

SCHEDULE 2

Regulation 4

THE RIGHT TO BUY PROVISIONS AS THEY APPLY IN CASES WHERE THE RIGHT TO BUY IS PRESERVED

Right to buy

61.—(1) Notwithstanding anything contained in any agreement, a qualifying person (or such one or more of qualifying persons as may be agreed between them) shall, subject to this Part, have the right to purchase the qualifying house at a price fixed under section 62.

(2) This section applies to every qualifying house where—

- (b) the landlord is the heritable proprietor of the qualifying house; and
- (c) immediately prior to the date of service of an application to purchase, the qualifying person has been for not less than 2 years in occupation of a house (including accommodation provided as mentioned in subsection (11)(n)) or of a succession of houses provided by any persons mentioned in subsection (11) or of the qualifying house or any other house provided by the landlord which was a qualifying house.

(2A) For the purposes of subsection (2)(c), where the house or qualifying house was provided by a housing association which, at any time while that house was so provided, was not a registered housing association, the association shall, if it became a registered housing association at any later time, be deemed to have been a registered housing association at all times since it first provided that house.

(3) This section also applies to a qualifying house let to the qualifying person following acquisition by the landlord of a defective dwelling previously purchased by the qualifying person if the qualifying person would not otherwise have the right to purchase under this Part; and where it so applies—

- (a) paragraph (c) of subsection (2) shall not have effect;
- (b) the words “beyond 2” in section 62(3)(b) shall not have effect.

(4) This section does not apply—

- (a) to a qualifying house that 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; or
- (b) where a landlord which is a registered housing association has at no time received a grant under—
 - (i) any enactment mentioned in paragraph 2 of Schedule I to the Housing Associations Act 1985⁽¹⁾ (grants under enactments superseded by the Housing Act 1974⁽²⁾);
 - (ii) section 31 of the Housing Act 1974 (management grants);
 - (iii) section 41 of the Housing Associations Act 1985 (housing association grants);
 - (iv) section 54 of that Act (revenue deficit grants);
 - (v) section 55 of that Act (hostel deficit grants);
 - (vi) section 59(2) of that Act (grants by local authorities);
 - (vii) section 50 of the Housing Act 1988 (housing association grants); or
 - (viii) section 51 of that Act (revenue deficit grants); or

(1) 1985 c. 69.
(2) 1974 c. 44.

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- (c) where such a landlord has at no time let (or had available for letting) more than 100 dwellings; or
 - (f) where, within a neighbourhood, the qualifying house is one of a number (not exceeding 14) of houses with a common landlord, being a landlord which is a registered housing association, and it is the practice of that landlord to let at least one half of those houses for occupation by any or all of the following—
 - (i) persons who have suffered from, or are suffering from, mental disorder (as defined in the Mental Health (Scotland) Act 1984⁽³⁾), physical handicap or addiction to alcohol or other drugs;
 - (ii) persons who have been released from prison or other institutions;
 - (iii) young persons who have left the care of a local authority,and a social service is, or special facilities are, provided wholly or partly for the purpose of assisting those persons.
- (5) Where the spouse of a qualifying person occupies the qualifying house as his only or principal home but is not himself a qualifying person, the right to purchase the qualifying house under subsection (1) shall not be exercised without the consent of such spouse.
- (6) A qualifying person may exercise his right to purchase, if he so wishes, together with one or more members of his family acting as joint purchasers, provided—
- (a) that such members are at least 18 years of age, that they have, during the period of 6 months ending with the date of service of the application to purchase, had their only or principal home with the qualifying person and that their residence in the qualifying house is not a breach of any obligation of the tenancy; or
 - (b) where the requirements of paragraph (a) are not satisfied, the landlord has consented.
- (7) The Secretary of State may by order made by statutory instrument amend, or add to, the descriptions of persons set out in sub-paragraphs (i) to (iii) of paragraph (f) of subsection (4).
- (10) In this section and the following section—
- (a) references to occupation of a house include occupation—
 - (i) in the case of more than one qualifying person, by any one of them;
 - (ii) by any person occupying the house rent-free;
 - (iii) as the spouse of the qualifying person or of any such person;
 - (b) for the purpose of determining the period of occupation—
 - (i) any interruption in occupation of 12 months or less shall be regarded as not affecting continuity; and
 - (ii) any interruption in occupation of more than 12 months and less than 24 months may at the discretion of the landlord be regarded as not affecting continuity; and
 - (iii) there shall be added to the period of occupation of a qualifying house by a qualifying person any earlier period during which he was at least 16 years of age and occupied the qualifying house as a member of the family of the tenant or of a qualifying person or of one or more of the joint tenants of the house.
- (11) The persons providing houses referred to in subsection (2)(c) (occupation requirement for exercise of right to purchase) and in section 62(3)(b) (calculation of the discount from the market value) are—

(3) 1984 c. 36.

