



Housing (Scotland) Act 1988

1988 CHAPTER 43

PART III

CHANGE OF LANDLORD: SECURE TENANTS

56 Right conferred by Part III

- (1) This Part of this Act has effect for the purpose of conferring on any person who has been approved under section 57 below or Scottish Homes the right to acquire from a public sector landlord any house—
 - (a) which, on the relevant date, is occupied by a qualifying tenant; and
 - (b) of which, on that date, the landlord is heritable proprietor,and any other heritable property of which, on that date, the landlord is heritable proprietor and which will reasonably serve a beneficial purpose in connection with the occupation of the house; and, in this Part of this Act, “house” includes any such property.
- (2) In subsection (1) above, “heritable proprietor” includes any person entitled under section 3 of the Conveyancing (Scotland) Act 1924 (disposition by uninfert person) to grant a disposition.
- (3) The following are public sector landlords for the purposes of this Part of this Act, namely—
 - (a) an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council;
 - (b) a development corporation within the meaning of the New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the Local Government Planning and Land Act 1980);
 - (c) the Scottish Special Housing Association;
 - (d) the Housing Corporation;
 - (e) Scottish Homes.

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- (4) A secure tenant is a qualifying tenant for the purposes of this Part unless he is obliged to give up possession of the house in pursuance of an order of the court or will be so obliged at a date specified in such an order.
- (5) The right conferred by this Part of this Act does not extend to a house—
- (a) which is one of a group which has been provided with facilities (including a call system and the services of a warden) specially designed or adapted for the needs of persons of pensionable age or disabled persons;
 - (b) which has facilities which are substantially different from those of an ordinary house and has been designed or adapted for occupation by—
 - (i) a person of pensionable age; or
 - (ii) a disabled person,whose special needs require accommodation of the kind provided by the house; or
 - (c) which is in an area which is, by order made by the Secretary of State on the application of the islands or district council in whose area it is situated, designated a rural area.
- (6) The right conferred by this Part of this Act does not arise in relation to a house if—
- (a) it is held by an islands council for the purposes of its functions as an education authority and is required for the accommodation of a person who is or will be employed by the council for those purposes; and
 - (b) the council is not likely to be able reasonably to provide other suitable accommodation for that person.
- (7) An order under subsection (5)(c) above may be made only if within the designated rural area more than one-third of all relevant houses have been acquired under this Part of this Act or purchased, whether under Part III of the Housing (Scotland) Act 1987 (which confers the right to buy upon certain public sector tenants) or otherwise, and the Secretary of State is satisfied that an unreasonable proportion of the houses so acquired or purchased consists of houses which have been resold and are not—
- (a) being used as the only or principal homes of the owners; or
 - (b) subject to regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984, or assured tenancies for the purpose of Part II of this Act.
- (8) An order under subsection (5)(c) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) For the purposes of subsection (7) above a “relevant house” is one of which—
- (a) at 3rd October 1980, the islands or district council in whose area it was situated;
 - (b) at 7th January 1987, a registered housing association (within the meaning of the Housing Associations Act 1985)
- was landlord.
- (10) In this Part of this Act “the relevant date”, in relation to an acquisition or proposed acquisition under this Part, means the date on which is made the application under section 58 below seeking to exercise the right conferred by this Part.
- (11) In section 14(2) of the Housing (Scotland) Act 1987 (houses which may be sold by local authorities without consent of Secretary of State) in paragraph (a) there shall be

added at the end the words “or, in pursuance of Part III of the Housing (Scotland) Act 1988 (change of landlord)”.

57 Persons by whom right may be exercised

- (1) The right conferred by this Part shall not be exercisable except by a person who has been approved by Scottish Homes under this section (in this Part of this Act referred to as an “approved person”) or by Scottish Homes; and neither a public sector landlord (other than Scottish Homes), nor a regional council, or a joint board or joint committee of two or more regional councils or any trust under the control of a regional council, may be so approved.
- (2) An approval under this section—
 - (a) may be given to a particular person or to persons of a particular description;
 - (b) may apply either generally or in relation to particular acquisitions or acquisitions made in a particular area or within a particular period;
 - (c) may, in relation to a particular person, specify the maximum number to which the approval extends of houses to be acquired by him under this Part of this Act;
 - (d) may be given subject to conditions.
- (3) An approval under this section may be revoked by Scottish Homes, but without prejudice to any transaction previously completed.

58 Application to exercise rights conferred by this Part and offer to sell

- (1) For the purposes of exercising the right conferred by this Part of this Act, the applicant (that is to say, the approved person or, as the case may be, Scottish Homes) shall serve on the landlord a notice in such form as may be prescribed (in this Part of this Act referred to as an “application”)—
 - (a) containing a statement that the applicant seeks to exercise the right conferred by this Part of this Act; and
 - (b) accompanied by the consent in writing of the qualifying tenant to an approach being made to their existing landlord.

