

# HOUSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

#### **Part 14 – Right to Buy: Reforms**

157. This part amends existing provisions on right to buy in the Housing (Scotland) Act 1987 (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. Part 14 ends the right to buy for new supply social housing and new tenants, reforms existing pressured area designation provisions and limits the purchase of police houses.

#### **Re-accommodated persons: protection of right to buy**

158. The amendment made by section 140 to section 61 of the 1987 Act ensures that, under the circumstances provided for, the right to buy entitlements of tenants who are re-accommodated by their landlord and experience a break in occupation as a result are protected for all social housing let under a Scottish secure tenancy.
159. Paragraph (a) adds an additional two circumstances to those already included within section 61(2)(c) of the 1987 Act in order to ensure that a tenant who is accommodated by such landlords under the circumstances provided for (see sub-paragraph (c)), is not deemed to have incurred a break in continuous occupation.
160. The effect of paragraph (b) is to ensure that breaks in occupation of a tenancy resulting from the circumstances provided for should be disregarded for the purposes of determining the period of occupation. That is, any period beginning with the termination of a tenancy in terms of section 18(2), 20(3) or 22(3) of the 2001 Act, and ending with the person being re-accommodated in pursuance of sections 19(3)(b), 21(3)(b) or 22(6) of the 2001 Act should be disregarded.
161. Paragraph (c) adds an additional two categories of person providing accommodation referred to in section 61(2)(c) (occupation requirement for exercise of right to purchase) to the list of landlords included in section 61(11) of the 1987 Act. The category in new section 61(11)(ab) includes those persons who provide accommodation to a tenant in instances where the tenant is required to move by their landlord under the circumstances provided for. The category in new section 61(11)(ac) includes those persons who provide accommodation to a tenant in instances where the tenant’s existing house is to be demolished and the tenant agrees to move at their landlord’s request.

#### **Limitation on right to buy: new tenants**

162. [Section 141](#) inserts a new section 61ZA into the 1987 Act to extend the range of circumstances under which the right to buy cannot be exercised to include new tenants to the social housing sector. This is intended to ensure that tenants taking up a Scottish secure tenancy for the first time (following commencement of section 141) and those returning to the social rented sector after a break will not have the right to buy over any property they rent from a social landlord.

163. Subsection (1) of new section 61ZA sets out the tenancies which are not included in this limitation. These are tenancies of properties let under a Scottish secure tenancy created on or after the commencement date of section 141 of the Act, where the tenant has since that date continuously been occupying a house let by a social landlord or a landlord mentioned in section 61(11), or occupying living accommodation provided as mentioned in section 61(11)(ab), (ac) or (n).
164. Subsection (2) sets out the circumstances where an interruption in continuous occupation should be disregarded (where a tenant's tenancy has been terminated under section 18(2), 20(3) or 22(3) of the Housing (Scotland) Act 2001 and the tenant is then re-accommodated in pursuance of section 19(3)(b), 21(3)(b) or 22(6) of that Act) and also provides discretion for a landlord to disregard an interruption in occupation, where it appears to the landlord to result from circumstances outwith the control of the tenant.

### **Pressured areas: amendments**

165. [Section 142](#) amends the existing pressured area provision in section 61B of the 1987 Act to extend the maximum designation period from 5 to 10 years, to allow particular housing types as well as particular areas to be designated as pressured and to allow local authorities (rather than Scottish Ministers) to designate, revoke or amend pressured area and housing type designations, without requiring Scottish Ministers' approval.
166. Subsection (2) amends section 61C of the 1987 Act and sets out the process which local authorities should follow when designating a pressured area or housing type. Before making, amending or revoking a designation, local authorities have to take such steps as are reasonable to publicise its proposal to make, amend or revoke designations and its reasons for so proposing. They must consult every RSL holding houses for housing purposes in the part of their area covered by the proposals and such bodies representing the interests of tenants and other residents in that part and such other persons as the authority thinks fit. Local authorities proposing to make, amend or revoke pressured area or housing type designations should have regard to guidance issued by Scottish Ministers about how they should do it, the information they should take into account before doing so and the terms of such designations.

### **Limitation on right to buy: new supply social housing**

167. [Section 143](#) inserts a new section 61F into the 1987 Act to extend the range of circumstances (set out in sections 61A to E) under which the right to buy cannot be exercised to include new supply social housing. A new supply social house is defined in subsection (3) as a house which is let under a Scottish secure tenancy created on or after the relevant day (which is the day on which section 143 comes into force), but which was not so let on or before 25 June 2008 or was acquired by the landlord on or after 25 June 2008.
168. Subsection (2) of the new section 61F provides that the limitation on exercising the right to buy over new supply social housing does not apply in the following circumstances:
- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house, following an order for recovery of possession under section 16(2) of the Housing (Scotland) Act 2001, on any of the grounds set out in paragraphs 9 to 15 of schedule 2 to that Act.
  - Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house where the landlord has erroneously brought the tenancy / joint tenancy to an end and re-possessed the house because the landlord believes that the tenant is/tenants are/ are not occupying the house; or where the tenant of a house that has been designed for a person with special needs dies and as a result the landlord is required to re-accommodate a person who would otherwise have qualified to succeed to the tenancy.

*These notes relate to the Housing (Scotland) Act 2010  
(asp 17) which received Royal Assent on 9 December 2010*

- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house, as a result of a written agreement between the landlord and tenant where the tenant agrees to move from their original house which the landlord wishes to demolish.
- Where a tenant's short Scottish secure tenancy is converted into a Scottish secure tenancy under section 37 of the 2001 Act.
- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house without the landlord having given the tenant seven days notice before the creation of the Scottish secure tenancy to which the new supply social house is subject, or where the landlord acquired the house from the tenant at least seven days before the missives for acquisition were concluded, that they will lose the right to buy over that new supply house.

### **Police housing**

169. [Section 144](#) inserts a new section 69A into the 1987 Act to permit local authority landlords to refuse applications from tenants, who would otherwise have the right to buy under section 61 of the 1987 Act, to purchase their house where that house is held by the authority for the purposes of a police force and it is necessary to retain the house for operational purposes. Subsections (3) and (4) of the new section set out matters which the landlord must consider when deciding whether or not to refuse a tenant's application.

### **Duty to collect and publish information: local authority housing stock**

170. [Section 145](#) requires Scottish Ministers, after the end of each financial year, to collect and publish information in respect of each local authority on the number of houses sold under Right to Buy; receipts derived from these sales; how much debt has incurred in respect of local authority housing stock and; how much debt in respect of local authority housing stock has been repaid, all during that financial year.

### **Duty to collect and publish information: tenants eligible for right to buy**

171. [Section 146](#) requires Scottish Ministers, after the end of each financial year, to collect and publish information in respect of each local authority on the number of tenants with a Right to Buy their house on pre-Housing (Scotland) Act 2001 terms and the number of tenants with a Right to Buy on post-Housing (Scotland) Act 2001 terms, during that financial year.

### **Duty to collect and publish information: sale of houses by registered social landlords**

172. [Section 147](#) requires Scottish Ministers, after the end of each financial year, to collect and publish information in respect of each registered social landlord on the number of houses sold under Right to Buy and the receipts derived from these sales, during that financial year.