

Agenda item no.

Board/Committee:	HOUSING BOARD
Date of meeting:	NOVEMBER 2005
Title:	RIGHT TO BUY STRATEGY
Author:	HEAD OF TECHNICAL SERVICES
Status:	FOR DECISION

Purpose

The Council operates the Right to Buy scheme for its tenants, whereby at present they are able to purchase their home after a two year period in a qualifying tenancy. The Housing Act 2004 makes changes to Right to Buy legislation, as part of the Government's drive to modernise the scheme. Most changes took effect from 18 January 2005. This report sets out the changes to the Right to Buy scheme brought about by the 2004 Act, along with a new Right to Buy Strategy, particularly to deal with early re-sales by RTB purchasers.

Recommendation

That the Housing Board:

- 1 Notes the changes to the Right to Buy legislation.
- 2 Adopts the new Right to Buy Strategy

1 Background

- 1.1 The Council operates the Right to Buy scheme for its tenants, in line with legislation that has been evolving since the 1950s. The Council's informal scheme began in 1970 and was subsequently amended in the light of the Housing Acts of 1980 (when the full Right to Buy scheme was introduced) and 1985. In September 2003, the Council decided to abolish the local scheme which gave tenants the Right to Buy after only one year in a qualifying tenancy, rather than after two years as was the norm elsewhere and as was provided for in the legislation.
- 1.2 The current Right to Buy scheme allows secure tenants to buy the homes they rent from their local authority landlord at a discount which starts, after a qualifying period, at 32% for houses and 44% for flats, rising by 1% a year (2% for flats) to a maximum of 60% for houses and 70% for flats. However, this is subject to an over-riding cap on discount that varies between regions. If a buyer resells the property within a given period following the exercise of their Right to Buy, they can be required to repay some or all of the discount they received.
- 1.3 The Housing Act 2004 makes changes to Right to Buy legislation, as part of the Government's drive to modernise the scheme. Most changes took effect from 18 January 2005.

2 Report

- 2.1 The Housing Act 2004 has introduced changes to tackle profiteering and to lessen the impact of Right to Buy sales on the availability of affordable housing. The changes to the Right to Buy scheme are set out below (unless otherwise stated,

they will only affect tenants who apply for the Right to Buy on or after 18 January 2005). A commentary on the reasons and/or likely impact is included in italics below each change.

- 2.2 **The initial qualification period is extended from two years to five years for new tenancies that begin on or after 18 January 2005.** *This will not affect tenants whose tenancies began prior to 18 January 2005, nor those who transferred a long-standing tenancy after this date to a different property. Tenants will qualify for the same amount of discount as they would have under the previous rules – ie, after the five years, discount will commence at 35% for a house and 50% for a flat, as opposed to 32% and 44% respectively.*
- 2.3 **The discount repayment period is extended from three years to five years.** *Prior to this, former tenants would have only had to pay back the discount if they had sold within 3 years of purchase. This revision will force purchasers to repay their RTB discount to the Council, on a sliding scale. The current repayment taper of 100/66/33 per cent will be changed to 100/80/60/40/20 per cent.*
- 2.4 **The amount of discount to be repaid if a property is resold within five years will be a percentage of the market value of the property when it is resold, disregarding the value of improvements made by the owner of the property.** *The repayment of discount was previously based upon the discount received at the time that the tenant bought the property from their landlord, reduced by the taper referred to in 2.3 above, rather than the market value.*
- 2.5 **Landlords are given the discretion not to demand that former tenants should repay all or part of the discount they received in certain circumstances.** *This is designed to address cases where repayment could involve genuine hardship. Government guidance asserts that this power will only be used in exceptional circumstances.*
- 2.5.1 The Housing Act 2004 gives local authorities the discretion to waive part or the whole of the repayment of discount received on a Right to Buy sale in certain circumstances. Additional guidance has now been issued by the Office of the Deputy Prime Minister on how to manage applications by former tenants selling their homes within the discount period for the Council to waive its discount repayment entitlement. It offers guidance as to when it might be appropriate to exercise discretion not to demand repayment of the discount. The guidance was issued in January 2005.
- 2.5.2 The guidance sets out firstly when, in the Government's view, it may be appropriate for local authorities to use its powers. It clearly states that it is for each landlord to decide, but that use of such discretion would normally only be justified in certain circumstances, as follows:

Criteria

- Cases of extreme personal hardship;
- Cases where there is a demonstrable threat of violence to family members, especially children;
- Relationship breakdowns involving threatened domestic violence;
- Racial, faith, homophobic or other harassment;
- Extreme anti-social behaviour, such as persistent drug dealing nearby;

- The onset of a severe medical condition or deterioration of an existing condition requiring a move on medical grounds;
- Where a move is essential to take up an offer of employment in another area after long-term unemployment or redundancy where there is little likelihood of finding work nearby;

Where there has been a traumatic personal event, such as a bereavement, which makes a move necessary on emotional or psychological grounds.

- 2.5.3 In every case, it will be necessary to establish the criterion in question and that a move could not take place unless part or all of the repayable discount is waived. It is clear that the discretion should only be used in exceptional circumstances.
- 2.5.4 Landlords need to have in place procedures for considering and deciding upon requests, and must be open, fair and transparent in their decision-making, as decisions may be the subject of judicial review and/or scrutiny by the Ombudsman. Decisions should also be cleared with the local authority's auditors.
- 2.5.5 The guidance continues to provide that it is for individual landlords to decide how to manage such matters, whether it is by way of written representations or a formal hearing. Evidence to cover the ground put forward by the applicant should be produced, such as from the Police., the employer of the applicant or their doctor or psychiatrist.
- 2.5.6 It is envisaged that landlords will only exercise their discretion where the applicant cannot afford to repay part or all of the original discount.
- 2.5.7 The Council will only use its discretion in exceptional circumstances. Please refer to the attached Right to Buy Strategy, which includes a suggested policy setting out how the Council's discretion should be exercised and managed.
- 2.6 **Landlords are allowed to suspend or exempt dwellings scheduled for demolition from the Right to Buy, to tackle the windfall profits now available to Right to Buy tenants living in areas where regeneration schemes are planned (but will not apply if the RTB application was made before 18 January 2005).** *The Council already exercises an intention to demolish procedure on properties where the tenant has applied for the RTB, and has done so recently to deter a sale.*
- 2.7 **Tenants who agree during the discount repayment period to sell their home to a third party at a later date must repay some or all of their discount as if they had actually sold their home at the time of the agreement. Tenants who applied for the Right to Buy before 18 January 2005 will be affected if the agreement to sell to a third party is made after that date.** *Only one Gosport tenant has made such an arrangement with an investment company, and it did not have a satisfactory outcome for him.*
- 2.8 **Owners who wish to resell their home within 10 years of it having been sold under the Right to Buy must first offer it at market value to a local social landlord (the local authority or RSL). Regulations providing for procedures and timescales will be laid before Parliament shortly.** *This change will provide the Council and other approved bodies (mainly registered social landlords) with a*

period of several weeks in which to exercise the right of first refusal to purchase an RTB property. Further details will be reported when the regulations are made, and a suggested policy will be referred for approval by Members.

