



Post Right to Buy Policy

- Repayment of discount
- Buying back former Council properties
- Restrictive Covenants
- Lease Extensions
- Freehold Purchase

Adopted February 2014
Updated March 2021

	Post Right to Buy Policy <ul style="list-style-type: none"> • Repayment of Discount • Buying back former Council properties • Restrictive Covenants • Lease Extensions • Freehold Purchase
Users of Policy	CBC Officers
Date Adopted	February 2014
Date last Reviewed	March 2021
Review Frequency	Every 3 years
Best Before Date	28 February 2024
Scheme Delegation	
Formation of Policy	Portfolio Holder(s) with delegated responsibility for the Housing
Amendments	Portfolio Holder(s) with delegated responsibility for the Housing
Monitoring	Housing Client Co-ordinator
Implementation	Housing Client Co-ordinator
Decisions	Client Services Manager

1. Purpose

- 1.1 The Council operates the Right to Buy scheme for its tenants in line with the regulations set out in current legislation.
- 1.2 The processing of applications and management of this policy is carried out by officers in the Council's Place and Client and Legal Services departments with assistance from Colchester Borough Homes and Colchester Amphora Trading Ltd.
- 1.3 The Council's strategic housing role includes ensuring landlord functions are fulfilled by protecting tenants' rights and the neighbourhood they live in. It also has an enabling role in its aim to provide additional housing that is affordable to local people and must balance this with the limited resources available to ensure value for money. Additionally, consideration is given to the Council's wider responsibility in safeguarding the interests of residents across the borough and the public purse.
- 1.4 This policy deals with situations that result from Council tenants exercising their right to buy.
 - **Repayment of Discount;** the **Housing Act 2004** gives the Council discretionary power to waive in full or in part the repayment of the discount a tenant received on their right to buy sale.
 - **Right of First Refusal;** owners wishing to resell their property within 10 years of it having been sold under the Right to buy must first offer it at market value to the former landlord (the Council), or its successor in title or a person nominated by it, a Registered Provider.
 - **Release, variation, breaches and enforcement of restrictive housing covenants;** all property sold under the Right to buy scheme is subject to restrictive covenants, which are good estate management practice and/or promote the wider duties of the Council as a landowner. Owners must seek approval from the Council if they want to do anything to the property which would otherwise breach a covenant specified within the Right to buy conveyance. If a housing covenant is breached the Council can take action to make sure the owner complies with it or seek compensation.

- **Requests to extend leases;** The Council offers leases of 125 years as standard. A lease extension is achieved by granting a new lease in place of the existing one, but for an additional 90 years beyond the original 125 years. Lease extensions are usually requested when the amount of time left to run on the lease is approaching 80 years but can be requested at any time.
- **Requests to purchase the freehold of a leasehold property;** the process of buying the freehold from the landlord and as a result turning a leasehold property into a freehold property. The leaseholder becomes a freeholder and owns the property and the land on which it is built outright.

1.5 The policy also deals with restrictive covenants on land which has been sold outside the Right to buy process.

2. Aims

2.1 The aim of the policy is to set out the Council's approach to the discretionary areas that are not governed by legislation relating to the Right to Buy.

3. Background and Legislation

RIGHT TO BUY

- 3.1 The Right to Buy scheme was introduced by the **Housing Act of 1980** and amended by the **Housing Act 1985**. Under part 5 of the **Housing Act 1985** secure tenants were permitted to buy the homes they rent from their local authority landlord or where they have preserved Right to Buy, (where a local authority had transferred the ownership of its housing stock) from their Registered Provider.
- 3.2 The Housing Act included measures to prevent a tenant from completing a Right to Buy sale if an application is pending a demotion order, suspension order or a possession order sought on the grounds of anti-social behaviour. If a demotion order or outright possession order is made, the tenant will lose their secure tenancy and therefore lose the right to buy.
- 3.3 Tenants that qualify for right to buy will receive discount on the open market value of the property; the amount of discount is dependent upon the length of tenancy and the type of property.
- 3.4 The **Housing Act 2004**, which came into force in January 2005, made further changes to the Right to Buy scheme:
- The qualifying period a person or household had to be a tenant before making a right to buy application was extended from two to five years. This has been amended by The **Deregulation Act 2015** section 28. to at least 3 years.
 - Right to Buy was removed from properties due to be demolished.
 - Extending the period during which a property could not be sold unless the discount was repaid from three to five years.
 - Sought to end deferred resale arrangements by making discount repayable from the date of the agreement to resell.
 - Gave the social landlord right of first refusal on resale within 10 years.
 - The landlord was able to serve a notice after 3 months requiring a tenant to