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- (a) a regional, islands or district council in Scotland; any local authority in England and Wales or in Northern Ireland; and the statutory predecessors of any such council or authority, or the common good of any such council, or any trust under the control of any such council;
- (b) the Commission for the New Towns;
- (c) a development corporation, an urban development corporation; and any development corporation established under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
- (d) Scottish Homes and the Scottish Special Housing Association;
- (e) a registered housing association;
- (f) the Housing Corporation;
- (g) a housing co-operative within the meaning of section 22 or a housing co-operative within the meaning of section 27B of the Housing Act 1985⁽⁴⁾;
- (h) the Development Board for Rural Wales;
- (i) the Northern Ireland Housing Executive or any statutory predecessor;
- (j) a police authority or the statutory predecessors of any such authority;
- (k) a fire authority or the statutory predecessors of any such authority;
- (l) a water authority in Scotland; any water authority constituted under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
- (m) the Secretary of State, where the house was at the material time used for the purposes of the Scottish Prison Service or of a prison service for which the Home Office or the Northern Ireland Office have responsibility;
- (n) the Crown, in relation to accommodation provided in connection with the service whether by the tenant or his spouse as a member of the regular armed forces of the Crown;
- (o) the Secretary of State, where the house was at the material time used for the purposes of a health board constituted under section 2 of the National Health Services (Scotland) Act 1978⁽⁵⁾ or for the purposes of a corresponding board in England and Wales, or for the purposes of the statutory predecessors of any such board; or the Department of Health and Social Services for Northern Ireland, where the house was at the material time used for the purposes of a Health and Personal Services Board in Northern Ireland, or for the purposes of the statutory predecessors of any such board;
- (p) the Secretary of State, or the Minister of Agriculture, Fisheries and Food, where the house was at the material time used for the purposes of the Forestry Commission;
- (q) the Secretary of State, where the house was at the material time used for the purposes of a State Hospital provided by him under section 90 of the Mental Health (Scotland) Act 1984 or for the purposes of any hospital provided under corresponding legislation in England and Wales;
- (r) the Commissioners of Northern Lighthouses;
- (s) the Trinity House;
- (t) the Secretary of State, where the house was at the material time used for the purposes of Her Majesty's Coastguard;
- (u) the United Kingdom Atomic Energy Authority;

(4) 1985 c. 69; section 27B was inserted by the Housing and Planning Act 1986 (c. 63), section 10.

(5) 1978 c. 29.

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- (v) the Secretary of State, where the house was at the material time used for the purposes of any function transferred to him under section 1(2) of the Defence (Transfer of Functions) Act 1964(6) or any function relating to defence conferred on him by or under any subsequent enactment;
- (w) such other person as the Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament prescribe.

The price

62.—(1) Subject to subsection (6A), the price at which a qualifying person shall be entitled to purchase a qualifying house under this Part shall be fixed as at the date of service of the application to purchase by subtracting a discount from the market value of the qualifying house.

- (2) The market value for the purposes of this section shall be determined by either—
 - (a) a qualified valuer nominated by the landlord and accepted by the qualifying person; or
 - (b) the district valuer,

as the landlord thinks fit as if the qualifying house were available for sale on the open market with vacant possession at the date of service of the application to purchase.

For the purposes of this subsection, no account shall be taken of any element in the market value of the qualifying house which reflects an increase in value as a result of work the cost of which would qualify for a reimbursement under section 58.

- (3) Subject to subsection (5), the discount for the purposes of subsection (1) shall be—
 - (a) 32 per cent. of the market value of the qualifying house except—
 - (i) where the qualifying house is a flat, it shall be 44 per cent. of the market value;
 - (ii) where the qualifying house is one to which section 61(3) applies, it shall be 30 per cent. or, where it is a flat, 40 per cent. of the market value;
 together with
 - (b) an additional one per cent. or, where the qualifying house is a flat, two per cent., of the market value for every year beyond 2 of continuous occupation by the appropriate person, immediately preceding the date of service of the application to purchase, of a house or of a qualifying house (including accommodation provided as mentioned in section 61(11)(n)) or of a succession of houses provided by any persons mentioned in section 61(11),

up to a maximum discount of 60 per cent., or where the qualifying house is a flat, 70 per cent. of the market value.

- (4) For the purposes of subsection (3)—
 - (a) the “appropriate person” is the qualifying person, or if it would result in a higher discount and if she is cohabiting with him at the date of service of the application to purchase, his spouse; and where more than one qualifying person are joint purchasers the “appropriate person” shall be whichever qualifying person (or, as the case may be, spouse) has the longer or longest such occupation; and
 - (b) where the house or qualifying house was provided by a housing association which, at any time while the house or qualifying house was so provided was not a registered housing association, the association shall, if it became a registered housing association at any later time, be deemed to have been a registered housing association at all times since it first provided the house or qualifying house.

