

SCHEDULE 2

Regulation 2(2)

PART V AS IT APPLIES IN CASES WHERE THE RIGHT TO ACQUIRE APPLIES THE RIGHT TO ACQUIRE

The right to acquire

The right to acquire

118.—(1) A tenant of a registered social landlord who satisfies the conditions in section 16(1)(a) and (b) of the Housing Act 1996 has the right to acquire, that is to say, the right, in the circumstances and subject to the conditions and exceptions stated in the following provisions of this Part—

- (a) if the dwelling-house is a house and the landlord owns the freehold, to acquire the freehold of the dwelling-house,
- (b) if the landlord does not own the freehold or if the dwelling-house is a flat (whether or not the landlord owns the freehold), to be granted a lease of the dwelling-house.

(2) Where a tenancy is a joint tenancy then, whether or not each of the joint tenants occupies the dwelling-house as his only or principal home, the right to acquire belongs jointly to all of them or to such one or more of them as may be agreed between them; but such an agreement is not valid unless the person or at least one of the persons to whom the right to acquire is to belong occupies the dwelling-house as his only or principal home.

Qualifying period for right to acquire

119.—(1) The right to acquire does not arise unless the period which, in accordance with Schedule 4, is to be taken into account for the purposes of this section is at least two years.

(2) Where the tenancy is a joint tenancy the condition in subsection (1) need be satisfied with respect to one only of the joint tenants.

Exceptions to the right to acquire

120. The right to acquire does not arise in the cases specified in Schedule 5 (exceptions to the right to acquire).

Circumstances in which the right to acquire cannot be exercised

121.—(1) The right to acquire cannot be exercised if the tenant is obliged to give up possession of the dwelling-house in pursuance of an order of the court or will be so obliged at a date specified in the order.

(2) The right to acquire cannot be exercised if the person, or one of the persons, to whom the right to acquire belongs—

- (a) has a bankruptcy petition pending against him,
- (c) is an undischarged bankrupt, or
- (d) has made a composition or arrangement with his creditors the terms of which remain to be fulfilled.

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Claim to exercise right to acquire

Tenant's notice claiming to exercise right to acquire

122.—(1) A tenant claims to exercise the right to acquire by written notice to that effect served on the landlord.

(2) In this Part “the relevant time”, in relation to an exercise of the right to acquire, means the date on which that notice is served.

(3) The notice may be withdrawn at any time by notice in writing served on the landlord.

(4) The tenant shall not make an application to acquire the dwelling-house under section 16 of the Housing Act 1996 (right of tenant to acquire dwelling) at any time when the tenant has made an application to buy under this Part, as it applies in relation to the right to buy and the preserved right to buy, which has not been withdrawn by the tenant or denied by the landlord, but nothing in this subsection shall prevent the tenant withdrawing such an application and submitting an application under section 16 of the Housing Act 1996 (right of tenant to acquire dwelling).

Claim to share right to acquire with members of family

123.—(1) A tenant may in his notice under section 122 require that not more than three members of his family who are not joint tenants but occupy the dwelling-house as their only or principal home should share the right to acquire with him.

(2) He may validly do so in the case of any such member only if—

- (a) that member is his spouse or has been residing with him throughout the period of twelve months ending with the giving of the notice, or
- (b) the landlord consents.

(3) Where by such a notice any members of the tenant's family are validly required to share the right to acquire with the tenant, the right to acquire belongs to the tenant and those members jointly and he and they shall be treated for the purposes of this Part as joint tenants.

Landlord's notice admitting or denying right to acquire

124.—(1) Where a notice under section 122 (notice claiming to exercise right to acquire) has been served by the tenant, the landlord shall, unless the notice is withdrawn, serve on the tenant within the period specified in subsection (2) a written notice either—

- (a) admitting his right, or
- (b) denying it and stating the reasons why, in the opinion of the landlord, the tenant does not have the right to acquire.

(2) The period for serving a notice under this section is four weeks where the requirement of section 119 (qualifying period for the right to acquire) is satisfied by a period or periods during which the landlord was the landlord on which the tenant's notice under section 122 was served, and eight weeks in any other case.

Landlord's offer of an alternative dwelling-house

124A.—(1) Where the landlord, in his notice under section 124 (landlord's notice admitting or denying the right to acquire), admits the tenant's right to acquire, he may offer to make a disposal to that tenant of an alternative dwelling-house.

(2) The tenant may refuse the landlord's offer of an alternative dwelling-house.

(3) If the tenant accepts the landlord's offer of an alternative dwelling-house the provisions of this Part shall apply to the alternative dwelling-house.

Landlord's notice of purchase price and other matters

125.—(1) Where a tenant has claimed to exercise the right to acquire and that right has been established (whether by the landlord's admission or otherwise), the landlord shall—

- (a) within eight weeks where the right is that mentioned in section 118(1)(a) (right to acquire freehold), and
- (b) within twelve weeks where the right is that mentioned in section 118(1)(b) (right to acquire leasehold interest),

serve on the tenant a notice complying with this section.

