



Housing Act 1985

1985 CHAPTER 68

PART V

THE RIGHT TO BUY

Powers of Secretary of State

164 Secretary of State's general power to intervene.

- (1) The Secretary of State may use his powers under this section where it appears to him that tenants generally, a tenant or tenants of a particular landlord, or tenants of a description of landlords, have or may have difficulty in exercising effectively and expeditiously the right to buy or the right to be granted a shared ownership lease.
- (2) The powers may be exercised only after he has given the landlord or landlords notice in writing of his intention to do so and while the notice is in force.
- (3) Such a notice shall be deemed to be given 72 hours after it has been sent.
- (4) Where a notice under this section has been given to a landlord or landlords, no step taken by the landlord or any of the landlords while the notice is in force or before it was given has any effect in relation to the exercise by a secure tenant of the right to buy, the right to a mortgage or the right to be granted a shared ownership lease, except in so far as the notice otherwise provides.
- (5) While a notice under this section is in force the Secretary of State may do all such things as appear to him necessary or expedient to enable secure tenants of the landlord or landlords to which the notice was given to exercise the right to buy, the right to a mortgage and the right to be granted a shared ownership lease; and he is not bound to take the steps which the landlord would have been bound to take under this Part.
- (6) Where in consequence of the exercise by a secure tenant of the right to a mortgage a landlord becomes a mortgagee of a dwelling-house whilst a notice under this section is in force in relation to the landlord and to the dwelling-house, then, while the notice remains in force—

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- (a) the Secretary of State may, on behalf of the mortgagee, receive any sums due to it and exercise all powers and do all things which the mortgagee could have exercised or done, and
- (b) the mortgagee shall not receive any such sum, exercise any such power or do any such thing, except with the consent of the Secretary of State, which may be given subject to such conditions as the Secretary of State thinks fit.

165 Vesting orders for purposes of s. 164.

- (1) For the purpose of conveying a freehold or granting a lease in the exercise of his powers under section 164 the Secretary of State may execute a document, to be known as a vesting order, containing such provisions as he may determine; and for the purposes of stamp duty the vesting order shall be treated as a document executed by the landlord.
- (2) A vesting order has the like effect, except so far as it otherwise provides, as a conveyance or grant duly executed in pursuance of this Part, and, in particular, binds both the landlord and its successors in title and the tenant and his successors in title (including any person deriving title under him or them) to the same extent as if the covenants contained in it and expressed to be made on their behalf had been entered into by them.
- (3) If the landlord’s title to the dwelling-house in respect of which a vesting order is made is not registered, the vesting order shall contain a certificate stating that the freehold conveyed or grant made by it is subject only to such incumbrances, rights and interests as are stated elsewhere in the vesting order or summarised in the certificate.
- (4) The Chief Land Registrar shall, on a vesting order being presented to him, register the tenant as proprietor of the title concerned; and if the title has not previously been registered—
 - (a) he shall so register him with an absolute title, or as the case may require a good leasehold title, and
 - (b) he shall, for the purpose of the registration, accept any such certificate as is mentioned in subsection (3) as sufficient evidence of the facts stated in it.
- (5) F1
- (6) If a person suffers loss in consequence of a registration under this section in circumstances in which he would have been entitled to be indemnified under section 83 of the Land Registration Act 1925 by the Chief Land Registrar had the registration of the tenant as proprietor of the title been effected otherwise than under this section, he is instead entitled to be indemnified by the Secretary of State and section 166(4) of this Act (recovery of Secretary of State’s costs from landlord) applies accordingly.

Textual Amendments
 F1 S. 165(5) repealed by [Land Registration Act 1988 \(c. 3, SIF 98:2\)](#), ss. 1(2)(d), 2, [Sch.](#)

166 Other provisions supplementary to s. 164.

- (1) A notice under section 164 may be withdrawn by a further notice in writing, either completely or in relation to a particular landlord or a particular case or description of case.

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- (2) The further notice may give such directions as the Secretary of State may think fit for the completion of a transaction begun before the further notice was given; and such directions are binding on the landlord, and may require the taking of steps different from those which the landlord would have been required to take if the Secretary of State's powers under section 164 had not been used.
- (3) Where in consequence of the exercise of his powers under section 164 the Secretary of State receives sums due to a landlord, he may retain them while a notice under that section is in force in relation to the landlord and is not bound to account to the landlord for interest accruing on them.
- (4) Where the Secretary of State exercises his powers under section 164 with respect to secure tenants of a landlord, he may—
 - (a) calculate, in such manner and on such assumptions as he may determine, the costs incurred by him in doing so, and
 - (b) certify a sum as representing those costs;and a sum so certified is a debt from the landlord to the Secretary of State payable on a date specified in the certificate, together with interest from that date at a rate so specified.
- (5) sums payable under subsection (4) may, without prejudice to any other method of recovery, be recovered from the landlord by the withholding of sums due from the Secretary of State, including sums payable to the landlord and received by the Secretary of State in consequence of his exercise of his powers under section 164.
- (6) In this section the references to a landlord include references to a body which has become a mortgagee in consequence of the exercise by a secure tenant of the right to a mortgage, and the references to the powers of the Secretary of State with respect to the secure tenants of a landlord include references to the powers of the Secretary of State to act on behalf of such a mortgagee.