complete their Right to Buy purchase instead of after 12 months.

RIGHT OF FIRST REFUSAL (Buy Back)

- 3.5 The **Housing Act 2004** introduced covenants requiring owners wishing to dispose of their property during the first ten years after purchasing under the Right to buy scheme to offer the property back to the Council before placing it on the open market.
- 3.6 The **Housing (Right of First Refusal) (England) Regulations 2005** set out the procedures for owners to follow in offering their properties back and also for the Council in accepting such offers which the Council will observe.

COVENANTS

- 3.7 Case Law – **Regina v. Braintree District Council, ex parte Malcolm William Halls (2000)**; Local authorities cannot, when selling houses under the right to buy legislation, impose covenants to restrict the purchaser's right to profit from development of the land. Therefore, Right to Buy valuations should be carried out on the unrestricted value of properties, fully reflecting any development or hope value that exists at the date of valuation so far as the market would reflect it.
- 3.8 The **Housing Act 1985** does not prohibit the release of valid covenants in return for payment, i.e. covenants imposed for the purposes of good estate management or to promote the wider duties of the landlord as a housing authority.

EXTENSION OF LEASES

- 3.9 The standard lease issued by the Council is for 125 years. The **Leasehold Reform, Housing and Urban Development Act 1993** allows for the grant of a new lease for an additional 90 years beyond the original 125 years. The Act sets out the procedure the leaseholder and the local authority should follow.

PURCHASING THE FREEHOLD

- 3.10 The conditions under which leaseholders may purchase the freehold of a property are covered by the **Leasehold Reform, Housing and Urban Development Act 1993**

ADMINISTRATION CHARGES

- 3.11 The legislation governing the extension of leases and purchase of the freehold provides guidance on who is responsible for the payment of legal costs and when administration charges can be made. Any charges made in relation to the extension of leases and purchase of the freehold will follow this guidance.
- 3.12 Dealing with enquiries and issues that arise post Right to Buy can involve investigation and work with other departments which costs the Council. Administration charges will be made to cover the costs for dealing with requests relating to the discretionary elements on repayment of Right to Buy discount, processing requests for deeds of variation and processing requests for approval to carry out work covered by restrictive covenants.

4. The Policy

This policy sets out how the council will deal with the following areas.

- i. Discretionary powers on repayment of right to buy discount, see paragraph 4.1

- ii. Right of First Refusal (Buy Back), see paragraph 4.6
- iii. Variation of restrictive housing covenants, see paragraph 4.14
- iv. Breach of restrictive housing covenants, see paragraph 4.24
- v. Extension of leases, see paragraph 4.28
- vi. Purchasing the freehold, see paragraph 4.35
- vii. Administration charges, see paragraph 4.36

Discretionary powers on repayment of Right to Buy discount

- 4.1 In January 2005 the then ODPM issued guidance which provides examples of where it may be appropriate to use discretionary powers. This guidance is attached at **Appendix A**. The Council will follow these examples to guide its decisions as to where discretion may be justified.
- 4.2 A decision not to require repayment of Right to Buy discount will lead to a net cost to the public purse. The Council will only consider a request to waive all or part of the repayable discount where:
- The facts justifying the move are established and evidenced.
- and**
- A move could not take place unless part or all of the repayable discount were to be waived.
- 4.3 In addition, the Council will take into consideration whether requiring the owner to repay the discount would lead to demonstrable financial hardship.

