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Extending the Right to Buy (England)

By Wendy Wilson
Alex Bate

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Summary

The statutory Right to Buy (RTB) was introduced in October 1980. To date, just under 2 million council properties in England have been sold. As a general rule, assured tenants of housing associations (aside from those who were previously secure council tenants with a 'preserved' RTB) do not have the RTB on the same terms as council tenants.

The Conservative Party's 2015 Manifesto contained a commitment to "extend the Right to Buy to tenants in Housing Associations to enable more people to buy a home of their own." Subsequently, the 2015 Queen's Speech announced that a *Housing Bill* would be introduced to "dramatically extend the Right to Buy to the tenants of Housing Associations – putting home ownership within the reach of 1.3 million more families."

While welcomed by housing association tenants who have long sought the RTB, the measure is controversial and has generated strong reactions from social landlords. Local authorities are concerned that the measure will be paid for, in part, by the sale of their most valuable (vacant) stock. Commentators have questioned whether the rate of sales of vacant council stock will track the take-up rate of the extended RTB. Housing associations have questioned the legitimacy of legislating to allow the sale of assets owned by charities/not-for-profit companies.

The Government has said that the properties sold will be replaced on a one-for one basis; however, this has raised questions around how replacement will be financed; the timing of replacement (there will always be a time-lag); and where the replacements will be built. Comparisons have been drawn with the existing commitment to replace properties sold since the discount levels were increased in 2012. RTB sales increased from 2,638 in 2011/12 to 11,261 in 2013/14 while the total number of dwelling started on site since 2012/13 (up to the third quarter of 2014/15) was 2,712. The replacement properties are let at affordable rent levels of up to 80% of market rents and there is no requirement for the replacement properties to be built in the same area.

1. Right to Buy: background

1.1 RTB timeline

The 1979 Conservative manifesto included the following commitment:

> In the first session of the next Parliament we shall therefore give council and new town tenants the legal right to buy their homes, while recognising the special circumstances of rural areas and sheltered housing for the elderly. Subject to safeguards over resale, the terms we propose would allow a discount on market values reflecting the fact that council tenants effectively have security of tenure. Our discounts will range from 33 per cent after three years, rising with length of tenancy to a maximum of 50 per cent after twenty years.[1]

This commitment was implemented by the ***Housing Act 1980;*** the statutory Right to Buy came into effect on 3 October 1980. Successive Conservative Governments then made several changes to extend eligibility and amend the discounts available.

Housing and Building Control Act 1984: Right to Buy extended to leasehold property; minimum qualification period reduced from 3 to 2 years; maximum discount increased to 60% after thirty years.

Housing Act 1985: Consolidating act. Right to Buy legislation is found in this Act (as amended).

Housing and Planning Act 1986: Discounts for flats of minimum 44% up to 70% after 15 years introduced; preserved Right to Buy introduced (applies to council tenants following a large scale voluntary transfer of the landlord's stock to a housing association)

Housing Act 1988: 'Delay notices' introduced to compensate tenants whose landlords delayed in implementing the policy; cost floor for discount limited to properties less than 8 years old.

Local Government and Housing Act 1989: Required local authorities to reserve 75% of capital receipts from RTB sales for debt redemption.

Leasehold Reform, Housing and Urban Development Act 1993: Abolition of the rights: to a local authority mortgage, to defer completion at a fixed purchase price and to a shared ownership lease.

Housing Act 1996: Right to Acquire for housing association tenants introduced. Tenants qualify after 2 years but to much lower discount levels than under the Right to Buy. Only applies to properties built with Social Housing Grant after April 1997.

The Labour Government came to power in 1997 supportive of the principle of Right to Buy, although a series of measures reduced its scope and at the same time made it easier for authorities to reinvest capital receipts raised for investment in housing:

Local Government Finance (Supplementary Credit Approvals) Act 1997: Allowed set-aside capital receipts to be taken into account when

[1] Margaret Thatcher Foundation, *Conservative General Election Manifesto 1979*

issuing Supplementary Credit Approvals to local authorities. This enabled the phased release of reserved capital receipts.

Statutory Instrument 1998/2997: Introduced regional maximum discounts for new claims, from £22,000 in the North East to £38,000 in London;[2] increased cost floor from 8 to 10 years.

Statutory Instrument 2003/498: Reduced the maximum discount in some London, Eastern and South Eastern boroughs to £16,000.

Local Government Act 2003: Allowed local authorities to use some capital receipts to buy back RTB properties, after which 75% was returned to the Treasury.

Housing Act 2004: Increased qualifying period from 2 to 5 years; gave a right to refuse RTB to tenant with an ASBO; introduced right of first refusal (local authority can buy back RTB on market within 10 years); exemption from RTB for properties set to be demolished; small increase of minimum discount for houses and flats; extended the repayment of discount period to 5 years.

Statutory Instrument 2005/1735: Landlords required to provide certain information on RTB to tenants.

The 2010 Government set out its intention to 'reinvigorate' the Right to Buy in a 2011 consultation document, which was followed by a number of legislative and policy changes:

Statutory Instrument 2012/734: Reintroduced a national maximum discount at an increased level of £75,000; increased cost floor from 10 to 15 years.

This was accompanied by a commitment to 'one-for-one' replacement (at a national level) of all additional homes sold as a result of the increased maximum discount.

Statutory Instrument 2013/677: Increased maximum discount in London to £100,000.[3]

Autumn Statement 2013: Announced the introduction of Right to Buy Agents; £100m fund to increase access to mortgage finance for RTB applicants.

Statutory Instrument 2014/1915: Maximum percentage discount increased to 70%.

Deregulation Act 2015: Reduced qualifying period for RTB from 5 to 3 years with effect from 26 May 2015.