(2) The notice shall describe the dwelling-house, shall state the price at which, in the opinion of the landlord, the tenant is entitled to have the freehold conveyed or, as the case may be, the lease granted to him and shall, for the purpose of showing how the price has been arrived at, state—

- (a) the value at the relevant time,
- (b) the improvements disregarded in pursuance of section 127 (improvements to be disregarded in determining value), and
- (c) the discount to which the tenant is entitled and, where applicable, the amount mentioned in section 130(1) (reduction for previous discount).

(3) The notice shall state the provisions which, in the opinion of the landlord, should be contained in the conveyance or grant.

(4) Where the notice states provisions which would enable the landlord to recover from the tenant—

- (a) service charges, or
- (b) improvement contributions,

the notice shall also contain the estimates and other information required by section 125A (service charges) or 125B (improvement contributions).

(4A) The notice shall contain a description of any structural defect known to the landlord affecting the dwelling-house or the building in which it is situated or any other building over which the tenant will have rights under the conveyance or lease.

(5) The notice shall also inform the tenant of—

- (a) the effect of sections 125D and 125E(1) and (4) (tenant's notice of intention, landlord's notice in default and effect of failure to comply),
- (b) his right under section 128 to have the value of the dwelling-house at the relevant time determined or re-determined by the district valuer,
- (c) the effect of section 136(2) (change of tenant after service of notice under section 125),
- (d) the effect of sections 140 and 141(1), (2) and (4) (landlord's notices to complete and effect of failure to comply).

Estimates and information about service charges

125A.—(1) A landlord's notice under section 125 shall state as regards service charges (excluding, in the case of a flat, charges to which subsection (2) applies)—

- (a) the landlord's estimate of the average annual amount (at current prices) which would be payable in respect of each head of charge in the reference period, and

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- (b) the aggregate of those estimated amounts,
- and shall contain a statement of the reference period adopted for the purpose of the estimates.
- (2) A landlord's notice under section 125 given in respect of a flat shall, as regards service charges in respect of repairs (including works for the making good of structural defects), contain
- (a) the estimates required by subsection (3), together with a statement of the reference period adopted for the purpose of the estimates, and
 - (b) a statement of the effect of paragraph 16B of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant).
- (3) The following estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period—
- (a) for works itemised in the notice, estimates of the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item, and the aggregate amounts of those estimated costs and contributions, and
 - (b) for works not so itemised, an estimate of the average annual amount (at current prices) which the landlord considers is likely to be payable by the tenant.

Estimates and information about improvement contributions

- 125B.**—(1) A landlord's notice under section 125 given in respect of a flat shall, as regards improvement contributions, contain—
- (a) the estimates required by this section, together with a statement of the reference period adopted for the purpose of the estimates, and
 - (b) a statement of the effect of paragraph 16C of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant).
- (2) Estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period.
- (3) The works to which the estimates relate shall be itemised and the estimates shall show—
- (a) the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item and
 - (b) the aggregate amounts of those estimated costs and contributions.

Reference period for purposes of ss. 125A and 125B

- 125C.**—(1) The reference period for the purposes of the estimates required by section 125A or 125B is the period—
- (a) beginning on such date not more than six months after the notice is given as the landlord may reasonably specify as being a date by which the conveyance will have been made or the lease granted, and
 - (b) ending five years after that date or, where the notice states that the conveyance or lease will provide for a service charge or improvement contribution to be calculated by reference to a specified annual period, with the end of the fifth such period beginning after that date.
- (2) For the purpose of the estimates it shall be assumed that the conveyance will be made or the lease granted at the beginning of the reference period on the terms stated in the notice.

Tenant's notice of intention

125D.—(1) Where a notice under section 125 has been served on a tenant, he shall within the period specified in subsection (2) serve a written notice on the landlord stating either that he intends to pursue his claim to exercise the right to acquire or that he withdraws that claim.

(2) The period for serving a notice under subsection (1) is the period of twelve weeks beginning with whichever of the following is the later—

- (a) the service of the notice under section 125, and
- (b) where the tenant exercises his right to have the value of the dwelling-house determined or re-determined by the district valuer, the service of the notice under section 128(5) stating the effect of the determination or re-determination.

Landlord's notice in default

125E.—(1) The landlord may, at any time after the end of the period specified in section 125D(2) or, as the case may require, section 136(2), serve on the tenant a written notice—

- (a) requiring him, if he has failed to serve the notice required by section 125D(1), to serve that notice within 28 days, and
- (b) informing him of the effect of this subsection and subsection (4).

(2) At any time before the end of the period mentioned in subsection (1)(a) (or that period as previously extended) the landlord may by written notice served on the tenant extend it (or further extend it).

(3) If at any time before the end of that period (or that period as extended under subsection (2)) the circumstances are such that it would not be reasonable to expect the tenant to comply with a notice under this section, that period (or that period as so extended) shall by virtue of this subsection be extended (or further extended) until 28 days after the time when those circumstances no longer obtain.

(4) If the tenant does not comply with a notice under this section, the notice claiming to exercise the right to acquire shall be deemed to be withdrawn at the end of that period (or, as the case may require, that period as extended under subsection (2) or (3)).

