



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART III

#### RIGHTS OF PUBLIC SECTOR TENANTS

##### *Security of tenure*

#### **44 Secure tenancies.**

- (1) Subject to subsection (4) and to section 45 and section 52(6), a tenancy (whenever created) of a house shall be a secure tenancy if—
  - (a) the house is let as a separate dwelling;
  - (b) the tenant is an individual and the house is his only or principal home; and
  - (c) the landlord is one of the bodies mentioned in subsection (2).
- (2) The bodies referred to in subsections (1)(c) and (7) are the bodies mentioned in section 61(2)(a) and any housing trust which was in existence on 13th November 1953.
- (3) Where a tenancy of a house is held jointly by two or more individuals, the requirements of subsection (1)(b) shall be deemed to be satisfied if all the joint tenants are individuals and at least one of the joint tenants occupies the house as his only or principal residence.
- (4) A tenancy shall not be a secure tenancy if it is a tenancy of a kind mentioned in Schedule 2.
- (5) Where the tenancy of a house is excluded from being a secure tenancy by reason only of the operation of paragraph 1 or 8 of Schedule 2, sections 53 to 60 shall nevertheless apply to that tenancy as if it were a secure tenancy.
- (6) A tenancy which has become a secure tenancy shall continue to be a secure tenancy notwithstanding that the requirements of subsection (1)(b) may have ceased to be fulfilled.

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- (7) Where a tenant under a secure tenancy is accommodated temporarily in another house of which the landlord is a body mentioned in subsection (2), while the house which he normally occupies is not available for occupation, the other house shall be deemed for the purposes of this Part, except sections 46 and 47, to be the house which he normally occupies.

#### **45 Special provision for housing associations.**

- (1) A tenancy shall not be a secure tenancy at any time when the interest of the landlord belongs to a registered housing association which is a co-operative housing association.
- (2) Sections 44, 46 to 50, 51, 52, and 82 to 84 shall apply to a tenancy at any time when the interest of the landlord belongs to a housing association which is a co-operative housing association and is not registered.
- (3) If a registered housing association which is a registered co-operative housing association ceases to be registered, it shall notify those of its tenants who thereby become secure tenants.
- (4) Notice under subsection (3) shall be given in writing to each tenant concerned, within the period of 21 days beginning with the date on which the association ceases to be registered.
- (5) In this section—
- (a) references to registration in relation to a housing association are to registration under the Housing Associations Act 1985;
  - (b) “co-operative housing association” has the same meaning as in section 300(1)(b).

#### **46 Restriction on termination of secure tenancy.**

- (1) Notwithstanding any provision contained in the tenancy agreement, a secure tenancy may not be brought to an end except—
- (a) by the death of the tenant (or, where there is more than one, of any of them), where there is no qualified person within the meaning of section 52;
  - (b) by operation of section 52(4) or (5);
  - (c) by written agreement between the landlord and the tenant;
  - (d) by operation of section 50(2);
  - (e) by an order for recovery of possession under section 48(2); or
  - (f) by 4 weeks’ notice given by the tenant to the landlord.
- (2) If, while the house which the tenant under a secure tenancy normally occupies is not available for occupation, the tenant is accommodated temporarily in another house of which the landlord is a body mentioned in section 44(2), either—
- (a) by agreement; or
  - (b) following an order under section 48(2) (in a case where an order has also been made under subsection (5) of that section),

the landlord shall not be entitled to bring the tenant’s occupation of the other house to an end before the house which he normally occupies is available for occupation unless the secure tenancy has been brought to an end.

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#### **47 Proceedings for possession.**

- (1) The landlord under a secure tenancy may raise proceedings for recovery of possession of the house by way of summary cause in the sheriff court of the district in which it is situated.
- (2) Proceedings for recovery of possession of a house subject to a secure tenancy may not be raised unless—
  - (a) the landlord has served on the tenant a notice complying with subsection (3);
  - (b) the proceedings are raised on or after the date specified in the said notice; and
  - (c) the notice is in force at the time when the proceedings are raised.
- (3) A notice under this section shall be in a form prescribed by the Secretary of State by statutory instrument, and shall specify—
  - (a) the ground, being a ground set out in Part I of Schedule 3, on which proceedings for recovery of possession are to be raised; and
  - (b) a date, not earlier than 4 weeks from the date of service of the notice or the date on which the tenancy could have been brought to an end by a notice to quit had it not been a secure tenancy, whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (4) A notice under this section shall cease to be in force 6 months after the date specified in it in accordance with subsection (3)(b), or when it is withdrawn by the landlord, whichever is earlier.

#### **48 Powers of sheriff in proceedings.**

- (1) The court may, as it thinks fit, adjourn proceedings under section 47 on a ground set out in any of paragraphs 1 to 7 and 16 of Part I of Schedule 3 for a period or periods, with or without imposing conditions as to payment of outstanding rent or other conditions.
- (2) Subject to subsection (1), in proceedings under section 47 the court shall make an order for recovery of possession if it appears to the court that the landlord has a ground for recovery of possession, being—
  - (a) a ground set out in any of paragraphs 1 to 7 of that Part and specified in the notice required by section 47 and that it is reasonable to make the order; or
  - (b) a ground set out in any of paragraphs 8 to 15 of that Part and so specified and that other suitable accommodation will be available for the tenant when the order takes effect; or
  - (c) the ground set out in paragraph 16 of that Part and so specified and both that it is reasonable to make the order and that other suitable accommodation will be available as aforesaid.
- (3) Part II of Schedule 3 shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).
- (4) An order under subsection (2) shall appoint a date for recovery of possession and shall have the effect of—
  - (a) terminating the tenancy; and
  - (b) giving the landlord the right to recover possession of the house, at that date.

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- (5) Where, in proceedings under section 47 on the ground set out in paragraph 10 of Part I of Schedule 3, it appears to the court that it is the intention of the landlord—
- (a) that substantial work will be carried out on the building (or a part of the building) which comprises or includes the house; and
  - (b) that the tenant should return to the house after the work is completed,
- the court shall make an order that the tenant shall be entitled to return to the house after the work is completed; and subsection (4)(a) shall not apply in such a case.

#### **49 Rights of landlord where a secure tenancy appears to have been abandoned.**

- (1) This section shall have effect where a landlord who has let a house under a secure tenancy has reasonable grounds for believing that—
- (a) the house is unoccupied; and
  - (b) the tenant does not intend to occupy it as his home.
- (2) The landlord shall be entitled to enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the house in accordance with section 50.