In order to make a decision the Council will require financial evidence; this could include but is not limited to;

- gross income
- mortgage application
- mortgage offer
- estate agent fees
- solicitor fees
- stamp duty
- savings and investments
- regular outgoings

The Council will take into consideration the following circumstances when deciding whether the Right to buy discount should be repaid.

- (a) whether an owner of the property wishes to move because otherwise he or she and/or other family members (especially children) face a demonstrable threat of violence or significant harm, for example, due to:
 - relationship breakdowns involving actual or threatened domestic violence.
 - racial, faith, homophobic or any other kind of harassment.
 - extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property.
- (b) whether the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds.

- (c) whether an early move is essential to return to employment, for example, where an individual has a firm offer of a job in another area and would thereby be able to return to work, either:
- after long term unemployment; or
 - after having been made redundant, when his/her skills are such that there is no prospect of getting another job locally.
- (d) whether a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons.

4.4 Where any of the circumstances in paragraph 4.3 apply, clear objective evidence is required to support the case; for example.

- from the police
- a doctor or psychiatrist
- or an employer

4.5 Taking into consideration all the evidence supplied the Client Services Manager will decide whether to waive all or part of the repayment of discount. The decision should also be cleared with the Audit and Risk Manager as there is a net cost to the public purse if the repayment is not made.

Right of First Refusal (Buy Back)

4.6 All properties (freehold and leasehold) sold under the Right to buy since 18 January 2005 contain a covenant which requires the owner to offer the property back to the council, if the property is offered for sale within ten years of the original purchase. This is known as the right of first refusal. The Council is not required to buy back properties offered to it in this way, however, the Council will always consider whether or not to buy back a property.

4.7 The Council's decision to buy back a property will be determined by the following factors.

- a) Capital funds are available.
- b) Housing need and demand is established for the type of property being offered and, in the area, where the property is located.
- c) Additional costs for any refurbishment work is minimal, i.e. to bring the property up to the Decent Homes Standard.
- d) The purchase represents value for money.

4.8 In addition to the factors above there may be other instances when the Council may wish to buy back a property, for example, where a piece of land in its ownership is landlocked.

4.9 The Council can nominate another Registered Provider to buy the property. Where appropriate, the Council will consult with Registered Providers to see whether there is any interest to purchase the property being offered.

4.10 In accordance with the regulations, the owner of the property must provide the following information when offering the property to the Council.

- a statement from the owner or trustee saying that they wish to dispose of the property.
- the full postal address of the property being offered.
- state there is a covenant regarding buy-back under Right to Buy legislation.
- information about the type of property, the number of bedrooms and details of the heating system.
- details of any improvements or structural changes made since purchasing from

the council.

- an address where correspondence can be sent.

4.11 The Council will ask Colchester Amphora Trading to survey and provide a valuation for the property being offered; if the seller does not wish to accept the offer the valuation can be referred to the District Valuation Office (DVO) whose valuation will supersede any previous valuation.

Where the Council considers the DVO valuation no longer represents value for money (see point 4.7), the Council may negotiate with the seller to agree a mutually acceptable sale price. If an agreement cannot be reached the Council may advise the seller that they can proceed with selling the property on the open market.

Where the seller does not wish to accept the valuation provided by the DVO the Council may negotiate with the seller to reach a mutually acceptable sale price. If an agreement cannot be reached and the Council feels the negotiation process has been exhausted, the Council may advise the seller that they can proceed with selling the property on the open market.

4.12 The appropriate Officer will decide whether the property meets the policy criteria set out in 4.7 above and will follow the council's financial regulations in determining whether further approval is required by the Portfolio Holder who has responsibility for acquisitions and disposals of council assets, or by the Cabinet.

4.13 The Council will act in accordance with the time limits set out in the regulations [The Housing \(Right of First Refusal\) \(England\) Regulations 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukhr/2005/1200/1)

In summary the time limits are.

