

PROTECTED AREAS AND LEASEHOLD ENFRANCHISEMENT: EXPLANATORY NOTE

1.0 PURPOSE OF REPORT

- 1.1 To advise partners and stakeholders of the Regulations¹, and provide an explanatory note as to: (i) the purpose; (ii) legislative requirements; and (iii) the policy, procedural and strategic implications.²

2.0 CONTEXT

- 2.1 New regulations, in Sections 300-302 of the Housing and Regeneration Act 2008, came into effect on the 7th September 2009.
- 2.2 There are two main factors of risk that have been addressed within the new Regulations and Order: 1) *Risk of early enfranchisement; and* 2) *Retention and sustainability of shared ownership housing stock.*
- 2.3 S300-302 of the 2008 Act has enabled the Secretary of State to designate 'Protected Areas', ensuring shared ownership houses are retained as such in areas that they would be difficult to replace; whilst also ensuring the mitigation of risk of early enfranchisement³.

¹ The Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009, 2009 No. 2097 and The Housing (Right to Enfranchise) (Designated Protected Area) (England) Order 2009, 2009 No. 2098

² This should not be interpreted as legal guidance or replace the need for the reader to seek legal advice; nor does it replace the explanatory memorandum on the Office of Public Sector Information website - see http://www.opsi.gov.uk/si/si2009/em/uksiem_20092098_en.pdf

³ Early enfranchisement means the tenant acquiring the freehold under statutory rights before acquiring 100% equity. The leasehold Reform Act 1967 makes provision for shared ownership leases being exempt from early enfranchisement if certain conditions are met. One such condition require that leaseholders must be able to 'staircase' up to 100%, thereby rendering any restriction open to leaving a landlord at risk of early enfranchisement.

3.0 SHARED OWNERSHIP: POLICY AND STRATEGIC OBJECTIVES

- 3.1 Shared ownership schemes delivered where there is identified need are integral to the government's objective to 'create thriving communities and affordable homes'.
- 3.2 Purchasers buy an initial share (minimum 25%) of the equity of a home owned usually by a Registered Social Landlord, and pays rent on the remainder. The provider retains the freehold and grants a long lease to the purchaser. The leaseholder may then buy further equity shares (known as 'staircasing') until the property is owned outright. Recycled Capital Grant Funding⁴ is usually used when available to re-invest in the development of replacement affordable housing, to ensure the future need is addressed.
- 3.3 Previous guidance, legislation and planning policy have acknowledged the need to address the issue of availability and sustainability of affordable housing in rural settlements⁵.
- 3.4 The evidenced increased necessity for affordable housing in rural areas due to the small size of the housing market that meets the needs of households⁶, together with limited land availability and some justifiable planning controls in small settlements, highlights the requirement to ensure affordable housing is retained as much as possible.
- 3.5 The policy objectives behind s300-302 of the Housing and

⁴ Recycled Capital Grant Funding (RCGF) is a process where the provider will re-invest receipts gleaned from sales of affordable housing that had public investment to bring the original development forward.

⁵ Properties situated in a rural area designated by order of the Secretary of State under Section 17(1)(b) (Right to Acquire: Supplementary Provisions) of the Housing Act 1996 are exempt from Right to Acquire. See also Planning Policy Statement 3: Housing.

⁶ See Affordable Rural Housing Commission final report (Goodman Report); Planning Policy Statement 3: Housing; Living Working Countryside: The Taylor Review of Rural Economy and Affordable Housing (Taylor Review)

Regeneration Act 2008 relate to the above issues (paragraph 3.4), ensuring shared ownership houses in such areas where they would be difficult to replace are not subject to the general government aim to enable leaseholders to gain full ownership, rendering the home lost to the affordable housing sector; and to remove the risk of financial loss to all providers due to early enfranchisement.

4.0 THE REGULATIONS AND ORDER

4.1 The Regulations and Order apply to England only.

4.2 The Order lists all the areas that are designated as 'Protected Areas'⁷.

4.3 The Regulations specify a requirement for landlords to include in a shared ownership lease, for houses within a 'Protected Area', conditions that either:

4.3.1 Restrict the leaseholder's equity share to 80%; or

4.3.2 ensure that once the leaseholder has acquired 100% share of the house, it is sold back to the landlord.