167 Power to give directions as to covenants and conditions.

- (1) Where it appears to the Secretary of State that, if covenants or conditions of any kind were included in conveyances or grants of dwelling-houses of any description executed in pursuance of this Part—
 - (a) the conveyances would not conform with Parts I and II of Schedule 6, or
 - (b) the grants would not conform with Parts I and III of that Schedule.he may direct landlords generally, landlords of a particular description or particular landlords not to include covenants or conditions of that kind in such conveyances or grants executed on or after a date specified in the direction.
- (2) A direction under this section may be varied or withdrawn by a subsequent direction.

168 Effect of direction under s. 167 on existing covenants and conditions.

- (1) If a direction under section 167 so provides, the provisions of this section shall apply in relation to a covenant or condition which—
 - (a) was included in a conveyance or grant executed before the date specified in the direction, and

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- (b) could not have been so included if the conveyance or grant had been executed on or after that date.
- (2) The covenant or condition shall be discharged or (if the direction so provides) modified, as from the specified date, to such extent or in such manner as may be provided by the direction; and the discharge or modification is binding on all persons entitled or capable of becoming entitled to the benefit of the covenant or condition.
- (3) The landlord by whom the conveyance or grant was executed shall, within such period as may be specified in the direction—
 - (a) serve on the person registered as the proprietor of the dwelling-house, and on any person registered as the proprietor of a charge affecting the dwelling-house, a written notice informing him of the discharge or modification, and
 - (b) on behalf of the person registered as the proprietor of the dwelling-house, apply to the Chief Land Registrar (and pay the appropriate fee) for notice of the discharge or modification to be entered in the register.
- (4) F2
- (5) Notwithstanding anything in section 64 of the Land Registration Act 1925 (certificates to be produced and noted on dealings), notice of the discharge or modification may be entered in the register without the production of any land certificate outstanding in respect of the dwelling-house, but without prejudice to the power of the Chief Land Registrar to compel production of the certificate for the purposes mentioned in that section.

Textual Amendments
 F2 S. 168(4) repealed by [Land Registration Act 1988 \(c. 3, SIF 98:2\)](#), s. 2, Sch.

169 Power to obtain information, etc.

- (1) Where it appears to the Secretary of State necessary or expedient for the purpose of determining whether his powers under section 164 or 166 (general power to intervene) or section 167 or 168 (power to give directions as to covenants and conditions) are exercisable, or for or in connection with the exercise of those powers, he may by notice in writing to a landlord require it—
 - (a) at such time and at such place as may be specified in the notice, to produce any document, or
 - (b) within such period as may be so specified or such longer period as the Secretary of State may allow, to furnish a copy of any document or supply any information.
- (2) Any officer of the landlord designated in the notice for that purpose or having custody or control of the document or in a position to give that information shall, without instructions from the landlord, take all reasonable steps to ensure that the notice is complied with.
- (3) In this section references to a landlord include—
 - (a) a landlord by whom a conveyance or grant was executed in pursuance of this Part, and
 - (b) a body which has become a mortgagee in consequence of the exercise by a secure tenant of the right to a mortgage.

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170 Power to give assistance in connection with legal proceedings.

- (1) This section applies to—
 - (a) proceedings under this Part or to determine a question arising under or in connection with this Part, and
 - (b) proceedings to determine a question arising under or in connection with a conveyance or grant executed in pursuance of this Part,
other than proceedings to determine a question as to the value of a dwelling-house (or part of a dwelling-house).
- (2) A party or prospective party to proceedings or prospective proceedings to which this section applies, who—
 - (a) has claimed to exercise or has exercised the right to buy or the right to be granted a shared ownership lease, or
 - (b) is a successor in title of a person who has exercised either of those rights,may apply to the Secretary of State for assistance under this section.
- (3) The Secretary of State may grant the application if he thinks fit to do so on the ground—
 - (a) that the case raises a question of principle, or
 - (b) that it is unreasonable having regard to the complexity of the case, or to any other matter, to expect the applicant to deal with it without such assistance,or by reason of any other special consideration.
- (4) Assistance by the Secretary of State under this section may include—
 - (a) giving advice.
 - (b) procuring or attempting to procure the settlement of the matter in dispute,
 - (c) arranging for the giving of advice or assistance by a solicitor or counsel,
 - (d) arranging for representation by a solicitor or counsel, including such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings, and
 - (e) any other form of assistance which the Secretary of State may consider appropriate;but paragraph (d) does not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in any proceedings.
- (5) In so far as expenses are incurred by the Secretary of State in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Secretary of State—
 - (a) on any costs which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance was given, and
 - (b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings;but subject to any charge under the [F³Legal Aid Act 1988] and to any provision of that Act for payment of any sum [F⁴to the Legal Aid Board].
- (6) References in this section to a solicitor include the Treasury Solicitor.

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Textual Amendments

- F3** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, **Sch. 5 para. 20(a)**
F4 Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45, **Sch. 5 para. 20(b)**
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Modifications etc. (not altering text)

- C1** S. 170 applied by [Housing and Planning Act 1986 \(c. 63, SIF 61\)](#), s. 24(1), **Sch. 5 Pt. I para. 5(6)**
C2 S. 170(4)(c)(d) amended (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, 5, **Sch. 1**

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