

# Right to Buy Financial Charge Postponement – Policy Update



## Appendix A – Draft Right to Buy Financial Charge Postponement Policy

### **Introduction**

1. The council has a legal interest in a property purchased under the right to buy scheme (RTB) for up to 10 years after the purchase completes. This is because the council has given a discount off the open market valuation of the property. If the property is sold within the first five-year period, then discount must be repaid. The amount of the discount that must be repaid reduces each year over the five-year period. The council's legal interest is known as a charge.
2. The council's charge ranks behind a charge taken by the mortgage lender who provided the funds required to the property initially. This means that upon a sale of the property, the mortgage lender's charge gets paid first. If a RTB homeowner wants to take out additional borrowing, secured against the dwelling, the lender may ask the council to defer or postpone its charge, so that repayment of the additional borrowing also takes priority over the council's charge. This policy deals sets out when the council will agree to postponing its charge.

### **What is a deed of postponement?**

3. A deed or letter of postponement is a legal agreement between the mortgage provider and the council that allows security for additional borrowing to take precedence over the council's RTB charge.
4. If the additional borrowing proposed is for an approved purpose, as specified in Section 156 of the Housing Act 1985, the council is bound to provide its consent. Approved purposes are:
  - The cost of works to the dwelling;
  - The cost of service charges;
  - Advances to repay the original mortgagee (like for like re-mortgage).
5. In all other circumstances, the council has discretion whether to postpone its charge, but it will not approve applications for other purposes except in exceptional circumstances.

### **Applications for a deed of postponement**

6. A request for a postponement of charge must be made through a mortgage provider or legal representative. The request must be accompanied by evidence of the reason why it is being requested.

7. If the request is made during the right to buy process a letter of postponement will be issued. If made within the five-year discount re-payment period after completing the right to buy you a deed of postponement will be required.
8. Requests made in respect of works to the dwelling will only be approved if the works preserve or enhance the fabric of the building and its value. This will include works that are necessary to maintain the structure, weather tightness or safety of the property. This will not include the cost of things like landscaping, gardening, decorating, new carpets/flooring or soft furnishings.
9. The following information/evidence must be provided when requesting a postponement of charge:
  - The property address and ownership/land registry details.
  - Confirmation of the outstanding balance on the mortgage and any other loans secured by a superior charge, and details of the lender(s).
  - The amount of the additional borrowing proposed, the reason for it, and evidence of a loan offer.
  - A current valuation of the property. We may need a valuation carried out by a qualified chartered surveyor (FRICS or MRICS).
  - Payment of a fee to cover the council's administration costs in processing the application. The fee is payable in respect of costs incurred whether consent is granted. The fee may vary depending on the amount of work involved in considering you application.
10. Where the request relates to the cost of works to the dwelling, the following may also be required:
  - At least two quotations for the cost of the intended works.
  - The quotations must be from established/reputable contractors provide on their letterhead and include VAT.
  - The quotations must contain sufficient detail of the works and a breakdown of associated costs so that the council can gauge whether the intended works are reasonable, realistic and proportionate when considering the amount of any additional finance to be secured through an additional preferential charge, and by reference to the value of or equity in the property.
11. The council can only consider the request once it has all the information that it needs. Timescales may vary depending on the information required, when it is provided and the complexity of the assessment that needs to be made. Please factor this into any timetables you may be working to and ensure you make your request and provide the required information in good time.
12. The council may make its consent conditional upon undertaking the works within a reasonable period, and providing evidence of completion and of the costs actually incurred. If this applies to you, you will be advised of the council's requirements as part of the application process.

13. It is your responsibility to determine whether the proposed works require planning, building control or any other permissions or consent. Where that is the case, separate applications should be made to the council (or other relevant authority). The council's agreement to postpone its charge may be given subject to demonstrating that all of the necessary consents are in place.