In this subsection, “prescribed” means prescribed by regulations made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

- (2) In subsection (1) above the reference to the qualifying tenant includes any spouse of his or hers who occupies the house as his or her only or principal home and, where there is a joint tenancy, each joint tenant’s spouse who so occupies the house, and in this subsection the reference to a tenant’s or joint tenant’s spouse includes a person of the opposite sex who is living with the tenant or joint tenant as if he or she were the tenant’s or joint tenant’s husband or wife.
- (3) The applicant shall, at the same time as he serves an application, serve a copy of it on the qualifying tenant and on Scottish Homes (where the applicant is not Scottish Homes).
- (4) An application shall cease to have effect—
 - (a) if the applicant withdraws it; or
 - (b) if the qualifying tenant withdraws his consent,

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by notice thereof served upon the landlord.

- (5) Where an application is served under this section and the landlord does not serve notice of refusal under section 61 below, it shall within 2 months after service of the application serve on the applicant a notice (in this Part referred to as an “offer to sell notice”) stating—
- (a) the market value of the house on the date of service of the application;
 - (b) any conditions which the landlord intends to impose under subsection (9) below
- and containing an offer to sell the house to the applicant at a price equal to that value and under those conditions.
- (6) For the purposes of subsection (5) above, the market value of a house shall be determined by either—
- (a) a qualified valuer nominated by the landlord and accepted by the applicant; or
 - (b) the district valuer,
- as the landlord thinks fit.
- (7) In determining the market value of a house for the purposes of subsection (5) above, regard shall be had to the price which, on the relevant date, it would realise if sold on the open market by a willing seller on the following assumptions, namely—
- (a) that it was sold subject to the tenancy held by the qualifying tenant but otherwise with vacant possession;
 - (b) that it was to be conveyed with the same rights and subject to the same burdens as it would be in pursuance of the right of acquisition under this Part of this Act;
 - (c) that the only prospective purchasers were Scottish Homes or the persons who, on that date, were approved under section 57 above; and
 - (d) that the applicant would, within a reasonable period carry out such works as are reasonably necessary to put the house into the state of repair required by the landlord’s repairing obligations.
- (8) Where the circumstances are such that, on the relevant date, a house, if offered for sale in accordance with subsection (7) above, would not realise any price then—
- (a) for the purposes of that subsection, the price shall be taken to be—
 - (i) such amount as would require to be paid to Scottish Homes or a person who, on the relevant date, was approved under section 57 above in order that it or he would willingly so acquire the house, expressed as a negative; or
 - (ii) where Scottish Homes or that person would willingly so acquire it for no consideration, nil;
 - (b) the market value of the house may be determined under that subsection to be a negative value or nil;
 - (c) where the market value is so determined, the reference in subsection (5) above to a price equal to the market value shall be construed accordingly and references in this section to selling a house and the purchaser of it shall be construed respectively as references to disposing of it and the acquirer of it; and
 - (d) where, by virtue of paragraph (c) above, the price of the house is in the negative, the obligation to pay shall be upon the landlord.

- (9) The landlord shall, at the same time as it serves an offer to sell notice serve a copy of the notice upon the qualifying tenant.
- (10) An offer to sell under this section may be under such conditions as are reasonable, provided that—
 - (a) they shall not reduce the tenant's enjoyment and use of the house as tenant of the applicant from that which he had as tenant of the landlord; and
 - (b) they shall include such terms as are necessary to entitle the applicant to receive a good and marketable title to the house.
- (11) A condition which imposes a new charge or an increase of an existing charge for the provision of a service in relation to the house shall provide for the charge to be in reasonable proportion to the cost to the landlord of providing the service.
- (12) No condition shall be imposed under this section which has the effect of requiring the applicant or the tenant to pay any expenses of the landlord.

59 Variation of conditions

- (1) Where an offer to sell notice is served on an applicant and he wishes to exercise the right conferred by this Part of this Act, but—
 - (a) he considers that a condition contained in the offer to sell is unreasonable; or
 - (b) he wishes to have a new condition included in it,he may request the landlord to strike out or vary the condition, or to include the new condition as the case may be, by serving on the landlord within one month after service of the offer to sell notice a notice in writing setting out his request; and if the landlord agrees, it shall accordingly serve an amended offer to sell on the applicant within one month of service of the notice setting out the request.
- (2) An applicant who is aggrieved by the refusal of the landlord to agree to strike out or vary a condition, or to include a new condition, or by his failure timeously to serve an amended offer to sell, may, within one month or, with the consent of the landlord given in writing before the expiry of the said period of one month, within 2 months of the refusal or failure, refer the matter to the Lands Tribunal for Scotland (hereinafter in this Part of this Act referred to as the Lands Tribunal) for determination.
- (3) In proceedings under subsection (2), the Lands Tribunal may, as it thinks fit, uphold the condition or strike it out or vary it, or insert the new condition, and where its determination results in a variation of the terms of the offer to sell, it shall order the landlord to serve on the applicant an amended offer to sell accordingly within 2 months thereafter.