2015 Conservative manifesto: Committed to extend the Right to Buy to housing association tenants.

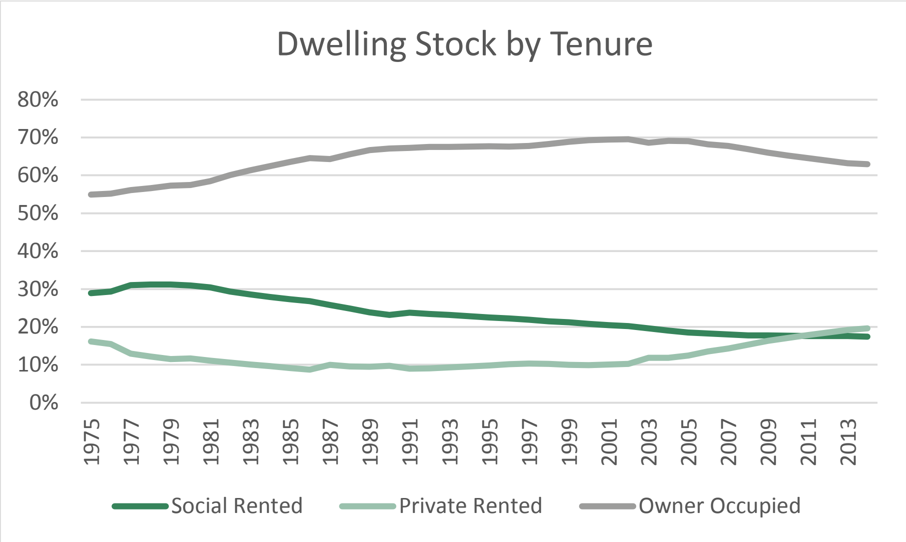
While the Government has taken action to reinvigorate the RTB in England, the Scottish and Welsh Governments have sought to curtail it

[2] A national maximum discount of £50,000 had applied prior to this change.
[3] SI 2014/1378 increases the maximum discount annually in line with the Consumer Price Index

– more information can be found in Library Briefing 07174, Comparing the Right to Buy in England, Scotland, Wales and Northern Ireland.

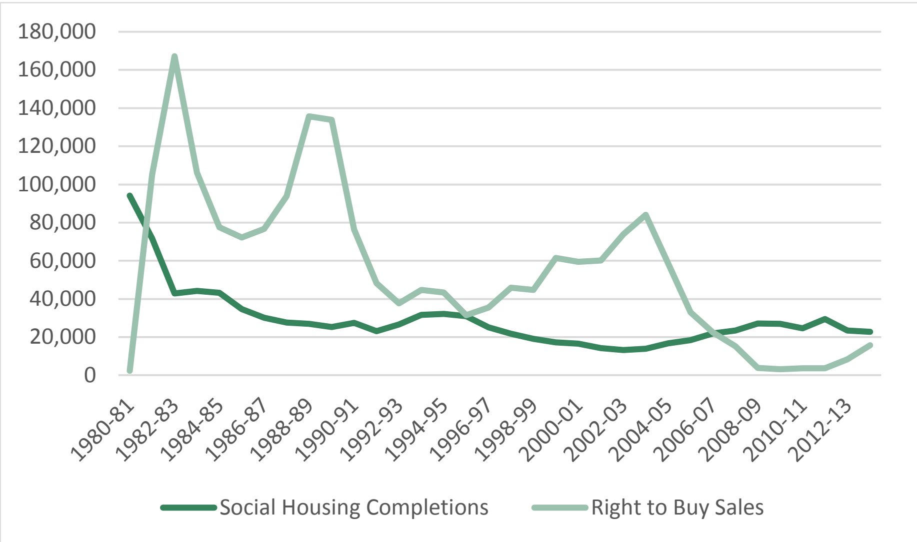
1.2 Data on RTB sales

Right to Buy has had a significant impact on the mix of tenures in England. At the time of its introduction in 1980 owner occupation was at 57%; it subsequently rose to a high of 70% in 2002:



Source: DCLG live table 104

The rise in owner occupation has largely been at the expense of social rented housing, which fell from 31% of the housing stock to 17% between 1980 and 2014. One of the major criticisms of the Right to Buy is that the dwellings sold have not been replaced:

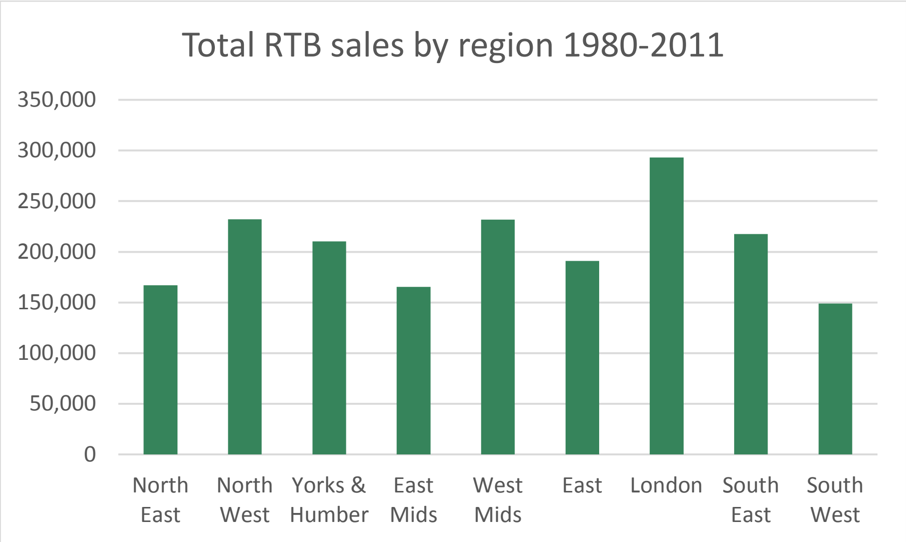


Source: DCLG live tables 209 & 671

Since the introduction of the one-to-one replacement policy, the number of local authority social housing starts funded by Right to Buy receipts are:

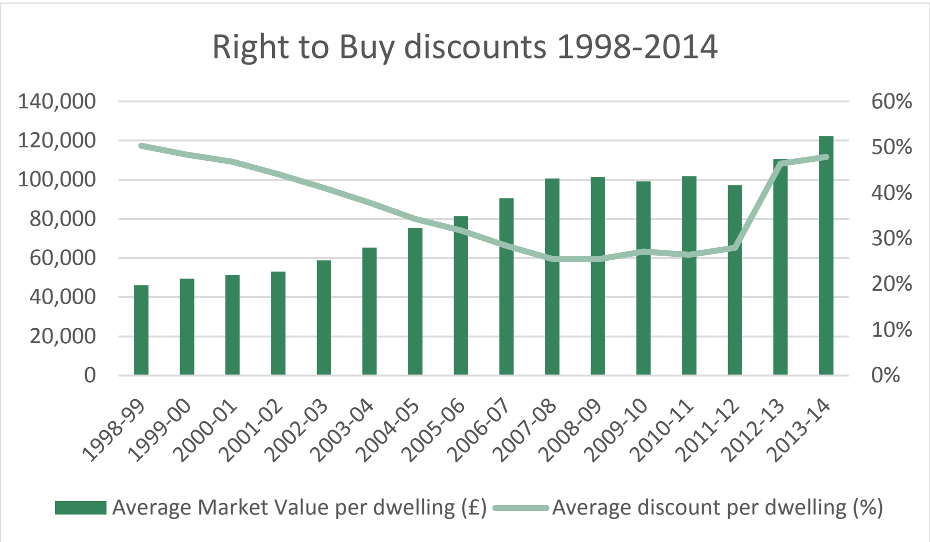
2012-13	2013-14	2014-15[4]
473	961	1278

Overall, the RTB resulted in the sale of 1.9 million council properties between1980-2011, with large sales across all English regions. The highest number of sales took place in London, 293,000, and the lowest number in the South West, 149,000:[5]