Purchase price

Purchase price

126.—(1) The price payable for a dwelling-house on a conveyance or grant in pursuance of this Part is—

- (a) the amount which under section 127 is to be taken as its value at the relevant time, less
- (b) the discount to which the purchaser is entitled under an order under section 17 of the Housing Act 1996 (right to acquire: supplementary provisions).

(2) References in this Part to the purchase price include references to the consideration for the grant of a lease.

Value of dwelling-house

127.—(1) The value of a dwelling-house at the relevant time shall be taken to be the price which at that time it would realise if sold on the open market by a willing vendor—

- (a) on the assumptions stated for a conveyance in subsection (2) and for a grant in subsection (3),

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- (b) disregarding any improvements made by any of the persons specified in subsection (4) to (4A) and any failure by any of those persons to keep the dwelling-house in good internal repair, and
 - (c) on the assumption that any service charges or improvement contributions payable will not be less than the amounts to be expected in accordance with the estimates contained in the landlord's notice under section 125.
- (2) For a conveyance the assumptions are—
- (a) that the vendor was selling for an estate in fee simple with vacant possession,
 - (b) that neither the tenant nor a member of his family residing with him wanted to buy, and
 - (c) that the dwelling-house was to be conveyed with the same rights and subject to the same burdens as it would be in pursuance of this Part.
- (3) For the grant of a lease the assumptions are—
- (a) that the vendor was granting a lease with vacant possession for the appropriate term defined in paragraph 12 of Schedule 6,
 - (b) that neither the tenant nor a member of his family residing with him wanted to take the lease,
 - (c) that the ground rent would not exceed £10 per annum, and
 - (d) that the grant was to be made with the same rights and subject to the same burdens as it would be in pursuance of this Part.
- (4) Where the tenant is a secure tenant the persons referred to in subsection (1)(b) are—
- (a) the secure tenant,
 - (b) any person who under the same tenancy was a secure tenant before him,
 - (c) any member of his family who, immediately before the secure tenancy was granted, was a secure tenant of the same dwelling-house under another tenancy,

but do not include, in a case where the secure tenancy has at any time been assigned by virtue of section 92 (assignments by way of exchange), a person who under that tenancy was a secure tenant before the assignment.

- (4A) Where the tenant is an assured tenant the persons referred to in subsection (1)(b) are—
- (a) the assured tenant,
 - (b) any member of his family—
 - (i) who was an assured or secure tenant before him under the same tenancy, or
 - (ii) who, immediately before the tenancy was granted, was an assured or secure tenant of the same dwelling-house under another tenancy.

Determination of value by district valuer

128.—(1) Any question arising under this Part as to the value of a dwelling-house at the relevant time shall be determined by the district valuer in accordance with this section.

(2) A tenant may require that value to be determined, or as the case may be re-determined, by a notice in writing served on the landlord not later than three months after the service on him of the notice under section 125 (landlord's notice of purchase price and other matters) or, if proceedings are then pending between the landlord and the tenant for the determination of any other question arising under this Part, within three months of the final determination of the proceedings.

(3) If such proceedings are begun after a previous determination under this section—

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- (a) the tenant may, by notice in writing served on the landlord within four weeks of the final determination of the proceedings, require the value of the dwelling-house at the relevant time to be re-determined, and
- (b) the landlord may at any time within those four weeks, whether or not a notice under paragraph (a) is served, require the district valuer to re-determine that value;

and where the landlord requires a re-determination to be made in pursuance of this subsection, it shall serve on the tenant a notice stating that the requirement is being or has been made.

(4) Before making a determination or re-determination in pursuance of this section, the district valuer shall consider any representation made to him by the landlord or the tenant within four weeks from the service of the tenant's notice under this section or, as the case may be, from the service of the landlord's notice under subsection (3).

(5) As soon as practicable after a determination or re-determination has been made in pursuance of this section, the landlord shall serve on the tenant a notice stating the effect of the determination or re-determination and the matters mentioned in section 125(2) and (3) (terms for exercise of right to acquire).

Discount

129.—(1) Subject to the following provisions of this Part, a person exercising the right to acquire is entitled to a discount of such amount or at such rate as the Secretary of State may by order prescribe.

(1A) Where, under section 124A(3) (landlord's offer of an alternative dwelling-house), the tenant has accepted the landlord's offer of an alternative dwelling-house, the discount to which the tenant is entitled shall be the discount prescribed under section 17 of the Housing Act 1996 in relation to that alternative dwelling-house.

Reduction of discount where previous discount given

130.—(1) There shall be deducted from the discount an amount equal to any previous discount qualifying, or the aggregate of previous discounts qualifying, under the provisions of this section.