60 Notice of acceptance

- (1) Where an offer to sell notice is served upon an applicant and he wishes to exercise the right conferred by this Part of this Act and—
 - (a) he does not dispute the offer to sell by timeously serving a notice setting out a request under section 59(1) above or by referring the matter to the Lands Tribunal under section 62(1) below; or
 - (b) any such dispute has been resolved,the applicant shall serve a notice of acceptance on the landlord within 2 months of whichever is the latest of—

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- (i) the service upon the applicant of the offer to sell;
 - (ii) the service on him of an amended offer to sell (or if there are more than one, of the latest amended offer to sell);
 - (iii) a determination by the Lands Tribunal under section 59(3) above which does not require service of an amended offer to sell;
 - (iv) a finding or determination of the Lands Tribunal in a matter referred to it under subsection (1) of section 62 below,
- or within such longer period as may be agreed between the applicant and the landlord.
- (2) A notice of acceptance under subsection (1) above is of no effect unless the qualifying tenant and the applicant have concluded a lease of the house for a period immediately subsequent to the sale of the house in pursuance of this Part of this Act, being a lease which is conditional upon that sale proceeding.
 - (3) If a notice of acceptance under subsection (1) above is not served within the period specified in or, as the case may be, agreed under that subsection, the application to which the notice relates shall lapse.
 - (4) Where an offer to sell (or an amended offer to sell) has been served on the applicant and a relative notice of acceptance has been duly served on the landlord, a contract of sale of the house shall be constituted between the landlord and the applicant on the terms contained in the offer (or amended offer) to sell.

61 Refusal of applications

- (1) Where a landlord on which an application has been served—
 - (a) disputes the applicant’s right under this Part of this Act it shall, by notice (in this Part of this Act referred to as a “notice of refusal”) served within one month after service of the application, refuse the application;
 - (b) after reasonable inquiry (which shall include reasonable opportunity for the applicant to amend the application), considers that any of the information contained in the application is incorrect in a material particular, it shall, by notice of refusal served within 2 months after the application, refuse the application.
- (2) A notice of refusal shall specify the grounds on which the landlord disputes the applicant’s right under this Part of this Act or, as the case may be, the correctness of the information.
- (3) Where a landlord serves a notice of refusal on an applicant, the applicant may, within one month thereafter apply to the Lands Tribunal for a finding that the applicant is entitled to exercise the right conferred by this Part on such terms as it may determine.

62 Reference to Lands Tribunal

- (1) Where—
 - (a) a landlord which has been duly served with an application fails to issue timeously either an offer to sell or a notice of refusal;
 - (b) the Lands Tribunal has made a determination under section 59(3) above and the landlord has failed to issue an amended offer to sell within 2 months thereafter;

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- (c) the Lands Tribunal has made a finding under section 61(3) above and the landlord has not, within 2 months, duly progressed the application in accordance with that finding;
- (d) a landlord has served an offer to sell which does not comply with a requirement of this Part of this Act,

the applicant may refer the matter to the Lands Tribunal by serving on its clerk a copy of any notice served and of any finding or determination made under this Part of this Act together with a statement of his grievance.

- (2) On a reference to the Lands Tribunal under subsection (1) above, it shall consider whether any of paragraphs (a) to (d) thereof apply and, if it so finds, it may serve an offer to sell notice and do otherwise as the landlord might do in pursuance of such notice; and anything done by it under this subsection shall have effect as if done by the landlord.
- (3) Nothing in this section shall affect the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

63 Consent for subsequent disposals

- (1) A person other than Scottish Homes who acquires any property under this Part of this Act shall not dispose of it except with the consent in writing of Scottish Homes.
- (2) Any consent for the purposes of subsection (1) above may be given either in respect of a particular disposal or in respect of disposals of any class or description (including disposals in particular areas) and either unconditionally or subject to conditions.
- (3) The consent of Scottish Homes under section 9 of the Housing Associations Act 1985 (control of dispositions) is not required for any disposal, or disposals of any class or description, in respect of which consent is given under subsection (1) above.
- (4) In this section references to disposing of property include references to—
 - (a) granting or disposing of any interest in property;
 - (b) entering into a contract to dispose of property or to grant or dispose of any such interest; and
 - (c) granting an option to acquire property or any such interest.

64 Extension etc. of relevant periods

- (1) In this section “relevant period” means any period within which anything is required by this Part to be done by either of the parties, that is to say, the applicant and the landlord.
- (2) At any time before the end of any relevant period, or any such period as previously extended under this subsection, the other party may, by a written notice served on the party to whom the requirement relates, extend or further extend that period.
- (3) Where—
 - (a) the applicant is the party to whom the requirement relates; and
 - (b) the relevant period, or that period as extended under subsection (2) above, expires without his doing what he is required by this Part to do within that period,

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his application claiming to exercise the right conferred by this Part shall be deemed to be withdrawn, but without prejudice to his making a further such application.