#### **50 Repossession.**

- (1) A landlord wishing to take possession of a house under section 49(4) shall serve on the tenant a notice—
- (a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as his home;
  - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if he intends to occupy the house as his home; and
  - (c) informing the tenant that, if it appears to the landlord at the end of the said period of 4 weeks that the tenant does not intend so to occupy the house, the secure tenancy will be terminated forthwith.
- (2) Where the landlord has—
- (a) served on the tenant a notice which complies with subsection (1); and
  - (b) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as his home,
- and at the end of the period of 4 weeks mentioned in subsection (1)(c) is so satisfied, it may serve a further notice on the tenant bringing the tenancy to an end forthwith.
- (3) Where a tenancy has been terminated in accordance with this section the landlord shall be entitled to take possession of the house forthwith without any further proceedings.
- (4) The Secretary of State may by order made by statutory instrument make provision for the landlord to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies, and in particular—
- (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant; and

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- (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to him before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

## **51 Tenant's right of recourse to sheriff.**

- (1) A tenant under a secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 50(2) may raise proceedings by summary application within 6 months after the date of the termination in the sheriff court of the district in which the house is situated.
- (2) Where in proceedings under this section it appears to the sheriff that—
  - (a) the landlord has failed to comply with any provision of section 50; or
  - (b) the landlord did not have reasonable grounds for finding that the house was unoccupied, or did not have reasonable grounds for finding that the tenant did not intend to occupy it as his home; or
  - (c) the landlord was in error in finding that the tenant did not intend to occupy the house as his home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of his intention so to occupy it,he shall—
  - (i) where the house has not been let to a new tenant, make an order that the secure tenancy shall continue; or
  - (ii) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (3) Part II of Schedule 3 to this Act shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(ii).

### *Succession*

## **52 Succession to secure tenancy.**

- (1) On the death of a tenant under a secure tenancy, the tenancy shall pass by operation of law to a qualified person, unless—
  - (a) there is no qualified person, or the qualified person declines the tenancy under subsection (4); or
  - (b) the tenancy is terminated by operation of subsection (5).
- (2) For the purposes of this section, a qualified person is—
  - (a) a person whose only or principal home at the time of the tenant's death was the house and who was at that time either—
    - (i) the tenant's spouse; or
    - (ii) living with the tenant as husband and wife; and
  - (b) where the tenancy was held jointly by two or more individuals, a surviving tenant where the house was his only or principal home at the time of the tenant's death;
  - (c) where there is no person falling within paragraph (a) or (b), a member of the tenant's family who has attained the age of 16 years where the house was his only or principal home throughout the period of 12 months immediately preceding the tenant's death.

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- (3) Where there is more than one qualified person, the benefit of the provisions of subsection (1) or, as the case may be, of subsection (6) shall accrue—
- (a) to such qualified person; or
  - (b) to such two or more qualified persons as joint tenants,
- as may be decided by agreement between all the qualified persons or, failing agreement within 4 weeks of the death of the tenant, as the landlord shall decide.
- (4) A qualified person who is entitled to the benefit of subsection (1) may decline the tenancy by giving the landlord notice in writing within 4 weeks of the tenant's death, and—
- (a) he shall vacate the house within 3 months thereafter;
  - (b) he shall be liable to pay rent which becomes due after the said death only in respect of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) during any part of which he has occupied the house after the said death.
- (5) A secure tenancy which has passed under subsection (1) to a qualified person shall not, on the death of a tenant (or one of joint tenants) so pass on a second occasion, and accordingly the secure tenancy shall be terminated when such a death occurs; but the provisions of this subsection shall not operate so as to terminate the secure tenancy of any tenant under a joint tenancy where such a joint tenant continues to use the house as his only or principal home.
- (6) Where a secure tenancy is terminated by operation of subsection (5) and there is a qualified person, he shall be entitled to continue as tenant for a period not exceeding 6 months, but the tenancy shall cease to be a secure tenancy.
- (7) Where a tenant gives up a secure tenancy in order to occupy another house which is subject to a secure tenancy, whether by agreement or following termination of the first tenancy by an order under section 48(2)(b), for the purposes of subsections (2) and (5) those tenancies shall be treated as being a single secure tenancy.

### *Leases*

#### **53 Tenant's right to written lease.**

- (1) Every secure tenancy shall be constituted by writing which shall be <sup>F1</sup>subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995.]
- (2) It shall be the duty of the landlord under a secure tenancy to draw up the documents required to comply with subsection (1), to ensure that they are duly executed before the commencement of the tenancy and to supply a copy of the documents to the tenant.
- (3) A tenant shall not be required to pay any fees in respect of anything done under subsection (2).

#### **Textual Amendments**

**F1** Words in s. 53(1) substituted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), Sch. 4 para. 59

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## 54 Restriction on variation of terms of secure tenancies.

- (1) Notwithstanding anything contained in the tenancy agreement, the terms of a secure tenancy may not be varied except—
  - (a) by agreement between the landlord and the tenant; or
  - (b) under subsection (2) or (4).
- (2) The rent or any other charge payable under a secure tenancy may, without the tenancy being terminated, and subject to section 58 of the <sup>M1</sup>Rent (Scotland) Act 1984, be increased with effect from the beginning of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) by a written notice of increase given by the landlord to the tenant not less than 4 weeks before the beginning of the rental period (or any earlier day on which the payment of rent in respect of that period falls to be made).
- (3) Where—
  - (a) a landlord wishes to vary the terms or conditions of a secure tenancy, but the tenant refuses or fails to agree the variation; or
  - (b) a tenant wishes to vary any term of a secure tenancy which restricts his use or enjoyment of the house, on the ground that—
    - (i) by reason of changes in the character of the house or of the neighbourhood or other circumstances which the sheriff may deem material, the term is or has become unreasonable or inappropriate; or
    - (ii) the term is unduly burdensome compared with any benefit which would result from its performance; or
    - (iii) the existence of the term impedes some reasonable use of the house, but the landlord refuses or fails to agree the variation,the landlord or, as the case may be, the tenant may raise proceedings by way of summary application in the sheriff court of the district in which the house is situated.
- (4) In proceedings under subsection (3), the sheriff may make such order varying any term of the tenancy (other than a term relating to the amount of rent or of any other charge payable by the tenant) as he thinks it reasonable to make in all the circumstances, having particular regard to the safety of any person and to any likelihood of damage to the house or to any premises of which it forms part, including if the sheriff thinks fit an order that the tenant shall pay to the landlord such sum as the sheriff thinks just to compensate him for any patrimonial loss occasioned by the variation; and such an order shall not have the effect of terminating the tenancy.
- (5) At any time before he grants an order in proceedings under subsection (3)(b), the sheriff may order the tenant to serve a copy of his application on any person who, in the capacity of owner or tenant of any land—
  - (a) appears to the sheriff to benefit from the term of which variation is sought; or
  - (b) appears to him to be adversely affected by the proposed variation.
- (6) An agreement under subsection (1)(a) shall be in writing which is [<sup>F2</sup>subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995,] and it shall be the duty of the landlord to draw up the said writing and to ensure that it is duly executed.

### Textual Amendments

**F2** Words in s. 54(6) substituted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), Sch. 4 para. 60

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#### Marginal Citations

M1 1984 c. 58.

