
EXPLANATORY NOTE

(This note is not part of the Order)

The landlords of secure tenants buying their homes under the Right to Buy scheme (the terms of which are contained in Part 5 of the Housing Act 1985 (the “1985 Act”)), are required by section 156A of the 1985 Act to impose a covenant in conveyances and grants of leases to the effect that, for a period of ten years after the property is transferred to the tenant under the Right to Buy, there must be no relevant disposal which is not an exempted disposal (these terms are defined in sections 159 and 160 of the 1985 Act respectively), unless the prescribed conditions have been satisfied (a “right of first refusal covenant”). This instrument contains the prescribed conditions.

These Regulations require that the owners of properties bound by the covenant who wish to make a relevant disposal which is not an exempted disposal, must first offer the property for purchase by its former landlord, its successor in title or a person nominated by it. In relation to a leasehold property, the notice must be served upon the former landlord, or the current landlord under the lease if that is not the former landlord (Regulation 5). If the property is freehold, the notice must be served upon the former landlord if that person is still in existence, otherwise upon the local housing authority for the area in which the property is situated (Regulation 4).

The recipient of an offer notice has a period of 8 weeks in which to either accept the offer itself, or to nominate another person to accept the offer (Regulation 6). If a recipient of an offer notice wishes neither to accept an offer itself, nor to nominate another social landlord, then it must serve a rejection notice upon the owner (Regulation 7).

The only persons who can be nominated to accept an offer are the social landlords specified in Regulation 8. Before a social landlord can be nominated, they must have confirmed in writing that they wish to accept the offer by nomination.

If no social landlord accepts the offer within the 8 week time limit, then the owner is free to dispose of the property as he sees fit. However, if the owner has not done so within 12 months, and then subsequently wishes to dispose of the property, a fresh offer notice must be served (Regulation 9).

The social landlord must enter into a binding contract for the purchase of the property within either 12 weeks of accepting the offer, or within 4 weeks of receipt of a written notice from the owner saying that he is ready to complete the transaction, whichever is longer. If this time limit is not complied with, then the owner is free to dispose of the property as he sees fit (Regulation 10).

These Regulations also apply to right of first refusal covenants imposed in relation to properties bought by assured tenants under the Preserved Right to Buy scheme (see sections 171A-H of the 1985 Act), the Right to Acquire scheme (see sections 16 and 17 of the Housing Act 1996), and properties sold voluntarily at a discount by local authorities (see section 32 of the 1985 Act), registered social landlords (see section 8 of the Housing Act 1996) and housing action trusts (see section 79 of the Housing Act 1988). Properties bought under any of these schemes are generally subject to a right of first refusal covenant. Regulations 16 to 18 contain the necessary modifications in the case of sales of property acquired as a result of these voluntary disposals. In applying Regulations 16 to 18 the term relevant disposal and exempted disposal are defined in Part 1 of the 1985 Act, section 15 of the Housing Act 1996 and Schedule 11 of the Housing Act 1988 respectively.