(2) A "previous discount" means a discount given before the relevant time—

- (a) on conveyance of the freehold, or a grant or assignment of a long lease, of a dwelling-house by a person within paragraph 7 or 7A of Schedule 4 (public sector landlords) or, in such circumstances as may be prescribed by order of the Secretary of State, by a person so prescribed, or
- (aa) on conveyance of the freehold, or a grant or assignment of a long lease of a dwelling-house by a person against whom the right to buy was exercisable by virtue of section 171A (preservation of right to buy on disposal to private sector landlord) to a person who was a qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling-house was the qualifying dwelling-house, or
- (ab) in pursuance of the provision required by paragraphs 3 to 5 or paragraph 7 of Schedule 6A (redemption of landlord's share), or
- (b) in pursuance of the provision required by paragraph 1 of Schedule 8 (terms of shared ownership lease: right to acquire additional shares), or any other provision to the like effect, or
- (c) in pursuance of any provision of, or required by, this Part as it has effect by virtue of section 17 of the Housing Act 1996 (the right to acquire: supplementary provisions).

(3) A previous discount qualifies for the purposes of this section if it was given—

- (a) to the person or one of the persons exercising the right to acquire, or

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- (b) to the spouse of that person or one of those persons (if they are living together at the relevant time), or
- (c) to a deceased spouse of that person or one of those persons (if they were living together at the time of the death);

and where a previous discount was given to two or more persons jointly, this section has effect as if each of them had been given an equal proportion of the discount.

(4) Where the whole or part of a previous discount has been recovered by the person by whom it was given (or a successor in title of his)—

- (a) by the receipt of a payment determined by reference to the discount, or
- (b) by a reduction so determined of any consideration given by that person (or a successor in title of his), or
- (c) in any other way,

then, so much of the discount as has been so recovered shall be disregarded for the purposes of this section.

(5) An order under this section—

- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section “dwelling-house” includes any yard, garden, outhouses and appurtenances belonging to the dwelling-house or usually enjoyed with it.

Change of tenant or landlord after service of notice claiming right to acquire

Change of tenant after notice claiming right to acquire

136.—(1) Where, after a secure tenant (“the former tenant”) has given a notice claiming the right to acquire, another person (“the new tenant”)—

- (a) becomes the secure tenant under the same secure tenancy, otherwise than on an assignment made by virtue of section 92 (assignments by way of exchange), or
- (b) becomes the secure tenant under a periodic tenancy arising by virtue of section 86 (periodic tenancy arising on termination of fixed term) on the coming to an end of the secure tenancy,

the new tenant shall be in the same position as if the notice had been given by him and he had been the secure tenant at the time it was given.

(1A) Where, after an assured tenant (“the former tenant”) has given a notice claiming the right to acquire, another person (“the new tenant”) becomes—

- (a) the assured tenant by virtue of section 17 of the Housing Act 1988 (succession by spouse on tenant’s death), or
- (b) the assured tenant under a statutory tenancy arising by virtue of section 5 of the Housing Act 1988 (statutory assured tenancy on the end of a fixed term tenancy),

the new tenant shall be in the same position as if the notice had been given by him and he had been the tenant at the time it was given.

(2) If a notice under section 125 (landlord’s notice of purchase price and other matters) has been served on the former tenant, then, whether or not the former tenant has served a notice under subsection (1) of section 125D (tenant’s notice of intention), the new tenant shall serve a notice

under that subsection within the period of twelve weeks beginning with whichever of the following is the later—

- (a) his becoming the tenant, and
- (b) where the right to have the value of the dwelling-house determined or re-determined by the district valuer is or has been exercised by him or the former tenant, the service of the notice under section 128(5) stating the effect of the determination or re-determination.

(6) The preceding provisions of this section do not confer any right on a person required in pursuance of section 123 (claim to share right to acquire with members of family) to share the right to acquire, unless he could have been validly so required had the notice claiming to exercise the right to acquire been given by the new tenant.

(7) The preceding provisions of this section apply with the necessary modifications if there is a further change in the person who is the tenant.

Change of landlord after notice claiming right to acquire

137.—(1) Where the interest of the landlord in the dwelling-house passes from the landlord to another body after a tenant has given a notice claiming to exercise the right to acquire, all parties shall subject to subsection (2) be in the same position as if the other body had become the landlord before the notice was given and had been given that notice and any further notice given by the tenant to the landlord and had taken all steps which the landlord had taken.

(2) If the circumstances after the disposal differ in any material respect, as for example where—

- (a) the interest of the disponent in the dwelling-house after the disposal differs from that of the disponent before the disposal, or
- (c) any of the provisions of Schedule 5 (exceptions to the right to acquire) becomes or ceases to be applicable,

all those concerned shall, as soon as practicable after the disposal, take all such steps (whether by way of amending or withdrawing and re-serving any notice or extending any period or otherwise) as may be requisite for the purpose of securing that all parties are, as nearly as may be, in the same position as they would have been if those circumstances had obtained before the disposal.

Completion of purchase in pursuance of right to acquire

Duty of landlord to convey freehold or grant lease

138.—(1) Where a tenant has claimed to exercise the right to acquire and that right has been established, then, as soon as all matters relating to the grant have been agreed or determined, the landlord shall make to the tenant—

- (a) if the dwelling-house is a house and the landlord owns the freehold, a grant of the dwelling-house for an estate in fee simple absolute, or
- (b) if the landlord does not own the freehold or if the dwelling-house is a flat (whether or not the landlord owns the freehold), a grant of a lease of the dwelling-house,

in accordance with the following provisions of this Part.