- Acknowledge receipt of an offer notice as soon as reasonably practical.
- Accept the offer or nominate another to accept the offer within 8 weeks of receipt of the offer notice.
- Serve a rejection notice as soon as decided to reject the offer and within 8 weeks of receipt of the offer notice.
- If a rejection notice is served or we fail to serve either an acceptance notice or rejection notice within 8 weeks the owner may dispose of the property as he sees fit within the subsequent 12 months. If the property is not disposed of within 12 months the property will need to be offered back to the Council again.
- The purchase must complete no later than 12 weeks after the acceptance notice is served or no later than 4 weeks after written notification that the owner is ready to complete, whichever is later.
- If the District Valuer is asked by either party to determine the value of the property, the time from when the request is received by the District Valuer and the date parties are notified of the determined value is excluded from the completion time limits.

Variation of restrictive housing covenants

4.14 Restrictive covenants are essentially a promise to do or not to do something on or to land or property. They are normally imposed by a former owner. Restrictive covenants stay with the land and as such the responsibility of complying with the covenants is passed from one owner to another.

- 4.15 The use of covenants is common and is good Estate Management practice and/or promotes the wider duties of the Council as a landowner. Covenants are imposed on all property and land sales carried out by the Council. They have to be reasonable and capable of being adhered to. Examples of covenants imposed include the restriction of use of land for development and specific usage of land, for example, as garden land.
- 4.16 Approval to remove or vary a restrictive covenant is separate from planning permission and building regulations approval.
- 4.17 Restrictive covenants are included in the sales of properties under the Right to Buy as well as any housing land sales. This part of the policy sets out how the Council will deal with requests to remove or vary a restrictive covenant.
- 4.18 There are two types of covenant related request, these are.
- to obtain approval to carry out work.
 - to vary or remove a covenant to permit the proposed use, known as a 'Deed of Variation.'
- 4.19 In order to ensure requests are dealt with consistently the following test will be applied to requests received.

Is the restrictive covenant still relevant? In order to make this decision the Council will consider the following.

- a) Whether there have been changes in the character of the neighbourhood for example, other developments, change of use of adjoining buildings in an area.
- b) Whether the covenant is still capable of being adhered to.
- c) Other material circumstances.

If the covenant is still relevant the request will be turned down.

- 4.20 If the covenant is no longer relevant the following further tests will be applied:
- a) Is there clear evidence that approval or variation is not contrary to public interests and that a fee would be adequate compensation for varying or removing the covenant or giving consent.
 - b) Whether the person entitled to the benefit of the covenant would lose any practical benefit of subsequent value for example, loss of privacy or experience increased noise.

- 4.21 The applicant assumes all responsibility for paying the Council's fees and any charges associated with the change of use to the land. Any fee for the removal or varying of a covenant will be determined by Colchester Amphora Trading Ltd in consultation with the Client Services Manager.
- 4.22 The Client Services Manager will decide whether or not to approve work, vary or remove covenants in accordance with the policy.
- 4.23 An owner may only reapply for a restrictive housing covenant to be varied or removed if there is a material change of circumstances which makes the variation or removal necessary and appropriate. For example, mobility issues. Each case will be considered on its merits.

Breach of restrictive housing covenants

- 4.24 If a restrictive housing covenant is breached the Council may decide to take legal action. The property owner may make a retrospective request for works completed or to vary or remove the covenant but there is no guarantee that this will be granted. Any retrospective request would be subject to the same tests applied to a prospective request to vary a housing covenant.
- 4.25 The applicant assumes all responsibility for paying the Council's fees and to pay any charges associated with any change of use to the land. Any fee for the removal or varying of a covenant will be determined by Colchester Amphora Trading Ltd in consultation with the Client Services Manager.
- 4.26 If retrospective permission is refused the owner will be expected to take action to comply with the restrictive housing covenant.
- 4.27 Legal action may be taken if the owner does not fulfil the Council's request to comply with a restrictive housing covenant.

