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Riaghaltas na h-Alba

# Housing, Regeneration and Planning

## Analysis of Responses to the Future of Right to Buy in Scotland Consultation



# **ANALYSIS OF RESPONSES TO THE FUTURE OF RIGHT TO BUY IN SCOTLAND CONSULTATION**

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## **EXECUTIVE SUMMARY**

Right to Buy was introduced in 1980 with its current form based in the Housing (Scotland) Act 1987 and amended by the Housing (Scotland) Acts of 2001 and 2010. The 2001 Act made changes which 'preserved' the entitlements of existing tenants and introduced 'modernised' entitlements for new tenancies that started on or after 30 September 2002. The 2010 Act maintained these entitlements but ended the right to buy for new tenants, those returning to the sector after a break and for new supply houses.

The policy has increased home ownership in Scotland with 65% of Scottish homes now owner-occupied. However, the right to buy has also depleted the number of homes available to rent from social landlords at a time when there is a high demand for affordable rented housing. This has resulted in long waiting lists and challenges for local authorities in meeting their responsibilities for housing homeless people.

Following a series of consultative seminars held during 2012 with a range of stakeholders including landlords and tenants, the Scottish Government published a written consultation paper to seek views on proposals for reforming the right to buy legislation. One hundred and sixty nine responses to the consultation were received, 83% from organisations (largely social landlords) and 17% from individuals. A summary of their views on the proposals follows.

### **The need for more changes**

Most (87%) of those who provided a view considered that there should be further restrictions on the right to buy policy. However, around one-quarter (24%) of the 29 tenant/resident groups which responded opposed further restrictions. The main reasons for supporting further restrictions were that the demand for social housing outstrips supply and that the current legislation on right to buy has become too complex to administer.

Eighty three per cent of those who provided a view agreed with the proposal to end right to buy altogether. This included 92% of Registered Social Landlords (RSLs) and 81% of the local authorities who responded on this issue. Four out of 5 of the tenant/resident groups who provided a view also advocated ending right to buy. The main reason given for supporting abolition was to stem the loss of affordable houses for rent out of social rented sector.

Of the minority (17%) of respondents with mixed views or who wished to see right to buy retained, the main rationale was that this right should not be taken away from those who held it.

Should the right to buy end, 73% of respondents who commented recommended a notice period of two years or less.

If the right to buy continues, the proposal to move those with preserved entitlement onto modernised terms received a mixed response. The main reasons provided by respondents in support of this proposal were to provide a balance between enabling tenants to buy their own homes, whilst ensuring that landlords continue to receive reasonable receipts from sales; and to reduce some of the complexity which currently exists in relation to right to buy sales. Other respondents argued, however, that under this proposal the loss of social rented housing from the sector will still be unacceptable and the complexities will remain or even increase.

Should those with preserved entitlement be moved onto modernised terms, 74% of those who provided a view stipulated a notice period of 2 years or less.

Given the choice of ending the right to buy policy or moving from preserved to modernised terms, 85% preferred the option of abolishing right to buy altogether. This was viewed as the best option to retain stock within the social rented sector, ending the current complexities in entitlements and promoting equality amongst tenants. A recurring comment was that ending the policy may result in a surge in sales during the notice period and possibly negative reactions from some tenants and sections of the media, which will need to be handled. Some predicted possible legal challenges to the change in policy. Should a decision be made to move those on preserved entitlements to modernised terms, some respondents cautioned that this would require additional staff training and the production of clear guidance to social landlords from the Scottish Government to cope with the confusion amongst tenants which may ensue.

Whatever policy option is decided, a recurring theme across a range of respondent sectors was for timely and good quality communication about the changes between landlords and tenants.

### **The financial effect on landlords**

Around half (53%) of those who provided a view considered that the policy changes proposed would have minimal financial impact on landlords over the longer term. A further quarter (23%) predicted a financial gain to landlords. In general, it appeared that larger social landlords were amongst those most likely to rely on right to buy sales as a key source of income and were therefore most likely to encounter a negative financial impact at least in the short term.

To minimise negative effects respondents recommended early reviews of business plans to adjust strategies and budgets to accommodate the change in policy. It was also considered that retaining the option of voluntary sales by landlords could help to offset the loss of receipts if right to buy is abolished.

### **Other changes**

The vast majority (86%) of those who commented agreed with the proposal to repeal Section 69 of the Housing (Scotland) Act 1987 which allows landlords to refuse to sell homes provided for tenants of pensionable age who have special

needs, should Scottish Ministers authorise this. The proposal to allow landlords local discretion to decide which homes should be exempt from right to buy because they are needed for elderly tenants with special needs met with approval, with respondents agreeing that landlords have the local knowledge of their stock required to make informed decisions. However, one main objection to the proposal was that the repeal of Section 69 could lead to discrimination on the grounds of health, age or care needs.

The 2001 Housing (Scotland) Act extended the right to buy to all tenants with Scottish secure tenancies of non-charitable RSLs and those RSLs which became charities after 18 July 2001. The Act also allowed for this right to be suspended for 10 years from 30 September 2002. The proposal to impose a blanket suspension rather than requiring RSLs to apply for suspension every 10 years received a mixed response. Whilst it was felt that this would help to protect desirable social rented properties from being sold and could be an acceptable 'half-way' measure between right to buy and abolition of the right to buy, others argued that ending the right to buy altogether would be a much simpler and straightforward option.

Of the other right to buy issues which respondents thought should be tackled the following were most commonly highlighted:

- family members other than the tenant providing the finance to purchase under right to buy, possibly for future financial gain;
- ensuring standards of maintenance and repair are kept up in mixed tenure blocks;
- need to simplify the eligibility criteria for right to buy should the policy continue; restricting individuals to only one purchase of a social rented property and/or not allowing an individual to rent in the social rented sector if they have previously purchased under right to buy;
- and clarification of the eligibility rights on succession to and acquisition of right to buy properties.

### **Assessment of equal opportunities**

Groups identified as most likely to gain from the proposed reforms were prospective tenants for whom more stock should be available to rent; current and new tenants; tenants requiring maintenance to their properties in future; and tenants with special needs including those with disabilities who will have more security over their home.

Those seen as being affected negatively were existing tenants who aspire to own their home but do not have the financial ability to purchase before the policy ends; people with disability and other special needs who have less opportunity than others to purchase outwith the social rented market; professional staff who currently carry out valuations on right to buy properties; and tenants living in rural areas with limited opportunity for alternative low cost home ownership.

Many respondents recommended that to counteract many of these potential negative impacts, other options for low cost home ownership should be made available and promoted and an adequate lead in time given before any changes are made. Several also recommended that a communication strategy is implemented to advise about the impending changes with high profile publicity given to convey the benefits of the changes.

The partial **Equalities Impact Assessment (EQIA)** developed for the consultation was welcomed as being comprehensive and fair although more emphasis was requested on the positive outcomes of the changes on disadvantaged and minority groups.

### **Business and Regulatory Impact Assessment (BRIA)**

Positive impacts of the policy changes on organisations were identified as being an increase in viability, enabling the delivery of business aims and easing the ability to borrow. In addition, respondents welcomed what they predicted would be a reduction in the volume of administration associated with handling applications to buy and maintaining their waiting lists. It was considered that business planning would become easier if right to buy was abolished.

Only a few negative impacts on business were identified and included a possible increase in demands for transfer requests due to more choice of property within the social rented sector; losses in professional/technical staff no longer involved in valuating properties; and the need for reviewing the business plan to accommodate changed policy. The partial BRIA accompanying the consultation was generally welcomed although the assumption in the BRIA that Option 1 (do nothing) was cost neutral was challenged, whilst a few respondents considered that moving all to modernised entitlements would have more of a negative impact than suggested, on account of the complexities this would generate.

## 1. INTRODUCTION

1.1 Right to Buy was originally introduced in 1980 with its current form based in the Housing (Scotland) Act 1987 and amended by the Housing (Scotland) Acts of 2001 and 2010. The 2001 Act made changes which 'preserved' the entitlements of existing tenants and introduced 'modernised' entitlements for new tenancies that started on or after 30 September 2002. The 2010 Act maintained these entitlements but ended the right to buy for new tenants, those returning to the sector after a break and for new supply houses.

1.2 Since the right to buy was introduced around 455,000 properties have been bought using the scheme. The policy has been instrumental in shifting the pattern of home ownership in Scotland with 65% of Scottish homes now owner-occupied. Whilst enabling many families to become home owners and helping to create more mixed tenure communities, right to buy has also depleted the number of homes available to rent from social landlords. The Scottish Government recognises that many people want to own their homes, but it does not believe that this should be at the expense of homes in the social rented sector.

1.3 There is a high demand for affordable rented housing. The reduction in such housing available to rent has resulted in longer waiting lists. Local authorities also have responsibilities for housing homeless people. In the financial year 2011 to 2012 there were 45,322 homeless applications.

1.4 In 'Homes Fit for the 21<sup>st</sup> Century: The Scottish Government's Strategy and Action Plan for Housing in the Next Decade: 2011-2020'<sup>1</sup>, the Scottish Government said that it would consult on ways to reform the preserved right to buy to make it fair for both tenants and landlords. During 2012 the Scottish Government held a series of consultative seminars with a range of stakeholders including local authorities, Registered Social Landlords (RSLs) and tenant groups. It published a written consultation paper on 7 June 2012 and sought views by 30 August 2012 on a number of proposals for reforming the right to buy legislation. This report presents an analysis of the responses to the written consultation.

