

## **EXPLANATORY MEMORANDUM TO THE HOUSING (RIGHT TO BUY AND RIGHT TO ACQUIRE) (LIMITS ON DISCOUNT) (AMENDMENT) (WALES) ORDER 2015**

This Explanatory Memorandum has been prepared by the Housing Policy Division and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Housing (Right to Buy and Right to Acquire) (Limits on Discount) (Amendment) (Wales) Order 2015. I am satisfied the benefits outweigh any costs.

### **Lesley Griffiths AM**

The Minister for Communities and Tackling Poverty, one of the Welsh Ministers.

1 June 2015

## **1. Description**

A person exercising the Right to Buy or Right to Acquire a dwelling-house under Part 5 of the Housing Act 1985 or under sections 16 and 17 of the Housing Act 1996 respectively, may be entitled to a discount equal to a percentage of the price before discount. This Order amends the Housing (Right to Acquire) (Discount) (Wales) Order 1997, and the Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999 to reduce the discount on both Right to Acquire and Right to Buy to £8,000 from the current £16,000.

This Order also provides for the continued application of the Housing (Right to Acquire) (Discount) (Wales) Order 1997, and the Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999 in certain circumstances.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

None.

## **3. Legislative background**

A person exercising the right to buy a dwelling-house under Part 5 of the Housing Act 1985 (the Act) may be entitled, under sections 129 to 131 of and Schedule 4 to the Act, to a discount equal to a percentage of the price before discount.

The discount may not reduce the price by more than such sum as the Welsh Ministers<sup>1</sup> may by order prescribe nor may it reduce the price below an amount representing the costs incurred by the landlord over a specified period of time in respect of the dwelling-house in accordance with a determination by the Welsh Ministers made under section 131 to the Act.

Section 131(4) provides the discount shall not in any case reduce the price by more than such sum as the Welsh Ministers may by order prescribe. The Housing (Right to Buy) (Limit on Discount) (Wales) Order 1999 prescribes the maximum amount of discount as £16,000. This Order amends the Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999 (as amended in 2003) to reduce the maximum discount available to £8,000.

Sections 16 and 17 of the Housing Act 1996 provide tenants of registered social landlords the right to acquire their properties in certain circumstances. Section 17(1) (a) provides the Welsh Ministers may by order specify the amount or rate of discount to be given on the exercise of the right to acquire. The Housing (Right to Acquire)

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<sup>1</sup> Section 131 confers functions on the Secretary of State. These functions have been transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, and subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

(Discount) (Wales) Order 1997 prescribes the maximum discount as £16,000. This Order amends the Housing (Right to Acquire) (Discount) (Wales) Order 1997 to reduce the maximum discount available to £8,000.

This Order also provides for the continued application of the Housing (Right to Acquire) (Discount) (Wales) Order 1997, and the Housing (Right to Buy) (Limits on Discount) (Wales) Order 1999 where a notice under section 122(1) of the Housing Act 1985 was served before this Order came into force.

Some parts of this Explanatory Memorandum may refer only to the term 'Right to Buy'. Unless otherwise stated, this should be taken to mean the Right to Buy, the Preserved Right to Buy, the Extended Right to Buy and the Right to Acquire<sup>2</sup>.

This instrument will follow the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

The *Right to Buy* is set out in the Housing Act 1985 while the *Right to Acquire* is set out in the Housing Act 1996. These Acts, and associated subordinate legislation provide tenants with secure or assured tenancies the right to buy their homes at a discount from the market price, subject to certain conditions.

The provision known as the *Preserved Right to Buy* applies to Local Authority tenants whose homes have been transferred to a Registered Social Landlord.

Social housing sales have reduced from their peak years in the 1980s but between 31 March 1981 and 31 March 2014 around 135,600 Local Authority and 2,800 Housing Association homes have been sold to tenants under the *Right to Buy* and *Right to Acquire* schemes. This represents a 45% reduction on the 1981 social housing stock. In the ten years or so from 31 March 2003 to 31 March 2013, the proportion of dwellings in the social rented sector has fallen from 18% of the total housing stock to 16%.