Source: DCLG live tables 670 & 675

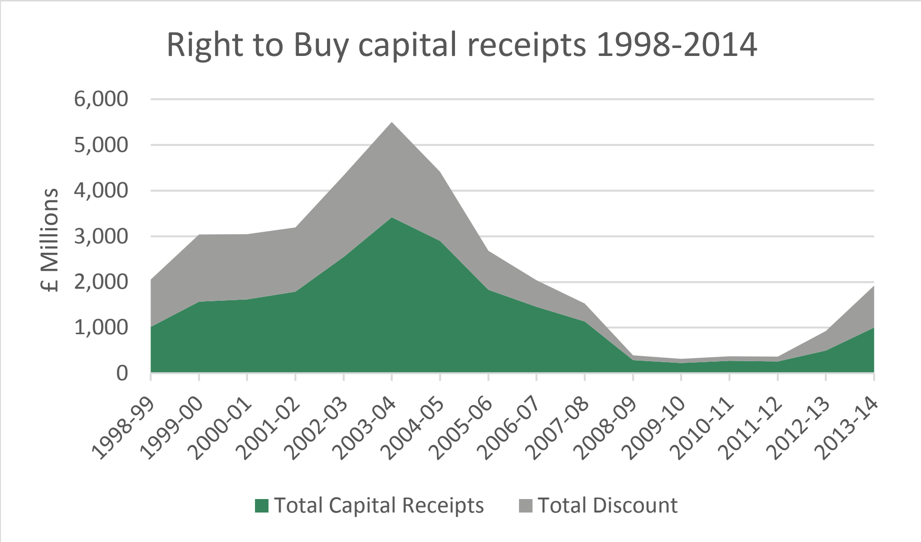
The introduction of regional discount caps in 1998 saw a significant decrease in discounts as a percentage of market value. The average discount reached a low of 25% in 2008-09. After the 2010 Government's removal of the regional caps and the increase in the maximum discount, the average discount rose to 48% in 2013-14.



Source: DCLG live table 682

4 2014-15 is for Q1-Q3 only, source: DCLG live table 693
5 Statistics at a regional level were not recorded after 2010-11

Although the decrease in percentage discount saw local authorities retain a larger proportion of capital receipts, declining Right to Buy sales from 2004 saw much smaller overall capital receipts. These began to increase following the 2010 Government's reforms, albeit with local authorities retaining a smaller proportion:



Source: DCLG live table 682

1.3 Replacing the stock

The single most contentious aspect of the RTB has been the failure to replace the sold stock. By the end of June 1996 around 1.6 million council homes had been sold in the UK generating, at that point, some £28 billion in capital receipts.[6] The RTB has raised more than any other Government privatisation initiative.[7]

There was no commitment to replace the sold homes when the statutory RTB was introduced in 1980. Restrictions were placed on the use of capital receipts raised from sales from the scheme's inception. Prior to April 1990, the Government's intention was to limit authorities to using only 20% of receipts raised from sales. However, the ability of authorities to 'cascade' receipts from year to year, together with the application of restrictions to only to 'prescribed expenditure' meant that local authority expenditure and debt exceeded the Government's intended levels; in response, more stringent controls were introduced in April 1990.

After 1 April 1990, under section 59 of the *Local Government and Housing Act* 1989, local authorities were required to set-aside 75% of receipts raised from the sale of council houses.[8] These receipts were could only be used, unless an authority became debt-free, to redeem debts or pay off credit agreements.[9] The remaining 25% of 'useable receipts' could be used at any time to finance capital expenditure on

6 Sums received by local authorities when they sell property, such as land and buildings.
7 Chartered Institute of Housing (CIH), Boosting Housing Investment Through Capital Receipts, June 1996, para 204
8 Aside from occasions on which the rules were relaxed.
9 Section 64 of the 1989 Act.

any aspect of local authority services. Useable receipts could also be set aside as provision for credit liabilities.

By the late 1980s local authority housing investment was running at £4-5 billion per annum; it had reached its peak of £12 billion in 1974/75 (at 1994/95 prices). Local authorities and housing commentators actively campaigned for the lifting of restrictions on the re-use of capital receipts as a means of making up this 'shortfall' in housing investment. In response, the Conservative Governments of 1979-97 argued that if councils were allowed to spend all their receipts they would have to borrow again, ultimately resulting in increased public expenditure.

The April 1997 Labour Party Manifesto included a commitment to allow the phased release of housing capital receipts for reinvestment in new build and renovation. On 14 May 1997 the Queen's Speech included the following commitment:

> Measures will be introduced to enable capital receipts from the sale of council houses to be invested in housebuilding and renovation as part of my Government's determination to deal with homelessness and unemployment.

The *Local Government Finance (Supplementary Credit Approvals) Act 1997* allowed set-aside capital receipts to be taken into account when issuing Supplementary Credit Approvals to local authorities; this had previously been prohibited.[10] The Explanatory Memorandum to the Bill said the measure would "allow the controlled release of reserved receipts from the sale of council houses."

Subsequently, the capital receipts pooling mechanism was introduced by the *2003 Local Government Act* (and associated regulations) with effect from April 2004. Under this mechanism councils were required to pool 75% of the receipts raised from the sale of council houses. Housing authorities could use the remaining 25% of capital receipts for any capital purpose, including investment in new social housing. The pooled capital receipts were redistributed back to local authorities by Government to enhance capital spend according to need – there was no requirement that these receipts be spent on housing capital expenditure:

> RTB sales reduce public sector net borrowing and since receipts are cash and therefore interchangeable with all other capital receipts, they are not hypothecated to any particular spending at any particular time.[11]

On 30 June 2009 the then Housing Minister, John Healey, announced:

> …from today we will exclude all new-build council housing from the HRA subsidy system which means that councils will retain in full the rent and capital receipts from these homes.[12]

10 A credit approval permits an authority to pay for capital expenditure using credit, rather than cash. Credit compromises borrowing and credit arrangements, e.g. leasing. Basic Credit Approvals can be used in relation to any kind of capital expenditure whereas a Supplementary Credit Approval can only be used for capital expenditure of the kind specified in the approval.