(6) 1964 c. 15.

(5) The Secretary of State may by order made with the consent of the Treasury provide that, in such cases as may be specified in the order—

- (a) the minimum percentage discount,
- (b) the percentage increase for each complete year of the qualifying period after the first two, or
- (c) the maximum percentage discount,

shall be such percentage higher than that specified in subsection (3), as may be specified in the order.

(6) An order under subsection (5)—

- (a) may make different provision with respect to different cases or descriptions of case,
- (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient, and
- (c) shall be made by statutory instrument and shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(6A) Except where the Secretary of State so determines, the discount for the purpose of subsection (1) shall not reduce the price below the amount which, in accordance with a determination made by him, is to be taken as representing so much of the costs incurred in respect of the qualifying house as, in accordance with the determination, is to be treated as—

- (a) incurred in the period commencing with the beginning of the financial year of the landlord which was current 5 years prior to the date of service of the application to purchase the qualifying house or such other period as the Secretary of State may by order provide; and
- (b) relevant for the purposes of this subsection,

and if the price before discount is below that amount, there shall be no discount.

(6B) An order under subsection (6A) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may make different provision in relation to different cases or circumstances or different areas.

(10) Where at the date of service of an offer to sell under section 63 any of the costs referred to in subsection (6A) are not known, the landlord shall make an estimate of such unknown costs for the purposes of that subsection.

PROCEDURE

Application to purchase and offer to sell

63.—(1) A qualifying person who seeks to exercise a right to purchase a qualifying house under section 61 shall serve on the landlord a notice (referred to in this Part as an “application to purchase”) which shall be in such form as the Secretary of State shall by order made by statutory instrument prescribe, and shall contain—

- (a) notice that the qualifying person seeks to exercise the right to purchase;
- (b) a statement of any period of occupancy of a house including the qualifying house on which the qualifying person intends to rely for the purposes of section 61 and 62; and
- (c) the name of any joint purchaser within the meaning of section 61(6).

(2) Where an application to purchase is served on a landlord, and the landlord does not serve a notice of refusal under section 68 or 69 it shall, within 2 months after service of the application to purchase, serve on the qualifying person a notice (referred to in this Part as an “offer to sell”) containing—

- (a) the market value of the qualifying house determined under section 62(2);
- (b) the discount calculated under section 62(3);

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- (c) the price fixed under section 62(1);
- (d) any conditions which the landlord intends to impose under section 64; and
- (e) an offer to sell the qualifying house to the qualifying person and any joint purchaser named in the application to purchase at the price referred to in paragraph (c) and under the conditions referred to in paragraph (d).

Conditions of sale

64.—(1) Subject to section 75, an offer to sell under section 63(2) shall contain such conditions as are reasonable, provided that—

- (a) the conditions shall have the effect of ensuring that the qualifying person has as full enjoyment and use of the qualifying house as owner as he has had as tenant;
- (b) the conditions shall secure to the qualifying person such additional rights as are necessary for his reasonable enjoyment and use of the qualifying house as owner (including, without prejudice to the foregoing generality, common rights in any part of the building of which the qualifying house forms part) and shall impose on the qualifying person any necessary duties relative to rights so secured; and
- (c) the conditions shall include such terms as are necessary to entitle the qualifying person to receive a good and marketable title to the qualifying house.

(2) A condition which imposes a new charge or an increase of an existing charge for the provision of a service in relation to the qualifying house shall provide for the charge to be in reasonable proportion to the cost to the landlord of providing the service.

(3) No condition shall be imposed under this section which has the effect of requiring the qualifying person to pay any expenses of the landlord.

(4) No condition shall be imposed under this section which has the effect of requiring the qualifying person or any of his successors in title to offer to the landlord, or to any other person, an option to purchase the qualifying house in advance of its sale to a third party, except in the case of a qualifying house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age or disabled person whose special needs require accommodation of the kind provided by the qualifying house.

(5) Where an option to purchase permitted under subsection (4) is exercised, the price to be paid for the qualifying house shall be determined by the district valuer who shall have regard to the market value of the qualifying house at the time of the purchase and to any amount due to the landlord under section 72 (recovery of discount on early re-sale).

Variation of conditions

65.—(1) Where an offer to sell is served on a qualifying person and he wishes to exercise his right to purchase, 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; or
- (c) he has not previously notified the landlord of his intention to exercise that right together with a joint purchaser, but now wishes to do so; or
- (d) he has previously notified the landlord of his intention to exercise that right together with any joint purchaser but now wishes to exercise the right without that joint purchaser,

he may request the landlord to strike out or vary the condition, or to include the new condition, or to make the offer to sell to the qualifying person and the joint purchaser, or to withdraw the offer

to sell in respect of the joint purchaser, as the case may be, by serving on the landlord within one month after service of the offer to sell a notice in writing setting out his request; and if the landlord agrees, it shall accordingly serve an amended offer to sell on the qualifying person within one month of service of the notice setting out the request.