### **Written consultation responses**

1.5 One hundred and sixty nine responses to the consultation were submitted and analysed. Of these, 164 formal responses were received and have been made publicly available on the Scottish Government website<sup>2</sup> unless the respondent has specifically requested otherwise. One hundred and forty one responses (83%) were submitted by organisations, with 29 (17%) submissions from individuals. Table 1 shows the numbers of responses by category of respondent. RSLs comprised the largest respondent group, submitting 35% of all

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<sup>1</sup> [www.scotland.gov.uk/publications/2011/02/03132922/0](http://www.scotland.gov.uk/publications/2011/02/03132922/0)

<sup>2</sup> The consultation responses can be viewed at:  
<http://www.scotland.gov.uk/Publications/2012/09/2777/0>

responses received. Tenant and resident groups submitted 19% of responses. Twenty six local authorities provided a written submission. The full list of the organisations responding to the consultation is in Annex 1.

**Table 1: Number of responses by category of respondent<sup>3</sup>**

<b>Category</b>	<b>Abbreviation used in report</b>	<b>Number</b>	<b>Percentage %</b>
Registered Social Landlords	RSLs	59	35
Tenant/Resident Groups	Ten Gp	32	19
Local Authorities	LA	26	15
Representative bodies	Rep	10	6
Voluntary groups/Charities	Vol	8	5
Other	Oth	5	3
<b>Total organisations</b>		<b>140</b>	<b>83</b>
Individuals	Ind	29	17
<b>Total</b>		<b>169</b>	<b>100</b>

1.6 An electronic database was used to collate the written responses to assist analysis. This database stored free text in a systematic manner whilst providing the flexibility for amendments as the work progressed. The fields used to record the material were based on questions used in the consultation document. Both quantitative and qualitative approaches to analysing the responses were adopted to reflect the nature of the consultation questions, many of which combined both closed and open elements.

### **Report of findings**

1.7 The following 5 chapters document the substance of the analysis. Chapter 2 examines views on the need for more changes to the right to buy legislation. Chapter 3 documents views on the likely financial impact which changes will have on landlords. Other possible changes to the legislation are considered in chapter 4. An assessment of the implications for equal opportunities is reported in chapter 5. Finally, views on the business and regulatory impact assessment are summarised in chapter 6.

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<sup>3</sup> Where respondents fitted more than one category, a decision was made on their “lead” category according to the content of their response.

## 2: THE NEED FOR MORE CHANGES

### Background

2.1 The consultation proposed changes to the right to buy for the following reasons:

- The discounts of up to 70% for tenants with a preserved right to buy cannot be justified.
- It is unfair that some tenants benefit from much larger discounts than others.
- The law in this area is too complicated and difficult to understand for landlords and tenants.
- The right to buy is outdated and out of step with the focus on increasing the availability of affordable housing for those who need it most.

Two key changes were proposed:

- Removing the preserved right to buy entitlement and moving all tenants to the modernised right to buy.
- Ending all right to buy entitlements.

**Question 1: Do you agree that further restrictions on the right to buy are needed? Y/N Please give your comments and reasons.**

2.2 One hundred and fifty seven (93%) respondents answered this question. The vast majority of these (87%) agreed that further restrictions on the right to buy are needed. Those in agreement included all but one local authority and all of the voluntary groups and 'Others' who provided a view. Significant minorities of individuals (27%) and tenant/resident groups (24%) opposed further restrictions. A breakdown in responses by category of respondent is in Table 2.

**Table 2: Q1 responses by category of respondent**

Category	Agree		Disagree		Total
	n <sup>4</sup>	%	n	%	
Voluntary groups/Charities	6	100			6
Other	3	100			3
Local Authorities	25	96	1	4	26
Registered Social Landlords	55	93	4	7	59
Representative bodies	7	88	1	12	8
Tenant/Resident Groups	22	76	7	24	29
Individuals	19	73	7	27	26
<b>Total</b>	<b>137</b>	<b>87</b>	<b>20</b>	<b>13</b>	<b>157</b>

<sup>4</sup> 'n' denotes the number of organisations/individuals responding

## Reasons in favour of further restrictions on the right to buy

2.3 Two reasons for agreeing that further restrictions on the right to buy are needed dominated responses:

- **Demand for social housing outstrips supply** leading to long waiting lists for housing and difficulties for social landlords in fulfilling obligations to meet the homelessness legislation. People with need for specific types of property (e.g. people with special needs or those requiring larger properties) are particularly affected. The shortage of supply comes at a time when there is increasing demand for social housing due to the challenging economic climate and welfare reforms. A typical comment was:

‘In the current climate of persistent high levels of housing need and limited access to existing social sector stock, plus constrained opportunities for new build, it is counter-productive to retain this legislation’ (Argyll and Bute Council).

- **The current legislation on right to buy is too complex** and further restrictions could exacerbate this. The complexity of the current legislation impacts on costs of administration. One respondent commented:

‘Years of tampering with the RTB has left the system complex and confusing. In our Association alone we have 7 categories of RTB’ (Cernach Housing Association Limited).

Table 3 overleaf summarises the reasons given in favour of further restrictions on the right to buy.

**Table 3: Reasons in favour of further restrictions**

Reasons	No. of mentions	% of those in favour
Demand for social housing outstrips supply	77	56
Legislation is already too complex	37	27
RTB has led to fragmentation of estate management leading to difficulties for maintenance and repairs of communal areas/new owners may have difficulty paying for upkeep of their homes	14	10
Discounts are not justifiable	10	7
The public purse should not be funding housing which benefits some people over others	7	5
The different levels of discount create unfairness	7	5
Some families have bought houses for financial gain with the purpose of renting out or selling on	7	5
Need to sustain housing provision for future generations	6	4
Creates difficulty and uncertainties for strategic/business planning	4	3
The RTB is outdated, meeting past needs not current ones	4	3
The demand for RTB is no longer there	1	1

**Reasons against further restrictions on the right to buy**

2.4 Seven main reasons were cited by those disagreeing with further restrictions on the right to buy. Each was mentioned by five or fewer respondents:

- The restrictions established by the Housing (Scotland) Act 2010 are sufficient along with the decline in interest to buy.
- It is unfair to take away the aspirations of those who have planned to buy their home in the future.
- The right to buy should be available to all.
- The answer is not to restrict, but to build more homes.
- People still want to buy their homes and should be allowed to do so.
- The receipts from right to buy have enabled investment in housing stock and progress towards the Scottish Housing Quality Standard.
- Many tenants were informed that they would retain the right to buy in stock transfers and this should be honoured.

**Q2: Do you agree with the proposal to end the right to buy altogether? Y/N**

2.5 One hundred and sixty one (95%) respondents answered this question. The vast majority of these (83%) agreed with the proposal to end the right to buy altogether. Ninety two per cent of RSLs and 81% of local authorities agreed that

the right to buy policy should end. Eighty per cent of the tenant/resident groups which responded were also in favour of ending the right to buy altogether. Table 4 below provides a breakdown of responses by category of respondent.

**Table 4: Q2 responses by category of respondent**

Category	Agree		Mixed views		Disagree		Total
	n	%	n	%	n	%	
Registered Social Landlords	54	92			5	8	59
Tenant/Resident Groups	24	80	2	7	4	13	30
Local Authorities	21	81			5	19	26
Representative bodies	8	89			1	11	9
Voluntary groups/Charities	5	83			1	17	6
Other	3	75			1	25	4
Individuals	18	67			9	33	27
<b>Total</b>	<b>133</b>	<b>83</b>	<b>2</b>	<b>1</b>	<b>26</b>	<b>16</b>	<b>161</b>

### Reasons in favour of ending the right to buy

2.6 Many respondents, predominantly RSLs, simply re-iterated their arguments provided in response to question 1, in particular, that ending the right to buy would **stem what they saw as the loss of affordable houses for rent to the private sector**. It was argued that retaining properties in the social rented sector would help maintain future investment in new build and attaining Scottish Housing Quality Standards, ultimately leading to more choice of quality stock. Two tenant groups commented that ending the right to buy would provide the opportunity for tenants to have ‘the right to rent’.

2.7 Two other common rationales for ending the right to buy were provided by respondents across several sectors:

- **This is the simplest, ‘cleanest’, and easiest option** which will remove current complexities, creating a ‘level playing field’ (Inverclyde Council) for all social tenants; enabling tenants to ‘know where they stand’ (Albyn Housing Society Ltd).
- The abolition of right to buy will allow for **more strategic management of stock and planning of future works** along with more informed business planning. One local authority commented:

'Removal of the RTB would give more financial stability to social landlords and greater certainty over their business planning and asset management with the retained stock providing a reliable income stream' (West Dunbartonshire Council).

2.8 Other substantive arguments in favour of ending the right to buy mentioned by only a few respondents (less than 10) were:

- **The time is right** to end right to buy in terms of reduced demand, difficulties in accessing mortgages, the economic downturn, and the best stock for purchase already gone. One respondent summed up their view:

'RTB sales have declined substantially in the last decade compared with the previous levels. While this will partly be the product of the economic downturn it also indicates that the RTB is a policy whose time has passed. RTB now plays a more marginal role in the overall housing system than it did in the 1980s and 1990s' (Glasgow and West of Scotland Forum of Housing Associations).