11 HC Deb 21 February 2008 c906-7W

12 HC Deb 30 June 2009 WS14

The *2011 Localism Act* provided for the abolition of the Housing Revenue deficit subsidy system with effect from April 2012. At this point local housing authorities in England moved to a self-financing regime following a one-off redistribution of 'debt' between local authorities. The self-financing settlement included an assumed annual receipt from RTB sales. Some authorities (136) took on more debt while others had their debt levels reduced or they became/remained debt free.[13] Under this system capital receipts raised from the sale of council homes is split between the Government and the local authority.[14] The split was initially set at 75/25% but is now 70/30%.

When the Coalition Government made changes to the maximum RTB discounts in order to 'reinvigorate' the RTB, a different approach to the treatment of receipts raised over and above those already assumed in the self-financing settlement was adopted. This approach is explained in the following section.

One-for-one replacement since 2012

Alongside the commitment to 'reinvigorate' the RTB by increasing the discount levels, the Government also committed to one-for-one replacement of the sold properties. It was recognised that RTB receipts would need to be supplemented by borrowing, provider contributions in the form of land, or other funding in order to achieve one-for-one replacement.

Following a consultation exercise on the proposed process for the replacement mechanism,[15] the Government published guidance for local authorities:

> Local authorities will be able to retain the receipts for replacement housing – provided they can sign up to an agreement with Government that they will limit the use of the net Right to Buy receipts to 30% of the cost of the replacement homes. The way this will work is explained in a bit more detail below.
>
> After discussion with local government, the Government has decided that receipts from Right to Buy sales will in future be applied as follows:
>
> - the council may deduct certain costs, namely: an amount to cover the housing debt supportable from the income on the additional Right to Buy sales; transaction and administration costs; and an amount which reflects the income the council might reasonably have expected from Right to Buy sales prior to the new scheme;
>
> - the council must also pay the Government an amount which reflects the income which the Treasury expected from Right to Buy sales prior to the new scheme;

13 The debt settlement was intended to allow each council, from rental income, to manage and maintain its stock in a good state of repair for 30 years, or replace it where necessary, with enough left over to meet debt interest and repay the debt over the same period.

14 Labour's model for self-financing had proposed that councils would retain 100% of their capital receipts and interest derived from investing the receipts.

15 DCLG, [Reinvigorating the Right to Buy and one for one replacement](), December 2011

- once these costs are deducted, the remaining receipts (the 'net receipts') are available to fund (and must be applied to) replacement affordable rented homes.

> The Government expects that, if it were to retain the net receipts from Right to Buy sales, it would be able to provide – at a national level - one-for-one replacement affordable rented homes, while restricting the contribution made from the net Right to Buy receipts to 30% of the cost of the replacement homes. Where a local authority is satisfied that it can match this rate (in other words, apply the remaining receipt to new affordable rented housing, while restricting the contribution made from the net Right to Buy receipts to 30% of the cost of the replacement homes), the Government will be prepared to enter into an Agreement that the authority may retain the remaining receipts. We will publish further details of the way in which this will operate shortly. Where authorities do not wish to enter into such an Agreement, the remaining receipt will be returned to the Department for Communities and Local Government, and re-distributed for new affordable rented housing by the Homes and Communities Agency (or, in London, the Greater London Authority).[16]

Replacement of the sold properties is at a national level and the new properties built are let at affordable rents of up to 80% of market rents, as opposed to social rent levels of around 50% of market rents.

When the Government announced its preferred delivery model for replacing sold properties, commentators expressed doubts as to whether the model would actually deliver one-for-one replacement. Their concerns focused on:

- Whether sales would generate sufficient capital receipts to replace the sold homes, particularly in low value areas.
- Whether the borrowing caps placed on local authorities (as part of the April 2012 self-financing settlement) would impede their ability to find the additional funding needed to supplement the capital receipts raised.
- Whether one-for-one meant like-for-like, i.e. could a 3 bed home be replaced with a one bed flat?
- There were tensions between those seeking a localist solution to replacing sold properties and those who argued for national pooling of receipts.

RTB sales have certainly increased as a result of the Government's measures (up from 2,638 in 2011/12 to 11,261 in 2013/14[17]) but, to date, one-for-one replacement of the sold properties has not kept track:

> There were 414 dwellings started on site or were acquired in 2014-15 Q3, bringing the total since 2012-13 Q1 to 2,712 dwellings. Reported starts on site and acquisitions are increasing over time, which is likely to be primarily caused by the time lag in building or acquiring houses.[18]

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16 DCLG, Reinvigorating the Right to Buy and one for one replacement: information for local authorities, March 2012
17 DCLG, Right to Buy Sales (England), 24 February 2015, table 1
18 Ibid, p5

A joint report prepared by the Chartered Institute of Housing (CIH), Local Government Association (LGA) and the National Federation of ALMOs (2015) considers the reasons for the shortfall in replacement homes:

> Since April 2012 the government has increased the discounts available for council tenants who buy their home using RTB. DCLG statistics show that there has been a rise in purchases from 2,638 in 2011/12 to 5,944 in 2012/13 and 11,261 in 2013/14, in a recovering housing market. The government has committed in-principle to using the receipts from these sales to replace the homes that have been sold on a 'one-for-one' basis. However in practice this commitment has not been able to deliver to its intended potential as:

- much of the revenue from sales goes to the Treasury and to debt repayments, with only a proportion being retained locally for reinvestment
- it does not include homes which local authorities had already projected that they would sell before the increased discounts were announced, or housing association properties sold under the preserved RTB
- it is a national target which does not aim to ensure all homes sold are replaced in the same area for replacement.