(2) A qualifying person 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 to make the offer to sell to the qualifying person and the joint purchaser, or to withdraw the offer to sell in respect of any joint purchaser under subsection (1), or by his failure timeously to serve an amended offer to sell under the said subsection, 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 two months of the refusal or failure, refer the matter to 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 or order that the offer to sell be made to the qualifying person and the joint purchaser, or order that the offer to sell be withdrawn in respect of any joint purchaser, 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 qualifying person an amended offer to sell accordingly within 2 months thereafter.

Notice of acceptance

66.—(1) Where an offer to sell is served on a qualifying person and he wishes to exercise his right to purchase and—

- (a) he does not dispute the terms of the offer to sell by timeously serving a notice setting out a request under section 65(1) or by referring the matter to the Lands Tribunal under subsection (1)(d) of section 71; or
- (b) any such dispute has been resolved;

the qualifying person shall, subject to section 67(1), serve a notice of acceptance on the landlord within 2 months of whichever is the latest of—

- (i) the service on him of the offer to sell;
- (ii) the service on him of an amended offer to sell (or if there is more than one, of the latest amended offer to sell);
- (iii) a determination by the Lands Tribunal under section 65(3) which does not require service of an amended offer to sell;
- (iv) a finding of determination of the Lands Tribunal in a matter referred to it under section 71(1)(d) where no order is made under section 71(2)(b);
- (v) the service of an offer to sell on him by virtue of subsection (2)(b) of section 71;
- (vi) where a loan application under subsection (2)(a)(i) of section 216 (loans) has been served in accordance with that section, the service of a relative offer or refusal of loan; or
- (vii) where section 216(7) (loans) is invoked, the decision of the court.

(2) Where an offer to sell (or an amended offer to sell) has been served on the qualifying person and a relative notice of acceptance has been duly served on the landlord, a contract of sale of the qualifying house shall be constituted between the landlord and the qualifying person on the terms contained in the offer (or amended offer) to sell.

Fixed price option

67.—(1) Where an offer to sell (or an amended offer to sell) is served on a qualifying person, but he is unable by reason of the application of regulations made under section 216(3) (loans) to obtain a loan of the amount for which he has applied, he may, within 2 months of service on him of an

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offer of loan, or (as the case may be) of the date of a declarator by the sheriff under section 216(7) (loans), whichever is the later, serve on the landlord a notice to the effect that he wishes to have a fixed price option, which notice shall be accompanied by a payment to the landlord of £100, and in that event he shall be entitled to serve a notice of acceptance on the landlord at any time within 2 years of the service of the application to purchase:

Provided that where, as regards the qualifying house, the qualifying person has served a loan application in accordance with subsection (2)(a)(ii) of section 216 (loans), he shall be entitled (even if the said period of 2 years has expired) to serve a notice of acceptance on the landlord within 2 months of whichever is the later of—

- (a) the service of a relative offer, or refusal, of loan; or
- (b) where section 216(7) is invoked, the decision of the court.

(2) The payment of £100 mentioned in subsection (1) shall be recoverable—

- (a) by the qualifying person, when he purchases the qualifying house in accordance with that subsection or, if he does not, at the expiry of the period of 2 years mentioned therein;
- (b) by the qualifying person, when the landlord recovers possession of the qualifying house under subsection (3); or
- (c) by his personal representatives, if he dies without purchasing the qualifying house in accordance with that subsection.

(3) The existence of a fixed price option under subsection (1) shall not prevent the landlord from recovering possession of the property in any manner which may be lawful, and in that event the option shall be terminated.

Refusal of applications

68.—(1) Where a landlord on which an application to purchase has been served disputes the qualifying person's right to purchase a qualifying house under section 61, it shall by notice (referred to in this Part as a "notice of refusal") served within one month after service of the application to purchase, refuse the application.

(2) Where a landlord on which an application to purchase has been served, after reasonable enquiry (which shall include reasonable opportunity for the qualifying person to amend his application), is of the opinion that information contained in the application is incorrect in a material respect it shall issue a notice of refusal within 2 months of the application to purchase.

(3) A notice of refusal shall specify the grounds on which the landlord disputes the qualifying person's right to purchase or, as the case may be, the accuracy of the information.

(4) Where a landlord serves a notice of refusal on a qualifying person under this section, the qualifying person may within one month thereafter apply to the Lands Tribunal for a finding that he has a right to purchase the qualifying house under section 61 on such terms as it may determine.

HOUSES PROVIDED FOR SPECIAL PURPOSES

Secretary of State's power to authorise refusal to sell certain houses provided for persons of pensionable age

69.—(1) This section applies to a qualifying house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age whose special needs require accommodation of the kind provided by the qualifying house.