- Ending the right to buy is the **fairest route** to go down as it will remove what some perceived to be the current inequalities in the system between neighbouring tenants holding different rights to buy.
- **There are other mechanisms to help people aspiring to buy a home to do so.** These include shared ownership schemes and in rural areas, the Rural Home Ownership Grant.

### Reasons given against ending the right to buy

2.9 Amongst those against ending the right to buy, seven respondents emphasised their view that the right to buy their own home should not be taken away from tenants. One local authority described this right as:

'a fundamental contractual right which should not be removed altogether despite the pressure on housing supply' (Comhairle nan Eilean Siar).

Four respondents (three of these being tenant/resident groups and the other an individual) commented that ending the right to buy would not in itself create new homes. Other reasons in against ending the right to buy were provided, each by only one respondent:

- Too soon after the 2010 Housing Scotland Act (Ten Gp).
- Will prevent people getting on in their lives (Ind).
- Not fair as some people have already benefitted (Ind).
- The re-sale of ex-RTB properties contributes to the supply of affordable housing (LA).
- It is fair to offer discounts to purchase housing which people have already paid years of rent towards (Ten Gp).

### **Q3: If right to buy ends, what notice period should be given?**

2.10 The consultation document emphasised that should the right to buy be abolished, changes would not be made immediately but a notice period given before any changes are made. This would allow tenants the opportunity to buy their homes under their current entitlements if they chose to do so.

2.11 One hundred and thirty two (78%) respondents specified a notice period which they considered to be appropriate. Almost three-quarters of these (73%) recommended a notice period of two years or less. Table 5 summarises the notice periods suggested by respondents.

**Table 5: Summary of recommended notice periods should right to buy end**

<b>Notice period</b>	<b>No. of respondents</b>	<b>% of respondents</b>
Immediate – 1 year	50	38
> 1 year – 2 years	46	35
> 2 years – 3 years	24	18
> 3 years	12	9
<b>Total</b>	<b>132</b>	<b>100</b>

2.12 There was no distinct pattern in the categories of respondent favouring shorter or longer lead in periods, although tenant/resident groups were slightly over-represented amongst those recommending longer notice periods.

2.13 One RSL (Paragon Housing Association Limited) urged that whatever notice period is finally decided, it should be made clear whether this timeframe is for completing a RTB purchase or for intimating the intent to buy. Another encouraged the Scottish Government to:

‘allow housing associations in Scotland to retain the full receipt of sales until changes of the right to buy come into effect and to continue full retention of the receipt where properties are sold as a result of tenants exercising modernised right to buy if this is the Government’s chosen reform’ (Scottish Borders Housing Association).

### **Reasons in favour of a shorter notice period**

2.14 The four most common reasons in favour of a shorter notice period were:

- To limit the opportunity for unscrupulous firms and disreputable private landlords buying up stock during the notice period, or family members putting pressure on elderly or other vulnerable people to purchase their homes.
- To limit further loss of social housing to the private sector.
- People have already had ample time to exercise their right to buy.
- The consultation along with the passage of the new housing act should raise awareness that anyone wishing to exercise their right should do so.

2.15 Other reasons provided by three or fewer respondents were:

- To let RSLs get on with strategic planning.
- To prevent a rush in sales.
- Any longer would serve to perpetuate the operation of the right to buy and lead to more complexity and confusion.

### **Reasons in favour of a longer notice period**

2.16 There were two substantive arguments provided in favour of a longer notice period:

- This will help to smooth any panic ‘spike’ in sales and lessen the risk of people buying without thinking through the longer term implications of costs of upkeep of their property.
- To enable those who have planned to exercise their right, but have been waiting until they are more financially secure or meet the qualifying occupancy period, to exercise their right. For example, one local authority which favoured a five year notice period argued:

‘A five year introductory period would ensure that tenants whose tenancy started before the 1<sup>st</sup> March 2011 and therefore have the modernised right to buy subject to five years occupation would have the chance to exercise the right. Any Bill ...should consider freezing any accrued discount at that point in time, with no increase in discount during the notice period’ (West Lothian Council).

<b>Q4: Do you agree with the proposal to move all those with a preserved entitlement onto modernised terms? Y/N</b>
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2.17 The Scottish Government estimates that if tenants with the preserved right to buy were all moved to the modernised right to buy from 2015, sales could be reduced significantly. Depending on the economy and its effect on future house conditions, this reform could mean that an extra 5,000 homes could be kept for renting in the social sector between 2015 and 2020.

2.18 One hundred and twenty six (75%) respondents answered the question on whether they agreed with the proposal to move all those with a preserved entitlement onto modernised terms. A summary of their responses is in Table 6.

**Table 6: Summary of views on whether those with a preserved entitlement should be moved onto modernised terms**

<b>Response</b>	<b>No. of respondents</b>	<b>% of respondents</b>
Yes	21	17
Yes if RTB is not abolished	34	27
No	68	54
Neither yes or no	3	2
<b>Total</b>	<b>126</b>	<b>100</b>

2.19 The responses to this question are difficult to interpret and should be treated with caution. Of the 68 respondents who disagreed with the proposal, some did so because in their view the right to buy should be abolished altogether. Others, however, disagreed with the proposal because they felt that the right to buy policy should be left alone, with tenants keeping the rights they already have. As it was not possible to identify for all of the respondents the rationale behind their response to this question the data in Table 5 cannot be interpreted fully. It is possible, however, to present the arguments for and against the proposal which respondents documented in their submissions.

**Reasons in favour of moving those with a preserved entitlement onto modernised terms**

2.20 Those presenting arguments in favour of the proposal were largely RSLs and local authorities. Two main arguments dominated:

- The proposal provides a compromise/balance with benefits both to purchaser and to landlord. Tenants still can aspire to owning their home and purchasing at a discount; landlords will continue to receive receipts from sales.
- The proposal will reduce the complexity which currently exists with right to buy entitlements. One local authority commented:

‘This would allow a two tier system of modernised right to buy entitlement or no right to buy entitlement which would be less complex than the current three tier system’ (East Dunbartonshire Council).

2.21 Other arguments in favour of the proposal were:

- More equitable between tenants – places them all on the same footing.
- Reduces the number of houses taken out of the social rented sector.
- Starts the process of the gradual phasing out of the right to buy policy.
- Still allows tenants the opportunity to get onto the housing ladder.

## **Arguments against moving those with a preserved entitlement onto modernised terms**

2.22 Of the 68 respondents who stated that they disagreed with the proposal, 30 (spanning six different respondent categories) argued that the right to buy policy should be abolished entirely.

2.23 Four further common arguments against the proposal were:

- Even with this change in entitlement the loss of social rented housing from the sector is unacceptable.
- The proposal will increase the complexity of an already confusing policy. One respondent remarked:

‘From a practical perspective, this proposal would still require a great deal of work to establish whether a tenant had a right to buy or not. This task would become even more complex as time passes as more and more tenants would be transferring tenancy and succeeding to tenancies at the same time as new tenants to social housing are beginning tenancies’ (Perth and Kinross Council).

- Changing entitlements is not fair on those set to lose current entitlements (this argument prevailing largely amongst tenant groups and individual respondents). One RSL summed up the view of others concerned about breaching commitments made to tenants:

‘Our suspension of the modernised right to buy has recently been extended to 2022 and tenants would therefore automatically lose the right which is unfair compared to giving notice’ (Rutherglen and Cambuslang Housing Association).

- The proposal would perpetuate inequality or even create more unfairness with some tenants having a right to buy and others having no right to buy. One local authority commented:

‘Reduction of the discount may have the effect of increasing inequality by excluding more people on lower incomes from buying their homes without adequately protecting stock levels’ (Fife Council).

2.24 Other arguments against the proposal which were made by three or fewer respondents were:

- This would still create uncertainty for landlords’ business planning.
- Those who wish to use their right to buy will have exercised this by now so abolition is better than making further changes to the policy.
- The proposed change is undemocratic and possibly not legal.

**Q5: If Yes, what notice period should we give for moving everyone onto modernised terms?**

2.25 Ninety seven (57%) respondents specified a notice period which they considered to be appropriate. Almost three-quarters of these (74%) recommended a notice period of two years or less. Table 7 summarises the notice periods suggested by respondents.

**Table 7: Summary of recommended notice periods for moving everyone onto modernised terms**

<b>Notice period</b>	<b>No. of respondents</b>	<b>% of respondents</b>
Immediate – 1 year	37	38
> 1 year – 2 years	35	36
> 2 years – 3 years	19	20
> 3 years	6	6
<b>Total</b>	<b>97</b>	<b>100</b>

2.26 Of the 40 RSLs providing a response, 82% favoured a shorter notice period of two years or less. This contrasts with the 10 tenant/resident groups who responded to this question, half of which recommended a notice period of two years or less, the other half advocating a longer lead in period. Two-thirds (65%) of the local authorities who responded recommended a shorter notice period of two years or less; one third (35%) recommended a period of over two years.

2.27 A recurring theme was that whatever time frame is finally decided, the change should be well advertised, deploying clear and transparent information in language which is easy for tenants to understand.