> Government statistics also show the number of replacement homes which councils have been able to build or acquire using RTB receipts. So far this has fallen short of the total number sold and of the number covered by the current one-for-one commitment, at 473 in 2012/13, 961 in 2013/14 and 1,278 during the first three quarters of 2014/15.[19]

[19] CIH, LGA & National Federation of ALMOs, Keeping Pace – replacing Right to Buy sales, 2015, p2

2. RTB and housing associations

2.1 Current position

Housing association tenants who entered into their tenancy agreements after 15 January 1989 are assured tenants whose rights are governed by the *1988 Housing Act.* As a general rule, assured tenants of housing associations do not have the Right to Buy the home in which they live.[20]

The *1988 Housing Act,* which introduced the assured tenancy regime for housing associations, also introduced a 'mixed funding regime.' A key aim of the Conservative Government of the day was to attract more private finance into social housing development. Under the mixed funding regime associations bid for public funding for new housing development in the form of grant (from the Homes and Communities Agency, HCA). The remaining scheme costs are usually met from private finance in the form of loans secured on an association's asset base (i.e. their housing stock) and rental stream. The rationale for exempting assured tenants from the Right to Buy has been based on the need for associations to provide security for private lenders. If these tenants were able to buy their homes, the value of an association's asset base would gradually be eroded and their rental stream reduced; it was recognised that, in turn, this would make lenders cautious about backing them.

Although they may not have the Right to Buy, some housing association tenants will have a statutory Right to Acquire. The *1996 Housing Act* introduced the Right to Acquire – like the RTB it is a statutory right for tenants of housing associations to acquire their homes at a discount to the open market value. The right applies to eligible tenants of associations who live in eligible properties or new lettings provided with Social Housing Grant (or transferred to a housing association) after 1 April 1997. The Right to Acquire works in the same way as the RTB, subject to some important differences, for example:

- Associations may sell the tenant an alternative property (i.e. a property other than that to which the tenancy relates and which is the subject of the tenant's claim).
- The discount offered to tenants is significantly less generous than that offered under the Right to Buy (maximum £16,000). The discount is a flat rate (i.e. it does not vary depending on the number of qualifying years as a tenant).

2.2 Government proposals

The Conservative Party's 2015 Manifesto contained the following commitment:

> We will extend the Right to Buy to tenants in Housing Associations to enable more people to buy a home of their own. It is unfair that they should miss out on a right enjoyed by tenants in

[20] The key exception to this is where the tenant was previously a secure council tenant at the point at which ownership of the property was transferred to a housing association – these tenants have a 'preserved' Right to Buy.

> local authority homes. We will fund the replacement of properties sold under the extended Right to Buy by requiring local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant. We will also create a Brownfield Fund to unlock homes on brownfield land for additional housing.[21]

The most expensive council properties (to be sold off when vacant) appear to be being defined as 'local authority properties that rank among the most expensive third of all properties of that type in their area - including private housing.'[22] The idea of selling off 'expensive' vacant council homes can be traced back to a 2012 paper for Policy Exchange by Alex Morton: Ending Expensive Social Tenancies.

2.3 Extending the RTB: previous consideration

Two MPs, Frank Field and David Davis, joined forces in January 2012 to publish a pamphlet with the Institute of Public Policy Research (IPPR) entitled The Right to Buy 2.0 in which they proposed an extension of the RTB:

> Although 61 per cent of housing association tenants want to own their own home, 90 per cent of them do not expect to be able to do so in the near future (Taylor 2011). Extending the right to buy is not only the best solution for housing association tenants who want to own their home. It is also a great and much-needed opportunity for those waiting for social housing.
>
> To provide more homes for the most vulnerable, housing associations need to receive all the proceeds from properties sold through the right to buy scheme in order to provide additional social housing, whether through acquisition or construction. This would enable many more people to take advantage of social housing than would otherwise be the case. It would also mean the Treasury recouping less money from each sale under right to buy than is currently the case.
>
> The right to buy would also encourage the development of mixed tenure housing areas containing privately owned, private rented and social housing. This is a far better outcome than huge, homogenous, monolithic council estates, which have come to be stigmatised as hotbeds of crime and social problems.
>
> In 2009/10, UK public spending on social housing was £10.4 billion. This included £5.7 billion on local authority housing and £4.7 billion on other social housing. This has clearly not been enough to make a real impact on the chronic shortage of affordable housing. Using the proceeds from right to buy sales to build or acquire new homes has the potential to increase dramatically the amount of money invested in new social housing.[23]

Some notes of caution were reportedly sounded by the National Housing Federation (the representative body of housing associations):

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21 Conservative Party's 2015 Manifesto, p54
22 Conservative Party Press Release, 14 April 2015
23 IPPR, *The Right to Buy 2.0*, January 2012, p15

> Gill Payne, director of campaigns and neighbourhoods at the National Housing Federation, welcomed the proposals to help social housing tenants own their home.
>
> But she said the issue was 'more complex' than the IPPR report suggested. 'Increasing discounts to enable tenants to buy their home would result in less money for housing associations to build much-needed affordable housing.'
>
> 'Even if right to buy receipts are retained by housing associations in full, once a property's existing debt and associated costs are paid, often what remains would not be enough to fund the cost of building a replacement home,' she added.[24]

However, Home Group, which owns 50,000 properties across England, Scotland and Wales, estimated that extending home ownership opportunities to housing association tenants could add more than £68bn to the UK economy based on research carried out in 2011:

> Mark Henderson, Home Group chief executive, said: "When the Government published its Housing Strategy at the end of 2011, improved right-to-buy opportunities for council tenants were at its heart. Home Group highlighted then that a far more seismic economic impact would be felt if the same opportunity was extended to housing association tenants providing we can replace a new property for each one sold.
>
> "Updating the right-to-buy rules for housing association tenants not only offers individuals the same chance to become a homeowner as residents in council homes, it will give a phenomenal boost to the UK economy."
>
> Current right-to-buy rules are blocking an estimated one million housing association tenants (source: IPPR) from buying their own properties. Based on historic data of local authority right-to-buy sales over the past 10 years, 1 in 5 of these would potentially look to buy their own home.
>
> In its Housing Strategy, the Government stipulated that landlords would need to build a new property for every home sold. With the average new housing association property costing £120,000 to build (Bevver and Struthers 2011 Annual Review of Social Housing), and an estimated 200,000 new homes being built to replace the properties sold, this would see £24bn spent directly in the construction sector. The Confederation of British Industry (CBI) has previously calculated that every £1 spent in construction was worth £2.84 for the economy. On this basis, extending right-to-buy to housing association tenants would be worth £68.2bn a year.
>
> Mr Henderson added: "There is clearly work still to be done on understanding how we can replace each sale with a new property but this is not an insurmountable problem. The key element is tenants having the necessary deposit when seeking a mortgage. Government could facilitate that through the use of the legacy debt that currently sits on housing authorities' books, at no cost to the taxpayer. This way, we can make it easier for people to own their own homes, we can move the sector away from the reliance on Government grant and we can make it economically possible to replace sales on a one-for-one basis."[25]