### *Subletting*

#### 55 No subletting by secure tenant without landlord’s consent.

- (1) It shall be a term of every secure tenancy that the tenant shall not assign, sublet or otherwise give up to another person possession of the house or any part thereof or take in a lodger except with the consent in writing of the landlord, which shall not be unreasonably withheld.
- (2) The landlord may refuse consent under this section if it appears to it that a payment other than—
  - (a) a rent which is in its opinion a reasonable rent; or
  - (b) a deposit returnable at the termination of the assignation, subletting or other transaction given as security for the subtenant’s obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents, which in its opinion is reasonable,
 has been or is to be received by the tenant in consideration of the assignation, subletting or other transaction.
- (3) This section shall not apply to any assignation, subletting or other transaction entered into before 3rd October 1980 provided that the consent of the landlord to the transaction and to the rent which is being charged has been obtained.
- (4) An assignation, subletting or other transaction to which this section applies shall not be a protected tenancy or a statutory tenancy within the meaning of the <sup>M2</sup>Rent (Scotland) Act 1984 [<sup>F3</sup>or an assured tenancy within the meaning of the Housing (Scotland) Act 1988, nor shall Part VII of the said Act of 1984] apply to such an assignation, sublet or other transaction.
- (5) In this section and in section 56, “subtenant” means a person entitled to possession of a house or any part thereof under an assignation, subletting or other transaction to which this section applies, and includes a lodger.
- (6) The provisions of Schedule 4 shall have effect as terms of every secure tenancy.

#### Textual Amendments

F3 Words substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(2\), Sch. 9 para. 10](#)

#### Marginal Citations

M2 1984 c. 58.

#### 56 Rent payable by subtenants.

- (1) It shall be a term of every secure tenancy—
  - (a) that the tenant shall notify the landlord of any proposed increase in a rent to which this section applies; and



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- (b) that no increase shall be made in a rent to which this section applies if the landlord objects.
- (2) Where a landlord under a secure tenancy has given consent to an assignment, subletting or other transaction under section 55, subsection (1) shall apply to the rent payable by the subtenant at the commencement of the assignment, subletting or other transaction.

### *Repairs and improvements*

#### **57 Landlord’s consent to work.**

- (1) It shall be a term of every secure tenancy that the tenant shall not carry out work, other than interior decoration, in relation to the house without the consent in writing of the landlord, which shall not be unreasonably withheld.
- (2) In this section and in Schedule 5, “work” means—
  - (a) alteration, improvement or enlargement of the house or of any fittings or fixtures;
  - (b) addition of new fittings or fixtures;
  - (c) erection of a garage, shed or other structure,but does not include repairs or maintenance of any of these.
- (3) The provisions of Schedule 5 shall have effect as terms of every secure tenancy.

#### **58 Reimbursement of cost of work.**

- (1) On the termination of a secure tenancy, the landlord shall have the power (in addition to any other power which it has to make such payments) to make any payment to the tenant which it considers to be appropriate in respect of any work carried out by him (or by any predecessor of his as tenant under the same secure tenancy) with the consent of the landlord under section 57, which has materially added to the price which the house might be expected to fetch if sold on the open market.
- (2) The amount of any payment under subsection (1) shall not exceed the cost of the work in respect of which it is made, after deduction of the amount of any grant paid or payable under Part I of the Act of 1974 or under Part XIII.
- (3) Where a secure tenancy has been terminated (under section 46(1)(a)) by the death of the tenant, a payment under subsection (1) may be made to the tenant’s personal representatives.

#### **[<sup>F4</sup>58A Right to compensation for improvements.**

- (1) For the purposes of this section—
  - (a) “qualifying improvement work” is improvement work which is prescribed as such by the Secretary of State and which is begun not earlier than the commencement of section 147 of the Leasehold Reform, Housing and Urban Development Act 1993;
  - (b) “qualifying person” is a person who is, at the time the tenancy comes to an end, the tenant of a landlord named in sub-paragraphs (i) to (iv) of section 61(2)(a); and—

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- (i) is the tenant by whom the qualifying work was carried out; or
    - (ii) is a tenant of a joint tenancy which existed at the time the improvement work was carried out; or
    - (iii) succeeded to the tenancy under section 52 on the death of the tenant who carried out the work and the tenancy did not cease to be a secure tenancy on his succession;
  - (c) a tenancy is terminated when—
    - (i) any of the circumstances of subsection (1) of section 46 apply and, in a case where the termination is under paragraph (c) or (f) of that subsection, the house which is the subject of the secure tenancy is vacated;
    - (ii) there is a change of landlord;
    - (iii) it is assigned to a new tenant.
- (2) Where the tenant of a landlord specified in sub-paragraphs (i) to (iv) of section 61(2)(a) has carried out qualifying improvement work with the consent of that landlord under section 57, the qualifying person or persons shall on the termination of the tenancy be entitled to be paid compensation by the landlord in respect of the improvement work.
- (3) Compensation shall not be payable if—
- (a) the improvement is not of a prescribed description; or
  - (b) the tenancy comes to an end in prescribed circumstances; or
  - (c) compensation has been paid under section 58 in respect of the improvement; or
  - (d) the amount of any compensation which would otherwise be payable is less than such amount as may be prescribed,
- and for the purposes of this subsection a prescribed description may be framed by reference to any circumstances whatever.
- (4) Regulations under this section may provide that—
- (a) any compensation payable shall be—
    - (i) determined by the landlord in such manner and taking into account such matters as may be prescribed; or
    - (ii) calculated in such manner and taking into account such matters as may be prescribed,
 and shall not exceed such amount, if any, as may be prescribed; and
  - (b) the landlord may set off against any compensation payable under this section any sums owed to it by the qualifying person or persons.
- (5) Where, in the case of two or more qualifying persons, one of them (“the missing person”) cannot be found—
- (a) a claim for compensation under this section may be made by, and compensation may be paid to, the other qualifying person or persons; but
  - (b) the missing person shall be entitled to recover his share of any compensation so paid from that person or those persons.
- (6) The Secretary of State may by regulations made under this section make such procedural, incidental, supplementary and transitional provisions as appear to him to be necessary or expedient, and may in particular—

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- (a) provide for the manner in which and the period within which claims for compensation under this section are to be made, and for the procedure to be followed in determining such claims;
  - (b) prescribe the form of any document required to be used for the purposes of or in connection with such claims; and
  - (c) provide for the determination of questions arising under the regulations.
- (7) Regulations under this section—
- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas;
  - (b) shall be made by statutory instrument which (except in the case of regulations which are made only under subsection (6)(b)) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F4** S. 58A inserted (1.4.1994) by 1993 c. 28, s. 147; S.I. 1993/2163, art. 2, Sch. 2.

## 59 Effect of works on rent.

No account shall be taken at any time in the assessment of rent to be payable under a secure tenancy by a tenant who has carried out work on the house or by a person who has succeeded him in the tenancy or by the spouse of such a person of any improvement in the value or amenities of the house resulting from the work carried out by the tenant.

