



Housing and Planning Act 1986

1986 CHAPTER 63

PART I

HOUSING

The right to buy

1 Exception to the right to buy with respect to dwelling-houses for persons of pensionable age

In Schedule 5 to the Housing Act 1985 (exceptions to the right to buy: certain dwelling-houses for persons of pensionable age), there shall be substituted for paragraph 11—

- “11 (1) The right to buy does not arise if the dwelling-house—
- (a) is particularly suitable for occupation by persons of pensionable age, having regard—
 - (i) to its location, and
 - (ii) to its size, design, heating system and other major features so far as those have been provided by the landlord, a predecessor of the tenant or a person qualified to succeed the tenant by virtue of Part IV of the Housing Act 1985,
 - (b) was let to the tenant or a predecessor in title of his for occupation by a person of pensionable age or a physically disabled person (whether the tenant or predecessor or another person).
- (2) In determining whether a dwelling is particularly suitable, regard shall be had as to whether the dwelling—
- (a) is easily accessible on foot;
 - (b) is on one level;
 - (c) being a flat located above ground floor, access by lift is available;
 - (d) has no more than two bedrooms ;
 - (e) has a heating system serving the living room and at least one bedroom.”.

2 Discount on right to buy and similar sales

- (1) In section 129 of the Housing Act 1985 (discount on exercise of right to buy), for subsections (1) and (2) substitute—

“(1) Subject to the following provisions of this Part, a person exercising the right to buy is entitled to a discount of a percentage calculated by reference to the period which is to be taken into account in accordance with Schedule 4 (qualifying period for right to buy and discount).

(2) The discount is, subject to any order under subsection (2A)—

- (a) in the case of a house, 32 per cent, plus one per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 60 per cent.;
- (b) in the case of a flat, 44 per cent, plus two per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 70 per cent.

(2A) The Secretary of State may by order made with the consent of the Treasury provide that, in such cases as may be specified in the order—

- (a) the minimum percentage discount,
- (b) the percentage increase for each complete year of the qualifying period after the first two, or
- (c) the maximum percentage discount,

shall be such percentage, higher than that specified in subsection (2), as may be specified in the order.

(2B) An order

- (a) may make different provision with respect to different cases or descriptions of case,
- (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient, and
- (c) shall be made by statutory instrument and shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”.

(2) The amendment made by subsection (1) does not apply where—

- (a) the tenant's notice claiming to exercise the right to buy or, as the case may be, to acquire an additional share under a shared ownership lease was served before the commencement of that subsection, and
- (b) the landlord has before commencement served its notice as to the terms of exercise of that right, that is, its notice under section 125 of, or paragraph 1(3) of Schedule 8 to, the Housing Act 1985,

but without prejudice to the tenant's right to withdraw the notice served before commencement and serve a new notice.

(3) In the following provisions (which in the case of disposals at a discount require a covenant for repayment of a proportion of the discount if the dwelling-house is disposed of within five years)—

- section 35(2) of the Housing Act 1985 (voluntary disposals by local authorities),
- section 155(2) of that Act (disposals in pursuance of the right to buy),

section 155(3) of that Act (disposals in pursuance of the right to be granted a shared ownership lease), and

paragraph 1(2) of Schedule 2 to the Housing Associations Act 1985 (voluntary disposals by registered housing associations),

for " five years " substitute " three years " and for " 20 per cent." substitute " one-third ".

- (4) A conveyance or lease containing the covenant required by any of the provisions mentioned in subsection (3) which was executed before the amendments made by that subsection came into force shall, provided no amount was then or had previously been payable under the covenant, have effect with such modifications as may be necessary to bring it into conformity with the amendments.

3 Discount on exercise of right to purchase in Scotland

- (1) In section 1 (secure tenant's right to purchase) of the Tenants' Rights, Etc. (Scotland) Act 1980, in subsection (5), after " (b) " insert—

“subject to an order under subsection (5B) below,”.

- (2) After subsection (5A) of the said section 1 insert—

“(5B) The Secretary of State may by order made with the consent of the Treasury provide that, in such cases as may be specified in the order—

- (a) the minimum percentage discount,
- (b) the percentage increase for each complete year of the qualifying period after the first two, or
- (c) the maximum percentage discount,

shall be such percentage, higher than that specified in subsection (5)(b), as may be specified in the order.