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24 "Housing association tenants should have right to buy," *Public Finance*, January 2012

25 Home Group, "68bn+ from extending right to buy", January 2012

Home Group has said that the proposals discussed in 2011 "do not reflect those currently being discussed during the 2015 General Election."[26]

2.4 Comment on extending the RTB

Comment is grouped under several broad headings below. The overwhelming concern amongst social housing providers is that the measure would result in further depletion of the social housing stock due to uncertainties around whether plans for 'one to one' replacement would bear fruit:

> Given this uncertainty, and the coalition's less-than-impressive record in delivering replacement social housing under the existing Right to Buy, there is a risk that these policies will lead to a further depletion of the social housing stock – something the proposal explicitly seeks to avoid.[27]

Number of eligible tenants

The National Housing Federation has estimated that an additional 850,000 tenants could become eligible under an extended RTB:

> **People will only be able to buy their home under this scheme if they are eligible and able to.** Firstly, they need to have lived in their property for at least three years – **1.4 million households fit this** criterion. Secondly, we should only count those who don't currently have Preserved Right to Buy (maintaining their right to buy after the home has been transferred from the council) as they can already buy with a large discount – we estimate there to be around 550,000 households (source: National Housing Federation amended estimates from DCLG Impact Assessment) that are already eligible for this leaving **850,000 households eligible for the new proposal.[28]**
>
> Not all of the 850,000 newly eligible households will be able to afford to exercise the RTB. Assuming the same discounts[29] and qualifying period[30] as a tenant as under the current RTB scheme, the NHF estimates:
>
> **Based on the average length of** occupancy (between nine to 12 years depending on the region), **the household income required to afford a 95% mortgage after the discount varies between £14,000 and £31,000** (source: DCLG using average local authority Right to Buy sale price)**.**
>
> **Even with this discount, not every household could afford such a mortgage** – the proportion of tenants varies by region from 15% to 35%. **This means that across the country there are 221,000 households that are eligible for the new proposal and able to afford the mortgage.** And if all of these households decide to take up the scheme, **it would cost £11.6**

[26] Home Group website [accessed on 31 May 2015]
[27] IFS Briefing Note BN171, *Extending Right to Buy – risks and uncertainties*, 2015
[28] NHF, Joe Sarling, "Right to Buy extension estimated to cost £12bn", 14 April 2015
[29] The maximum discount in London is £103,000 and just under £80,000 elsewhere. The amount of discount increases, subject to the maximum cap, depending on how long the applicant has been a tenant.
[30] Currently 5 years but reducing to 3 years later this year.

billion. Indeed, the longer the scheme operates for, the more households that become eligible.[31]

Region	Proportion able to afford	Number of homes impacted	Value of the total discount
NE	35%	19,620	£808,795,859
NW	35%	54,169	£2,229,816,970
Y&H	35%	26,752	£1,047,753,488
EM	35%	12,512	£507,165,608
WM	35%	29,522	£1,279,817,295
East	20%	14,923	£1,033,198,910
London	15%	23,445	£2,036,118,336
SE	20%	24,629	£1,702,805,349
SW	20%	15,902	£998,890,232
Total		**221,472**	**£11,644,362,048**

Financing the extension and replacing the homes sold

Some of the main concerns raised have focused on how the finances would work. The Conservative Party's press release made reference to the sale of 15,000 'expensive' vacant council homes per year which would raise £4.5bn (once debts on these properties have been repaid – this assumes an average value of £300,000).[32] The £4.5bn would be used to:

- Fund the extension of the RTB. There is an up-front cost to housing associations who will have to be compensated for selling properties at less than their market value.
- Replace the sold homes on a "one to one basis."
- Create a £1bn fund to unlock the construction of 400,000 homes on brownfield land (Brownfield Regeneration Fund).

At this point, no formal estimates of the cost of extending the RTB and paying off council debt associated with the 'expensive' vacant properties has been issued. DCLG has confirmed that financial modelling *has* been carried out but declined to release documentation in response to an FOI request by *Inside Housing* magazine on the grounds that it 'relates to the development of Government policy.'[33]

The NHF estimates the cost of the RTB extension at almost £12bn.[34] The Institute for Fiscal Studies (IFS) has said that this figure "probably provides an upper bound on the total cost of Right to Buy discounts

31 ibid
32 Conservative Party Press Release, 14 April 2015
33 RTB FOIA response, 7 May 2015
34 NHF, Joe Sarling, "Right to Buy extension estimated to cost £12bn", 14 April 2015

over the next parliament" and notes "The cost could be much less depending on actual choices made by tenants."[35]

Questions are being asked about whether the sale of vacant council homes will raise enough to pay for the RTB, the Brownfield Regeneration Fund *and* replacing sold council stock. It is not clear whether the rate of sales of vacant council stock will track the take-up rate of the extended RTB. The proposals assume sales of 15,000 vacant properties per year (turnover rate of 7% per year) at an average price of £300,000. Analysis by Savills challenges this figure:

> Savills calculates the total value of housing in the UK is £5.75 trillion and that social housing accounts for £374 billion on an existing use, or EUVSH, basis.
>
> On this basis, Savills research calculates that the average value of a socially rented home in England is just under £208,000, ranging from £99,452 in North East to £437,000 in London.[36]

When announcing the Conservative Manifesto on 14 April, David Cameron said that the vacant 'expensive' council homes sold would be replaced on a 'one-for-one' basis 'in the same area.' It has not proved possible, to date, to meet the rather weaker commitment to provide replacement housing nationally on a one-to-one basis for those sold under the current RTB – commentators are highly sceptical that this new commitment can be met.

