

Abolition of the Right to Buy and Associated Rights (Wales) Act 2018

Act Summary

January 2019



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January 2019

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Paper Overview:

The Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 received Royal Assent on 24 January 2018.

The Act abolished the Right to Buy (including the Preserved Right to Buy and Extended Right to Buy) and the Right to Acquire in Wales on 26 January 2019. The Welsh Government's stated purpose of the Act is to safeguard Wales' social housing stock for people who are unable to acquire homes through the housing market. It considered that this approach was 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 Explanatory Memorandum that accompanied the Bill, the Welsh Government published two research studies and a range of impact assessments. These are all available on the Welsh Government's website.

This briefing highlights amendments made at each stage of scrutiny. References to the Explanatory Memorandum are to the version revised after Stage 2.



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This briefing is intended to be read in conjunction with the Stage 1 Report (PDF, 4.81MB) from the Equality, Local Government and Communities Committee. The **Constitutional and Legislative Affairs Committee** (PDF, 898KB) and **Finance Committee** (PDF, 776KB) also laid reports at Stage 1.

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 the following day, 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 Bill and Explanatory Memorandum, the Welsh Government also published:

- a statement of policy intent which outlines the policy intent of the powers delegated to Welsh Ministers within the Act;
- 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 Act's homepage on the Assembly's **website**. The research reports and impact assessments are available on the Welsh Government's **website**.

Policy background

RTB was simultaneously 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.

Around 140,000 properties in Wales were 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.

Since 1980, when RTB was introduced, the **total social housing stock** fell from over 300,000 to around 230,000 in 2018. The Explanatory Memorandum notes in paragraph 3.13 that 45% of the social housing stock **in 1981 has been sold under RTB**.

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. There is clearly high demand for social housing. Social housing waiting list information is not collected centrally in Wales, but Welsh Government commissioned **research** (PDF, 1.7MB) (published in 2015) suggested that between 3,500 and 5,000 homes were needed in the "social sector" each year. 'Social sector' in this instance 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 2,316 additional affordable homes were 'delivered' in 2017-18 across Wales, largely by housing associations. 'Delivered' means that the unit is completed and is available for occupation. The Welsh Government updated its **estimates of housing need** in January 2019.

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 there for a number of years. Assuming tenants would have also stayed in the same property had they not bought their home, the property would not have been available for re-letting even if they had not exercised their RTB. However, there will be an impact on re-lets at some point in the future if that stock is not replaced as the property will be lost to the social housing stock as soon as it is sold. There has been some **research** (PDF 61KB) 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 15 years or more.

Although RTB has generated significant capital receipts, local authorities were not able to invest all of those funds into new housing. Further detail is in part 6 of this briefing. However, it is clear that the RTB 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 part 5 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 in future 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.

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 even though the social housing stock was under pressure, properties were continuing to be purchased through RTB/RTA. The purpose of the proposals in the paper were 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 RTB and RTA, 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 RTB and RTA in specific Local Authority areas

Comments **opposed** to the proposals included:

- It was felt removing RTB/RTA 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 RTB 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 RTB 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 RTB/RTA;
- 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.

Human Rights considerations

As set out in part 2 of this briefing, sections 2 and 4 of the Act prevented tenants from exercising their RTB or RTA on a dwelling which was regarded as new social housing stock. Section 6 abolished these rights completely. These provisions deprived individuals of the opportunity to exercise their RTB or RTA. Any provision that deprives an individual of their property will engage Article 1 of Protocol 1 to the European Convention on 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.

Financial costs and benefits

The Finance Committee considered the 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 proposals in the Bill under various scenarios. The scenario that reflects the provisions in the Act is option 5.

2. Overview of the Act's provisions

The primary purpose of the Act is to protect social housing stock by removing the obligation on social landlords to sell their properties under the RTB and RTA. The Act abolished both schemes in a graduated way: firstly, by restricting the rights of tenants to purchase any houses that were new to the social housing stock (this commenced 2 months after Royal Assent) and then, on 26 January 2019, abolishing those rights completely. The Act also contains provisions to ensure that tenants, and prospective tenants were made aware of the changes.