Requests for lease extensions

- 4.28 Any requests for lease extensions will be dealt with using the statutory procedure for acquiring new leases set out in the **Leasehold Reform, Housing and Urban Development Act 1993**. This allows for the grant of a new lease for an additional 90 years beyond the original term at a peppercorn rent.
- 4.29 To qualify for an extension the lease must be a long lease that has been owned by the applicant for more than 2 years.
- 4.30 This formal procedure is started by the service of a Tenant's Notice on the landlord.
- 4.31 The leaseholder is liable for the landlord's professional fees from the service of the notice regardless of whether the application is successful.
- 4.32 An individual flat owner cannot apply for a lease extension if the block containing the flat is subject to a current application for collective enfranchisement.
- 4.33 Applications for lease extensions will be suspended if the other leaseholders make an application for the freehold at the same time.

- 4.34 Requests for lease extensions will be refused if the applicant does not meet the conditions set out in the Leasehold Reform, Housing and Urban Development Act 1993 or the Council can demonstrate their intention to redevelop the building.

Purchasing the Freehold

- 4.35 Individual leaseholders cannot purchase the freehold of individual flats, but they may be able to acquire the freehold interest in a block of flats by direct negotiation with the Council. If the Council does not wish to sell, or suitable terms cannot be agreed, the leaseholders may use the process of leasehold enfranchisement set out in the **Leasehold Reform, Housing and Urban Development Act 1993**.

Administration Charges

- 4.36 A charge will be made for the administration of requests to waive repayable right to buy discount, requests for deeds of variation and requests to carry out works. Charges are reviewed as part of the annual Fees and Charges process and any changes to the charges will take effect at the beginning of the next financial year.
- 4.37 Payments are non-refundable and must be made before requests are processed.
- 4.38 Payment will be waived if the request for a deed of variation or request to carry out works is in order to make a property more suitable for a person with disabilities. Proof of disability will be required at the time the request is made. For example, Personal Independence Payment, Attendance Allowance, Employment and Support Allowance.
- 4.39 These administration charges are separate from any other charges the Council may make in relation to the removal or variation of a covenant which will be set by Colchester Amphora Trading Ltd in consultation with the Client Services Manager or for work completed by the Council's Legal Services.

5. Appeals Procedure

- 5.1 Appeals will be considered where additional information is provided to support the applicant's request.
- 5.2 Appeals must be received within 28 days of the date of the decision letter and must give specific grounds for the appeal whether it is based on the policy or the procedure.
- 5.3 Where an applicant is appealing against how the policy and procedure have been applied a Senior Officer will investigate the case and respond.
- 5.4 If the applicant is not satisfied with the reply given by the Senior Officer, the appeal will be referred to a member of the Senior Management Team who will review the handling of the case and respond in writing within four weeks with a final decision. There is no further internal appeal, and the next stage would be the Local Government and Social Care Ombudsman.
- 5.5 Appeals against decisions will be considered by the Assistant Director for Client Services whose decision is final. There is no further internal appeal, and the next stage would be the Local Government and Social Care Ombudsman.

6. Service Standards

- 6.1 Acknowledgement, including name and telephone number of the Officer dealing with the enquiry will be sent within 5 working days of receipt.
- 6.2 Decision – the customer will be notified of the decision within 8 weeks of receipt of enquiry.
- 6.3 Appeals acknowledgement including name and telephone number of the officer dealing with the appeal will be sent within 5 working days of receipt.
- 6.4 Appeal Decision – Customer will be notified of outcome within 8 weeks of receipt of appeal.
- 6.5 The Policy is also covered by an Equality Impact Assessment.

7. Monitoring and Review

- 7.1 We will monitor our performance in meeting the Service Standards set out in this Policy.
- 7.2 Reviews of the policy will be conducted every 3 years to make sure the policy continues to be efficient and effective or sooner if there is a relevant change in legislation, case law or in response to a change of relevant CBC policy.