The Conservative Party published a table showing the values over which council homes would be sold which was subsequently published in *Inside Housing* magazine:[37]

	1 bedroom	2 bedroom	3 bedroom	4 bedrooms	5 or more bedrooms
North East	80,000	125,000	155,000	250,000	310,000
North West	90,000	130,000	160,000	270,000	430,000
Yorkshire and the Humber	85,000	130,000	165,000	265,000	375,000
East Midlands	105,000	145,000	175,000	320,000	430,000
West Midlands	100,000	145,000	180,000	305,000	415,000
East	155,000	220,000	265,000	440,000	635,000
London	340,000	400,000	490,000	790,000	1,205,000
South East	165,000	250,000	320,000	495,000	755,000
South West	135,000	200,000	260,000	375,000	535,000

Some London councils made the point that these caps would result in the sale of almost all their social housing as vacancies arise. The findings of interim research by Liverpool Economics on behalf of Camden, Enfield, Haringey and Islington councils has been widely reported in the press. Using the indicative values set out in the table above, the research, reportedly found:

35 IFS Briefing Note BN171, Extending Right to Buy – risks and uncertainties, 2015, para 4.1
36 "The impact of an extended right to buy," Savills, 17 April 2015
37 Councils forced to sell expensive homes under Tory right to buy plans, *Inside Housing,* 14 April 2015

> Of the 73,727 properties owned by the four boroughs, the report estimated 3,467 would be sold under the policy in the first five years. It predicted Islington and Camden would be most affected with 1,843 of Islington's 25,736 properties, and 1,509 of Camden's 22,267 properties being sold in the first five years. Haringey only stood to lose 115 while it was predicted none of Enfield's properties would meet the threshold of what constitutes an expensive property.
>
> [...]
>
> The report said as a result it was "highly likely that a substantial part of the cost of building a replacement home would have to be financed through additional borrowing". It estimated that even if the new policy to replace homes worked, there would be a time lag of at least two years from the sale of a home to it being replaced. It argued some or all of the replacement homes might have to built in different boroughs which brought "a number of complications" as councils would either have to start buying land in other areas for letting to their own tenants, or funds would have to be transferred to other authorities or housing associations.[38]

After the policy announcement *Inside Housing* submitted Freedom of Information requests to over 100 stock owning local authorities asking: how many homes they owned of different types and sizes worth above the 'high-value' thresholds; when they were valued; and whether they had changed tenancies over the previous decade. The results of this exercise, which attracted 59 responses, were reported on 20 August. *Inside Housing* identified a 'postcode lottery' with some authorities facing the prospect of losing 'vast proportions' of stock and others reporting they will be totally unaffected.[39] As noted earlier, some London authorities will be disproportionately affected but others, such as Harrogate and some rural areas, told *Inside Housing* that a lot of their stock would have to be sold on becoming vacant – 59% in Harrogate's case.[40] Commentators have called for rural exemptions to an extended Right to Buy. The Government has said it will "carefully consider the potential impact of this reform on the different areas of the country, and this will include rural areas."[41]

The Housing Committee of the Greater London Authority considered the extended Right to Buy at its meeting on 16 July. Richard Blakeway, the Deputy Mayor for housing, reported that a 'broad assessment' by City Hall suggested that between 3,000 and 4,500 London council homes would be sold off each year.[42] A report prepared for the Committee identified substantial implications for the London boroughs.[43]

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38 Right to buy would be destructive for London, Local Government Chronicle, 28 May 2015
39 "Falling over the threshold," *Inside Housing*, 20 August 2015
40 Ibid.
41 DEP2015-0475
42 "GLA: London will see 4,500 homes sold off, *Inside Housing,* 16 July 2015
43 See GLA Housing Committee – Agenda and Reports for 16 July 2015, item 5

There is doubt as to whether the commitment to replace these properties with 'normal affordable housing in the same area' is realistic. The Institute for Fiscal Studies (IFS) has identified a trade-off between selling off valuable council stock and reinvesting in more affordable housing:

> The idea here seems to be that Las could house more people in social housing if they cashed in the value of their most expensive properties and used this to fund new construction in cheaper areas. There is of course a trade-off here: while selling expensive properties might expand the social housing stock, it will reduce the availability of social housing in the most expensive areas, thereby creating clearer divisions between areas where richer and poorer households are located.[44]

It will also be necessary to replace the housing association properties sold under the extended RTB. Associations will receive the full market value of the sold properties in order to do this. The IFS has said:

> The market sale price may be more or less than the cost of replacing a property with a more or less identical property, though it will almost certainly be sufficient to ensure replacement on a looser 'one-for-one' basis – i.e. in the same LA and with the same number of bedrooms, but potentially in a cheaper area and of lower quality.[45]

Sale of charitable assets and implications for public debt

A number of associations have questioned the legitimacy of legislating to allow the sale of assets owned by charities/not-for-profit companies; for example, *Inside Housing* reported the following comments:

> Brendan Sarsfield, chief executive of Family Mosaic and chair of the G15, said: 'We are independent organisations trying to meet housing need. We are not agents of the state and this is treating us as if we are.
>
> It is starting to feel more about the destruction of social housing than enabling aspiration.
>
> Ian Munro, chief executive of New Charter and regional chair of the National Housing Federation in the north, added: 'It's ludicrous. We are private not-for-profit organisations and this is a sequestration by any other name.'[46]

The same article reports that the extension of the RTB would also apply to housing association owned homes built without public subsidy.[47]

The Office for National Statistics (ONS) was questioned by *Inside Housing* on the implications of extending the RTB for their status as non-public bodies:

> Housing associations are currently considered private providers and carry their debts as private organisations. But if they were classified as public bodies by the Office for National Statistics

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44 IFS Briefing Note BN171, [Extending Right to Buy – risks and uncertainties](), 2015

45 IFS Briefing Note BN171, [Extending Right to Buy – risks and uncertainties](), 2015, para 4.3

46 "Right to buy extension would hit grant free homes," *Inside Housing,* 24 April 2014

47 ibid

> (ONS), their total debt would have to be carried on the national balance sheet.
>
> According to the Homes and Communities Agency's latest global accounts, total debt for the 336 biggest providers was £59.3bn in the 2013/14 financial year.
>
> This is 4% of the total national debt, which was valued at £1.47tn in 2015 by the treasury..
>
> A spokesperson for the ONS told *Inside Housing*: 'If the control arrangements for organisations were to change then we might have to review the classification [whether it is considered a public body] of that organisation.'
>
> When asked whether this would mean total debt would be added to the national balance sheet, he said: 'Yes, certainly… That's the purpose of the classification decisions.' The ONS spokesperson declined to say whether forcing housing associations to sell homes at a discount would constitute change of control.
>
> Steve Douglas, partner at consultancy Altair, said: 'This policy would be the biggest test yet of whether housing associations are genuinely independent organisations or whether they are state-controlled, public bodies. If it goes ahead this is likely to be in tested in court.'
>
> A well-placed source also said that an extension of the Right to Buy could force housing associations, which are mostly charities, to breach Charity Commission rules.
>
> Charity trustees are supposed to be free to make decisions in the best interests of their charity, but forcing associations to sell assets at a discount could mean this freedom is diminished, the source said. The Charity Commission declined to comment.
>
> In response, the Conservative Party said there is already a 'preserved Right to Buy' - which applies to stock transfer associations - and a Right to Acquire without there being a reclassification of debt. A spokesperson said: 'This policy will not lead to a reclassification of the housing association sector.'[48]