(1A) This section applies only to qualifying houses first let on a secure tenancy before 1st January 1990.

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(2) Where an application to purchase a qualifying house is served on a landlord and it appears to the landlord that—

- (a) the qualifying house is one to which this section applies; and
- (b) the qualifying person would, apart from this section, have a right under section 61 to purchase the qualifying house,

the landlord may, within one month after service of the application to purchase, instead of serving an offer to sell on the qualifying person, make an application to the Secretary of State under this section.

(3) An application under subsection (2) shall specify the facilities and features of design or adaptation which in the view of the landlord cause the qualifying house to be a qualifying house to which this section applies.

(4) Where the Secretary of State has received an application under this section and it appears to him that the qualifying house concerned is one to which this section applies, he shall authorise the landlord to serve on the qualifying person a notice of refusal under this section, which shall be served as soon as is practicable after the authority is given and in any event within one month thereafter.

(5) A notice of refusal served under subsection (4) shall specify the facilities and features specified for the purposes of subsection (3) and that the Secretary of State's authority for service of the said notice has been given.

(6) Where the Secretary of State refuses an application made under subsection (2), the landlord shall serve on the qualifying person an offer to sell under section 63(2)—

- (a) within the period mentioned in that section; or
- (b) where the unexpired portion of that period is less than one month or there is not an unexpired portion of that period, within one month of the Secretary of State's refusal.

LANDS TRIBUNAL

Reference to Lands Tribunal

71.—(1) Where—

- (a) a landlord who has been duly served with an application to purchase fails to issue timeously either an offer to sell (even if only such offer to sell as is mentioned in paragraph (d)) or a notice of refusal; or
- (b) the Lands Tribunal has made a determination under section 65(3) (variation of terms of offer to sell) and the landlord has failed to issue an amended offer to sell within 2 months thereafter; or
- (c) the Lands Tribunal has made a finding under section 68(4) (refusal of right to purchase) or has made an order under subsection (2)(b) of this section and the landlord has not duly progressed the application to purchase in accordance with that finding or, as the case may be, order, within 2 months thereafter; or
- (d) a landlord has served an offer to sell whose contents do not conform with the requirements of paragraphs (a) to (e) of section 63(2) (or where such contents were not obtained in accordance with the provisions specified in those paragraphs),

the qualifying person (together with any joint purchaser) may refer the matter to the Lands Tribunal by serving on the clerk to that body a copy of any notice served and of any findings or determination made under this Part, together with a statement of his grievance.

(2) Where a matter has been referred to the Lands Tribunal under subsection (1), the Tribunal shall consider whether in its opinion—

- (a) any of paragraphs (a) to (c) of that subsection apply, and if it so finds it may—

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- (i) give any consent, exercise any discretion, or do anything which the landlord may give, exercise or do under or for the purposes of sections 61 to 84; and
- (ii) issue such notices and undertake such other steps as may be required to complete the procedure provided for in sections 63 and 65 to 67;

and any consent given, any discretion exercised, or anything done, under the foregoing provisions of this subsection shall have effect as if it had been duly given, exercised or done by the landlord; or

- (b) paragraph (d) of that subsection applies, and if it so finds it may order the landlord to serve on the qualifying person an offer to sell, in proper form, under section 63(2) within such time (not exceeding 2 months) as it may specify.

(3) Nothing in this section shall affect the operation of the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

RECOVERABILITY OF DISCOUNT

Recovery of discount on early re-sale

72.—(1) A qualifying person who has purchased a qualifying house in exercise of a right to purchase under section 61, or any of his successors in title, who sells or otherwise disposes of the qualifying house (except as provided for in section 73) before the expiry of 3 years from the date of service of a notice of acceptance by the qualifying person under section 66, shall on the request of the landlord be liable to repay to the landlord, in accordance with subsection (3), a proportion of the difference between the market value determined, in respect of the qualifying house, under section 62(2) and the price at which the qualifying house was so purchased.

(2) Subsection (1) applies to the disposal of part of a qualifying house except in a case where—

- (a) it is a disposal by one of the parties to the original sale to one of the other parties; or
- (b) the remainder of the qualifying house continues to be the only or principal home of the person disposing of the part.

(3) The proportion of the difference which shall be paid to the landlord shall be—

- (a) 100 per cent. where the disposal occurs within the first year after the date of service of notice,
- (b) 66 per cent. where it occurs in the second such year, and
- (c) 33 per cent. where it occurs in the third such year.

(4) Where as regards a qualifying house or part of a qualifying house there is, within the period mentioned in subsection (1), more than one disposal to which that subsection would (apart from the provisions of this subsection) apply, that subsection shall apply only in relation to the first such disposal of the qualifying house, or part of the qualifying house.