(2) If the tenant has failed to pay the rent or any other payment due from him as a tenant for a period of four weeks after it has been lawfully demanded from him, the landlord is not bound to comply with subsection (1) while the whole or part of that payment remains outstanding.

(3) The duty imposed on the landlord by subsection (1) is enforceable by injunction.

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Terms and effect of conveyance or grant

139.—(1) A conveyance of the freehold executed in pursuance of the right to acquire shall conform with Parts I and II of Schedule 6; a grant of a lease so executed shall conform with Parts I and III of that Schedule; and Part IV of that Schedule has effect in relation to certain charges.

(2) The tenancy comes to an end on the grant to the tenant of an estate in fee simple, or of a lease, in pursuance of the provisions of this Part relating to the right to acquire; and if there is then a subtenancy section 139 of the Law of Property Act 1925 (effect of extinguishment of reversion) applies as on a merger or surrender.

Landlord's first notice to complete

140.—(1) The landlord may, subject to the provisions of this section, serve on the tenant at any time a written notice requiring him—

- (a) if all relevant matters have been agreed or determined, to complete the transaction within a period stated in the notice, or
- (b) if any relevant matters are outstanding, to serve on the landlord within that period a written notice to that effect specifying the matters,

and informing the tenant of the effect of this section and of section 141(1), (2) and (4) (landlord's second notice to complete).

(2) The period stated in a notice under this section shall be such period (of at least 56 days) as may be reasonable in the circumstances.

(3) A notice under this section shall not be served earlier than twelve months after the service of the landlord's notice under section 125 (notice of purchase price and other matters).

(4) A notice under this section shall not be served if—

- (a) a requirement for the determination or re-determination of the value of the dwelling-house by the district valuer has not been complied with,
- (b) proceedings for the determination of any other relevant matter have not been disposed of, or
- (c) any relevant matter stated to be outstanding in a written notice served on the landlord by the tenant has not been agreed in writing or determined.

(5) In this section "relevant matters" means matters relating to the grant.

Landlord's second notice to complete

141.—(1) If the tenant does not comply with a notice under section 140 (landlord's first notice to complete), the landlord may serve on him a further written notice—

- (a) requiring him to complete the transaction within a period stated in the notice, and
- (b) informing him of the effect of this section in the event of his failing to comply.

(2) The period stated in a notice under this section shall be such period (of at least 56 days) as may be reasonable in the circumstances.

(3) At any time before the end of that period (or that period as previously extended) the landlord may by a written notice served on the tenant extend it (or further extend it).

(4) If the tenant does not comply with a notice under this section the notice claiming to exercise the right to acquire shall be deemed to be withdrawn at the end of that period (or, as the case may require, that period as extended under subsection (3)).

(5) If a notice under this section has been served on the tenant and by virtue of section 138(2) (failure of tenant to pay rent, etc.) the landlord is not bound to complete, the tenant shall be deemed not to comply with the notice.

Registration of title

Registration of title

154.—(1) Where the landlord's title to the dwelling-house is not registered, section 123 of the Land Registration Act 1925 (compulsory registration of title) applies in relation to the conveyance of the freehold or the grant of a lease in pursuance of this Part, whether or not the dwelling-house is in an area in which an Order in Council under section 120 of that Act is for the time being in force (areas of compulsory registration) and, in the case of a lease, whether or not the lease is granted for a term of more than 21 years.

(2) Where the landlord's title to the dwelling-house is not registered, the landlord shall give the tenant a certificate stating that the landlord is entitled to convey the freehold or make the grant subject only to such incumbrances, rights and interests as are stated in the conveyance or grant or summarised in the certificate.

(3) Where the landlord's interest in the dwelling-house is a lease, the certificate under subsection (2) shall also state particulars of that lease and, with respect to each superior title—

- (a) where it is registered, the title number;
- (b) where it is not registered, whether it was investigated in the usual way on the grant of the landlord's lease.

(4) A certificate under subsection (2) shall be—

- (a) in a form approved by the Chief Land Registrar, and
- (b) signed by such officer of the landlord or such other person as may be approved by the Chief Land Registrar.

(5) The Chief Land Registrar shall, for the purpose of the registration of title, accept such a certificate as sufficient evidence of the facts stated in it; but if as a result he has to meet a claim against him under the Land Registration Acts 1925 to 1971 the landlord is liable to indemnify him.

(6) Sections 8 and 22 of the Land Registration Act 1925 (application for registration of leasehold land and registration of dispositions of leasehold) apply in relation to a lease granted in pursuance of this Part notwithstanding that it is a lease for a term of which not more than 21 years are unexpired or, as the case may be, a lease granted for a term not exceeding 21 years.

(7) Section 70(1)(k) of the Land Registration Act 1925 (overriding interests) shall not apply to a lease granted in pursuance of this Part.

Provisions affecting future disposals

Repayment of discount on early disposal

155.—(1) A conveyance of the freehold or grant of a lease in pursuance of this Part shall contain (unless, in the case of a conveyance or grant in pursuance of the right to acquire, there is no discount) a covenant binding on the tenant and his successors in title to the following effect.