In the last five years, an average of 188 homes has been lost from the social rented stock each year. In the last financial year, sales showed an increase with 253 homes purchased in contrast to 170 in 2012-13.

The Welsh Government has, with its partners, taken action to increase the social housing stock. Between 2011-12 and 2013-14 a total of 6,890 additional affordable housing units were built. This is 69% of the 10,000 target set for this term of Government. In addition, the Houses into Homes scheme has brought 4,471 long term empty units back into use against a target of 5,000 for the whole term of Government, just 529 short of meeting the target after the first three years.

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<sup>2</sup> For the Preserved Right to Buy please see the Housing (Preservation of Right to Buy) Regulations 1993 (S.I. 1993/2241), for the Extended Right to Buy please see the Housing (Extension of Right to Buy) Order 1993 (S.I. 1993/2240), and for the Right to Acquire please see the Housing (Right to Acquire) Regulations 1997 (S.I. 1997/619).

Recognising the impact of *Right to Buy* and *Right to Acquire* and the continuing pressure on social housing in 2011, the Housing (Wales) Measure 2011 was introduced. This Measure allows a Local Authority to apply to the Welsh Government to suspend the *Right to Buy* and the *Right to Acquire* in its area. To date, two Local Authorities – Carmarthenshire and Swansea – have applied to suspend the *Right to Buy*. Both applications have been successful. In over three years, only two applications for suspension have been received. Therefore, other options needed to be considered to protect existing social housing stock, which is a recognised way in which housing policy can be used to tackle poverty.

Suspension of the *Right to Buy* in some areas and not others means some tenants in some areas have different rights to tenants in adjacent areas. Given continuing housing pressures, the time is right to consider more action. While action may mean changing the rights of some tenants, it must be balanced by consideration of the needs of people who are on waiting lists for a home they can afford. Social housing plays a vital role in ensuring people who are unable to take advantage of the housing market can have a secure and affordable home.

A 2013 Joseph Rowntree Foundation report (The Link between Housing and Poverty) stated housing was very important in tackling poverty due to the targeted nature of affordable and social housing. It considered social housing to be one of the most redistributive elements of the welfare state with its ability to tackle poverty by directing social housing to those most in need. It is felt retaining the stock of social housing plays a major role in helping to tackle poverty.

There is evidence from Scotland to show where a property is sold at a discount under the *Right to Buy*, there are other costs to the public purse. For example, research indicates over time, a significant number of former *Right to Buy* properties ended up in the private rented sector where higher rents are charged. A study by Glasgow University suggests 43% of local housing allowance housing benefit claims in Renfrewshire are ex-*Right to Buy* properties. The report estimates the government is paying an extra £3 million each year in housing benefit in Renfrewshire alone, compared to what it would have paid if those houses were still owned by the council.

The Welsh Government decided to consider more action to protect social housing stock. A White Paper was published in January 2015 on the Future of *Right to Buy* and *Right to Acquire*. This put forward two proposals. First, in the short-term, reducing the maximum sales discount to £8,000. Second, the development of legislation to end the *Right to Buy* in the next Assembly. The consultation closed on 16 April 2015.

Aside from the consideration of action to protect social housing stock, the Welsh Government continues to help people to buy their own home. The Help to Buy Wales scheme, where people are assisted to buy a new home with a Government supported deposit, has been successful with 1,400 completions to March 2015 with a further 500 cases in the immediate pipeline. The Welsh Government is investing £170 million through the Help to Buy scheme, which is supporting the construction and sale of 5,000 properties.

## 5. Consultation

In total, three consultation exercises have now been carried out in relation to the *Right to Buy*. The consultation exercises were carried out in 2008 in advance of the Housing (Wales) Measure 2011 and also in 2011 in respect of the guidance on suspension. Respondents agreed with the proposals in both cases.

Public consultation was undertaken in 2008 as part of the development of the Housing (Wales) Measure 2011. Respondents generally agreed with the proposals for Local Authorities to be able to suspend the *Right to Buy* in their areas and felt five years was a reasonable period for suspension with a further extension to ten years available.

