

HOUSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 11 – Change of Landlord – Secure Tenants

140. This Part of the Act replaces the provisions in Part III (sections 56 to 64) of the Housing (Scotland) Act 1988 (the “1988 Act”) that deal with a change of secure tenants’ landlord (known as “tenant’s choice”). Those provisions will be repealed by paragraph 3(3) of schedule 2 to the Act. Section 125 provides for a person that is approved by the regulator under section 126 of the Act to acquire certain houses from local authority landlords. Section 127 sets the criteria that determine which houses are eligible to be acquired.
141. Section 56 of the 1988 Act provides for approved landlords to acquire eligible houses from a public sector landlord defined as one of a number of bodies including islands or district councils, development corporations within the meaning of the New Towns (Scotland) Act 1968, the Scottish Special Housing Association, the Housing Corporation and Scottish Homes. Section 125 replaces “public sector landlord” with “local authority landlord” because the other bodies have been wound up.
142. Under section 126 the regulator has the power to grant approved status to a person that is not a local authority landlord. Subsection (2) provides that the regulator may give approval for particular reasons, acquisitions, areas or purposes. Different approvals may be given for different cases to enable that person to acquire a house from a local authority. The regulator may grant approval subject to conditions and may vary or revoke an approval.
143. **Section 127** provides that an eligible house is a house owned by a local authority and occupied by a qualifying tenant. A qualifying tenant is a tenant with a Scottish secure tenancy where an order for recovery of possession has not been granted under section 16(2) of the Housing (Scotland) Act 2001.
144. **Section 127(3)** makes certain houses exempt from sale to an approved landlord. These are a house that is one of a group which has been provided with facilities (including a call system and the services of a warden); a house that has been specially designed or adapted for elderly or disabled people whose special needs require accommodation of the kind provided by the house; and houses owned by islands councils for the purposes of their functions as education authority, that are required as accommodation for someone employed for those purposes (and where the council is not likely to be able to reasonably provide other suitable accommodation for that person). Section 56(5) (c) of the 1988 Act also provides that an area determined by Scottish Ministers as a rural area is not eligible to be acquired by an approved person. Scottish Ministers’ order making power to determine a rural area is repealed by paragraph 3(3) of schedule 2 to the Act.
145. **Section 128** sets out the requirements an approved person must meet when they apply to a local authority to acquire a house. Section 129 requires the local authority landlord to make an offer to sell the house, or to refuse the application, within two months of the date on which an application is made under section 128.

146. **Section 130** sets out the process for determining the market value of an eligible house. The local authority must instruct the district valuer or a qualified valuer nominated by the local authority and accepted by the applicant to determine the market value. The valuer must have regard to the price which the house would realise if sold on the date on which the application was made on the open market by a willing seller as well as a number of other assumptions. Where a valuer determines that the house would not realise any price if offered for sale on the open market they can take the price to be either a negative value, equal to the amount which would require to be paid to an approved person in order that the approved person would willingly acquire the house, or where an approved person would willingly acquire the house for no consideration, nil, and the market value of the house may accordingly be determined to be a negative value or nil value.
147. **Section 131** sets out the conditions of sale of an eligible house to an approved person. It provides for the applicant to be able to request an amendment to the offer to sell if they consider a condition to be unreasonable or wish to have a new condition included in the offer. The applicant may refer the matter to the Lands Tribunal if a local authority landlord refuses a request or fails to respond within one month of the refusal. The Lands Tribunal can uphold, strike out or vary, or insert a new condition in the offer. Where a Lands Tribunal determination results in a variation of the offer to sell, it must order the local authority landlord to make an amended offer to sell to the applicant within two months of its determination.
148. **Section 132** sets out requirements in relation to the acceptance of an offer to sell. The applicant may accept an offer to sell within two months of the date on which the offer was made, or the date on which the latest amended offer was made, or the date of a determination by the Lands Tribunal which does not require the local authority to make an amended offer. Where notice of acceptance is not given within the required period, the offer to sell and the application lapse. A notice of acceptance has no effect unless the qualifying tenant and the applicant have concluded a lease of the house for a period immediately after the acquisition of the house. Giving a notice of acceptance constitutes a sale of the house between the local authority landlord and the applicant on the terms contained in the offer.
149. **Section 133** provides for a local authority landlord to refuse an application on the basis that it disputes the applicant's right to acquire the property or it considers any information in the application to be materially incorrect. It specifies the process for giving notice of refusal and allows the applicant to refer the matter to the Lands Tribunal for a finding in respect of its right to acquire.
150. Where a local authority landlord fails to comply with provisions on the offer to sell provision (section 129), an order made by the Lands Tribunal under section 131(9) or fails to progress an application under any finding made by the Lands Tribunal under section 133(3), the applicant may refer the matter to the Lands Tribunal. Subsection (2) provides that the Lands Tribunal may make an offer to sell to the applicant and this has the same effect as if it is done by the local authority landlord.
151. **Section 135** requires a person who acquires property under Part 11 to seek the regulator's consent for the subsequent disposal of that property. Consent may be given generally, to certain disposals, or for particular purposes. The regulator may place conditions on the consent. Before consenting to a disposal the regulator must be satisfied that the person seeking the consent has consulted tenants of the houses included in the disposal and any other person that the regulator requires the person to consult. This section does not apply to a disposal by a registered social landlord which is required to seek consent under Part 9 of the Act.
152. **Section 136** provides for the extension of time periods referred to in Part 11 of the Act where the applicant or local authority give notice of the extension before the end of the time period.