(5) Where a landlord secures the liability to make a repayment under subsection (1) the security shall, notwithstanding section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970(7), have priority immediately after—

- (a) any standard security granted in security of a loan either—
 - (i) for the purchase of the qualifying house, or
 - (ii) for the improvement of the qualifying house,

and any interest present or future due thereon (including any such interest which has accrued or may accrue) and any expenses or outlays (including interest thereon) which

(7) 1970 c. 35.

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may be, or may have been, reasonably incurred in the exercise of any power conferred on the lender by the deed expressing the said standard security; and

- (b) if the landlord consents, a standard security over the qualifying house granted in security of any other loan, and in relation thereto any such interest, expenses or outlays as aforesaid.

(6) For the avoidance of doubt, paragraph (a) of subsection (5) applies to a standard security granted in security both for the purpose mentioned in sub-paragraph (i) and for that mentioned in sub-paragraph (ii) as it applies to a standard security so granted for only one of those purposes.

(7) The liability to make a repayment under subsection (1) shall not be imposed as a real burden in a disposition of any interest in the qualifying house.

Cases where discount etc. is not recoverable

73.—(1) There shall be no liability to make a repayment under section 72(1) where the disposal is made—

- (a) by the executor of the deceased owner acting in that capacity; or
- (b) as a result of a compulsory purchase order; or
- (c) in the circumstances specified in subsection (2).

(2) The circumstances mentioned in subsection (1)(c) are that the disposal—

- (a) is to a member of the owner's family who has lived with him for a period of 12 months before the disposal; and
- (b) is for no consideration:

Provided that, if the donee disposes of the qualifying house before the expiry of the 3 year period mentioned in section 72(1), the provisions of that section will apply to him as if this was the first disposal and he was the original purchaser.

DUTIES OF LANDLORDS

Duties of landlords

74. It shall be the duty of every landlord of a qualifying house to which sections 61 to 84 and section 216 apply to make provision for the progression of applications under those sections in such manner as may be necessary to enable any qualifying person who wishes to exercise his rights under this Part to do so, and to comply with any regulations which may be made by statutory instrument by the Secretary of State in that regard.

Agreements affecting right to purchase

75.—(1) Subject to sections 61(1), 67(1) and 72(1)—

- (a) no qualifying person exercising or seeking to exercise a right to purchase under section 61(1) shall be obliged, notwithstanding any agreement to the contrary, to make any payment or to lodge any deposit with the landlord which he would not have been obliged to make, or as the case may be lodge, had he not exercised (or sought to exercise) the right to purchase;
- (b) a landlord is required neither to enter into, nor to induce (or seek to induce) any qualifying person to enter into, such agreement as is mentioned in paragraph (a), or into any agreement which purports to restrict that qualifying person's rights under this Part.

(2) Paragraph (a) of subsection (1) does not apply to the expenses in any court proceedings.

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POWERS OF SECRETARY OF STATE

Secretary of State may give directions to modify conditions of sale

78.—(1) Where it appears to the Secretary of State that the inclusion of conditions of a particular kind in offers to sell would be unreasonable he may by direction require landlords generally, landlords of a particular description, or particular landlords not to include conditions of that kind (or not to include conditions of that kind unless modified in such manner as may be specified in the direction) in offers to sell served on or after a date so specified.

(2) Where a condition's inclusion in an offer to sell—

- (a) is in contravention of a direction under subsection (1); or
- (b) in a case where the qualifying person has not by the date specified in such a direction served a relative notice of acceptance on the landlord, would have been in such contravention had the offer to sell been served on or after that date,

the condition shall have no effect as regards the offer to sell.

(3) A direction under subsection (1) may—

- (a) make different provision in relation to different areas, cases or classes of case and may exclude certain areas, cases or classes of case; and
- (b) be varied or withdrawn by a subsequent direction so given.

Secretary of State may give financial and other assistance for tenants involved in proceedings

79.—(1) Where, in relation to any proceedings, or prospective proceedings, to which this section applies, a qualifying person is an actual or prospective party, the Secretary of State may on written application to him by the qualifying person give financial or other assistance to the applicant, if the Secretary of State thinks fit to do so:

Provided that assistance under this section shall be given only where the Secretary of State considers—

- (a) that the case raises a question of principle and that it is in the public interest to give the applicant such assistance; or
- (b) that there is some other special consideration.

(2) This section applies to—

- (a) any proceedings under sections 61 to 84 and section 216; and
- (b) any proceedings to determine any question arising under or in connection with those sections other than a question as to market value for the purposes of section 62.

(3) Assistance by the Secretary of State under this section may include—

- (a) giving advice;
- (b) procuring or attempting to procure the settlement of the matter in dispute;
- (c) arranging for the giving of advice or assistance by a solicitor or counsel;
- (d) arranging for representation by a solicitor or counsel;
- (e) any other form of assistance which the Secretary of State may consider appropriate.