(2) The covenant shall be to pay to the landlord on demand, if within a period of three years there is a relevant disposal which is not an exempted disposal (but if there is more than one such disposal, then only on the first of them), the discount to which the tenant was entitled, reduced by one third for each complete year which has elapsed after the conveyance or grant and before the disposal.

Liability to repay is a charge on the premises

156.—(1) The liability that may arise under the covenant required by section 155 is a charge on the dwelling-house, taking effect as if it had been created by deed expressed to be by way of legal mortgage.

(2) Subject to subsections (2A) and (2B), the charge has priority immediately after any legal charge securing an amount advanced to the tenant by an approved lending institution for the purpose of enabling him to exercise the right to acquire.

(2A) The following, namely—

- (a) any advance which is made otherwise than for the purpose mentioned in subsection (2) and is secured by a legal charge having priority to the charge taking effect by virtue of this section, and
- (b) any further advance which is so secured,

shall rank in priority to that charge if, and only if, the landlord by written notice served on the institution concerned gives its consent; and the landlord shall so give its consent if the purpose of the advance or further advance is an approved purpose.

(2B) The landlord may at any time by written notice served on an approved lending institution postpone the charge taking effect by virtue of this section to any advance or further advance which—

- (a) is made to the tenant by that institution, and
- (b) is secured by a legal charge not having priority to that charge;

and the landlord shall serve such a notice if the purpose of that advance or further advance is an approved purpose.

(3) A charge taking effect by virtue of this section is a land charge for the purposes of section 59 of the Land Registration Act 1925 notwithstanding subsection (5) of that section (exclusion of mortgages), and subsection (2) of that section applies accordingly with respect to its protection and realisation.

(3A) The covenant required by section 155 (covenant for repayment of discount) does not, by virtue of its binding successors in title of the tenant, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this section, or a person deriving title under him; and a provision of the conveyance or grant, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with that covenant.

(4) The approved lending institutions for the purposes of this section are—

- the Corporation,
- a building society,
- a bank,
- a trustee savings bank,
- an insurance company,
- a friendly society,

and any body specified, or of a class or description specified, in an order made by the Secretary of State with the consent of the Treasury.

(4A) The approved purposes for the purposes of this section are—

- (b) to enable the tenant to defray, or to defray on his behalf, any of the following—
 - (i) the cost of any works to the dwelling-house,
 - (ii) any service charge payable in respect of the dwelling-house for works, whether or not to the dwelling-house and

- (iii) any service charge or other amount payable in respect of the dwelling-house for insurance, whether or not of the dwelling-house, and
- (c) to enable the tenant to discharge, or to discharge on his behalf, any of the following—
 - (i) so much as is still outstanding of any advance or further advance which ranks in priority to the charge taking effect by virtue of this section,
 - (ii) any arrears of interest on such an advance or further advance, and
 - (iii) any costs and expenses incurred in enforcing payment of any such interest, or repayment (in whole or in part) of any such advance or further advance.

(4B) Where different parts of an advance or further advance are made for different purposes, each of those parts shall be regarded as a separate advance or further advance for the purposes of this section.

- (5) An order under subsection (4)—
 - (a) shall be made statutory instrument, and
 - (b) may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

(6) Before making an order varying or revoking a previous order, the Secretary of State shall give an opportunity for representations to be made on behalf of any body which, if the order were made, would cease to be an approved lending institution for the purposes of this section.

Relevant disposals

159.—(1) A disposal, whether of the whole or part of the dwelling-house, is a relevant disposal for the purposes of this Part if it is—

- (a) a further conveyance of the freehold or an assignment of the lease, or
 - (b) the grant of a lease (other than a mortgage term) for a term of more than 21 years otherwise than at a rack rent.
- (2) For the purposes of subsection (1)(b) it shall be assumed—
- (a) that any option to renew or extend a lease or sub-lease, whether or not forming part of a series of options, is exercised, and
 - (b) that any option to terminate a lease or sub-lease is not exercised.

Exempted disposals

160.—(1) A disposal is an exempted disposal for the purposes of this Part if—

- (a) it is a disposal of the whole of the dwelling-house and a further conveyance of the freehold or an assignment of the lease and the person or each of the persons to whom it is made is a qualifying person (as defined in subsection (2));
- (b) it is a vesting of the whole of the dwelling-house in a person taking under a will or on an intestacy;
- (c) it is a disposal of the whole of the dwelling-house in pursuance of any such order as is mentioned in subsection (3);
- (d) it is a compulsory disposal (as defined in section 161); or
- (e) it is a disposal of property consisting of land included in the dwelling-house by virtue of section 184 (land let with or used for the purposes of the dwelling-house).

(2) For the purposes of subsection (1)(a), a person is a qualifying person in relation to a disposal if—

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- (a) he is the person, or one of the persons, by whom the disposal is made,
 - (b) he is the spouse or a former spouse of that person, or one of those persons, or
 - (c) he is a member of the family of that person, or one of those persons, and has resided with him throughout the period of twelve months ending with the disposal.
- (3) The orders referred to in subsection (1)(c) are orders under—
- (a) section 24 or 24A of the Matrimonial Causes Act 1973 (property adjustment orders or orders for the sale of property in connection with matrimonial proceedings),
 - (b) section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 (orders as to financial provision to be made from estate),
 - (c) section 17 of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders or orders for the sale of property after overseas divorce, &c.), or
 - (d) paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents).