Further consultation was undertaken in 2011 when developing the guidance for the Measure. The main findings were respondents agreed the proposed process of applying for suspension was clear and the indicators of housing pressure were considered to be appropriate.

There were 94 responses to the White Paper on the future of the *Right to Buy* and *Right to Acquire*. The main findings were:

More than nine out of ten respondents who answered the question (94 per cent) believe the Welsh Government should take more action to help people whose needs cannot be met by the housing market. Three out of four (75 per cent) feel the Welsh Government should do more to protect the social housing stock from further reduction.

Overall, the responses show support for the proposal to reduce the maximum sales discount and the proposal to develop legislation to end the *Right to Buy* and *Right to Acquire*.

The proposal to reduce the maximum sales discount was supported by 53 of the 70 respondents (76 per cent) who clearly indicated their views. The other 24 respondents either did not answer this question or answered in a way in which their views were unclear or contradictory.

Sixty nine respondents made clear their views on the level to which the maximum sales discount should be reduced. Of those who were clear one way or the other, thirty one respondents (46 per cent) agreed with the proposal. Two other respondents gave qualified support to the discount of £8,000. The remainder (54 per cent) did not agree with the figure of £8,000. Analysis of the responses shows the majority (69 per cent) of those respondents who said they opposed the reduction to £8,000 wanted the discount to be even lower or removed altogether.

The proposal to end the *Right to Buy* and *Right to Acquire* was supported by 63 per cent of the 83 respondents who clearly indicated their views. Another six respondents gave qualified support to the proposal. The other five respondents either did not answer this question or answered in a way in which their views were unclear or contradictory.

The consultation attracted responses from a wide variety of individuals and organisations. For organisations, this included Local Authorities, Registered Social Landlords (Housing Associations) and representative bodies working in the field of housing. Respondents from individual members of the public included social housing tenants and owner occupiers.

## **6. Part 2 Regulatory Impact Assessment**

### **Options**

A number of options relating to the future of the *Right to Buy* have been considered. Preliminary cost implications and benefits are examined for each option. The Options are:

- Option 1 – Continue with provision under the Housing (Wales) Measure 2011.
- Option 2 – Encourage greater use of the Housing (Wales) Measure 2011 by providing support to Local Authorities to encourage more applications.
- Option 3 – Make adjustments to the relevant provisions reducing maximum discounts as a disincentive to the take up of the *Right to Buy* and the *Right to Acquire*.
- Option 4 – Allow each Local Authority to decide for itself whether to suspend the *Right to Buy* and *Right to Acquire* in its area.
- Option 5 – The Welsh Government to develop legislation to end the *Right to Buy* and the *Right to Acquire*.

## **Option 1 – Continuation under the Housing (Wales) Measure 2011**

The Housing (Wales) Measure 2011 would continue in its current form. Local Authorities would be able to follow Carmarthenshire County Council as the first authority, and the City and County of Swansea as the second, to seek to utilise the power to suspend the *Right to Buy*.

### **Advantages and disadvantages**

This option would require no additional work. Local Authorities are able to apply to suspend the operation of *Right to Buy* and the *Right to Acquire* under the Housing (Wales) Measure 2011 by applying to the Welsh Government. The suspension is for a period of up to five years, which can be extended to ten years. Housing pressure in the area has to be proved and actions taken to alleviate housing pressure also have to be listed.

In the years following its commencement, no use was made of the ability to suspend under the Measure until Carmarthenshire's application in July 2014. To cover the whole of Wales, this option requires every Authority to apply separately. Although a number of other Local Authorities have said they are interested in pursuing this option. To date, two applications have been approved.

### **Costs and benefits**

Any reduction in *Right to Buy* sales would also have the resultant effect of reducing the capital receipts to Housing Associations and to stock retaining Local Authorities. Local Authorities set aside 75% of *Right to Buy* receipts to pay off debt and 25% is useable for capital expenditure. Most of the Local Authorities are prudent in the amount of capital receipt they predict and it only represents a small proportion of capital income. None of the Local Authorities are dependent on the income to meet Welsh Housing Quality Standard.