8. Communicating the Policy to Staff

- 8.1 Managers and staff involved in the implementation of the policy will receive a copy of the policy and procedural flow chart.
- 8.2 The Council will provide sufficient training to enable staff to understand and comply with the policy.
- 8.3 A copy of the Policy will be available through 'SharePoint'.
- 8.4 Any amendments to the policy will be communicated, in a timely manner, to managers and staff involved in implementing the policy. Revised policy documents will be circulated and be available through 'SharePoint'.

9. Communicating the Policy to Customers

- 9.1 A copy of the policy will be placed on the Council's website along with fact sheets providing further details including some of the most frequently asked questions and briefly describe the procedure.



Right to Buy – the use of discretionary powers on repayment of discount

Guidance to local authorities, housing associations and other registered social landlords

Introduction

1. Under section 155 of the Housing Act 1985, former social tenants who dispose of a property within a specified period after purchasing it under the Right to Buy scheme have to repay upon demand by the former landlord all or part of the discount they received on purchase, unless it is an exempted disposal. Section 155 and section 155B also apply to the Rent to Mortgage scheme.¹

2. Section 185 of the 2004 Act clarifies that former landlords have discretion not to demand that former social tenants should repay part or all of the discount they received. This note offers guidance on when in the Government's view it might be appropriate to exercise this discretion.

Operational date

3. Section 185 came into force on 18 January 2005. Most of the changes it made apply only to cases where the tenant's notice claiming to exercise the right to buy under section 122 of the Housing Act 1985 was served on or after 18 January 2005. However, in relation to a disposal which takes place on or after 18 January 2005, and which triggers repayment of discount (regardless of when the property was bought), the requirement that a person is liable to pay an amount to the landlord 'on demand' is to be read as his being liable to pay to the landlord so much of that amount (if any) as the landlord may demand. This means that landlords will have discretion as to whether or not to demand repayment of the full amount of discount for any disposal which takes place on or after 18 January 2005, and which triggers repayment of discount.

¹ the closing date for applications under this scheme was 17 July 2005

Situations where it may be appropriate to use discretionary powers

4. It is for each landlord to decide whether the circumstances in any particular case would justify the exercise of discretion under section 155 of the Housing Act 1985. However, the Government considers that this is most likely to be justified in circumstances where repayment would lead to demonstrable personal hardship. But it may also be justified in other circumstances.

5. Examples of circumstances where discretion might be justified include the following. In each case, it will normally be necessary to establish both the Facts justifying a move, and that such a move could not take place unless part or all of the repayable discount were to be waived.

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

- relationship breakdowns involving actual or threatened domestic violence
- racial, religious, homophobic or any other kind of harassment
- extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property

(b) where the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds;

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

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

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

Consideration of requests for the exercise of discretion

6. It is envisaged that this power will only be used in exceptional circumstances, and that landlords will have procedures in place to consider and decide requests that discretion should be exercised. The consideration process should be open, fair and transparent, bearing in mind that decisions may be subject to judicial review and/or to scrutiny by the Local Government Ombudsman or Housing Ombudsman.

7. It will be for landlords themselves to decide what procedures to use, and whether or not such decisions should be subject to review and, if so, by what means. Requests could be determined by means of written representations, or by a formal hearing of the parties (in which case the applicant should have the option of appearing with a representative or advisor).

8. Landlords will also wish to bear in mind the need for clear and objective evidence; for example, from local police, a doctor or psychiatrist, or an employer.

Financial implications

9. It is envisaged that former landlords will only exercise their discretion in cases where the former tenant cannot afford to repay part or all of their discount.

10. In most cases a decision by a former landlord not to demand repayment will lead to a net cost to the public purse. Landlords must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. In cases where the former landlords are registered social landlords (for example, where the former tenant bought under the Preserved Right to Buy), they should bear in mind that, under the Homes and Communities Agency's regulatory code, they are required to protect public money.

Further information

This publication supersedes earlier guidance issued in January 2005. It is only available online.

If you require this publication in an alternative format (eg Braille or audio) please email alternativeformats@communities.gsi.gov.uk quoting the title and ISBN of the publication, and your address and telephone number.

January 2010

© Crown copyright 2010

ISBN: 9781 4098 2169 4