Meaning of “compulsory disposal”

161. In this Part a “compulsory disposal” means a disposal of property which is acquired compulsorily, or is acquired by a person who has made or would have made, or for whom another person has made or would have made, a compulsory purchase order authorising its compulsory purchase for the purposes for which it is acquired.

Exempted disposals which end liability under covenants

162. Where there is a relevant disposal which is an exempted disposal by virtue of section 160(1)(d) or (e) (compulsory disposals or disposals of land let with or used for purposes of dwelling-house) the covenant required by section 155 (repayment of discount on early disposal) is not binding on the person to whom the disposal is made or any successor in title of his, and that covenant and the charge taking effect by virtue of section 156 cease to apply in relation to the property disposed of.

Treatment of options

163.—(1) For the purposes of this Part the grant of an option enabling a person to call for a relevant disposal which is not an exempted disposal shall be treated as such a disposal made to him.

Modifications of Leasehold Reform Act 1967 in relation to leases granted under this Part

Exclusion of leases where landlord is housing association and freeholder is a charity

172.—(1) Part I of the Leasehold Reform Act 1967 (enfranchisement and extension of long leaseholds) does not apply where, in the case of a tenancy or sub-tenancy to which this section applies, the landlord is a housing association and the freehold is owned by a body of persons or trust established for charitable purposes only.

(2) This section applies to a tenancy created by the grant of a lease in pursuance of this Part of a dwelling-house which is a house.

(3) Where Part I of the 1967 Act applies as if there had been a single tenancy granted for a term beginning at the same time as the term under a tenancy falling within subsection (2) and expiring at the same time as the term under a later tenancy, this section also applies to that later tenancy.

(4) This section applies to any sub-tenancy directly or indirectly derived out of a tenancy falling within subsection (2) or (3).

Leases granted under this Part to be treated as long leases at a low rent

174. For the purposes of Part I of the Leasehold Reform Act 1967 (enfranchisement and extension of long leaseholds) a tenancy created by the grant of a lease in pursuance of this Part of a dwelling-house which is a house shall be treated as being a long tenancy notwithstanding that it is granted for a term of 21 years or less.

Determination of price payable

175.—(1) Where, in the case of a tenancy or sub-tenancy to which this section applies, the tenant exercises his right to acquire the freehold under Part I of the Leasehold Reform Act 1967, the price payable for the dwelling-house shall be determined in accordance with section 9(1A) of that Act notwithstanding that the circumstances specified in that section do not apply.

(2) This section applies to a tenancy created by the grant of a lease in pursuance of this Part of a dwelling-house which is a house.

(3) Where Part I of the 1967 Act applies as if there had been a single tenancy granted for a term beginning at the same time as the term under a tenancy falling within subsection (2) and expiring at the same time as the term under a later tenancy, this section also applies to that later tenancy.

(4) This section applies to any sub-tenancy directly or indirectly derived out of a tenancy falling within subsection (2) or (3).

(5) This section also applies to a tenancy granted in substitution for a tenancy or sub-tenancy falling within subsections (2) to (4) in pursuance of Part I of the 1967 Act.

Supplementary provisions

Notices

176.—(3) A notice under this Part may be served by sending it by post.

(4) A notice to be served by the tenant on the landlord under this Part may be served by leaving it at, or sending it to, the principal office of the landlord or the office of the landlord with which the tenant usually deals.

Costs

178. An agreement between the landlord and a tenant claiming to exercise the right to acquire is void in so far as it purports to oblige the tenant to bear any part of the costs incurred by the landlord in connection with the tenant's exercise of that right.

Provisions restricting right to acquire etc. of no effect

179.—(1) A provision of a lease held by the landlord or a superior landlord, or of an agreement (whenever made), is void in so far as it purports to prohibit or restrict—

- (a) the grant of a lease in pursuance of the right to acquire, or
- (b) the subsequent disposal (whether by way of assignment, sub-lease or otherwise) of a lease so granted,

or to authorise a forfeiture, or impose on the landlord or superior landlord a penalty or disability, in the event of such a grant or disposal.

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Statutory declarations

180. A landlord may, if the landlord thinks fit, accept a statutory declaration made for the purposes of this Part as sufficient evidence of the matters declared in it.

Jurisdiction of county court

181.—(1) A county court has jurisdiction—

- (a) to entertain any proceedings brought under this Part, and
- (b) to determine any question arising under this Part;

but subject to section 128 (which provides for matters of valuation to be determined by the district valuer).

(2) The jurisdiction conferred by this section includes jurisdiction to entertain proceedings on any such question as is mentioned in subsection (1)(b) notwithstanding that no other relief is sought than a declaration.

(3) If a person takes proceedings in the High Court which, by virtue of this section, he could have taken in the county court, he is not entitled to recover any costs.