**Reasons in favour of a shorter notice period**

2.28 Relatively few respondents documented substantive arguments in favour of a shorter notice period. A summary of their rationales follows:

- Will minimise the potential risk to stock loss.
- Will reduce uncertainty and enable landlords to get on with strategic planning.
- Will minimise the risk of unscrupulous family members and/or lenders to pressurise tenants into purchase.
- Will simplify what is a complex situation as soon as possible.
- Tenants are not losing a right to buy altogether.

**Reasons in favour of a longer notice period**

2.29 There were two substantive arguments provided in favour of a longer notice period:

- This will help to smooth any panic ‘spike’ in sales.
- To enable all those who wish to buy prior to the change, time to do so.

**Q6: Which option do you prefer – ending the right to buy or moving from preserved to modernised?**

2.30 One hundred and forty three (85%) respondents answered this question. Of these, 122 (85%) preferred the option of ending the right to buy. Nine respondents (6%) favoured moving from preserved to modernised entitlements. The remaining 12 respondents (8%)<sup>5</sup> created another category of ‘neither’, with several arguing that the original question should have provided a third option of retention of the status quo. Table 8 overleaf summarises the response to this question by category of respondent.

**Table 8: Views on which preference of policy option by category of respondent**

Category	Ending		Moving		Neither		Total
	n	%	n	%	n	%	
Registered Social Landlords	53	93	3	5	1	2	57
Tenant/Resident Groups	21	84			4	16	25
Local Authorities	20	87	2	9	1	4	23
Representative bodies	5	83	1	17			6
Voluntary groups/Charities	5	83	1	17			6
Other	4	100					4
Individuals	14	64	2	9	6	27	22
<b>Total</b>	<b>122</b>	<b>85</b>	<b>9</b>	<b>6</b>	<b>12</b>	<b>8</b>	<b>143</b>

NB Percentages may not add to 100% exactly due to rounding.

2.31 The vast majority of all of the respondent groups except individuals preferred the option of ending the right to buy over moving from preserved to modernised rights.

**Reasons in favour of ending the right to buy over moving from preserved to modernised entitlements**

2.32 Many respondents stated that they had already provided their views on ending the right to buy in response to earlier questions. However, amongst the arguments re-iterated or summarised, the following prevailed:

<sup>5</sup> Percentages do not add to 100% exactly due to rounding.

- Ending right to buy is the best option to retain stock within the social rented sector. One respondent remarked:

‘The consultation document itself seems to make the case for substantial and wholesale reform. Any reform other than outright abolition would not deliver against the essential objective of protecting the stock of social rented housing to meet current and future needs’ (South Lanarkshire Council).

- Ending right to buy presents a cleaner and simpler option which will end the current complexity in entitlements.
- Ending right to buy is the better option for promoting equality and fairness amongst tenants. One respondent commented:

‘...any variation on complete abolition would maintain an inequitable system with people being able to exercise a ‘right’ based on nothing more than being fortunate enough to be the tenant of a particular landlord in a particular property in a particular part of the country that doesn’t fit into one of the many and convoluted exemptions and exclusions’ (Scottish Federation of Housing Associations).

Other arguments were cited by small minority of respondents:

- The right to buy has served its purpose and has little relevance today.
- Ending right to buy will reduce bureaucracy.
- Ending right to buy rather than moving all to modernised entitlements signals a clearer policy message and meets sector expectations.

### **Reasons in favour of moving from preserved to modernised entitlements over ending right to buy**

2.33 Two substantive arguments in favour of moving entitlements rather than ending right to buy altogether were:

- It would be unfair to end right to buy as this was not highlighted in the Housing (Scotland) Act 2010.
- Moving to modernised entitlements would enable a balance between permitting right to buy for those wanting this, whilst reducing stock losses in the social rented sector.

<p><b>Q7: Do you think there would be any unexpected issues with either option?</b></p>
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2.34 Ninety nine (59%) respondents answered this question.

## Unexpected issues arising with the option of ending right to buy

2.35 Two issues were raised most frequently by respondents as potential issues which whilst possibly not unexpected, nonetheless require planning and management:

- surge in sales of housing
- negative reactions amongst tenants and sections of the media.

2.36 Thirty nine respondents identified a **surge in sales** as an issue which was likely to put pressure on landlord resources to deal with increased numbers of enquiries, whether or not these resulted in completed sales. One respondent commented:

‘We know that the volume of applications has declined sharply over recent years and no doubt administration arrangements will have too. Remembering that compliance with timescales is fundamental to the RTB process, it will be important for landlords to make sure that there are staffing resources in place to manage enquiries, investigation, verification, valuation, offers to sell, missives concluding, and so on’ (Chartered Institute of Housing Scotland).

2.37 Thirty four respondents considered that **tenants might react adversely** to this policy change, with some even resorting to legal action to challenge it in court. A few RSLs expressed concern that they would not be able to honour commitments made to their tenants, resulting in them losing the trust of their tenants. For example:

‘...transferring tenants to Scottish Borders Housing Association were promised the contractual right to buy under preserved terms at the time of the tenant ballot’ (Scottish Borders Housing Association).

2.38 A few respondents, however, suggested that any negative reaction might not be as severe as some envisaged, especially if tenants are given a few years notice of the changes. Examples of comments were:

‘...as an RSL which has recently consulted tenants regarding an extension of the exemption of RTB for a further 10 years and had this approved, although there were some negative comments.. all understood the reasons behind the application for extension of the exemption and did not oppose it’ (East Kilbride and District Housing Association).

‘It is important to remember that what is being proposed is the removal of a right previously granted by statute and that if removal is the preferred option, the change would not remove a tenant’s right to a home’ (HBJ Gateley).

2.39 Another potentially unexpected issue identified by ten respondents was that of **pressure placed on tenants** by financial lenders, family members or others to act quickly, raising the possibility of rushing into buying their home without taking into account the longer term financial implications of upkeep and mortgage payments (which may rise). It was argued that this in turn could lead to an increase in waiting lists for social rented housing, or mortgage to rent applications, as new owners find their finances are stretched and turn back to the sector for assistance. One respondent argued that this would be a particular problem for:

‘tenants who are financially on the border-line between renting and buying’ (Paragon Housing Association Limited).

2.40 Ten respondents, largely tenant/resident groups, identified a **decline in standards of housing** as a potentially unexpected issue over the longer term. They highlighted a few reasons for this:

- lack of landlord capital receipts to reinvest in the current stock
- tenants without aspirations to own their own homes may not look after their property as it will always be owned by someone else
- more people will have bought hastily without being able to afford the upkeep of their property.

2.41 One respondent (Ten Gp) argued however, that an increase in maintenance standards may gradually ensue as the ending of the right to buy would stem the sales of properties to people who cannot afford their upkeep.

2.42 Eight respondents reiterated concerns expressed previously that the potential spike in sales which could result in an announcement of the ending of the right to buy would lead to a **further loss of social rented stock**. Others, however, argued that the current lack of available mortgage finance could limit this effect.

2.43 Further potentially unexpected issues raised by 5 or fewer respondents were:

- There will be need to develop and expand alternative schemes to supporting low income families into the property market, for example, people with disabilities who are more likely than others to be living in poverty.
- There may be job losses amongst those who process right to buy sales and those who are involved in valuing social rented properties for sale.
- Inconsistencies will need to be addressed such as that between the policy situation in England and Wales and Scotland; the differences between individual right to buy and sales to communities of interest.
- There may be a benefit in terms of greater mobility between properties as older people are able to downsize to smaller properties without the

pressure of retaining oversized homes in case of a future wish to buy within their family.

- There could be a short term increase in income for landlords from sales of property bought before the deadline for ending right to buy.

### **Unexpected issues associated with the option of moving from preserved to modernised right to buy**

2.44 Twelve respondents from a range of different sectors cautioned that implementing this option could result in much confusion amongst tenants and indeed staff processing right to buy applications. It was suggested that this could result in a need for increased staff training and also a demand for the Scottish Government to produce additional guidance for landlords. One respondent outlined areas of potential confusion and possible resistance:

‘Transferring tenants from the preserved RTB to the modernised version is not straightforward when applied to housing associations and co-operatives. A range of exemptions currently apply to the modernised RTB in certain organisations, either because of charitable status, the ten year RSL exemption, or because their stock has local authority designated Pressured Area Status. If those with preserved RTB are transferred onto modernised RTB in any of these scenarios then that RTB, under current rules, would either be suspended or ended completely’ (Scottish Federation of Housing Associations).

2.45 One concern amongst a few respondents was that tenants might perceive this option to be a way of ending right to buy, ‘by the back door’ which could attract an adverse reaction.

### 3: THE FINANCIAL EFFECT ON LANDLORDS

#### Background

3.1 The Scottish Government believes that either moving those with preserved right to modernised rights, or ending right to buy, will provide improved ability for landlords to manage their assets and provide a financial incentive to build new homes. This would be due to greater certainty over which properties can or cannot be sold under right to buy. There would be a more predictable revenue stream, giving landlords greater confidence to borrow over the long term. Using the information available the Scottish Government considers that neither of the proposed changes will have a negative effect on the ability of social landlords to invest. The Government has no plans to change the existing arrangements for voluntary sales.