- (5C) An order—

- (a) may make different provision with respect to different cases or descriptions of case,
- (b) may contain such incidental, supplementary or transitional provisions, including such amendments to the provisions of section 9A (application of Part I when dwelling-house is repurchased as defective) below, as appear to the Secretary of State to be necessary or expedient, and
- (c) shall be made by statutory instrument and shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”.

4 Service charges and other contributions payable after exercise of right to buy

- (1) In section 125 of the Housing Act 1985 (landlord's notice of purchase price and other matters), for subsection (4) (notice to include estimate of amount of service charges) substitute—

“(4) Where the notice states provisions which would enable the landlord to recover from the tenant—

- (a) service charges, or
- (b) improvement contributions,

the notice shall also contain the estimates and other information required by section 125A (service charges) or 125B (improvement contributions).”.

(2) After that section insert—

“125A Estimates and information about service charges.

- (1) A landlord's notice under section 125 shall state as regards service charges (excluding, in the case of a flat, charges to which subsection (2) applies)—
 - (a) the landlord's estimate of the average annual amount (at current prices) which would be payable in respect of each head of charge in the reference period, and
 - (b) the aggregate of those estimated amounts,
 and shall contain a statement of the reference period adopted for the purpose of the estimates.
- (2) A landlord's notice under section 125 given in respect of a flat shall, as regards service charges in respect of repairs (including works for the making good of structural defects), contain—
 - (a) the estimates required by subsection (3), together with a statement of the reference period adopted for the purpose of the estimates, and
 - (b) a statement of the effect of—
 - paragraph 16B of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant), and
 - section 450A and the regulations made under that section (right to a loan in respect of certain service charges).
- (3) The following estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period—
 - (a) for works itemised in the notice, estimates of the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item, and the aggregate amounts of those estimated costs and contributions, and
 - (b) for works not so itemised, an estimate of the average annual amount (at current prices) which the landlord considers is likely to be payable by the tenant.

125B Estimates and information about improvement contributions.

- (1) A landlord's notice under section 125 given in respect of a flat shall, as regards improvement contributions, contain—
 - (a) the estimates required by this section, together with a statement of the reference period adopted for the purpose of the estimates, and
 - (b) a statement of the effect of paragraph 16C of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant).
- (2) Estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period.
- (3) The works to which the estimates relate shall be itemised and the estimates shall show—

- (a) the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item, and
- (b) the aggregate amounts of those estimated costs and contributions.

125C Reference period for purposes of ss. 125A and 125B.

- (1) The reference period for the purposes of the estimates required by section 125A or 125B is the period—
 - (a) beginning on such date not more than six months after the notice is given as the landlord may reasonably specify as being a date by which the conveyance will have been made or the lease granted, and
 - (b) ending five years after that date or, where the notice states that the conveyance or lease will provide for a service charge or improvement contribution to be calculated by reference to a specified annual period, with the end of the fifth such period beginning after that date.
- (2) For the purpose of the estimates it shall be assumed that the conveyance will be made or the lease granted at the beginning of the reference period on the terms stated in the notice.”.
- (3) In section 127 of the Housing Act 1985 (valuation of dwelling-house for purposes of right to buy) in subsection (1) (basis of valuation), after paragraph (b) insert—

“, and

 - (c) on the assumption that any service charges or improvement contributions payable will not be less than the amounts to be expected in accordance with the estimates contained in the landlord's notice under section 125.”.
- (4) In Part III of Schedule 6 to the Housing Act 1985 (terms of lease granted in pursuance of right to buy), after paragraph 16 insert—

“Service charges and other contributions payable by the tenant

- 16A (1) The lease may require the tenant to bear a reasonable part of the costs incurred by the landlord—
- (a) in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) (repairs, making good structural defects, provision of services, etc.), or
 - (b) in insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding or reinstatement, etc.),
- and to the extent that by virtue of paragraph 15(3) (effect of provision of superior lease) such obligations are not imposed on the landlord, to bear a reasonable part of the costs incurred by the landlord in contributing to costs incurred by a superior landlord or other person in discharging or, as the case may be, insuring against obligations to the like effect.
- (2) Where the lease requires the tenant to contribute to the costs of insurance, it shall provide that the tenant is entitled to inspect the relevant policy at such reasonable times as may be specified in the lease.