(4) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this section; and such rules or directions may provide—

- (a) for the exercise by a registrar of a county court of any jurisdiction exercisable under this section, and
- (b) for the conduct of proceedings in private.

(5) The power to make rules under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Meaning of “house”, “flat” and “dwelling-house”

183.—(1) The following provisions apply to the interpretation of “house”, “flat” and “dwelling-house” when used in this Part.

(2) A dwelling-house is a house if, and only if, it (or so much of it as does not consist of land included by virtue of section 184) is a structure reasonably so called; so that—

- (a) where a building is divided horizontally, the flats or other units into which it is divided are not houses;
- (b) where a building is divided vertically, the units into which it is divided may be houses;
- (c) where a building is not structurally detached, it is not a house if a material part of it lies above or below the remainder of the structure.

(3) A dwelling-house which is not a house is a flat.

Land let with or used for purposes of dwelling-house

184.—(1) For the purpose of this Part land let together with a dwelling-house shall be treated as part of the dwelling-house, unless the land is agricultural land (within the meaning set out in section 26(3)(a) of the General Rate Act 1967) exceeding two acres.

(2) There shall be treated as included in a dwelling-house any land which is not within subsection (1) but is or has been used for the purpose of the dwelling-house if—

- (a) the tenant, by written notice served on the landlord at any time before he exercises the right to acquire requires the land to be included in the dwelling-house, and
- (b) it is reasonable in all the circumstances for the land to be so included.

(3) A notice under subsection (2) may be withdrawn by a written notice served on the landlord at any time before the tenant exercises the right to acquire.

(4) Where a notice under subsection (2) is served or withdrawn after the service of the notice under section 125 (landlord's notice of purchase price, etc), the parties shall, as soon as practicable after the service or withdrawal, take all such steps (whether by way of amending, withdrawing or re-serving any notice or extending any period or otherwise) as may be requisite for the purpose of securing that all parties are, as nearly as may be, in the same position as they would have been in if the notice under subsection (2) had been served or withdrawn before the service of the notice under section 125.

Meaning of “secure tenancy” and “secure tenant”

185.—(1) References in this Part to a secure tenancy or a secure tenant in relation to a time before 26th August 1984 are to a tenancy which would have been a secure tenancy if Chapter II of Part I of the Housing Act 1980 and Part I of the Housing and Building Control Act 1984 and had then been in force or to a person who would then have been a secure tenant.

(2) For the purpose of determining whether a person would have been a secure tenant and his tenancy a secure tenancy—

- (a) a predecessor of a local authority shall be deemed to have been such an authority, and
- (b) a housing association shall be deemed to have been registered if it is or was a registered social landlord at any later time.

Members of a person's family

186.—(1) A person is a member of another's family within the meaning of this Part 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,
- (c) the stepchild of a person shall be treated as his child, and
- (d) an illegitimate child shall be treated as the legitimate child of his mother and reputed father.

Minor definitions

187. In this Part—

“improvement” means, in relation to a dwelling-house, any alteration in, or addition to, the dwelling-house and includes—

- (a) any addition to, or alteration in, landlord's fixtures and fittings and any addition or alteration connected with the provision of services to the dwelling-house,
- (b) the erection of a wireless or television aerial, and
- (c) the carrying out of external decoration

and shall be similarly construed in relation to any other building or land;

“improvement contribution” means an amount payable by a tenant of a flat in respect of improvements to the flat, the building in which it is situated or any other building or land, other than works carried out in discharge of any such obligations as are referred to in paragraph 16A(1) of Schedule 6 (obligation to repair, reinstate, etc.);

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“long tenancy” means—

- (a) a long tenancy within the meaning of Part IV,
 - (b) , or
 - (c) a tenancy falling within paragraph 1 of Schedule 2 to the Housing (Northern Ireland) Order 1983;
- and “long lease” shall be construed accordingly;

Index of defined expressions: Part V

188. The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used in the same section or paragraph):—

bank	section 622
building society	section 622
cemetery	section 622
charity	section 622
compulsory disposal	section 161
co-operative housing association	section 5(2)
the Corporation	section 6A
district valuer	section 622
dwelling-house	sections 183 and 184
exempted disposal	section 160
family (member of)	section 186
flat	section 183
friendly society	section 622
house	section 183
housing association	section 5(1)
housing trust	section 6
improvement	section 187
improvement contribution	section 187
incumbrances	paragraph 7 of Schedule 6
insurance company	section 622
lease	section 621
local authority	section 4(e)
local housing authority	section 1, 2(2)
long tenancy (and long lease)	section 187
new town corporation	section 4(b)
prescribed	section 614

public sector tenancy (and public sector tenant)	paragraphs 6 to 10 of Schedule 4
purchase price	section 126
reference period (for purposes of s.125A or 125B)	section 125C
registered social landlord	section 5(4) and (5)
regular armed forces of the Crown	section 622
relevant disposal	section 159 and see section 452(3)
relevant time	section 122(2)
right to acquire	section 118(1)
secure tenancy and secure tenant	sections 79 and 185
service charge	section 621A
tenant's incumbrance	paragraph 7 of Schedule 6
trustee savings bank	section 622
urban development corporation	section 4(d)