Subsequently, in response to a letter from Clive Betts, chair of the Communities and Local Government select committee, ONS has confirmed:

> At such a time that HM Government submits a policy proposal, or the policy has been enacted, we will certainly consider implications for the economic ownership of housing associations' housing assets, associated liabilities, and indeed for housing associations themselves.[49]

There are suggestions that housing associations would be prepared to launch legal challenges against an extension to the RTB:

> Because housing associations are private not-for-profit businesses, forcing the sale of homes at below market value could potentially breach Article 1, Protocol 1 of the European Convention on Human Rights, which gives everyone the "right to the peaceful enjoyment of one's possessions."[50]

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48 "Extending the right to buy could add £60bn to the national debt," *Inside Housing,* 14 April 2015

49 ONS letter, 15 July 2015

50 "Housing associations say they'll sue if the Tories force them to sell off homes under right to buy", *The Independent,* 15 April 2015

In the meantime, the House of Lords approved an amendment on Report (254 votes to 174) to the *Charities (Protection and Social Investment) Bill* 2015-16 to insert a new clause. Baroness Hayter of Kentish Town explained its purpose:

> The amendment is about the rights and the duties of independent charities which hold in trust various assets for their beneficiaries, both today and in perpetuity. Charitable law, which dates from Elizabethan times, developed to preserve and protect such assets, which are normally bequeathed or gifted for very specific charitable purposes. There are therefore rules covering the disposal of assets and the role and responsibilities of trustees, all with the same aim—to ensure that a charity's resources are spent only on the purposes laid down in its trust deed and in compliance with fiduciary and charitable law. Amendment 7 essentially restates the existing legal position and aims to give comfort to charity trustees that they cannot, without a change in the law, be compelled to sell assets where it is contrary to their charitable purpose.
>
> […]
>
> In terms of this Bill, the concern is that the Government want to interfere with the duties of charitable trustees to put their beneficiaries first and comply with their own trust deed. Many housing associations might sometimes welcome right to buy for their tenants where that accords with their charitable objectives. We support that. The problem, of course, is where it conflicts. The amendment seeks to prevent a charity being compelled to do something that is not in its best interest. In the letter of 16 July written to me by the noble Baroness, Lady Williams of Trafford, she admitted that what the Government propose would be a "substantial change". She acknowledged that housing association charities have some apprehension about being compelled to dispose of their assets and how that fits with charities law. Quite so—that is why this Bill is the place to debate this issue.
>
> Our amendment is about charities, many of whose tenants live in homes built with private charitable money. They are different from local authority tenants or tenants whose homes were built with some public money after 1974. Amendment 7 confirms the existing position that assets belonging to a charity must be used for that charity's purpose. Sometimes, indeed, that will be by sale to raise money or replace stock. The amendment simply says that it is for the trustees of these independent organisations to decide that—not some outside body. I beg to move.[51]

The lenders' view

The financial impact that an extension to the RTB would have on housing associations has also attracted attention.

Credit agency, Standard and Poors, reportedly said that while the capital receipts raised from sales could be 'positive from a credit perspective' in the short term, 'the scale of the proposed discounts would imply a weakening of housing association balance sheets that may affect their creditworthiness, and hence their capacity to develop, over the longer

[51] HL Deb 20 July 2015 cc907-8

term.'[52] Fitch Ratings, which assesses A2Dominion Group, Genesis HA and Great Places HA, added its concerns saying:

> An extension of the right to buy to housing associations could deplete the sector's rent-generating asset base, constrain borrowing capacity and push up the cost of debt, according to ratings agency Fitch.[53]

Adrian Bell of debt markets at Canaccord Genuity, has reportedly warned of potential insolvency risks:

> Mr Bell said valuers would lower the value of housing association properties used as security for loans, which could see some highly-geared associations pushed towards insolvency.
>
> He said all properties subject to the right to buy would have to be valued at Existing Use Value (Social Housing) (EUVSH), which takes a sum of rent receipts. This could see some associations lose as much as 30% of their security.
>
> 'There is a very real danger to the financial stability of the sector arising from this proposal,' he said. 'It's going to force everybody to convert to EUVSH, some landlords will not be able to handle that, and will be short of security and go bust.'
>
> EUVSH is currently the only option for stock transfer landlords, where many properties are subject to the preserved right to buy.[54]

Analysis by Savills has also focused on risks around valuations:

> Valuations will be crucial in determining the impact of extending the right to buy to all tenants of English housing associations, as set out in the Conservative manifesto.
>
> […]
>
> At present, English housing associations use two main methods of valuing their homes: 'Existing Use Value for Social Housing' and 'Market Value Subject to Tenancy'.
>
> Under the former approach, EUVSH, if the sum received by a housing association for a home sold under the extended right to buy is less than the value of future lost rent from the property, EUVSH values might fall.
>
> Anne Johnson, director of housing valuations at Savills, said: 'This would require housing association business plans to be reviewed to ensure that lending covenants were not breached.
>
> 'On the other hand, values could rise if the sums receivable are more valuable and there are no restrictions on the use of the sales receipts by associations.'
>
> Under the second method, MVST, if existing tenants were granted the right to buy and this right was preserved were the properties to be sold to a private landlord, the value of the home would be likely to fall if the sum receivable was less than its market value. If the right to buy were not preserved upon sale then values would be unaffected.
>
> Ms Johnson added: 'However, housing associations would have to face the practical problem of providing their lenders with

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52 "Right to buy extension would hit borrowing and could push landlords into insolvency", *Inside Housing,* 14 May 2015

53 "Fitch joins S&P in warning over impact of Right to Buy on HA finances", *Social Housing,* 16 April, 2015

54 ibid

> replacement security when homes were sold. Assessing the impact on housing association asset values and business plans is not straightforward and will depend on the fine detail of any legislation.'[55]

The impact of associations losing control over their assets is a further issue:

> Richard Petty, director of housing at JLL, added: 'The big concern is that it could make associations unfundable because it would take away control of their assets.
>
> 'You would have to build that into loan agreements, and I don't think lenders would accept a situation where security could be sold at a discount.'[56]

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55 "The impact of an extended right to buy," Savills, 17 April 2015
56 "Fitch joins S&P in warning over impact of Right to Buy on HA finances", *Social Housing,* 16 April, 2015

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