- (3) Where the landlord does not insure against tile obligations imposed by the covenant implied by virtue of paragraph 14(3), or, as the case may be, the superior landlord or other person does not insure against his obligations to the like effect, the lease may require the tenant to pay a reasonable sum in place of the contribution he could be required to make if there were insurance.
- (4) Where in any case the obligations imposed by the covenants implied by virtue of paragraph 14(2) or (3) are modified in accordance with paragraph 14(4) (power of county court to authorise modification), the references in this paragraph are to the obligations as so modified.
- (5) This paragraph has effect subject to paragraph 16B (restrictions in certain cases as regards costs incurred in the initial period of the lease).
- 16B (1) Where a lease of a flat requires the tenant to pay service charges in respect of repairs (including works for the making good of structural defects), his liability in respect of costs incurred in the initial period of the lease is restricted as follows.
- (2) He is not required to pay in respect of works itemised in the estimates contained in the landlord's notice under section 125 any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.
- (3) He is not required to pay in respect of works not so itemised at a rate exceeding—
- (a) as regards parts of the initial period falling within the reference period for the purposes of the estimates contained in the landlord's notice under section 125, the estimated annual average amount shown in the estimates;
 - (b) as regards parts of the initial period not falling within that reference period, the average rate produced by averaging over the reference period all works for which estimates are contained in the notice;
- together, in each case, with an inflation allowance.
- (4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—
- (a) if the lease includes provision for service charges to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period ;
 - (b) if the lease provides for service charges to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease; and
 - (c) if the tenant served notice under section 142 deferring completion, the initial period ends on the date on which it would have ended if the lease had been granted on the date on which the notice was served.
- 16C (1) Where a lease of a flat requires the tenant to pay improvement contributions, his liability in respect of costs incurred in the initial period of the lease is restricted as follows.

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- (2) He is not required to make any payment in respect of works for which no estimate was given in the landlord's notice under section 125.
 - (3) He is not required to pay in respect of works for which an estimate was given in that notice any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.
 - (4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—
 - (a) if the lease includes provision for improvement contributions to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period;
 - (b) if the lease provides for improvement contributions to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease ; and
 - (c) if the tenant served notice under section 142 deferring completion, the initial period ends on the date on which it would have ended if the lease had been granted on the date on which the notice was served.
- 16D (1) The Secretary of State may by order prescribe—
- (a) the method by which inflation allowances for the purposes of paragraph 16B or 16C are to be calculated by reference to published statistics; and
 - (b) the information to be given to a tenant when he is asked to pay a service charge or improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant.
- (2) An order—
- (a) may make different provision for different cases or descriptions of case, including different provision for different areas;
 - (b) may contain such incidental, supplementary or transitional provisions as the Secretary of State thinks appropriate; and
 - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (5) For paragraph 18 of Schedule 6 to the Housing Act 1985 (avoidance of certain provisions relating to service charges) substitute—
- “18 Where the dwelling-house is a flat, a provision of the lease or of an agreement collateral to it is void in so far as it purports—
- (a) to authorise the recovery of such a charge as is mentioned in paragraph 16A (contributions in respect of repairs, etc.) otherwise than in accordance with that paragraph and paragraph 16B (restrictions in initial period of lease); or
 - (b) to authorise the recovery of any charge in respect of costs incurred by the landlord—
 - (i) in discharging the obligations imposed by the covenant implied by paragraph 14(3) (rebuilding or reinstatement,

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- &c.), or those obligations as modified in accordance with paragraph 14(4), or
 - (ii) in contributing to costs incurred by a superior landlord or other person in discharging obligations to the like effect; or
 - (c) to authorise the recovery of an improvement contribution otherwise than in accordance with paragraph 16C (restrictions in initial period of lease).”.
- (6) The amendments in this section do not apply where—
- (a) the tenant's notice claiming to exercise the right to buy was served before the commencement of this section, and
 - (b) the landlord has before commencement served his notice under section 125 of the Housing Act 1985 (notice of terms of exercise of right);
- but without prejudice to the tenant's right to withdraw the notice served before commencement and serve a new notice.

5 Loans in respect of service charges

In Part XIV of the Housing Act 1985 (loans for acquisition or improvement of housing), after section 450 insert—

“Loans in respect of service charges

450A Right to a loan in certain cases after exercise of right to buy.