**Q8: What financial effect would our proposed changes have on social landlords, particularly over the longer term?**

3.2 One hundred and thirty six (80%) respondents answered this question. Responses did not generally distinguish between the different options for change, but addressed the broad impact of either restrictions in, or the abolition of, the right to buy. In the few instances when the option to move from preserved to modernised right to buy entitlement was specifically mentioned, respondents considered that whilst this option was likely to reduce the risk of losses for some landlords, it could also generate an increase in administration costs due to the complexities involved.

3.3 Several respondents indicated that the financial impact of the changes would have been much more significant a decade ago when there were more sales and the receipt from these contributed more to a landlord's capital programme. Many medium to smaller landlords remarked that in the current climate of dwindling right to buy sales they no longer relied on sales proceeds to maintain or improve their stock.

3.4 Seventy eight respondents provided a view on the broad financial effect of the proposed changes on social landlords over the longer term. Their responses are summarised in Table 9 below.

**Table 9: Summary of views on the broad financial effect of the proposed changes on social landlords**

	No. of respondents	%
Gain financially	18	23
Lose financially	19	24
Marginal/little change	41	53
Total	78	100

3.5 Of those respondents who expressed a view, over three-quarters (76%) considered that over the longer term the financial effect of the proposed changes on social landlords would be marginal or beneficial. Almost two-thirds (63%) of those predicting a negative impact on finances were individuals or tenant/resident groups.

3.6 From the responses it appeared that larger RSLs and local authorities were those most likely to rely on sales as a key source of income to fund capital investment and repair work, and were therefore most likely to encounter a negative impact at least in the shorter term. For example, City of Edinburgh Council estimated that the abolition of right to buy will result in a capital loss of approximately £2.8 million in the first year with the rent charge for homes that otherwise would have been sold resulting in an estimated income to the Housing Revenue Account of £0.27 million in the first year. This contrasted with information from some of the smaller landlords who reported small net losses due to sales over recent years.

3.7 Those predicting a marginal or increase in financial benefits as a result of the proposed changes envisaged increased revenue from rent over longer term being set against losses in income from sales receipts. In addition, some respondents identified potential reductions in costs:

- staff/administration
- legal
- management of homelessness
- management of common repairs which involve owner occupiers
- reduction in possible factoring costs.

3.8 Four respondents (three RSLs and one tenant/resident group) commented that the beneficial social impact of retaining stock in this sector and the increased confidence amongst tenants generated by the viability of their RSL should be viewed alongside any consideration of finances.

3.9 Forty seven respondents across all respondent categories agreed that the proposed changes, particularly ending right to buy, would result in more predictable and sustainable revenue streams which would benefit business planning.

3.10 Fifteen respondents (seven of them RSLs) welcomed what they predicted would be the positive impact which greater certainty over income would have on securing and servicing loans. However, one respondent (Fife Federation of Tenants & Residents Associations) expressed concern that the introduction of welfare reforms presented another element of unpredictability on rental income levels, which coupled with reduced funding for new build, could impact on housing associations' ability to borrow and build. Three local authorities predicted an increase in their need to borrow over the coming years.

3.11 Five tenant/resident groups envisaged increased maintenance costs to landlords in the longer term if the proposed changes are made, due to the ageing of properties which previously would have been the responsibility of their new owners.

**Q9: What steps could landlords take to reduce any negative effects?**

3.12 Ninety six (57%) respondents answered this question. Many of these respondents, however, stated simply that they felt the negative effects were likely to be minimal. Amongst the others, two recommendations dominated:

- Twenty three respondents (largely RSLs and local authorities) advocated early **review of business plans** by landlords to adjust budgets and strategies to accommodate and prepare for the changes in policy. One respondent summed up the views of many:

‘Prudent landlords should have sustainable business plans that are not heavily predicated on right to buy capital receipts’ (Clyde Valley Housing Association).

3.13 One local authority recommended preparing a ‘Plan B’ as a contingency, whilst others advocated prudent asset management.

- Twenty respondents from a range of sectors identified **timely and good quality communication between landlords and tenants** as an effective route to reducing negative effects. The Scottish Government and landlords were seen as having a key role in explaining the rationale behind policy changes, promoting the benefits of change and advising tenants on options including home ownership outwith right to buy. A typical comment was:

‘Clear communication by both the Scottish Government and social landlords, being open and transparent with tenants, informing them clearly their RTB is being phased out/coming to an end might help reduce any negative effects’ (Glasgow Housing Association).

3.14 One respondent specified several possible avenues for communicating changes:

‘...District Management Committees, Tenants and Residents Associations, Open Door Newsletter, Web page, advertisements in local newspapers...’ (Dumfries & Galloway Housing Partnership Boards Members, District Management and Tenants).

3.15 Six respondents considered that retaining the option of voluntary sales by landlords (e.g. of vacant property or where the maintenance costs were higher

than the rental income) could help to offset the loss of receipts from the removal of the right to buy.

3.16 Other recommendations made by three or fewer respondents were:

- Advise tenants on the dangers of unscrupulous money lenders during the period prior to the right to buy ending.
- Phase out the right to buy gradually, giving time for landlords to adjust their business planning.
- Factor the properties sold before the end of right to buy so as to help with maintenance in the future.
- Continue to consider ways to boost the supply of affordable housing in Scotland.
- Use the income from the 'spike' in sales before the ending of right to buy to reduce debt on housing stock.
- Identify new sources of income such as increasing rent, increasing borrowing or disposal of land and other assets.
- Landlords should ensure they have all the information they need and administrative arrangements in place to handle the increased workload prior to changes being implemented.
- Landlords should ensure they have all the advice they need (e.g. from the Scottish Government and Housing Regulator) to help them understand the ramifications of the changes, to prepare for giving accurate advice to their tenants.
- Build in security of tenancies; emphasise that under the Scottish Social Housing Charter tenants have a secure home.
- Emphasise the positives of renting. One RSL remarked:

'Assuming the negatives to be related to disappointment with tenants who would be denied the opportunity to exercise RTB, we would hope to adequately explain to them the advantages of our continuing to own, manage and maintain the houses for the wider benefit of the community' (Whiteinch & Scotstoun Housing Association Ltd).

- The Scottish Government should provide clear information on the legislative changes and advise landlords on addressing possible negative effects

## 4: OTHER CHANGES

### Repeal section 69

4.1 Section 69 of the Housing (Scotland) Act 1987 allows landlords to refuse to sell (if Scottish Ministers have given their authorisation) homes provided for tenants of pensionable age who have special needs, which a tenant would otherwise be entitled to buy. These homes have to be substantially different from normal houses. The legislation has become difficult to apply in a modern context, for example, the meanings of 'pensionable age' and 'amenity house' are ambiguous. Judgements need to be made on whether a home has been adapted specifically for a person of pensionable age or merely for a disabled person of any age. Features of new build housing which would once have been considered to be 'substantially different' are now standard.

4.2 The Scottish Government wishes to repeal Section 69 and allow landlords local discretion to decide which homes should be exempt from the right to buy because they are needed for elderly tenants with special needs.

**Q10: Do you support the proposal to repeal Section 69 and delegate decision-making to landlords? Y/N**

4.3 One hundred and thirty two (78%) respondents answered this question (although a further 11 respondents indicated their opposition to the proposal on the grounds that they supported the end of right to buy entirely). Many of the 132 respondents also supported the end of right to buy, but provided a view on Section 69 in the event of the right to buy remaining.

4.4 The vast majority (86%) of those responding agreed with the proposal to repeal Section 69 and delegate decision-making to landlords. This included all 28 local authorities who provided a view, 86% of RSLs and 78% of tenant/resident groups. Table 10 summarises the responses.

**Table 10: Summary of views on repealing Section 69**

	No. of respondents	%
In favour of repeal	114	86
Against repeal	17	13
Mixed views	1	1
Total	132	100

### Reasons in favour of repealing Section 69

4.5 Five reasons in favour of repealing Section 69 dominated. These are listed below in order with the most frequently mentioned first.

- Landlords have the local knowledge of their stock and local circumstances which is required to make informed decisions on sales of adapted housing (19 mentions across a range of five respondent sectors)
- This will protect housing stock of value to future generations of older and disabled tenants (13 mentions across a range of five respondent sectors). One respondent commented:

‘Given the demographic projections for Scotland over the next few decades it is vitally important that relevant housing is protected for prospective older and disabled households with limited resources’ (Shelter Scotland).

- Repeal of Section 69 will allow for local flexibility, responsiveness and discretion (nine mentions largely by RSLs and local authorities).
- Section 69 is currently too complex to apply and the proposal will simplify the process (nine mentions, eight of which were by local authorities). One remarked:

‘Section 69 is much too vague in definition and much too open to interpretation’ (East Ayrshire Council).

- Consistent with delegation of decision-making on ‘pressurised areas’ to local authorities (six mentions, five of which were by local authorities).

#### 4.6 Other rationales provided by four or fewer respondents in favour of repealing Section 69 were:

- It is expensive to adapt housing and such housing should not be sold at a discount. Repeal of Section 69 will protect investment (four mentions).
- There is no control over who purchases adapted housing after the initial sale (one mention).
- Repeal of Section 69 is part of the process of ending right to buy altogether (one mention).

