

HOUSING (SCOTLAND) ACT 2001

EXPLANATORY NOTES

BACKGROUND AND OVERVIEW

Part 2 – Tenants of Social Landlords

Chapter 2 – Right to Buy

67. This Chapter amends existing provisions on right to buy in the 1987 Act and inserts some new provisions. In general, tenants who currently have the right to buy will continue to do so on existing terms until their tenancy comes to an end. However the rent to mortgage scheme, lender of last resort and fixed price option provisions are repealed, although transitional provisions allow for protection for those currently benefiting from those provisions. The Chapter extends the right to buy to all tenants with a Scottish secure tenancy subject to a number of exemptions in certain specified circumstances. Tenants who did not previously have the right to buy, and all tenants entering into new tenancies, will have the right to buy on the revised terms provided for in this Chapter.

Section 42: The qualifying conditions

68. The amendment made by *subsection (1)(a)* ensures that a tenant's right to buy is preserved if there is a change in their landlord or the status of their landlord after the tenancy is granted.
69. Before being entitled to exercise their right to buy a tenant has to have lived in accommodation rented from a relevant landlord for a certain period of time. That period is currently 2 years; *subsection 1(b)* extends that to 5 years.
70. *Subsection (2)* further amends the existing provisions to require tenants to have been in continuous occupation of the property during the qualifying period. However, *subsection (2)(c)* allows for this requirement to be disregarded for circumstances outwith the control of the tenant, subject to the discretion of the landlord.

Section 43: Exemptions from right to buy

71. This section amends the range of circumstances under which the right to buy cannot be exercised.
72. *Subsection (2)* repeals the existing provisions relating to specialist and group housing. These are replaced by a single exemption at *subsection (6)* for groups of houses designed for persons with special needs with or situated near special facilities, or where tenants are in receipt of housing support. *Subsection (2)* also ends the current exemption under section 61(4)(b) of the 1987 Act for registered housing associations which have not received public subsidy.
73. *Subsection (4)* confirms the exemption from right to buy of properties which are part of a co-operative housing association and *subsection (5)* amends the exemption for some charitable housing associations. Any registered social landlord which is a Scottish

charity on the date when the Housing (Scotland) Act 2001 received Royal Assent will be exempt from the right to buy.

Section 44: Limitation on right to buy: registered social landlords

74. This section inserts a new section 61A into the 1987 Act suspending the right to buy for tenants of a registered social landlord. This is intended to ensure that registered social landlords have time to adjust to the new arrangements. *Subsection (3)* of the new section sets a time period for this suspension of 10 years from the date on which the tenancies of the landlord must be Scottish secure tenancies by virtue of an order under section 11(1).
75. *Subsection (4)* of the new section gives powers to the Scottish Ministers to extend this suspension for a further period or periods as they see fit, subject to a maximum of 10 years for each further period. *Subsections (7) to (9)* set out the arrangements whereby registered social landlords can end this suspension on a voluntary basis.
76. *Subsection (2)* of the new section sets out the tenancies which are not included in this suspension. These are tenancies:
- of properties acquired by the landlord after the date when the landlord becomes subject to the Act's provisions on Scottish secure tenancies by virtue of an order under section 11(1);
 - of properties built after that date where a grant was offered to the landlord;
77. There is a power for the Scottish Ministers to specify further exemptions by order.

Section 45: Limitation on right to buy: pressured areas

78. This section inserts two new sections into the 1987 Act. The new section 61B allows the Scottish Ministers to designate particular areas as pressured areas for a period of up to 5 years. Any tenancy granted in a pressured area since the introduction of the Scottish secure tenancy or which did not previously have the right to buy, is exempt from the right to buy for the period of the designation.
79. *Subsection (1)* of the new section specifies that before being designated as pressured an area must meet two criteria: first, the availability of housing provided by the local authority or registered social landlords must be, or be likely to be, substantially less than the need in that area, and second, the exercise of the right to buy in that area must be likely to make that shortage worse. *Subsections (8) and (9)* provide for a designation to be amended or revoked by the Scottish Ministers; and to be extended for a further period or periods of up to 5 years each.
80. The new section 61C sets out the procedure for designating a pressured area: the proposal must be put forward by a local authority (see section 61B(1)) after local consultation, and the Scottish Ministers can set out in guidance the form of the proposal and the information it should include.