## [<sup>F5</sup>60 Right to have repairs carried out.

- (1) The Secretary of State may make regulations for entitling a secure tenant of a landlord prescribed by the Secretary of State, subject to and in accordance with the regulations, to have qualifying repairs carried out to the house which is the subject of the secure tenancy.
- (2) Those regulations shall prescribe—
  - (a) the maximum amount which will be paid in respect of any single qualifying repair;
  - (b) the maximum time within which a qualifying repair is to be completed.
- (3) The regulations may also provide that—
  - (a) a landlord which has been prescribed under subsection (1) shall—
    - (i) maintain a list of contractors who are prepared to carry out qualifying repairs;
    - (ii) take such steps as may be prescribed to make its secure tenants aware of the provisions of the regulations and of the list of contractors;
    - (iii) where the tenant makes an application to him for a qualifying repair to be carried out, issue a works order to the usual contractor specifying the nature of the repair and the last day of the maximum time prescribed under subsection (2)(b);
  - (b) where the usual contractor has not started the repair work by the last day specified in the works order, the tenant shall have the right to instruct one of the other listed contractors to carry out the repair;

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- (c) where the repair work is carried out by that other listed contractor, the landlord shall be liable to pay for the work carried out;
  - (d) a listed contractor who is instructed by a tenant shall notify the landlord that he has been so instructed as soon as he receives the instruction;
  - (e) if the usual contractor fails to carry out the repair within the specified maximum time, the landlord shall pay to the tenant such sum by way of compensation as may be determined by or under the regulations;
  - (f) the landlord may set off against any compensation payable under the regulations any sums owed to it by the tenant.
- (4) The regulations may—
- (a) make different provision with respect to different cases or descriptions of case, including different provision for different areas;
  - (b) make such procedural, incidental, supplementary and transitional provision as appears to the Secretary of State necessary or expedient.
- (5) Nothing in subsections (2) to (4) above shall be taken as prejudicing the generality of subsection (1).
- (6) Regulations under this section shall be made by statutory instrument.
- (7) In this section—
- “listed contractor” means any contractor (including the usual contractor) specified in the landlord’s list of contractors;
  - “qualifying repair” means a repair prescribed as such in the regulations;
  - “usual contractor” means the direct services organisation of the landlord or the contractor to whom the landlord has contracted its repairs.]

#### Textual Amendments

**F5** S. 60 substituted (1.4.1994) by 1993 c. 28, s. 146; S.I. 1993/2163, art. 2, Sch. 2.

### *Right to buy*

#### **61 Secure tenant’s right to purchase**

- (1) Notwithstanding anything contained in any agreement, a tenant of a house to which this section applies (or such one or more of joint tenants as may be agreed between them) shall, subject to this Part, have the right to purchase the house at a price fixed under section 62.
- (2) This section applies to every house let under a secure tenancy where—
- (a) the landlord is either—
    - [<sup>F6</sup>(i) a local authority, or a joint board or joint committee of two or more local authorities, or the common good of a local authority or any trust under the control of a local authority; or
    - (ii) a water authority or sewerage authority;]
    - (iii) a development corporation (including an urban development corporation); or
    - [<sup>F7</sup>(iv) Scottish Homes]

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- (v) the Housing Corporation; or
  - (vi) a registered housing association; or
  - (vii) a housing co-operative; or
  - (viii) a police authority in Scotland; or
  - (ix) a fire authority in Scotland; and
- (b) the landlord is the heritable proprietor of the house or, in the case of a landlord who is a housing co-operative, a body mentioned in paragraph (a)(i) is the heritable proprietor; and
- (c) immediately prior to the date of service of an application to purchase, the tenant has been for not less than 2 years in occupation of a house (including accommodation provided as mentioned in subsection (11)(n)) or of a succession of houses provided by any persons mentioned in subsection (11).
- [<sup>F8</sup>(2A) For the purposes of subsection (2)(c), where the house was provided by a housing association which, at any time while the house was so provided, was not a registered housing association, the association shall, if it became a registered housing association at any later time, be deemed to have been a registered housing association at all times since it first provided the house.]
- (3) This section also applies to a house let under a secure tenancy granted in pursuance of section [<sup>F9</sup>282(2) or (3)] (grant of secure tenancy on acquisition of defective dwelling), if the tenant would not otherwise have the right to purchase under this Part; and where it so applies—
- (a) paragraph (c) of subsection (2) shall not have effect;
  - (b) the words “beyond 2” in section 62(3)(b) shall not have effect.
- (4) This section does not apply—
- (a) to a house that is one of a group which has been provided with facilities (including a call system and the services of a warden) specially designed or adapted for the needs of persons of pensionable age or disabled persons; or
  - (b) where a landlord which is a registered housing association has at no time received a grant under—
    - (i) any enactment mentioned in paragraph 2 of Schedule 1 to the <sup>M3</sup>Housing Associations Act 1985 (grants under enactments superseded by the <sup>M4</sup>Housing Act 1974);
    - (ii) section 31 of the Housing Act 1974 (management grants);
    - (iii) section 41 of the Housing Associations Act 1985 (housing association grants);
    - (iv) section 54 of that Act (revenue deficit grants);
    - (v) section 55 of that Act (hostel deficit grants); [<sup>F10</sup>or]
    - (vi) section 59(2) of that Act (grants by local authorities); [<sup>F10</sup>or]
    - [<sup>F11</sup>(vii) section 50 of the Housing Act 1988 (housing association grants); or
    - (viii) section 51 of that Act (revenue deficit grants); or]
  - (c) where such a landlord has at no time let (or had available for letting) more than 100 dwellings; or
  - (d) where such a landlord is a charity—
    - (i) entered in the register of charities maintained under the <sup>M5</sup>Charities Act 1960 by the Charity Commissioners for England and Wales; or

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- (ii) which but for section 4(4) of, and paragraph (g) of the Second Schedule to, that Act (exempt charities) would require to be so entered; or
  - (e) where by virtue of section 49(2) of the said Act of 1960 (extent) such a landlord is not one to which Part II of that Act (registration of charities, etc.) applies, but—
    - (i) the landlord has, in respect of all periods from 14th November 1985 or from the date of first being registered by the Housing Corporation [<sup>F12</sup>or by Scottish Homes] (whichever is the later) claimed and been granted (whether or not retrospectively), under section 360(1) of the <sup>M6</sup>Income and Corporation Taxes Act 1970 (special exemptions for charities), exemption from tax; and
    - (ii) where such exemption has not been claimed and granted in respect of all periods from the said date of registration, the rules of the landlord, registered under the <sup>M7</sup>Industrial and Provident Societies Act 1965 and in force at that date, were such as would have admitted of such exemption had it been claimed as at that date; or
  - (f) where, within a neighbourhood, the house is one of a number (not exceeding 14) of houses with a common landlord, being a [<sup>F13</sup>landlord which is a registered housing association], and it is the practice of that landlord to let at least one half of those houses for occupation by any or all of the following—
    - (i) persons who have suffered from, or are suffering from, mental disorder (as defined in the <sup>M8</sup>Mental Health (Scotland) Act 1984), physical handicap or addiction to alcohol or other drugs;
    - (ii) persons who have been released from prison or other institutions;
    - (iii) young persons who [<sup>F14</sup>as children have been looked after by] a local authority,

and a social service is, or special facilities are, provided wholly or partly for the purpose of assisting those persons.
- <sup>F15</sup>(4A) The reference in subsection (4)(f)(iii) above to children looked after by a local authority shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.]
- (5) Where the spouse of a tenant or, where there is a joint tenancy, the spouse of a joint tenant, occupies the house as his only or principal home but is not himself a joint tenant, the right to purchase the house under subsection (1) shall not be exercised without the consent of such spouse.
  - (6) A tenant may exercise his right to purchase, if he so wishes, together with one or more members of his family acting as joint purchasers, provided—
    - (a) that such members are at least 18 years of age, that they have, during the period of 6 months ending with the date of service of the application to purchase, had their only or principal home with the tenant and that their residence in the house is not a breach of any obligation of the tenancy; or
    - (b) where the requirements of paragraph (a) are not satisfied, the landlord has consented.
  - (7) The Secretary of State may by order made by statutory instrument amend, or add to, the descriptions of persons set out in sub-paragraphs (i) to (iii) of paragraph (f) of subsection (4).