### **Reasons against repealing Section 69**

#### 4.7 The main substantive rationale provided by four tenant/resident groups and one voluntary organisation was that repeal of Section 69 could lead to discrimination on the grounds of health, age or care needs. One respondent argued:

‘We believe these proposals to be in direct opposition to the Public Sector Equality Duty to advance equality of opportunity for disabled people, given that they will prevent otherwise eligible disabled tenants from benefiting from the right to buy in the same way as non-disabled tenants simply because of impairment and a requirement to make

adaptations to a tenancy to meet assessed needs' (Capability Scotland).

4.8 Other reasons against repealing Section 69 were:

- The Scottish Government should not be shifting responsibility onto landlords (two mentions).
- The status quo works (two mentions).
- Councils cannot be trusted not to politicise decisions (two mentions).
- This is not a priority for change (two mentions).
- Needs more debate before changing (one mention).

### **General comments**

4.9 A common comment was that if repeal of Section 69 goes ahead then the Scottish Government will need to provide sufficient guidance, particularly relating to definitions, to ensure that landlords across the country operate in a consistent and transparent manner. It was argued that an appeal system should be put in place along with a monitoring system so that inconsistencies in local areas can be identified and addressed.

4.10 Five respondents questioned why a distinction should be made between elderly disabled and disabled people of any age. One respondent remarked:

'The determination should be related more to the features of a property rather than the age of the person occupying it' (Ind).

4.11 Another commented:

'It would be helpful if the proposal went further and noted that landlords could also exclude housing from right to buy because, for example, it was needed for younger people with mobility problems or wider health issues' (South Lanarkshire Council).

4.12 Four respondents recommended that tenants should be fully consulted and involved in the decision-making process should Section 69 be repealed.

4.13 Four respondents urged that landlords retain their right to sell adapted properties voluntarily to people with disabilities should they judge it appropriate, particularly as options to buy on the open market are often restricted for such people.

### **Extend the 10 year suspension**

4.14 The 2001 Act extended the right to buy to all tenants with Scottish secure tenancies of non-charitable RSLs and those RSLs which became charities after 18 July 2001. This act also allowed for this right to be suspended for 10 years

from 30 September 2002. Section 61A of the 1987 Housing (Scotland) Act (as amended) allows RSLs to apply to Scottish Ministers for the suspension to be extended for another 10 years. The Scottish Government is considering a proposal to make the current suspensions permanent while still keeping the condition that allows RSLs to remove any suspension.

4.15 The 10 year suspension does not apply to tenancies of most homes built by RSLs after 30 September 2002. These homes are covered by the right to buy, but due to the 'cost-floor' rule<sup>6</sup> they cannot be sold at a discount. The 'cost-floor' rule will no longer apply after 10 years resulting in these homes being available to buy at a discount from 1 April 2013.

4.16 Putting in place a blanket suspension on right to buy for all RSLs from a certain date could be one option to end uncertainty for tenants over their right to buy. Alternatively it may be simpler to end the right to buy altogether for the stock affected.

<b>Q11: Do you have any views on the 10 year suspension and possible future changes?</b>
--

4.17 One hundred and nine (64%) respondents addressed this question. The complexities of the issues associated with the 10 year suspension and the various proposals tabled generated a complex mix of responses which proved to be difficult to summarise and interpret. In particular, it is not clear whether some respondents have argued for a complete abolition of right to buy or whether they are agreeing with an end to the right to buy for some stock. It is also not clear whether many of those agreeing that there should be an extension to the 10 year suspension wish this to be a blanket suspension as proposed or simply the maintenance of the status quo with RSLs applying every 10 years. The following analysis has been undertaken against this lack of clarity and is presented, therefore, at a general rather than detailed level.

### **Support for a blanket suspension**

4.18 The proposal to introduce a blanket suspension for all RSLs from a particular date attracted much cross-category support (for the reasons above it has not been possible to quantify this) although many respondents stated that this was a second-choice option for them, with their preference being total abolition of right to buy.

4.19 Reasons in favour of a blanket suspension included:

- Will help to protect desirable social rented properties from being sold.
- Will provide an acceptable 'half way measure' between right to buy and abolition of right to buy.

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<sup>6</sup> The 'cost-floor' rule is where a landlord can state a minimum selling price if they have built, bought or spent at least £5,000 on repairs or improvements in the last 10 years.

- Will create more certainty for tenants and landlords alike.
- Provides equity across RSLs.
- Seems logical as otherwise RSLs will need to apply every 10 years.
- Saves resources which are required for applying for repeat suspensions.

4.20 Support was also expressed by a small number of respondents (largely RSLs) for the proposal to include within the suspension those homes built by RSLs after 30 September 2002. One respondent (Other) commented that houses acquired (rather than built) would still fall outwith this proposal resulting in an imbalance in rights. In addition, one respondent highlighted the situation of charitable housing associations that missed out on obtaining their charitable status by 18 July 2001 'cut off' date for right to buy exemption:

'In our view those associations should not necessarily have to apply for extensions to the exemption beyond 2012 simply because they missed a notional cut-off date. We understand that there are around 15 organisations falling into this category and anything up to 7000 properties affected' (Scottish Federation of Housing Associations).

### **Reasons against a blanket suspension**

4.21 A substantial body of respondents recommended that rather than amending the right to buy policy further, it would be more straightforward to end it for all social housing. Repeat extensions or making the current suspensions permanent were seen as unfair to tenants who may aspire to buy their home but in effect may never be given this opportunity. As one RSL commented:

'Wouldn't it be simpler....to remove the 'right' when in reality it is highly unlikely that tenants will ever be able to exercise it?' (Cernach Housing Association Limited).

4.22 One further common argument against supporting the 10 year suspension and related policy was that these perpetuated inequalities between the rights of different tenants depending on landlord and circumstance. The proposals were viewed as sustaining anomalies even between tenants renting from the same RSL.

4.23 Another argument posed by one respondent (Oth) against a blanket suspension was that this could damage landlord/tenant relationships, at least in the short term (although it was acknowledged that over a longer period relationships may improve due to the increased transparency and certainty over rights to buy).

## **Arguments against any changes to the status quo**

4.24 Eight respondents (largely tenant/resident groups and individuals) appeared to favour the status quo, with most stating simply that the current provisions are adequate and should remain in place. One RSL argued for retention of the status quo as they predicted a total abolition of right to buy within the next 10 years.

<b>Q12: Are there any other right to buy issues which you think should be tackled?</b>
--

4.25 Fifty-three (31%) respondents took the opportunity to raise other issues or re-emphasise aspects of previously raised issues which they felt were important. One RSL also commented that the current economic climate changed the context for home ownership, suggesting that further issues may well emerge:

‘The financial stability of the external economy has to throw doubts on home ownership. As a housing provider we are dealing with clients who are potentially threatened with homelessness due to the increase in overall debt’ (Berwickshire Housing Association).

4.26 A number of other specific right to buy issues were raised by respondents.

### **Purchasing of right to buy properties by wider family members**

4.27 Nine respondents (five of whom were individuals) urged that the issue of family members other than the tenants themselves purchasing right to buy properties for future financial gain, should be addressed. The scenario of offspring purchasing their parents’ house and selling this in the future was highlighted. One respondent (RSL) suggested that sales should be limited to tenants who can demonstrate that they can purchase their home by their own financial means.

### **Better maintenance of mixed tenure homes**

4.28 Seven respondents (all but one being RSLs and tenant/resident groups) called for action to tackle the problem of maintenance issues in mixed tenure blocks. Ways of enforcing owner occupiers to maintain standards were urged, with the suggestion made that tenants must demonstrate their financial ability to maintain their property before being permitted to buy it.

### **Simplification of the right to buy policy**

4.29 Seven respondents (five of whom were RSLs) urged that if right to buy continues, then effort should go into simplifying the eligibility criteria. One further

respondent (LA) called for clearer and accessible guidance material to support the continuation of the policy.

### **Limiting opportunities for buying and renting**

4.30 Six respondents (four of whom were local authorities) requested that individuals be restricted to only one purchase of a social rented property. Two further respondents suggested that once an individual has rented then bought their home they should not be permitted to rent another home in the social rented sector. One individual respondent recommended that an age limit of 70 years should be placed on tenants wishing to purchase their home. Another individual respondent requested that tenants known for anti-social behaviour should forgo the right to buy.

### **Clarification of rights on succession to and acquisition of right to buy properties**

4.31 Six respondents (from a range of sectors) requested clarification on eligibility for discounts in cases where the tenancy changes due to succession (in the case of death of a tenant, for example) or the creation of joint tenancies. Various scenarios were painted by respondents which they felt needed to be addressed. For example:

‘There has always been some doubt as to whether a move from a single to a joint tenancy involves an assignation of the tenancy. In addition, a joint tenant may succeed to a preserved right to buy even where they themselves were not in occupation of the property and had no tenancy interest prior to 30<sup>th</sup> September 2002’ (East Dunbartonshire Council).

‘At present the right to buy is being passed on death, to joint tenants and spouses/civil partners, who may have no connection to the original tenancy. This chain can continue indefinitely and effectively protects the right to buy for a small number of tenants. This does not seem consistent with the spirit of the Housing (Scotland) Act 2010’ (Home Scotland).