- 2.9 **Landlords can serve a notice after 3 months requiring a tenant to complete their Right to Buy purchase; at present they may only do so after 12 months.** *This will prevent speculative applications and subsequent valuations (which are in effect frozen for up to 18 months) which the applicant does nothing to take forwards, and which can result in eventual completions at values far below a true current market price.*
- 2.10 **Landlords must give their secure tenants information on the costs and responsibilities of home ownership – this applies to all secure tenants, whether they have applied for the Right to Buy or not. An Order specifying the matters on which information must be given will be laid before Parliament shortly.** *This creates an obligation on the Council to periodically advise all tenants about the real impact – both positive and negative – of home ownership. Currently, the Council provides very limited information to tenants on the Right to Buy. Improved information will be made available through the Council’s website as well as through newsletters and other publications.*
- 2.11 **Tenants will no longer be able to apply for the Rent to Mortgage scheme after 17 July 2005.** *This is a scheme which has been taken up by only a handful of tenants across the whole country since it was introduced in the early 1990s. It is most unlikely therefore that its loss will be noticed by any Council tenants.*
- 2.12 **Jurisdiction in respect of appeals by tenants against being denied the Right to Buy on the grounds that their homes are particularly suitable for occupation by elderly persons transfers from the Secretary of State to the Residential Property Tribunal Service on 4 July 2005.** *The Council has very few appeals in this respect.*
- 2.13 Members will note that these revisions are quite extensive. Their overall impact may be to suppress demand for the Right to Buy, which is already significantly lower than in recent years.
- 2.14 The 2004 Act also introduces, from January 2007, compulsory Home Information Packs (commonly known as Sellers’ Packs). Home owners will be required to have a Home Information Pack when marketing their home for sale, and to make a copy of this available to prospective buyers on request. The scheme is not intended to operate in the sale of tenanted properties where the home is not offered with vacant possession, and for this reason Right to Buy sales are excluded. However, the Government will be consulting local authorities and other social landlords on the possibility of extending the benefits of Home Information Packs to these types of sale.
- 2.15 A Right to Buy Strategy has been devised which sets out how the Council aims to manage the Right to Buy. This is set out in the appendix to this report.

3 **Risk assessment**

- 3.1 It is not felt that the revised legislation will create any additional risk for the Council. Any income lost through reduced RTB sales is more than offset by the retention of units of rented accommodation for the use of future generations of local people.

4 **Conclusion**

- 4.1 Recent legislative changes to the Right to Buy will have an impact upon both the Council, in its role of processing RTB applications, and its tenants, who may be considering whether to purchase their home under the Right to Buy. The approval of the Board is sought for the Housing Services Manager to implement these changes.

Financial implications:	
Legal implications:	The Borough Solicitor has had direct input to this report.
Service Improvement Plan implications:	None
Corporate Plan	None
Risk Assessment	Low
Background papers:	None
Appendices/Enclosures:	Housing Strategy
Report author/Lead Officer:	Clive Milone – Head of Technical Services

GOSPORT BOROUGH COUNCIL

RIGHT TO BUY STRATEGY

1 Introduction

- 1.1 The Council operates the Right to Buy scheme for its secure social housing tenants who wish to purchase their homes. It follows legislation which sets out how the scheme is to operate, as well as guidance used by the Office of the Deputy Prime Minister.
- 1.2 The processing of applications and management of the Right to Buy scheme is carried out by Housing Services.

2 Strategy

- 2.1 The Council aims to meet all relevant statutory guidelines in processing Right to Buy applications and managing the scheme.
- 2.2 An improved leaflet will be devised for tenants contemplating the Right to Buy, which will set out the process of buying a home, along with clear information on the costs and responsibilities of home ownership. The scheme will be regularly brought to the attention of tenants through the tenant newsletter and the Council's website will be enhanced to provide essential information about the scheme.
- 2.3 A service standard will be devised by 31 December 2005 which will set out how the Council will process and manage Right to Buy applications.
- 2.5 A report will be provided to Housing Board in May every year setting out the number and value of Right to Buy sales in the previous financial year.

3 Repayment of discount: the use of discretionary powers

- 3.1 The Council will deal with applications to waive the repayment of discount in the following way:
 - Applications should be sent or passed to the Housing Services Manager in the first instance;
 - If not already provided with the original application, further supporting evidence will be requested from the applicant, such as medical reports and financial details to confirm whether or not the applicant can afford to repay the whole or part of the discount themselves;
 - The Council's auditor will be consulted;
 - The Housing Services Manager will consider the matter, taking into account the evidence offered by the applicant and any advice received from the auditor, reach a decision and notify the applicant;
 - The possibility of an appeal will be included in the written determination sent by the Housing Services Manager to the applicant;
 - Appeal will be to the Chief Executive, whose decision shall be final;
 - Legal advice can be requested at any stage of the process if considered appropriate.

