RIA)

Canllawiau - Guidance

costau pontio - Transitional costs

costau rheolaidd - Ongoing costs

Cydsyniad Brenhinol - Royal Assent

Cyfnod 1 - Stage 1

Cymhwysedd deddfwriaethol - Legislative competence

Egwyddorion cyffredinol - General principles

Enw byr - Short title

is-ddeddfwriaeth - Subordinate legislation

Memorandwm Esboniadol - Explanatory Memorandum -

Papur Gwyn - White Paper

Penderfyniad ariannol - Financial resolution

ymgyngoriad - Consultation