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- (8) The Commissioners of Inland Revenue shall, as regards any registered housing association, at the request of the Secretary of State, provide him [<sup>F16</sup>, the Housing Corporation and Scottish Homes] with such information as will enable them to determine whether that association is a landlord in respect of which this section will not, by virtue of subsection (4)(d), apply; and where a registered housing association is refused exemption on a claim under section 360(1) of the <sup>M9</sup>Income and Corporation Taxes Act 1970 the Commissioners shall forthwith inform the Secretary of State [<sup>F16</sup>, the Housing Corporation and Scottish Homes] of that fact.
- (9) Where information has been received by the Housing Corporation [<sup>F17</sup>or by Scottish Homes] under subsection (8) and having regard to that information the Corporation [<sup>F18</sup>or, as the case may be, Scottish Homes] is satisfied that the housing association to which it relates is not a landlord in respect of which this section applies, they shall make an entry to that effect in the register of housing associations maintained by them under section 3(1) [<sup>F19</sup>or, as the case may be, 3(1A)] of the <sup>M10</sup>Housing Associations Act 1985; and they shall cancel that entry where subsequent information so received in relation to that housing association is inconsistent with their being so satisfied.
- (10) In this section and the following section—
- (a) references to occupation of a house include occupation—
    - (i) in the case of joint tenants, by any one of them;
    - (ii) by any person occupying the house rent-free;
    - (iii) as the spouse of the tenant, joint tenant or of any such person;
    - (iv) as the child, or the spouse of a child, of a tenant or a person occupying the house rent free who has succeeded, directly or indirectly, to the rights of that person in a house occupation of which would be reckonable for the purposes of this section; but only in relation to any period when the child, or as the case may be spouse of the child, is at least 16 years of age; or
    - (v) . . . . . <sup>F20</sup>, as a member of the family of a tenant or a person occupying the house rent free who, not being that person's spouse or child (or child's spouse), has succeeded, directly or indirectly, to such rights as are mentioned in paragraph (iv); but only in relation to any period when the member of the family is at least 16 years of age.
  - (b) for the purpose of determining the period of occupation—
    - <sup>F21</sup>(i) . . . . .
    - <sup>F21</sup>(ii) . . . . .
    - [<sup>F22</sup>(iii) there shall be added to the period of occupation of a house by a joint tenant any earlier period during which he was at least 16 years of age and occupied the house as a member of the family of the tenant or of one or more of the joint tenants of the house.]
- (11) The persons providing houses referred to in subsection (2)(c) (occupation requirement for exercise of right to purchase) and in section 62(3)(b) (calculation of the discount from the market value) are—
- (a) [<sup>F23</sup>any local authority] in Scotland; any local authority in England and Wales or in Northern Ireland; and the statutory predecessors of any such <sup>F24</sup> . . . authority, or the common good of any such [<sup>F23</sup>authority], or any trust under the control of any such [<sup>F23</sup>authority];
  - (b) the Commission for the New Towns;

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- (c) a development corporation, an urban development corporation; and any development corporation established under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
- [<sup>F25</sup>(d) Scottish Homes and the Scottish Special Housing Association;]
- (e) a registered housing association;
- (f) the Housing Corporation;
- (g) a housing co-operative within the meaning of section 22 or a housing co-operative within the meaning of section 27B of the <sup>M11</sup>Housing Act 1985;
- <sup>F26</sup>(h) . . . . .
- (i) the Northern Ireland Housing Executive or any statutory predecessor;
- (j) a police authority or the statutory predecessors of any such authority;
- (k) a fire authority or the statutory predecessors of any such authority;
- (l) a water authority [<sup>F27</sup>or sewerage authority] in Scotland; any water authority constituted under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
- (m) the Secretary of State, where the house was at the material time used for the purposes of the Scottish Prison Service or of a prison service for which the Home Office or the Northern Ireland Office have responsibility;
- (n) the Crown, in relation to accommodation provided in connection with service whether by the tenant or his spouse as a member of the regular armed forces of the Crown;
- (o) the Secretary of State, where the house was at the material time used for the purposes of a health board constituted under section 2 of the <sup>M12</sup>National Health Services (Scotland) Act 1978 or for the purposes of a corresponding board in England and Wales, or for the purposes of the statutory predecessors of any such board; or the Department of Health and Social Services for Northern Ireland, where the house was at the material time used for the purposes of a Health and Personal Services Board in Northern Ireland, or for the purposes of the statutory predecessors of any such board;
- (p) the Secretary of State, or the Minister of Agriculture, Fisheries and Food, where the house was at the material time used for the purposes of the Forestry Commission;
- (q) the Secretary of State, where the house was at the material time used for the purposes of a State Hospital provided by him under section 90 of the <sup>M13</sup>Mental Health (Scotland) Act 1984 or for the purposes of any hospital provided under corresponding legislation in England and Wales;
- (r) the Commissioners of Northern Lighthouses;
- (s) the Trinity House;
- (t) the Secretary of State, where the house was at the material time used for the purposes of Her Majesty's Coastguard;
- (u) the United Kingdom Atomic Energy Authority;
- (v) the Secretary of State, where the house was at the material time used for the purposes of any function transferred to him under section 1(2) of the <sup>M14</sup>Defence (Transfer of Functions) Act 1964 or any function relating to defence conferred on him by or under any subsequent enactment;
- (w) such other person as the Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament prescribe.



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### Textual Amendments

- F6** S. 61(2)(a): sub-paras. (i) and (ia) substituted (1.4.1996) for sub-paras. (i) and (ii) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(2)(a)**; S.I. 1996/323, **art. 4**
- F7** S. 61(2)(a)(iv) substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), **s. 3(2)**
- F8** S. 61(2A) inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(1), **Sch. 8 para. 1**
- F9** Words substituted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 93**
- F10** Word repealed (*prosp.*) by Housing Act 1988 (c. 50, SIF 61), ss. 140(2), 141(1), **Sch. 18**
- F11** S. 61(4)(b)(vii)(viii) inserted (*prosp.*) by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 79**
- F12** Words inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3, **Sch. 2 para. 9(a)**
- F13** Words substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(1), **Sch. 7 para. 2**
- F14** Words in s. 61(4)(f)(iii) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 42(a)**; S.I. 1996/3201, **art. 3(7)**
- F15** S. 61(4A) added (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 42(b)**; S.I. 1996/3201, **art. 3(7)**
- F16** Words substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3, **Sch. 2 para. 9(b)**
- F17** Words inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3, **Sch. 2 para. 9(c)(i)**
- F18** Words inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3, **Sch. 2 para. 9(c)(ii)**
- F19** Words inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3, **Sch. 2 para. 9(c)(iii)**
- F20** Words repealed by Local Government and Housing Act 1989 (c. 42, SIF 61), ss. 176(1)(a)(2), 194(4), **Sch. 12 Pt. II**
- F21** S. 61(10)(b)(i)(ii) repealed (27.9.1993) by 1993 c. 28, ss. 157(2), 187(2), **Sch. 22**; S.I. 1993/2163, **art. 2, Sch. 1**
- F22** Word “and” and s. 61(10)(b)(iii) added by Local Government and Housing Act 1989 (c. 42, SIF 61), **s. 176(1)(b)(2)**
- F23** Words in s. 61(11)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(2)(b)(i)(iii)**; S.I. 1996/323, **art. 4**
- F24** Words in s. 61(11)(a) repealed (1.4.1996) by 1994 c. 39, s. 180, **Sch. 13 para. 152(2)(b)(ii), Sch. 14**; S.I. 1996/323, **art. 4**
- F25** S. 61(11)(d) substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3, **Sch. 2 para. 9(d)**
- F26** S. 61(11)(h) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV**; S.I. 1999/2244, **art. 4**
- F27** Words in s. 61(11)(l) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(2)(c)**; S.I. 1996/323, **art. 4**