4.4 The Regulations render such leases, with a specified 'staircasing' restriction as per 4.3.1, as exempt from the risk of early enfranchisement.

5.0 POLICY, PROCEDURAL & STRATEGIC IMPLICATIONS

5.1 The new regulations provide an environment which is designed to have a positive impact on the provision and retention of shared ownership houses by:

⁷ See https://www.opsi.gov.uk/si/si2009/pdf/uksi_20092098_en.pdf

- 5.1.1 enabling greater certainty for strategic housing authorities that proposals for shared ownership homes in areas with identified need, where opportunities to build are scarce, can be brought forward without the risk of those homes being lost to the open market;
 - 5.1.2 enabling greater certainty for providers and lenders that there will no longer be a risk of financial loss due the regulations providing exemption from the risk of early enfranchisement;
 - 5.1.3 enabling greater choice for households because of a wider range of providers developing shared ownership homes due to the mitigation of the risk from early enfranchisement for all providers;
 - 5.1.4 enabling an increase in the availability of land due to landowners having greater assurance that the homes will be retained as affordable in perpetuity.
- 5.2 Providers must insert one of the clauses, as per paragraphs 4.3 in the shared ownership leases within Protected Areas.
- 5.2.1 If the provider chooses to allow the leaseholder to acquire 100% equity, there should be a covenant which states that the leaseholder agrees to sell the property to the provider, at market value, if they wish to move.
 - 5.2.2 If the provider is unable to buy back the property an alternative registered social landlord may be nominated, or the owner will be able to sell on the open market after a specified timescale (usually 6 months).
 - 5.2.3 It is expected that the landlord will be able to buy back the

property by using RCGF and/or private finance. If this is not possible, the Homes and Communities Agency will positively consider funding the repurchase, as per Section 9 of the Affordable Housing Capital Funding Guide:

*‘Where landlords have robustly exhausted all other funding routes, including the use of and or transfer of RCGF, the Agency will positively consider applications for grant to fund the repurchase of shared ownership property where: (i) the property was funded under the Agency’s Protected Areas policy; and (ii) the shared ownership lease granted contained the Agency’s Protected Area fundamental clause obliging the shared owner to sell the property back to the landlord, or the landlord’s nominee’.*⁸

5.3 The Homes and Communities Agency protected area policy extends the legislative requirements for retention of houses to also include grant funded flats.

5.3.1 This will assist with retention of all new shared ownership property in Protected Areas and it will put leaseholders in flats on a similar footing to leaseholders in houses.

5.4 The designated Protected Areas that are subject to the Order are coterminous with the rural areas that are already exempt from the Right to Acquire scheme⁹ and areas subject to Rural Exceptions site policy¹⁰, ensuring consistency in the rural housing retention policy¹¹.

⁸ See <http://cfg.homesandcommunities.co.uk/Protected-Area-Repurchase>

⁹ Those areas where Housing Association tenants are not eligible to buy their social rented home at a discount.

¹⁰ See Planning Policy Statement 3: Housing

¹¹ This lends both clarity and greater assurance to landowners and providers that properties that are enabled as affordable in perpetuity for households whose needs are not met by the market, will remain so.

5.5 The legislation allows further areas to be designated as Protected Areas. Criteria for designating further areas would include availability of land for housing in particular locations and existing available stock; the availability of shared ownership; and the level of identified need¹².

5.5.1 There is no intention to invite applications for further areas to receive Protected Area status at this time, (to be reviewed in 2011).

5.5.2 Protected Area status can be removed if it is no longer required.

6.0 CONCLUSION

6.1 The provisions within the Housing and Regeneration Act 2008 enables:

6.1.1 the designation of Protected Areas to prevent loss of shared ownership homes to the open market where they are difficult to replace;

6.1.2 providers to restrict 'staircasing' as a mechanism to retain shared ownership in the Protected Areas without the risk of financial loss due to early enfranchisement;

6.1.3 all housing providers, not only housing associations, to offer shared ownership leases for houses without the risk of early enfranchisement.

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¹² This evidence base is available in local authorities' Strategic Housing Land Availability Assessment and Strategic Housing Market Assessment.