If stock is not sold, there is no reduction in rental income. Discussions with Local Authorities have indicated rental income is more beneficial than *Right to Buy* sales. The impact of this option is unlikely to be as great as others, as suspension is reliant on Local Authorities making an application to the Welsh Ministers, and the pace up to the present has been very slow.

There are no significant additional costs to this option as sales of Registered Social Landlord properties under *Right to Acquire* are negligible and not relied upon by the Registered Social Landlords in their financial viability planning.

## **Option 2 – Encourage greater use of the Housing (Wales) Measure 2011**

This option is an extension of Option 1. It retains the use of the current Housing (Wales) Measure 2011 but would seek to encourage and support greater take up by Local Authorities of the opportunity to suspend the *Right to Buy*.

## **Advantages and disadvantages**

This option could help to speed up the number of applications from Authorities. More applications would, subject to them meeting the relevant criteria, result in more suspensions and thus reduce the loss of social housing stock at a faster pace than Option 1, where the pace is determined solely by Local Authorities. Action is straightforward and, subject to budget availability, could be mobilised fairly quickly.

## **Costs and benefits**

There would be no additional costs to Local Authorities over and above those they would commit to any application under the current arrangements. There would be a modest additional cost to the Welsh Government in providing the support and assistance. Based on what might be needed, the costs of support and assistance could be in the region of £30-50,000. There would be a set limit for the amount of assistance available to each local authority.

Any reduction in *Right to Buy* sales would have the same effects as those set out under Option 1.

Ultimately, the cost-effectiveness of this option would depend on the full engagement of all Local Authorities and this engagement being converted into applications for suspension from, preferably, all Local Authorities. There are questions about the cost-effectiveness of this option.

## **Option 3 – Make adjustments to existing legislation such as reducing discounts to dampen demand**

This option is based around amendments to existing legislation. The aim is to implement changes which would constrain the ability of tenants to exercise their *Right to Buy* thus reducing the number of homes lost to the social housing stock. The limit on the discount for purchase in Wales is already a constraint, which affects take up. The potential changes are as follows:

Reducing the maximum sales discount: The impact of reducing further the discount from its current level of £16,000 to £8,000 can be expected to have some effect in reducing the sales of social housing. This can be done by way of secondary legislation housing.

Change the qualifying period: This would involve the qualifying period for *Right to Buy* being increased from five years to, say, 10 or 15 years. This would lessen the opportunity for some tenants to purchase their home. An amendment would need to be made to section 119 of the Housing Act 1985, which would require primary legislation.

## **Advantages and disadvantages**

Reducing the discount can be done by way of an Order of the Welsh Ministers and is quicker to implement.

Extending the qualifying period would require primary legislation to amend section 119 of the Housing Act 1985 and could not be implemented as quickly as a reduction to the discount. It may be useful for new social housing as it would serve to protect the asset for longer. This would help to realise the benefits of the investment over a longer period of time. Although the ability of some tenants to accumulate the qualifying period from other rented properties means it would be ineffective in some cases.

Of the potential changes identified above, reducing the maximum available discount from £16,000 to £8,000 is considered to be the preferred option due to the means by which the change can be implemented, which in turn affects the much shorter timescale within which it could be brought into effect. .

## **Costs and benefits**

Any reduction in *Right to Buy* sales would have the effect of reducing the capital receipts to Housing Associations and to stock retaining Local Authorities. Officials have confirmed Local Authorities and Housing Associations have not relied on *Right to Buy* receipts in their business plans. If the discount levels are lowered, properties sold will result in a higher level of capital receipt coming into the Local Authority. However, fewer properties are expected to be sold. Based on the 156 properties sold by Local Authorities under the *Right to Buy* during 2013-14, the average selling price was £56,570. The Local Authority would continue to receive rental income (less any maintenance expenditure) on those properties retained by them under this option.

For the tenant of the property, the *Right to Buy* would be retained (unless their Local Authority applied to suspend the scheme in its area) but the cost of purchasing the property would increase by up to £8,000. For some people, this may make the purchase of the property unaffordable. Tenants who do not wish, or are unable, to purchase the property with a reduced discount are expected to continue to rent the property.