### Modifications etc. (not altering text)

- C1** S. 61 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, **Sch. 1**

### Marginal Citations

- M3** 1985 c. 69.  
**M4** 1974 c. 44.  
**M5** 1960 c. 58.  
**M6** 1970 c. 10.  
**M7** 1965 c. 12.  
**M8** 1984 c. 36.  
**M9** 1970 c. 10.  
**M10** 1985 c. 68.  
**M11** 1985 c. 68.  
**M12** 1978 c. 29.  
**M13** 1984 c. 36.  
**M14** 1964 c. 15

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VALID FROM 30/09/2002

**[<sup>F28</sup>61A Limitation on right to purchase from registered social landlords**

- (1) Subject to subsection (2), this section applies to a Scottish secure tenancy where the landlord is a registered social landlord and—
  - (a) the tenancy was created on or after the date specified in relation to the landlord in an order under section 11(1) of the Housing (Scotland) Act 2001 (asp 10), or
  - (b) the tenancy became a Scottish secure tenancy by virtue of such an order.
- (2) This section does not apply—
  - (a) to a tenancy of a house acquired by the landlord after the date referred to in subsection (1)(a),
  - (b) to a tenancy of a house constructed by the landlord after that date if an offer of grant in connection with the construction was made by the Scottish Ministers or a local authority after that date,
  - (c) in such other circumstances as the Scottish Ministers may specify by order made by statutory instrument.
- (3) Where this section applies, section 61(1) does not apply in relation to a house let under the tenancy until the expiry of—
  - (a) the period of 10 years beginning with the date referred to in subsection (1)(a), and
  - (b) any further period determined under subsection (4).
- (4) The Scottish Ministers may if they think fit, on an application made by the landlord before the expiry of a period mentioned in subsection (3)(a) or (b), determine a further period, not exceeding 10 years, for the purposes of paragraph (b) of that subsection.
- (5) The Scottish Ministers may issue guidance as to—
  - (a) the form of such an application,
  - (b) the information to be provided by the landlord in support of such an application.
- (6) Before making an application under subsection (4), the landlord shall consult—
  - (a) any heritable creditor of the landlord having an interest in a house of the landlord's in relation to which this section applies, and
  - (b) such other persons as it thinks fit.
- (7) If a registered social landlord so elects by notice in writing to the Scottish Ministers, subsection (3) ceases, on the date specified in the notice, to have effect in relation to houses let (whether before or after that date) by the landlord.
- (8) A notice given under subsection (7) cannot be withdrawn after the date specified in it.
- (9) Where a landlord gives a notice under subsection (7) it shall take such steps as are reasonable to inform—
  - (a) those of its tenants affected by the operation of subsection (3), and
  - (b) any heritable creditor referred to in subsection (6)(a),
 that the notice has been given and of its effect.

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(10) A statutory instrument containing an order under subsection (2)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

#### Textual Amendments

**F28** S. 61A inserted (30.9.2002) by 2001 asp 10, s. 44; S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

VALID FROM 30/09/2002

#### [<sup>F29</sup>61B Limitation on right to purchase: pressured areas

- (1) The Scottish Ministers may, from time to time, on a proposal from a local authority, designate any part of the local authority's area as a pressured area if they consider that—
  - (a) the needs of that part for housing accommodation in houses provided by the authority or by registered social landlords exceed substantially, or are likely to exceed substantially, the amount of such housing accommodation which is, or is likely to be, available in that part, and
  - (b) the exercise by tenants of houses in that part of the right under section 61(1) to purchase such houses is likely to increase the extent by which such needs exceed the amount of such housing accommodation.
- (2) A designation under subsection (1)—
  - (a) may be in terms of the proposal or in such other terms as the Scottish Ministers think fit,
  - (b) has effect for such period, not exceeding 5 years, as the Scottish Ministers may specify.
- (3) For so long as an area is designated as a pressured area, section 61(1) does not apply in relation to a house in the area—
  - (a) let under a tenancy created on or after the date specified in relation to the landlord in an order under section 11(1) of the Housing (Scotland) Act 2001 (asp 10), or
  - (b) let under a tenancy created before that date where—
    - (i) the tenant did not, immediately before that date, have a right under section 61(1) to purchase the house, or
    - (ii) the tenant succeeded to the tenancy on or after that date.
- (4) In determining for the purposes of subsection (3)(b)(i) whether a tenant had a right to purchase a house, section 61(2)(c) is to be left out of account.
- (5) A designation under subsection (1) shall—
  - (a) identify the pressured area,
  - (b) specify the date on which the designation takes effect, and
  - (c) specify the period for which it has effect.
- (6) The local authority shall take such steps as are reasonable to publicise—
  - (a) a designation under subsection (1) and its effect,

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- (b) any amendment or revocation of such a designation under subsection (8) and its effect.
- (7) Where a local authority landlord or a registered social landlord offers a person a tenancy of a house in an area in relation to which, on the proposed commencement date of the tenancy, a designation under subsection (1) will be in force, the landlord shall inform the person of the designation and its effect.
- (8) A designation under subsection (1) may be amended or revoked by the Scottish Ministers at any time if the local authority propose that they should do so and provide reasons for that proposal sufficient to justify the amendment or revocation.
- (9) A local authority may make a further proposal under subsection (1) in relation to a part of their area despite a designation under that subsection being, or having been, in force in relation to that part.
- (10) Nothing in this section affects a notice to purchase served prior to the designation of an area as a pressured area.]

#### Textual Amendments

**F29** S. 61B inserted (30.9.2002) by 2001 asp 10, s. 45; S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

VALID FROM 30/09/2002

#### <sup>F30</sup> 61C Pressured area proposals: procedure

- (1) A proposal by a local authority under section 61B(1) shall specify—
  - (a) the part of their area proposed for designation as a pressured area, and
  - (b) the period, not exceeding 5 years, for which it is proposed the designation should have effect.
- (2) The Scottish Ministers may issue guidance as to—
  - (a) the form of such a proposal,
  - (b) the information to be provided by a local authority in support of such a proposal.
- (3) Before making a proposal under section 61B(1) in relation to any part of their area a local authority shall consult—
  - (a) every registered social landlord holding houses for housing purposes in the part in question, and
  - (b) such bodies representing the interests of tenants and other residents in that part, and such other persons, as the authority think fit.