(4) In so far as expenses are incurred by the Secretary of State in providing the applicant with assistance under this section, any sums recovered by virtue of an award of expenses, or of an agreement as to expenses, in the applicant's favour with respect to the matter in connection with which the assistance is given shall, subject to any charge or obligation for payment in priority to other

debts under the Legal Aid (Scotland) Act 1986⁽⁸⁾ and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund, be paid to the Secretary of State in priority to any other debts.

(5) Any expenses incurred by the Secretary of State in providing assistance under this section shall be paid out of money provided by Parliament; and any sums received by the Secretary of State under subsection (4) shall be paid into the Consolidated Fund.

GENERAL

Interpretation of this Part

82. In this Part and in sections 14, 19, 20 and 216, except where provision is made to the contrary, “application to purchase” has the meaning assigned to it by section 63;

“family” and any reference to membership thereof shall be construed in accordance with section 83;

“fire authority” means a fire authority for the purposes of the Fire Services Acts 1947 to 1959 or a joint committee constituted by virtue of section 36(4)(b) of the Fire Services Act 1947⁽⁹⁾;

“heritable proprietor” in relation to a house, includes any landlord entitled under section 3 of the Conveyancing (Scotland) Act 1924 (disposition of the dwelling-house etc. by persons uninfert)⁽¹⁰⁾ to grant a disposition of the house;

“housing co-operative” has meaning assigned to it by section 22;

“landlord” means a person who lets a house to a tenant for human habitation, and includes his successors in title;

“offer to sell” has the meaning assigned to it by section 63(2) and includes such offer to sell as is mentioned in section 71(1)(d);

“police authority” means a police authority in Scotland within the meaning of section 2(1) or 19(9)(b) of the Police (Scotland) Act 1967⁽¹¹⁾ or a joint police committee constituted by virtue of subsection (2)(b) of the said section 19 and any police authority constituted in England and Wales or Northern Ireland under corresponding legislation;

“secure tenancy” means a secure tenancy within the meaning of section 44;

“tenancy” means any agreement under which a house is made available for occupation for human habitation, and “leases”, “let” and “lets” shall be construed accordingly;

“tenant” means a person who leases a house from a landlord and who derives his right therein directly from the landlord, and in the case of joint tenancies means all the tenants.

Members of a person’s family

83.—(1) A person is a member of another’s family for the purposes of this Act if—

- (a) he is the spouse of that person or he and that person live together as husband and wife; or
- (b) he is that person’s parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

(2) For the purposes of subsection (1)(b)—

- (a) a relationship by marriage shall be treated as a relationship by blood;
- (b) a relationship of the half-blood shall be treated as a relationship of the whole blood;

⁽⁸⁾ 1986 c. 47.

⁽⁹⁾ 1947 c. 41; 1951 c. 27; 1959 c. 44.

⁽¹⁰⁾ 1924 c. 27.

⁽¹¹⁾ 1967 c. 77; section 2(1) was amended by the Local Government (Scotland) Act 1973 (c. 65), section 146(3).

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- (c) the stepchild of a person shall be treated as his child; and
- (d) a child shall be treated as such whether or not his parents are married.

Service of notices

84.—(1) A notice or other document which requires to be served on a person under any provision of this Part or of section 216 may be given to him—

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by recorded delivery post to him at that address.

(2) For the purposes of this section and of section 7 of the Interpretation Act 1978 (references to service by post)(12) in its application to this section, a person’s proper address shall be his last known address.

Application of right to buy to cases where landlord is lessee

84A.—(1) Sections 61 to 84 and 216 (the “right to buy” provisions) shall, with the modifications set out in this section, apply so as to provide for—

- (a) the acquisition by the qualifying person of the landlord’s interest in the qualifying house as lessee under a registered lease of the qualifying house or of land which includes it or as assignee of that interest; and
- (b) the obtaining of a loan by the qualifying person in that connection,

as these sections apply for the purposes of the purchase of a qualifying house by the qualifying person from the landlord as heritable proprietor of it and the obtaining by the qualifying person of a loan in that connection.

(2) References in the right to buy provisions to the purchase or sale of a qualifying house shall be construed respectively as references to the acquisition or disposal of the landlord’s interest in the qualifying house by way of a registered assignation of that interest and cognate expressions shall be construed accordingly.

(3) The reference in section 61(2)(b) to the landlord’s being the heritable proprietor of the qualifying house shall be construed as a reference to the landlord’s being the holder of the interest of the lessee under a registered lease of the qualifying house or of land which includes it.

(4) References in the right to buy provisions to the market value of or price to be paid for a qualifying house shall be construed respectively as references to the market value of the landlord’s interest in the qualifying house and to the price to be paid for acquiring that interest.

(5) References in section 64(1) to the qualifying person’s enjoyment and use of a qualifying house as owner shall be construed as references to his enjoyment and use of it as assignee of the landlord’s interest in the qualifying house.