Section by section guide to the Act as passed by the Assembly

The Act 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 Act. It was amended at stage 2 of scrutiny to reflect the amendment made to Section 8 which adds to the list of bodies to which the 'information for tenants' document must be sent;
- Sections 2 to 5 of the Act are described as restricting the right of tenants to buy homes. However, in reality, they removed those rights, where the home in question was regarded as a new addition to the stock of social housing. The Act provided for exceptions to those "restrictions" – i.e. circumstances in which the RTB/RTA could still be exercised, until full abolition. These exceptions included instances where the tenant had no real choice about moving to the dwelling in question because a court order had been made and the court had identified the new home as suitable alternative accommodation. Sections 2 to 5 were repealed on 26 January 2019 by Section 6.
- Section 6 of the Act then wholly abolished the right of tenants to exercise the RTB or RTA. This section repealed 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 repealed 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 was to be at least 12 months following the day on which the Bill received Royal Assent. Article 2 of the *Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Commencement and Saving Provisions) Order 2018*

appointed 26 January 2019 as the day Sections 6 and 7 of the Act come into force. This meant that tenants had 12 months to exercise their RTB or RTA following Royal Assent.

- Section 7 removed the power of Welsh Ministers to make grants to registered social landlords (housing associations) 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 in Wales for a number of years. In a similar way 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. Again, the appointed day is 26 January 2019. However, Article 4 of the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Commencement and Saving Provisions) Order 2018 makes saving provisions to preserve the effect of section 21 of the Housing Act 1996 in relation to any disposals made before 26 January 2019.
- Section 8 of the Act placed a duty on Welsh Ministers to publish information to help tenants understand the effect of the Bill and the time limits that will apply to them if they wish to exercise their RTB or RTA. It was subject to a number of amendments at stages 2 and 3. This information had to be published within one month of the Act receiving Royal Assent. The Welsh Ministers had to take all reasonable steps to provide this information to all qualifying landlords. In turn, all landlords had to provide all of their relevant tenants with any of the information that they considered relevant, within two months of this section coming into force or, if earlier, within one month of receiving the information. Both the Welsh Government and individual landlords had to publish the information (or, in the case of landlords, such information as it considered relevant) on their websites. The information provided had to include the dates on which the RTB and RTA would cease to be exercisable in relation to dwellings new to the social housing stock and the date on which RTB and RTA would be abolished.
- Landlords had to ensure that they provided the information to tenants, and prospective tenants, in the most appropriate manner having regard to their particular needs and characteristics.
- Welsh Ministers also had to provide bodies representing tenants and other relevant organisations with a copy of the information for tenants document. The information was made available on the Welsh Government’s [website](#).

- 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 Act. It is notable that consequential amendments to the Housing Act 1985 were not included in the Act’s schedule. The Housing Act 1985 repeals and amendments are not included on the face of the Bill because of the forthcoming implementation of the Renting Homes (Wales) Act 2016. The Welsh Government’s [Statement of Policy Intent](#) (PDF, 444KB) which was published when the Bill was introduced, provides further explanation:
 - ... amendments to the Housing Act 1985 are to be made by secondary legislation to allow flexibility for the timing of such amendments, in light of the interaction between the implementation of this Bill and of the Renting Homes (Wales) Act 2016. A draft of the consequential amendments required to the Housing Act 1985 will be made available to the committee. Transitional, saving and consequential elements are designed to cater for the process removing the right to buy and right to acquire in Wales so that the new law operates as intended.
- The consequential amendments to the Housing Act 1985 were made in the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Consequential Amendments and Savings Provisions) Regulations 2019. These Regulations were approved by the Assembly on 22 January 2019.
- Section 10 is a standard section, which says that Regulations made under this Act 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 (24 January 2018). Sections 2 to 5 came into force 2 months after Royal Assent. Section 6 and 7 were to be brought into force by order but cannot be brought into force sooner than 12 months after the Act receives Royal Assent.
- Section 12 provides that the Act’s short title is “the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018.”

Stage 2 amendments

- **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** (PDF, 4.81MB) 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 amendments

Stage 3 consideration and disposal of amendments took place in plenary on 28 November 2017.

Amendments 15 and 16 were the only ones that were agreed at Stage 3. They amended Section 8. These amendments related to information for tenants and prospective tenants and the requirements placed on landlords. In moving the amendments tabled in the name of Bethan Jenkins AM (Plaid), Sian Gwenllian AM (Plaid) noted they:

...reflect the need for information about the Bill to be provided in an accessible manner that reflects recommendation 4 made by the equality committee, which looked at this. We’ve worked with the Government on these amendments, and these are necessary in order to ensure that communication with tenants happens in an acceptable manner.