#### Textual Amendments

**F30** S. 61C inserted (30.9.2002) by 2001 asp 10, s. 45; S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

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VALID FROM 30/09/2002

**[<sup>F31</sup>61D Limitation on right to purchase: arrears of rent, council tax etc.**

- (1) Subsections (2) and (3) apply where a tenant serves on a landlord an application to purchase at a time when the tenant, or any joint purchaser (within the meaning of section 61(6))—
  - (a) has not paid the landlord rent or any other charge lawfully due to the landlord under that or any other tenancy, or
  - (b) has not paid any sum lawfully due in respect of—
    - (i) council tax in respect of the house or any other house in the local government area in which the house is situated, or
    - (ii) water and sewerage charges in relation to the house or any other such house.
- (2) If the landlord is a local authority landlord, it is entitled (but not required) to serve on the tenant a notice of refusal under section 68.
- (3) If the landlord is a registered social landlord—
  - (a) where the sum is a sum referred to in subsection (1)(a), the landlord is entitled (but not required) to serve such a notice on the tenant,
  - (b) where the sum is a sum referred to in subsection (1)(b), the landlord shall—
    - (i) consult the local authority for the area in which the house is situated, and
    - (ii) serve such a notice on the tenant unless the authority agree that such a notice should not be served.]

**Textual Amendments**

- F31** S. 61D inserted (30.9.2002) by 2001 asp 10, s. 46(1); S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

VALID FROM 30/09/2002

**[<sup>F32</sup>61E Limitation on right to purchase: conduct**

- (1) Subsection (3) applies where—
  - (a) the landlord has served on the tenant a notice under section 14(2) of the Housing (Scotland) Act 2001 (asp 10) specifying a ground set out in any of paragraphs 1 to 7 of schedule 2 to that Act as the ground on which proceedings for recovery of possession of the house are to be raised, and
  - (b) neither of the following has occurred—
    - (i) the notice has ceased to be in force in accordance with section 14(5) of that Act or has been withdrawn by the landlord without proceedings for recovery of possession having been raised, or
    - (ii) such proceedings have been raised and have been finally determined.

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- (2) For the purposes of subsection (1)(b)(ii) proceedings are finally determined when—
  - (a) the period for appealing against the interlocutor disposing of the proceedings has expired without an appeal being lodged, or
  - (b) where an appeal has been lodged, the appeal is withdrawn or finally determined.
- (3) Where this subsection applies, section 61(1) does not apply in relation to the house referred to in subsection (1) of this section.
- (4) Nothing in this section affects an application to purchase served prior to service of the notice referred to in subsection (1).]

#### Textual Amendments

**F32** S. 61E inserted (30.9.2002) by 2001 asp 10, s. 47; S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

## 62 The price.

- (1) Subject to <sup>F33</sup>subsection (6A)], the price at which a tenant entitled to purchase a house under this Part shall be fixed <sup>F34</sup>as at the date of service of the application to purchase] by subtracting a discount from the market value of the house.
- (2) The market value for the purposes of this section shall be determined by <sup>F35</sup>either]—
  - (a) a qualified valuer nominated by the landlord and accepted by the tenant; or
  - (b) the district valuer,<sup>F36</sup>as the landlord thinks fit] as if the house were available for sale on the open market with vacant possession at the date of service of the application to purchase.

For the purposes of this subsection, no account shall be taken of any element in the market value of the house which reflects an increase in value as a result of work the cost of which would qualify for a reimbursement under section 58.

- (3) Subject to subsection (5), the discount for the purposes of subsection (1) shall be—
  - (a) 32 per cent. of the market value of the house except—
    - (i) where the house is a flat, it shall be 44 per cent. of the market value;
    - (ii) where the house is one to which section 61(3) applies, it shall be 30 per cent. or, where it is a flat, 40 per cent. of the market value;
 together with
    - (b) an additional one per cent. or, where the house is a flat, two per cent., of the market value for every year beyond 2 of <sup>F37</sup>. . . occupation by the appropriate person, <sup>F37</sup>. . . preceding the date of service of the application to purchase, of a house (including accommodation provided as mentioned in section 61(11) (n) or of a succession of houses provided by any persons mentioned in section 61(11),
 up to a maximum discount of 60 per cent., or where the house is a flat, 70 per cent. of the market value.

<sup>F38</sup>(3A) There shall be deducted from the discount an amount equal to any previous discount, or the aggregate of any previous discounts, received by the appropriate person on any

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previous purchase of a house by any of these persons from a landlord who is a person specified in subsection (11) of section 61 or prescribed in an order made under that subsection, reduced by any amount of such previous discount recovered by such a landlord.]

(4) For the purposes of subsection (3)

[<sup>F39</sup>(a) the “appropriate person” is whoever of—

- (i) the tenant; or
- (ii) the tenant’s spouse if living with him at the date of service of the application to purchase; or
- (iii) a deceased spouse if living with the tenant at the time of death; or
- (iv) any joint tenant who is a joint purchaser of the house,

has the longer or longest such occupation;]

[<sup>F40</sup>(b) where the house was provided by a housing association which, at any time while the house was so provided was not a registered housing association, the association shall, if it became a registered housing association at any later time, be deemed to have been a registered housing association at all times since it first provided the house.][<sup>F41</sup> and, for the purposes of subsection (3A), the “appropriate person ” is any of the persons mentioned in sub-paragraphs (i) to (iv) of paragraph (a).]

(5) 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 (3), as may be specified in the order.

(6) An order under subsection (5)—

- (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.

[<sup>F42</sup>(6A) Except where the Secretary of State so determines, the discount for the purpose of subsection (1) shall not reduce the price below the amount which, in accordance with a determination made by him, is to be taken as representing so much of the costs incurred in respect of the house as, in accordance with the determination, is to be treated as—

- (a) incurred in the period commencing with the beginning of the financial year of the landlord which was current 5 years prior to the date of service of the application to purchase the house or such other period as the Secretary of State may by order provide; and
- (b) relevant for the purposes of this subsection,

and, if the price before discount is below that amount, there shall be no discount.

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- (6B) An order under subsection (6A) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may make different provision in relation to different cases or circumstances or different areas.]
- (10) Where at the date of service of an offer to sell under section 63 any of the costs referred to in subsection [F43(6A)] are not known, the landlord shall make an estimate of such unknown costs for the purposes of that subsection.
- (11) . . . . . F44

#### Textual Amendments

- F33** Words substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 65\(1\)\(6\)](#)
- F34** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\), s. 194\(1\), Sch. 11 para. 94](#)
- F35** Word inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 8 para. 2\(a\)\(i\)](#)
- F36** words inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 8 para. 2\(a\)\(ii\)](#)
- F37** Words in s. 62(3)(b) repealed (27.9.1993) by 1993 c. 28, ss. 157(3)(a), 187(2), [Sch. 22](#); S.I. 1993/2163, art. 2, [Sch. 1](#).
- F38** S. 62(3A) inserted (27.9.1993) by 1993 c. 28, [s. 157\(3\)\(b\)](#); S.I. 1993/2163, art. 2, [Sch. 1](#).
- F39** S. 62(4)(a) substituted (27.9.1993) by 1993 c. 28, [s. 157\(3\)\(c\)\(i\)](#); S.I. 1993/2163, art. 2, [Sch. 1](#).
- F40** Word “; and” and s. 62(4)(b) added by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 8 para. 2\(b\)\(ii\)](#)
- F41** Words in s. 62(4) inserted (27.9.1993) by 1993 c. 28, [s. 157\(3\)\(c\)\(ii\)](#); S.I. 1993/2163, art. 2, [Sch. 1](#).
- F42** S. 62(6A)(6B) substituted for s. 62(7)–(9) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 65\(2\)\(6\)](#)
- F43** “(6A)” substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 65\(3\)\(6\)](#)
- F44** S. 62(11)–(13) repealed by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), ss. 65\(4\)\(6\), 72\(3\), Sch. 10](#)