### **Maintaining the option of voluntary sales**

4.32 Five respondents (from a range of sectors) emphasised what they perceived to be the importance of social landlords retaining the option to sell properties and other assets outwith the right to buy, on a voluntary basis. One respondent commented:

‘There are a range of circumstances when such voluntary disposals will make business and investment sense and these will necessarily require associated guidance that sets out the type of circumstances that are appropriate for this mechanism to be used – regeneration

being an obvious example, as well as circumstances of minority ownership in tenement blocks' (Chartered Institute of Housing Scotland).

### **Re-selling property bought under right to buy**

4.33 Five respondents (four of whom were tenant/resident groups or individuals) expressed concern at properties bought under right to buy being put on the market for resale by their owners. Two suggested that a minimum period be stipulated within which time the property cannot be sold (six years; 5 – 10 years). Another recommended that the larger the discount given, the longer the period should be before re-sale is permitted. One tenant group considered that once a social rented property is sold, the owner should not be permitted to rent it out subsequently.

### **Clarification of meaning of 'occupation' of a property**

4.34 Four local authority respondents requested clarification of what is meant by 'occupation' as used in Section 61ZA of the Housing (Scotland) Act 1987. The key ambiguity relates to whether 'occupation' should be defined as meaning the occupation as tenant or joint tenant, whether it should be given the same meaning as it has in terms of Section 61(10) of the Housing (Scotland) Act 1987, or whether it should be interpreted as including any physical occupation of a property.

### **Re-purchase of stock previously sold under right to buy**

4.35 Three respondents (two RSLs and one representative body) suggested that social landlords should consider buying back properties sold under right to buy perhaps at market value, even if this is less than the price that the property originally sold for.

### **Publicising changes**

4.36 Two local authorities recommended that whatever changes are made to the right to buy policy, there should be adequate publicity given to promoting these. One suggested that the Scottish Government should be responsible for this.

### **Other issues**

4.37 A number of other substantive issues were raised by one or two respondents.

- Tenants currently on mid-market rents under the National Housing Trust Scheme with a short assured tenancy to be brought into affordable renting at the end of the National Housing Trust term should the existing tenant be unable to buy the property.

- The Scottish Government rather than social landlords should bear the cost of discounting property prices, as the original decision to discount was grounded in a political decision to sell off social housing.
- Pressurised Area Status should apply to both forms of right to buy and not exclusively the modernised form.
- Landlords should not be required to provide prospective tenants with information and advice on their future ability to buy their homes and the level of discount they will be entitled to. As the primary focus of a landlord is to allocate a dwelling to meet the households' needs and aspirations in terms of renting a property, it is not appropriate that the landlord should be required to give advice in relation to exercising their right to buy.
- To help meet the immediate loss of rental income due to any spike in sales before any change to right to buy policy, the Scottish Government should allow RSLs to retain the capital receipts from sales and roll these over to help fund future housing supply through their development programmes.
- It should not be possible for families to still occupy or purchase a home which has been specially adapted for a family member who has died or moved away.

## 5: ASSESSMENT OF EQUAL OPPORTUNITIES

### Background

5.1 The public sector duty in terms of equal opportunities says that the public sector must consider equality in everything it does. The Equality Impact Assessment (EQIA) allows consideration of how policies may affect, either positively or negatively, different sectors of the population in different ways.

**Q13: What groups do you think would be affected – positively or negatively – by the proposed reforms?**

**Q14: What could we do to avoid any negative effect?**

### Perceived positive or negative effects

5.2 The majority of respondents (127 or 75%) provided a view on what they saw as the broad positive and/or negative impacts of the proposals on different groups. Table 11 provides a picture of how different sectors responded.

**Table 11: Broad views on the positive or negative impact of the proposals by respondent sector**

Respondent sector	No. of respondents identifying positives	No. of respondents identifying negatives
Registered Social Landlords	35	31
Local Authorities	17	18
Tenant/Resident Groups	20	12
Representative bodies	5	9
Voluntary groups/Charities	4	1
Other	5	4
Individuals	7	15
<b>Total</b>	<b>93</b>	<b>90</b>

5.3 Many respondents, particularly RSLs and local authorities identified both winners and losers depending on which policy changes are made. Tenant/resident groups highlighted more positives than negatives. Individual respondents identified more negatives, perhaps reflecting concerns over their individual circumstances or those of others they knew which had galvanised them into responding to the consultation.

5.4 A summary of the views by groups affected and ways to address negative impacts is in Table 12 overleaf.

**Table 12: Summary of views on which groups might be affected positively or negatively by the proposed reforms and what could be done to avoid any negative effect**

<b>Groups likely to experience positive effect</b>	<b>Comments</b>	<b>Ways to avoid any negative effect</b>
Prospective tenants due to the collective benefit of safeguarding social housing. Seen as benefitting in particular those on waiting lists; homeless; vulnerable groups; low income households; young people; armed forces	78 mentions from all sectors of respondent. For example: 'The proposals give collective benefits by means of continued provision of social housing whereas RTB gives subsidised individual benefit' (East Kilbride and District Housing Association).  'Households in housing need will be positively affected. They are some of the most disadvantaged in society and include single parent households and low income families who, in areas of limited supply, may spend long periods in temporary homeless accommodation' (Highland Council).	
Current and new tenants who will be treated equally	13 mentions from across most sectors. The proposals were viewed as creating a 'level playing field' which placed all tenants on the same rights (including those renting privately).	
Social landlords	9 mentions including respondents from RSLs, local authorities, tenant groups and one individual. Social landlords were seen to benefit from more sustainable rental income which will assist in longer term planning.	
Tenants requiring maintenance to their properties	8 respondents (5 of whom were tenant groups) predicted benefits in that repairs and maintenance will be made easier in the future. In	

	particular long term tenants who may not have the financial ability to carry our repairs will have their homes maintained into old age.	
Tenants with special needs/tenants who have disabilities	6 mentions from 6 different respondent sectors. The proposals were seen as safeguarding housing adapted for people with particular needs.	
<b>Groups likely to experience negative effect</b>	<b>Comments</b>	<b>Ways to avoid any negative effect</b>
Existing tenants who aspire to home ownership but do not have the financial ability at present but may lose their current entitlements to buy. Older people; younger people; those with preserved rights identified as key groups.	82 mentions from across all respondent sectors. For example: ‘The right to buy was a route into home ownership available to start young people off’ (Lanarkshire Housing Association). Some viewed any negative effects to be short term: ‘A minority of social tenants who have built up their RTB eligibility might be adversely affected in the short term but as the current situation is anomalous and inherently inequitable, this should not be a substantive consideration’ (Argyll and Bute Council).	1. 33 respondents recommended that other options for low cost home ownership are made available and promoted.  2. 21 respondents recommended that an appropriate ‘lead in time’ is set before any changes are made and this is highly publicised. One commented, ‘this should not be left to rumours in the press leading to a rush to buy’ (Fife Federation of Tenants & Residents Associations).  3. 16 respondents recommended that a communication strategy be implemented, which involves tenants and accommodates the requirements of those with

		<p>additional communication needs.</p> <p>4. 14 respondents recommended high profile, positive publicity to convey the benefits of the changes. One commented: ‘Clearly define the reasons taken by supporting them with valid examples as to why this decision was taken’ (Dumfries &amp; Galloway Housing Partnership Boards Members, District Management and Tenants).</p> <p>5. 5 respondents recommended that good quality advice be provided to existing tenants on their options in the notice period.</p> <p>6. 3 respondents recommended that a voluntary sales policy is maintained.</p>
<p>People with disabilities and other special needs</p>	<p>7 mentions involving RSLs, local authorities, a representative body and an individual. It was commented that such tenants had fewer opportunities to purchase a home outwith the social rented sectors. Repealing S69 was also</p>	<p>1. 16 respondents recommended that a communication strategy be implemented, which involves tenants and accommodates the</p>

	seen as impacting particularly on this group.	<p>requirements of those with additional communication needs.</p> <p>2. 5 respondents recommended that good quality advice be provided to existing tenants on their options in the notice period.</p> <p>3. 3 respondents recommended that a voluntary sales policy is maintained.</p>
People with jobs relating to right to buy protocol	One local authority and one RSL considered that chartered surveyors in particular may have less work due to changes to right to buy.	1. One local authority recommended that the jobs of the staff affected should be re-designed.
Tenants living in rural areas	One respondent highlighted this group: 'Rural tenants will be affected negatively if no appropriate support is put in place to enable low cost home ownership in rural Scotland' (Rural Housing Service).	<p>1. 33 respondents recommended that other options for low cost home ownership are made available and promoted.</p> <p>2. 5 respondents recommended that good quality advice be provided to existing tenants on their options in the notice period.</p>

**Q15: Do you have any comments on the partial Equalities Impact Assessment?**

5.5 Forty five (27%) respondents provided comments on the partial EQIA. Twenty one of these remarked that the EQIA appeared to be comprehensive and fair. Two respondents welcomed what they perceived to be useful tenant profiles. Three respondents agreed that further monitoring of the impact of the changes and more consultation with older people and those with disabilities will be useful. One view (Vol) was that not all of the assessment was entirely relevant to the policy issues. Another respondent (Ten Gp) stated their view that more information was required.

5.6 Several respondents called for **more emphasis** to be given in the EQIA to particular topics and groups:

- Positive outcomes of the changes on disadvantaged groups and minority groups (such as LGBT, people with disabilities) (seven mentions across a range of sectors)
- Negative impact on younger people who may have wished to exercise their rights but are not currently financially able to do so (three mentions across different sectors).
- Potentially negative impact of S69 change on older people and people with disabilities (Ten Gp).
- The possibility of pressure put on older people by families who purchase their home which may become unsuitable for their housing needs (LA).