(6) The reference in subsection (4) of section 64 to an option being offered to the landlord or to any other person to purchase the qualifying house in advance of its sale to a third party shall be construed as a reference to an option being offered to have the interest acquired by the qualifying person reassigned to the landlord or assigned to the other person in advance of its being disposed of to a third party; and the references in subsection (5) of that section to an option to purchase shall be construed accordingly.

- (7) In this section and section 76—
“registered lease” means a lease—

(12) 1978 c. 30.

- (a) which is recorded in the general register of sasines; or
 - (b) in respect of which the interest of the lessee is registered in the Land Register of Scotland, under the Registration of Leases (Scotland) Act 1857; and
- “registered assignment” means, in relation to such a lease, an assignment thereof which is so recorded or in respect of which the interest of the assignee has been so registered.

QUALIFYING HOUSE LOANS: SPECIAL CASES

Qualifying house loans to qualifying persons exercising right to purchase

216.—(1) A qualifying person who seeks to exercise his right to purchase a qualifying house under Part III and who has received an offer to sell (or, as the case may be, an amended offer to sell) from the landlord shall be entitled, together with any joint purchaser under section 61(6) (and the said qualifying person and any joint purchaser are referred to in this section as “the applicant”) to apply—

- (a) in the case where the former landlord is a development corporation (including an urban development corporation) or Scottish Homes, to that body; or
- (b) in a case where the former landlord is the Housing Corporation or a housing association registered in the register maintained by the Housing Corporation, to the Housing Corporation;
- (bi) in a case where the former landlord is a housing association registered in the register maintained by Scottish Homes, to Scottish Homes;
- (c) in any other case, to the local authority for the area in which the qualifying house is situated,

for a loan of an amount not exceeding the price fixed under section 62 to assist him to purchase the qualifying house.

(2) A loan application under subsection (1)—

- (a) must be served on the former landlord or other body—
 - (i) within one month after service on the qualifying person of the offer to sell (or, where there has been service of one or more amended offers to sell or there has been a determination by the Lands Tribunal under section 65(3) which does not require the issue of an amended offer to sell, of the latest of these); or
 - (ii) within one year and 10 months after service of the application to purchase if the qualifying person has, in terms of section 67, a fixed price option as regards the qualifying house;
- (b) shall be in such form as the Secretary of State shall by order made by statutory instrument prescribe, and shall contain—
 - (i) the amount of the loan which the applicant seeks;
 - (ii) the applicant’s annual gross income and his net income after payment of income tax and national insurance contributions;
 - (iii) any liabilities in respect of credit sales or other fixed outgoings of the applicant; and
 - (iv) a statement that the applicant has applied for and been unable to obtain a sufficient building society loan; and
- (c) shall be accompanied by evidence of the matters referred to in sub-paragraphs (ii) to (iv) of paragraph (b).

(3) Subject to such requirements as the Secretary of State may by order made by statutory instrument impose, a former landlord or other body which receives an application under subsection (1) shall, where it is satisfied on reasonable inquiry (which shall include reasonable

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opportunity for the applicant to amend his application) that the information contained in the loan application is correct, serve on the applicant an offer of loan, which shall specify a maximum amount of loan calculated in accordance with regulations made by statutory instrument by the Secretary of State.

(4) a former landlord or other body to which application has been made under subsection (1) shall complete its inquiries and either—

- (a) issue the offer of loan under subsection (3); or
- (b) refuse the application on the ground that information contained in the loan application is incorrect in a material respect,

within 2 months of the date of service of the loan application.

(5) An applicant who wishes to accept an offer of loan shall do so along with his notice of acceptance under sections 66(1) or 67(1).

(6) An offer of loan under subsection (3) together with an acceptance under subsection (5) shall constitute an agreement by the former landlord or other body, subject to such requirements as the Secretary of State may by order made by statutory instrument impose, to lend to the applicant for the purpose of purchasing the qualifying house—

- (a) the maximum amount of loan mentioned in subsection (3); or
- (b) the amount of loan sought by the applicant,

whichever is the lesser, on the execution by the applicant of a standard security over the qualifying house.

(7) An applicant who is aggrieved by a refusal under subsection (4)(b), or by a failure to comply with the said subsection, or by the calculation of maximum amount of loan mentioned in subsection (3) may, within 2 months of the date of the refusal or failure or of the offer of loan, as the case may be, raise proceedings by way of summary application in the sheriff court for the district in which the qualifying house is situated for declarator that he is entitled to a loan in accordance with subsection (3).

(8) Where in proceedings under subsection (7) the sheriff grants declarator that the applicant is entitled to a loan, such declarator shall have effect as if it were an offer of loan of the amount specified in the declarator duly issued under this section by the former landlord or other body.

(9) A statutory instrument made under subsection (3) or (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.