- (1) The Secretary of State may by regulations provide that where—
- (a) a lease of a flat has been granted in pursuance of Part V (the right to buy), and
 - (b) the landlord is the housing authority who granted the lease or another housing authority,
- the tenant has, in such circumstances as may be prescribed, a right to a loan in respect of service charges to which this section applies.
- (2) This section applies to service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land) which are payable in the period beginning with the grant of the lease and ending with the tenth anniversary of the grant or, where the lease provides for service charges to be payable by reference to a specified annual period, with the end of the tenth such period beginning after the grant of the lease.
- (3) The regulations may provide that the right—
- (a) arises only in respect of so much of a service charge as exceeds a minimum qualifying amount and does not exceed a maximum qualifying amount, and
 - (b) does not arise unless the amount thus qualifying for a loan itself exceeds a minimum amount,
- the amounts being either prescribed or ascertained in a prescribed manner.
- (4) The regulations shall provide that the right is—

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- (a) where the landlord is a housing association, a right to an advance from the Housing Corporation, and
 - (b) in any other case, a right to leave the whole or part of the service charge outstanding.
- (5) The regulations may, as regards the procedure for exercising the right, provide—
- (a) that a demand for service charges in respect of repairs shall inform the tenant whether, in the landlord's opinion, he is entitled to a loan and, if he is, what he must do to claim it;
 - (b) that the right must be claimed within a prescribed period of the demand ; and
 - (c) that on the right being claimed the lender shall inform the tenant of the terms of the loan and of the prescribed period within which the tenant may accept the offer.
- (6) In this section—
- " housing authority" includes any housing association within section 80 (the landlord condition for secure tenancies); and
 - " repairs " includes works for making good a structural defect.

450B Power to make loans in other cases.

- (1) The Secretary of State may by regulations provide that where—
- (a) a housing authority is the landlord of a flat under a long lease granted or assigned by the authority or by another housing authority, and
 - (b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land),
- the landlord or, where the landlord is a housing association, the Housing Corporation may, in such circumstances as may be prescribed, make a loan to the tenant in respect of the service charges.
- (2) The regulations shall provide that the power is—
- (a) where the landlord is a housing association, a power of the Housing Corporation to make an advance, and
 - (b) in any other case, a power of the landlord to leave the whole or part of the service charge outstanding.
- (3) Where the tenant is entitled to a loan in pursuance of regulations under section 450A, the power conferred by regulations under this section may be exercised in respect of any part of the service charge which does not qualify for a loan under that section.
- (4) In this section—
- "housing authority" includes any housing association within section 80 (the landlord condition for secure tenancies); and
 - "repairs" includes works for making good a structural defect.
- (5) This section does not affect any other power of the landlord, or the Housing Corporation, to make loans.

450C Supplementary provisions as to regulations under s. 450A or 450B.

- (1) This section applies to regulations under section 450A or 450B (regulations conferring right to loan, or power to make loan, in respect of service charges).
- (2) The regulations may provide that the right or, as the case may be, the power does not arise in the case of any prescribed description of landlord.
- (3) The regulations shall provide that the loan—
 - (a) in the case of a loan made in pursuance of regulations under section 450A (the right to a loan), shall be on such terms as may be prescribed, and
 - (b) in the case of a loan made by virtue of regulations under section 450B (power to make loan), shall be on such terms as the lender may determine subject to any provision made by the regulations ;and shall, in either case, be secured by a mortgage of the flat in question, but may be made whether or not the flat is adequate security for the loan.
- (4) The regulations may—
 - (a) as regards the rate of interest payable on the loan, either prescribe the rate or provide that the rate shall be such reasonable rate as may be determined by the lender or, where the lender is a local authority, provide that Schedule 16 applies (local authority mortgage interest rates);
 - (b) as regards administrative expenses of the lender in connection with a loan, provide that the lender may charge such expenses to the borrower, to the extent that they do not exceed such amount as may be prescribed, and that the expenses so charged may, at the option of the borrower in the case of a loan under section 450A and at the option of the lender in the case of a loan under section 450B, be added to the amount of the loan.
- (5) The regulations may apply whenever the lease in question was granted or assigned and whenever the service charge in question became payable.
- (6) The regulations—
 - (a) may make different provision for different cases or descriptions of case, including different provision for different areas ;
 - (b) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate ; and
 - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.