In the longer-term, the overall reduction in the number of *Right to Buy* and *Right to Acquire* sales is expected to help to increase the availability of social housing. It is recognised this option will not prevent all sales but is likely to serve as to effect a reduction in sales compared to what is likely to occur if the maximum discount is left at the current level of £16,000. It is therefore considered to be an useful short to medium-term measure towards achieving the policy intention of protecting social housing stock. .

#### **Option 4 – Allow each Local Authority to decide for itself whether to suspend the *Right to Buy* and *Right to Acquire* in its area.**

This option places the decision on suspension in the hands of Local Authorities themselves. Elected members would make the decision on the basis of the case put to them by their officers. They would, as with arrangements under the current Housing (Wales) Measure 2011, be accountable to their communities for such action. This option would also require primary legislation.

#### **Advantages and disadvantages**

There would be some advantages to this approach as the decision to suspend would be with the Local Authority. It fits with Local Authorities' strategic housing role in assessing housing need and using capital funding to plan and deliver new affordable homes. It would remove the work involved in applying to the Welsh Ministers. It would, however, remain a temporary solution if the Measure remained the same and only the approval mechanism changed.

As it requires primary legislation, this option is longer-term in nature. There would also be a risk of an inconsistency across Wales with suspension in some areas but not others. There is a possibility in some areas the *Right to Buy* would never be suspended.

#### **Costs and benefits**

The Welsh Government would save time by not being responsible for assessing applications. As with all options, there would be a very small administrative cost saving in direct expenditure of around £15-20,000 per year. Some costs would be incurred in developing and passing the legislation, and staff resources would need to be allocated to the task.

#### **Option 5 - End the *Right to Buy* and *Right to Acquire***

Under this option, the *Right to Buy* and the *Right to Acquire* would be abolished. It requires primary legislation. This option would have the greatest impact of all options but is a longer-term measure. A short-term option may also be beneficial to limit the reduction on the social housing stock in the medium term. During the development of legislation to end the *Right to Buy* and *Right to Acquire* a further Regulatory Impact Assessment on the policy will be developed.

This option would achieve the greatest protection of the social housing stock but, as it can only be achieved by way of new primary legislation, it is a longer term option. Consideration has been given to this separately and it is currently being taken forward. This Explanatory Memorandum and Regulatory Impact Assessment has been produced for the change to existing legislation to reduce the maximum sales discount. A separate Regulatory Impact Assessment will be published in due course as part of the requirement for new primary legislation in accordance with Standing Order 26.6(vi). This will describe fully the advantages and disadvantages, and costs and benefits of this option.

## **7. Preferred option**

The consultation on the future of the *Right to Buy* and *Right to Acquire* proposed action in both the short to medium-term and longer-term. The preferred option for achieving the policy intention in the short to medium-term is reducing the maximum sales discount from £16,000 to £8,000, and this was supported by the response to the consultation. Longer-term action is being taken forward separately.

The action to reduce discounts is an amendment to existing regulations regarding *Right to Buy* and not a new policy. Guidance says the Regulatory Impact Assessment should be proportionate and this has been taken into account. The key elements of Regulatory Impact Assessment have been completed.

## **8. Competition Assessment**

The Order will not affect business, or charities and/or the voluntary sector in ways which raise issues related to competition. The competition filter has not been applied.

This Order reduces the current discount levels to half of what they currently are. This will result in fewer sales but is not likely to stop them altogether.

## **9. Sustainable Development**

The reduction in discount from £16,000 to £8,000 should not have an adverse impact on sustainable development. The reduction in demand for *Right to Buy* and consequent safeguarding of social housing within the social sector could lead to fewer empty homes as once a *Right to Buy* property is sold and lost to the social sector it can enter the private rented sector. Anecdotal evidence from Local Authority housing managers and research in Scotland show potentially up to a third of *ex-Right to Buy* properties have subsequently been privately rented. These are more likely to become badly maintained and can then end up as empty properties. These are a wasted resource and can be the focus of vandalism and anti-social behaviour.

The retention of social housing should mean fewer new social homes are required to meet waiting list demand in the longer term.

