

THE EXECUTIVE

19 APRIL 2005

REPORT OF THE DIRECTOR OF HOUSING & HEALTH

CHANGES TO RIGHT TO BUY (RTB) LEGISLATION		FOR DECISION
<p><i>This report is to update members on recent changes to the Right to Buy (RTB) legislation.</i></p> <p>Summary The Housing Act 2004 makes changes to the way that some or all of the discount gained through RTB must be repaid. The Act extends the specified period from 3 to 5 years, with the former landlord having discretionary powers to waive the repayment.</p> <p>Recommendation i) That Members note the changes brought about in the Housing Act 2004 ii) Agree the procedure as detailed in paragraph 3 of this report to apply discretion.</p> <p>Reason Guidance from the Office of the Deputy Prime Minister (January 2005) recommends that landlords will have procedures in place to consider and decide requests that discretion should be exercised. This consideration process should be open, fair and transparent.</p>		
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1. Background

- 1.1 Under the current Right to Buy legislation, if a property is resold within three years of purchase, some or all of the discount allowed must be repaid.
- 1.2 Section 185 of the Housing Act 2004 extends the specified period from 3 years to 5 years for applications made after 18 January 2005. This section also states that former landlords have discretion not to demand that former tenants should repay part, or the entire, discount they have received, previously expressed as 'repayment on demand'.
- 1.3 Guidance from the Office of the Deputy Prime Minister envisages this power will only be used in exceptional circumstances and that it is most likely to be justified in circumstances where repayment would lead to demonstrable personal hardship, but it may also be justified in other circumstances.
- 1.4 It is necessary therefore to put in place a procedure to assess cases where it is appropriate to apply discretion.

2. Situations where it may be appropriate to use discretionary powers

2.2 The use of discretionary powers is most likely to be justified in circumstances where repayment would lead to demonstrable hardship, but may also be justified in other circumstances

2.3 Examples

A) Where an owner of the property wishes to move because otherwise he or she and / or other family members (especially children) face demonstrable threat of violence or of significant harm; for example due to.

- Relationship breakdowns involving actual or threatened domestic violence
- Racial, faith, homophobic or any other kind of harassment
- Extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property

B) Where the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds.

C) Where an early move is essential to return to employment, for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work, either

- After long term unemployment or
- After having been made redundant when his / her skills are such that there is no prospect of getting another job locally

D) Where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons.

3. Procedure

3.1 Requests should be made in writing and supported by clear and objective evidence, for example from a local police force, a doctor, a psychiatrist or an employer.

3.2 The Home Ownership Section within the Housing & Health Department will prepare a report and obtain the views of the Director of Finance. In most cases a decision by a former landlord not to demand repayment will lead to a net cost to the public purse.

3.3 A report will then be submitted to the Executive for decision.

4. Consideration of requests for the exercise of discretion

4.1 It is envisaged that this power will only be used in exceptional circumstances

4.2 In the past Members have received reports where the former tenant has requested the repayment of discount to be waived in exceptional circumstances. Requests of this nature are very infrequent.

5. Recommendations

- 5.1 That Members note the changes brought about in the Housing Act 2004.
- 5.2 Agree the procedure as detailed in paragraph 3 of this report for applying discretion.

6. Consultation

Legal Services
Internal Audit & Consultancy Services
Head of Finance – Housing & Health

7. Background papers used in preparation of this report

- Housing Act 2004
- Guidance to landlords on the use of discretionary powers on repayment of discount issued by the Office of the Deputy Prime Minister January 2005.
- Right to Buy - Procedure on the use of discretionary powers on repayment of discount.