Amendments 15 and 16 were both agreed without a vote. All other amendments were either not moved, fell, withdrawn or not agreed.

3. Right to Buy and associated rights

The RTB, and the associated rights covered by the Act, allowed tenants to buy their home at a discount providing they met the qualifying criteria for each scheme. A brief overview of those criteria, and the main restrictions, is provided below. Any application to exercise RTB, and associated rights, made prior to 26 January 2019 will still be processed by virtue of Article 3 of the *Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Commencement and Saving Provisions) Order 2018* even though the RTB legislation does not otherwise apply in Wales. Article 3 of the 2018 Order will also ensure that other duties, such as the requirement to repay a discount in certain circumstances will continue to apply. Regulation 5 of the *Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Consequential Amendments and Savings Provisions) Regulations 2019* makes similar saving provisions.

The Right to Buy

RTB was introduced in 1980. RTB gave qualifying secure tenants the statutory right to purchase 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. Some properties were exempt from RTB, and the tenant also had to 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 affected housing association tenants whose home previously belonged to a local authority. These tenants are also likely to have had the RTA.

If a tenant had become an assured tenant of a housing association following a large scale voluntary transfer (usually referred to as stock transfer) their RTB under the *Housing Act 1985* would have been preserved, even though they no longer had a secure tenancy. This was 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 prevalent in the private rented sector, which provide little security of tenure. Most housing association tenants will have assured tenancies.

The Extended Right to Buy

The Extended Right to Buy extended the RTB to a property where there is more than one interest. In addition to the interest of the landlord, there must have been an interest belonging to another public-sector body. This could have been 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 had the RTA if certain conditions were met. RTA was based on the RTB, 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 were exempt from the RTA.

Other qualifying conditions that the tenant must meet were the same as those that apply to the RTB. While maximum cash discounts under RTA and RTB were the same (£8,000 immediately prior to abolition), RTB discounts were historically much higher. This made RTB far more attractive to tenants.

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

4. Incentives and restrictions

Discounts

Under RTB, 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 longer. The precise discount depended 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 some 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 three to two 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 was gradually reduced, and stood at £8,000 immediately prior to abolition.

The maximum cash discount available under the RTB was as high as £50,000 between 1989 and 1999. The maximum cash discounts for RTB 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 until 25 January 2019 the discount was £8,000.

The precise level of discount depended on how long the purchaser had been a public-sector tenant and whether the property was a house or a flat.

Restrictions in Rural areas

Tenants in certain rural areas could face restrictions when exercising RTB or, in the case of RTA, were not 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 applied 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 were able to 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. That restriction meant that the property could only be sold or let to a person who either lives or works in the local area. Alternatively, the landlord could have required that if the property was to be sold within 10 years, it was 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 was purchased under RTB or RTA and the owner subsequently wished to sell it within 10 years, it would first have to be offered to the property's former landlord, or to another social landlord in the area at full market value. This applied in all areas, not just rural areas, and it also applied to voluntary sales where a discount was given. This provision was introduced in 2005.

Types of dwelling exempt from the schemes

Exemptions were set out in Schedule 5 to the *Housing Act 1985*, and included, amongst others exemptions:

- Sheltered accommodation;
- Dwellings that had been adapted for use by disabled people were only exempt if the dwelling was one of a group of dwelling-houses which it was the practice of the landlord to let for occupation by physically disabled persons, and a social service or special facilities were 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 have had to pay back (there were some exemptions) an amount to their former landlord if they sold the property within five years of it being purchased. The precise amount to be repaid depended on how soon they sold 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 were exempt from the requirement to repay discount, e.g. transfers between certain family members. In addition, if a home owner would have faced hardship by having to repay the discount and their circumstances justified it, their former landlord could decide not to ask them to pay some or all of what they owe.

Suspension of the Right to Buy

Local authorities in Wales were able to ask the Welsh Government to issue a direction suspending the RTB, and what the *Housing (Wales) Measure 2011* calls 'related rights', for a period of up to five years. This could be extended so the maximum period of suspension would have been for 10 years. 'Related rights' is the term used in the 2011 Measure, although the term 'Associated Rights' is used in the Act. They mean the same.