5.7 Finally, one respondent (Oth) highlighted a possible human rights-based objection to the changes to right to buy on the grounds of Article 8 which relates to protecting the private life of an individual against arbitrary interference from public authorities and private organisations. This respondent considered that it could be argued that by removing the right to buy the Scottish Government is failing in its duty to respect tenants' homes, particularly as the right to buy has existed for over 30 years and been made available to thousands of previous tenants.

## 6: BUSINESS AND REGULATORY IMPACT ASSESSMENT

### Background

6.1 All policy changes, whether European or domestic, which may affect businesses or the voluntary sector should be accompanied by a Business and Regulatory Impact Assessment (BRIA). The BRIA allows policymakers to use available evidence to find proposals that best achieve the policy aims while reducing, as far as possible, costs and burdens. The Scottish Government prepared a partial BRIA as part of the consultation.

<b>Q16: Do you have a view on the effect these proposals may have on your business?</b>
---

6.2 Seventy (41%) respondents answered this question. Of these, 23 (RSLs, local authorities and one voluntary group) predicted that the effect of the proposals on their business would be **minimal**. Typical comments were:

‘Losses of income would be offset by ongoing rental receipts and the overall negative effect would be minimal’ (West Dunbartonshire Council).

‘...the financial impact is neutral. However, in terms of asset management – sustaining control over the remaining stock will enable the Association to plan maintenance and renewal with more confidence and provide certainty to tenants over the sustainable future of their homes’ (Fife Housing Association).

6.3 Many respondents identified **positive impacts** (both financial and otherwise) on their business:

- Increase in viability, enabling delivery of the business aims, and easing the ability to borrow in future (26 mentions, 19 of which were RSLs). For example:

‘Ending RTB would support us in delivering our business – providing housing for people in need. It would provide rental income stability and this in turn would enable us to deliver our planned investment programme for our stock’ (Paisley South Housing Association)

‘...create a stable asset base on which to borrow’ (Partick Housing Association).

- Reduced volume of administration associated with handling of applications to buy and also maintenance of waiting lists (10 mentions, seven of which were RSLs). One respondent commented:

'Working for a Citizens Advice Bureau we do receive numerous queries about people who are unable to get social housing' (Slab Housing Project, Moray and Nairn CABs).

- Business planning will be made easier and more accurate (nine mentions across different sectors). For example:

'We expect that our business should benefit from a stronger and more sustainable rental income stream and balance sheet' (Clyde Valley Housing Association).

6.4 A few respondents highlighted what they predicted would be **negative impacts** on their business:

- More demands for transfer requests which will increase administration costs (two mentions).
- Losses in professional/technical staff no longer required for valuations of properties (two mentions).
- Lower capital receipts which are relied on to fund SHQS (one local authority).
- Will necessitate review of business plan (one local authority).

<b>Q17: Do you have any comments on the partial BRIA?</b>
---

6.5 Twenty nine (17%) respondents answered this question. Thirteen (10 being RSLs or local authorities) explicitly welcomed the BRIA as being comprehensive and reasonable.

6.6 Three respondents suggested that costs of handling the complex queries associated with right to buy should also be considered in the BRIA.

6.7 Seven respondents (five of them RSLs) disagreed that Option 1 (do nothing) was cost neutral. One remarked:

'While it (Option 1) does not involve any additional costs relative to the status quo, the effect of the RTB in its present form is that assets provided with public funding are lost and cannot be replaced. We believe that this carries a significant cost for Government, landlords and prospective tenants' (Cassiltoun Housing Association).

6.8 Five respondents (three of them RSLs) considered that Option 3 (moving to modernised RTB) would have a much greater negative impact than the BRIA suggested, due to the increased complexity which they predicted would ensue.

## ANNEX 1: LIST OF RESPONDENTS

No. of respondents = 169

Organisation
<b>Local Authorities = 26</b>
Aberdeen City Council
Aberdeenshire Council
Angus Council
Argyll and Bute Council
City of Edinburgh Council
Clackmannanshire Council
Comhairle nan Eilean Siar
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
Falkirk Council
Fife Council
Glasgow City Council
Highland Council
Inverclyde Council
Midlothian Council
Moray Council
North Ayrshire Council
North Lanarkshire Council
Orkney Islands Council
Perth and Kinross
Renfrewshire Council
South Lanarkshire Council
West Dunbartonshire Council
West Lothian Council
<b>RSLs = 59</b>
Abertay Housing Association
Albyn Housing Society
Almond Housing Association
Argyll Community Housing Association
Ayrshire Housing
Barrhead Housing Association
Berwickshire Housing Association
Blairtummock Housing Association
Caldeonia Housing Association
Cassiltoun Housing Association
Cernach Housing Association
Clydebank Housing Association
Cumbernauld Housing Partnership
Clyde Valley Housing Association
Clydesdale Housing Association
Cunninghame Housing Association

Dumfries and Galloway Housing Partnership
Dumfries and Galloway Housing Partnership Boards, Members, District Management and Tenants
Dunbritton Housing Association
Dunedin and Canmore Housing Association
East Kilbride and District Housing Association
Fife Housing Association
Glasgow Housing Association
Glasgow West Housing Association
Glen Oaks Housing Association
Hebridean Housing Partnership
Hjaltland Housing Association
Knowes Housing Association
Lanarkshire Housing Association
Larkfield Housing Association
Link Group
Lister Housing Co-operative
Manor Estates Housing Association
Muirhouse Housing Association
New Gorbals Housing Association
North View Housing Association
Ochil View Housing Association
Paisley South Housing Association
Paragon Housing Association
Partick Housing Association
Pentland Housing Association
Port of Leith Housing Association
Prospect Community Housing
Provanhall Housing Association
Queens Cross Housing Association
River Clyde Homes
Rural Scotland Housing Association
Rutherglen and Cambuslang Housing Association
Sanctuary Scotland Housing Association
Scottish Borders Housing Association
Shire Housing Association
Strathfillan Housing Group
Thenue Housing
Trafalgar Housing Association
Trust Housing Association
Weslo Housing Management
West of Scotland Housing Association
Whiteinch and Scotstoun Housing Association
Wishaw and District Housing Association
<b>Tenant/Resident Groups = 32</b>
BEEM Region 5 RTO Regional Network
Breton and Corentin Courts Residents' Association
Craigendoran Tenants' and Residents' Association

Dalmeny Tenant and Residents' Association
Dundee Federation of Residents' Associations
Duntocher Tenants' and Residents' Federation
Edinburgh Tenants' Federation
East Ayrshire Tenants' and Residents' Federation
East Dunbartonshire and Lanarkshire Regional Network, Region 8
East Fife Federation of Tenants' and Residents' Associations
Fife Federation of Tenants' and Residents' Associations
Firhill Residents' Association
Glenrothes Area Residents' Federation
Highland and Argyll and Bute Regional Network, Region 1
Interested Tenants of South Ayrshire Council
Invergordon Albyn Residents' Association
Kirkside Area Residents' Association
Maxwellton Court Residents' Association
Meadowfoot Tenants' and Residents' Association
Midlothian Tenants' Forum
Milton Albyn Housing Forum
Moray Tenants' Core Group
Northern Light Tenant Regional Network Region 2
Regional Networks 4, 8 and 9
Scottish Borders Tenants' Organisation
South Lanarkshire Tenants' Development Support Project
South West Scotland Regional Network, Region 6
Tayside Regional Network Region 3
West Ainess Residents' Association
West Strathclyde Registered Tenant Organisation, Region 7
Tenant Regional Network, Region 9
West Dunbartonshire Tenants' and Residents' Organisation
<b>Representative Bodies = 10</b>
Association of Local Authority Chief Housing Officers
Chartered Institute of Housing in Scotland
Council of Mortgage Lenders Scotland
Glasgow and West of Scotland Forum of Housing Associations
RICS Scotland
Royal Town Planning Institute in Scotland
Scottish Churches Housing Action
Scottish Federation of Housing Associations
Scottish Women's Convention
The Building Societies' Association
<b>Voluntary Organisations/Charities = 8</b>
Capability Scotland
Clovenstone Environment Group
Dundee Survival Group
Friends of Glasgow West
Rural Housing Service
Scottish Council for Single Homeless

SLAB Housing Project
Shelter Scotland
<b>Others = 5</b>
Harper Macleod
HBJ Gateley
Home Scotland
Valuation Office Agency
West Lothian Council SNP Group
<b>Individual respondents = 29</b>

**ANNEX 2: WRITTEN CONSULTATION QUESTION BY NUMBER OF RESPONDENTS WHO COMMENTED (Total respondents = 169)**

<b>Question</b>	<b>No. of respondents who commented</b>
<b>1</b>	157
<b>2</b>	161
<b>3</b>	132
<b>4</b>	126
<b>5</b>	97
<b>6</b>	143
<b>7</b>	99
<b>8</b>	136
<b>9</b>	96
<b>10</b>	132
<b>11</b>	109
<b>12</b>	53
<b>13 &amp; 14</b>	127 in total
<b>15</b>	45
<b>16</b>	70
<b>17</b>	29

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