## **10. Equality Impact Assessment**

In drafting this Order, consideration has been given to the Welsh Ministers' duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share characteristics and those who do not.

An Equality Impact Assessment has been undertaken, and is available on the Welsh Government's website. This amendment to regulations will safeguard social housing thereby benefitting women and Black and Minority Ethnic communities. The 2011

Census showed 54% of the social housing sector has a female head of household which is above the average across all tenures of 41% of households with a female head of household. In the social rented sector the proportion of heads of household who are from a Black and Minority Ethnic community was higher at 4% than the 3% across all tenures.

## **11. Children's Rights Impact Assessment**

A Children's Rights Impact Assessment has been carried out. Due regard has been given to the United Nations Convention on the Rights of the Child. Data from the 2011 Census shows more lone parent households live in social rented housing than in other tenures. The percentage of lone parent families in social rented housing is around 23% whereas the average number of lone parent families across all tenures is around 11%. Safe-guarding social rented housing for families is likely to benefit families and children. The Joseph Rowntree Foundation considers social housing to be a major contributor to tackling poverty as the targeting of social housing to those most in need is one of the most redistributive of social policies. Several of the Articles in the convention are relevant to housing. They have been identified in the Impact Assessment, which is on the Welsh Government website. The articles which are most relevant are: 3, 9, 18, 20, 23, and 27 with 27 having most relevance. Article 27 states: 'Children have a right to a standard of living is good enough to meet their physical and mental needs. The Government is committed to helping people who are unable to meet their housing needs through the housing market.'

## **12. Welsh Language Impact Assessment**

Concerns have been expressed in some parts of Wales about local Welsh speakers being priced out of Welsh speaking communities by high house prices. It is suggested this is to the detriment of the Welsh language. Social housing provides affordable homes for local people in their communities and is particularly important in rural areas. Over and above building more affordable homes, protecting existing social housing in local communities assist the availability of affordable housing. Some Welsh speaking communities in North Wales for instance are working with their rural housing enabler to develop more affordable housing. Preserving affordable and social housing in Welsh speaking areas and combining this with a robust approach to local connection is an important way of helping rural Welsh speaking communities to continue to exist and thrive. An impact assessment has been completed and can be found on the Welsh Government's website.

## **13. Rural Impact Assessment**

Nine Local Authorities are recognised as being rural Authorities. These are the Isle of Anglesey, Gwynedd, Powys, Ceredigion, Monmouthshire, Carmarthenshire, Denbighshire, Conwy and Pembrokeshire.

The three National Park Authorities are located within the rural local areas of Powys, Gwynedd and Pembrokeshire. They are the Brecon Beacons National Park, Snowdonia and Pembrokeshire Coast. On average, between a quarter and a third of all *Right to Buy* sales are within rural authorities. Specific problems of supply relate to rural Authorities. Safe-guarding existing social housing stock should benefit them.

It is recognised amongst Housing Associations and developers it is more complex and more expensive to build new homes in the National Parks and in rural areas where planning consent out of the urban settlements can be challenging. House prices can be higher in rural areas and there is sometimes competition in North and West Wales with second home owners. For these reasons safe-guarding the existing stock will benefit rural areas.

#### **14. Health and Well-being**

There are likely to be positive health impacts. A secure, affordable, home is the foundation has significant benefits for people's health and well being and their quality of life more generally. Research in Scotland concluded up to one third of properties sold as *Right to Buy* properties will end up after 10 years in the private rented sector. Private rented properties are recognised to often be in a poorer physical condition and to have less efficient heating and energy conservation measures than social housing. Poor housing can have a negative effect on health outcomes particularly in the case of children.

#### **15. Impacts on Privacy**

There are no impacts on privacy to be taken into consideration.

#### **16. Impacts on the voluntary sector**

There are no relevant impacts on the voluntary sector to be taken into consideration.

#### **17. Post-implementation review**

The Welsh Government undertakes an annual statistical collection on *Right to Buy* and *Right to Acquire* and will continue to do so. In this way sales, spikes in sales and the effect of any changes in regulations such as those proposed can be monitored. The Regulatory Impact Assessment for any new legislation will refer to the impact of this reduction in discount levels.