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

In 2012 the Welsh Government issued **guidance** to local authorities on applications to suspend the RTB in their area.

Prior to submitting an application to suspend the RTB, 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' had been met. Local authorities were responsible for applying for suspensions, even if they had no housing stock of their own.

The 'housing pressure condition' was 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 RTB and related rights.

Stakeholders who must have been consulted (Section 2 of the 2011 Measure) included providers of social housing within the proposed area of the suspension, neighbouring local authorities and bodies representing the interests of tenants. The suspension could 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 seven suspensions that were approved covered all 'relevant dwelling houses' within each local authority's entire area. A 'relevant dwelling-house' was one where the landlord was a social housing provider and the tenant had the RTB, or a right related to the RTB (such as the Preserved Right to Buy and RTA). Directions suspending the RTB or related rights could subsequently be varied or revoked on application by the local authority. They could also be extended, but an extended direction could not have effect beyond a period of ten years from the date of the first direction.

Requests from tenants to exercise the RTB or related rights served on the landlord prior to the Welsh Government considering an application for a direction could proceed in the normal way. However, section 31 of the Measure provided that requests served on the landlord after the date on which the Welsh Government decided to consider the local housing authority's application for a direction should be 'stayed'.

If the Welsh Government had 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" would be lifted on the day after the end of that period.

RTB and related rights were suspended in 7 out of 22 local authority areas (Carmarthenshire, Swansea, Anglesey, Flintshire, Denbighshire, Cardiff and Powys) prior to it being abolished. Tenants in areas where a suspension was approved did not have a further opportunity to purchase their home. Tenants in other areas had to submit their application before RTB and related rights were abolished in order to proceed.

The Directions suspending the RTB and related rights were made in 2016, 2017 and 2018 and are all available to view on the Welsh Government's [website](#).

Voluntary sales

Voluntary sales by social landlords are still permitted. 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 RTB 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 RTB, RTA 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](#) (PDF, 344KB) 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. By October 2018, almost 8,000 properties had been purchased 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 (PRS). 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 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 also appear to have entered the PRS. This presents challenges for social landlords (as freeholders) contacting absent leaseholders to recover repair and maintenance costs.

Other issues

Financial difficulties

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 by former social housing tenants 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.

Mortgage lenders' views

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](#) (PDF, 2.4MB) 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.

Flats

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 published [guidance](#) for both landlords and tenants in this area to help resolve disputes.

Abuse of the scheme

In 2003, the House of Commons' **Select Committee overseeing the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions** found evidence that RTB had 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 was intended to address deferred resale agreements and means that if a tenant enters into such an agreement they would still have to repay their RTB discount. The Welsh Government's **guidance for tenants** (PDF 154KB), which was updated in March 2017, warned against these types of agreement and noted 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 meant capital receipts from RTB were generally not invested in new housing. Various restrictions on what proportion of receipts could be spent, and what they could be used for, were in place from the time 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 have included 75% of RTB receipts.

Registered Social Landlords

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

RSLs were required under the *Housing Act 1996* to maintain a *Disposals Proceeds Fund* for replacing properties sold under RTA.

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. In January 2019 it stood at £80,900 across England, except in London boroughs where it's £108,000. 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** (PDF, 785KB) 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](#) (PDF, 334KB) in 2012 and proposals to abolish it were contained in a housing Bill the following year. The [Policy Memorandum](#) (PDF, 1.93MB) 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

139,617 properties were purchased under the RTB (including the preserved and extended versions) between 1980 and March 2018. The peak in sales was in 1982-83, when 15,048 dwellings were purchased.

In 2017-18, the most recent year for which data is available, 213 dwellings were purchased.

RTA purchases

226 dwellings were purchased under the RTA between 1997 and March 2018. In 2017-18, 23 dwellings were purchased.

Non-statutory sales

14,628 properties were purchased from social landlords on a non-statutory basis between 1980 and March 2018. A total of 302 were purchased in 2017-18. This includes 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

- Davies, A.R. (2013), **'Right to Buy': The Development of a Conservative Housing Policy, 1945-1980** (PDF, 818KB)
- 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**
- Welsh Government (2017), **The Right to Acquire: A guide for tenants**
- Welsh Government (2017), **Your Right to Buy Your Home: A guide for tenants of social landlords in Wales** (PDF, 154KB)