Section 46: Limitation on right to buy: arrears of rent, council tax, etc.

81. This section inserts two new provisions into the 1987 Act. *Subsection (1)* inserts section 61D which entitles the landlord to refuse an application under the right to buy from a tenant or joint purchaser who has arrears of rent or other charges, of council tax, or of water and sewerage charges. Slightly different provisions apply in each of these three cases to reflect the differences in the bodies to which the arrears may be due.
82. *Subsection (2)* amends section 63 of the 1987 Act to require a tenant of a registered social landlord who has applied to exercise their right to buy to provide a certificate from the local authority stating whether or not they have any arrears of council tax or water or sewerage charge, and if so the amount of these arrears. The local authority is required to issue such a certificate free of charge and within a specified time.

Section 47: Limitation on right to buy: conduct

83. This section inserts a new section 61E into the 1987 Act which suspends the right to buy from any person whose house is being repossessed on one of the conduct grounds in paragraphs 1 to 7 of *schedule 2* to the Act.

Section 48: Houses liable to demolition

84. This section inserts a new section into the 1987 Act. It provides the conditions and procedures required for a landlord to apply to Ministers for their consent for the landlord to refuse an application to buy on the grounds that the property is liable to demolition. Before granting such consent, Ministers will have regard in particular to how long before the landlord intends to demolish the house, and to what extent before deciding to demolish the landlord consulted the tenant about the proposal to demolish, and the effect of the proposal on the tenant's ability to exercise the right to buy.

Section 49: Discounts

85. Section 62 of the Housing (Scotland) Act 1987 sets out provisions for calculating the price at which a property should be sold under the right to buy. This section amends those provisions in the following ways for new Scottish secure tenants. (The existing provisions will continue to apply to tenants who currently have the right to buy by virtue of an order made under section 11(1)).
86. *Subsection (2)* changes the level of discount to be applied to the market value of the house. It removes the distinction between houses and flats. It sets a new minimum discount of 20% for all those with a 5 year eligibility period. It sets a single rate at which the level of discount increases from the minimum, of 1% of the market value for every year beyond 5 years that the tenant has occupied a house let by a relevant landlord. It reduces the maximum level of discount from 60% of the market value of the house to 35% or £15,000, whichever is the less.
87. In calculating a discount, section 62 of the 1987 Act requires account to be taken of any previous discounts received by the applicant(s). *Subsection (4)* inserts a new provision in section 62 making clear that a previous discount received by two or more persons jointly should be deemed to have been received in equal proportions.
88. *Subsection (3)* broadens the definition of appropriate persons for calculation purposes of any previous discount to be deducted from discount entitlement. The definition in section 62(4)(a)(i) to (iv) of the 1987 Act refers to the tenant, the tenant's spouse, or joint tenant. These will now reflect cohabitants of either sex, by virtue of section 108. *Subsection (5)* makes technical changes consequential to the changes made by *subsections (2)* and *(3)*.
89. *Subsections (6), (7) and (8)* allow the Scottish Ministers to vary the discount rates and set different discount regimes, including different caps, in different areas of the country by order.

Section 50: Assistance to tenants to obtain other accommodation

90. This section amends section 66 of the Housing (Scotland) Act 1988 to allow a local authority (with the approval of the Scottish Ministers) to establish a grant scheme to enable Scottish secure tenants of councils and registered social landlords to buy or extend a house, or to buy land and build a house. That section already allows such a scheme to include provisions for determining which tenants could qualify for grant assistance; *subsection (3)* inserts a new subsection to make clear that such provisions may in particular specify tenants in pressured areas as qualifying tenants. *Subsection (2)* extends the scope of these schemes so that grants can be paid to tenants of registered social landlords.

Section 51: Right to buy: miscellaneous repeals

91. This section abolishes the rent to loan scheme and removes the duty of the local authority to act as lender of last resort to tenants who wish to exercise the right to buy but are unable to raise the necessary finance elsewhere. The repeal of section 69(1A) removes the cut-off date which currently limits the scope for refusing the right to buy for certain houses provided for elderly persons and first let before 1 January 1990. A landlord subject to the right to buy can apply to the Scottish Ministers to refuse an application under the right to buy for any house which has been designed or adapted for special needs purposes.

Section 52: Reports on right to buy

92. This section places a duty on Scottish Ministers to provide reports on the effects and take-up of the right to buy.