#### Modifications etc. (not altering text)

- C2** S. 62 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, [Sch. 1](#)

#### [F45] 62A Eligibility for rent to loan scheme.

- (1) Subject to subsection (2), a tenant who has the right under section 61 to purchase a house may exercise the right by way of the rent to loan scheme.
- (2) Subsection (1) does not apply—
- (a) to the tenant of a house which is designated as defective under Part XIV; or
  - (b) to a tenant—
    - (i) in respect of whom a determination has been made that he is entitled to housing benefit in respect of any part of the relevant period; or
    - (ii) by or on behalf of whom a claim for housing benefit has been made (or is treated as having been made) and has not been determined or withdrawn.
- (3) In subsection (2), “the relevant period” means the period—
- (a) beginning twelve months before the date of the application to purchase the house; and
  - (b) ending on the day when the contract of sale of the house is constituted under section 66(2).]



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### Textual Amendments

**F45** S. 62A inserted (27.9.1993) by 1993 c. 28, s. 141; S.I. 1993/2163, art. 2, Sch. 1.

## Procedure

### 63 Application to purchase and offer to sell.

- (1) A tenant who seeks to exercise a right to purchase a house purchase and offer under section 61 shall serve on the landlord a notice (referred to in this Part as an “application to purchase”) which shall be in such form as the Secretary of State shall by order made by statutory instrument prescribe, and shall contain—
  - (a) notice that the tenant seeks to exercise the right to purchase;
  - (b) a statement of any period of occupancy of a house on which the tenant intends to rely for the purposes of section 61 and 62; and
  - (c) the name of any joint purchaser within the meaning of section 61(6) <sup>[F46]</sup>; and
  - (d) in the case of a tenant who is entitled to purchase the house by way of the rent to loan scheme, a statement whether he wishes to proceed so to purchase the house.]
- (2) Where an application to purchase is served on a landlord, and the landlord does not serve a notice of refusal under sections 68 to 70 it shall, within 2 months after service of the application to purchase, serve on the tenant a notice (referred to in this Part as an “offer to sell”) containing—
  - (a) the market value of the house determined under section 62(2);
  - (b) the discount calculated under section 62(3);
  - (c) the price fixed under section 62(1);
  - <sup>[F47]</sup>(cc) where the application to purchase contains a statement under subsection (1)(d) that the applicant wishes to proceed by way of the rent to loan scheme and the statement has not been withdrawn, the minimum amount of the initial capital payment, a statement that the applicant, if so minded, may make an initial capital payment greater than the minimum and a description of the deferred financial commitment including—
    - (i) the amount of the deferred financial commitment calculated as if due to be paid as at the date of the offer to sell;
    - (ii) an explanation of why and how the amount of the deferred financial commitment when payable under section 73C(3)(a) can vary from its amount as calculated under sub-paragraph (i); and
    - (iii) the procedure for paying the deferred financial commitment.]
  - (d) any conditions which the landlord intends to impose under section 64; and
  - (e) an offer to sell the house to the tenant and any joint purchaser named in the application to purchase at the price referred to in paragraph (c) and under the conditions referred to in paragraph (d).
- <sup>[F48]</sup>(3) Where, in response to an offer to sell containing the matters referred to in paragraph (cc) of subsection (2), an applicant has informed a landlord in writing of his intention to make an initial capital payment of an amount greater than the minimum, the landlord shall, before the end of the period specified in subsection (2) or, if later, the expiry of one month from the date when the landlord was so informed of the tenant’s

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intention, serve an amended offer to sell in which the calculation of the deferred financial commitment is revised accordingly.]

#### Textual Amendments

**F46** S. 63(1)(d) and preceding word inserted (27.9.1993) by 1993 c. 28, s. 143(2)(a); S.I. 1993/2163, art. 2, Sch. 1.

**F47** S. 63(2)(cc) inserted (27.9.1993) by 1993 c. 28, S. 143(2)(b); S.I. 1993/2163, art. 2, Sch. 1.

**F48** S. 63(3) inserted (27.9.1993) by 1993 c. 28, s. 143(2)(c); S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

**C3** S. 63 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

64

- (1) Subject to section 75, an offer to sell under section 63(2) shall contain such conditions as are reasonable, provided that—
  - (a) the conditions shall have the effect of ensuring that the tenant has as full enjoyment and use of the house as owner as he has had as tenant;
  - (b) the conditions shall secure to the tenant such additional rights as are necessary for his reasonable enjoyment and use of the house as owner (including, without prejudice to the foregoing generality, common rights in any part of the building of which the house forms part) and shall impose on the tenant any necessary duties relative to rights so secured; and
  - (c) the conditions shall include such terms as are necessary to entitle the tenant to receive a good and marketable title to the house.
- (2) A condition which imposes a new charge or an increase of an existing charge for the provision of a service in relation to the house shall provide for the charge to be in reasonable proportion to the cost to the landlord of providing the service.
- (3) No condition shall be imposed under this section which has the effect of requiring the tenant to pay any expenses of the landlord.
- (4) Subject to subsection (6), no condition shall be imposed under this section which has the effect of requiring the tenant or any of his successors in title to offer to the landlord, or to any other person, an option to purchase the house in advance of its sale to a third party, except in the case of a house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age or disabled person whose special needs require accommodation of the kind provided by the house.
- (5) Where an option to purchase permitted under subsection (4) is exercised, the price to be paid for the house shall be determined by the district valuer who shall have regard to the market value of the house at the time of the purchase and to any amount due to the landlord under section 72 (recovery of discount on early re-sale).
- (6) Subsection (4) shall not apply to houses in an area which is designated a rural area by the [<sup>F49</sup>local authority] within whose area it is situated where the Secretary of State, on the application of the [<sup>F49</sup>local authority] concerned, makes an order, which shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, to that effect.
- (7) An order under subsection (6) may be made where—

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- (a) within the said rural area more than one-third of all relevant houses have been sold [<sup>F50</sup>whether under this Part or otherwise]; and
  - [<sup>F51</sup>(b) the Secretary of State is satisfied that an unreasonable proportion of the houses sold consists of houses which have been resold and are not—
    - (i) being used as the only or principal homes of the owners; or
    - (ii) subject to regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act <sup>M15</sup>1984 or assured tenancies for the purposes of Part II of the Housing (Scotland) Act 1988.]
- (8) For the purposes of subsection (7)(a), a “relevant house” is one of which—
- (a) at 3rd October 1980, the council concerned, or
  - (b) at 7th January 1987, a registered housing association, is landlord.
- (9) A condition imposed by virtue of subsection (6) shall not have effect in relation to any house for more than 10 years from the date of its conveyance to a tenant in pursuance of his right to purchase under this Part and subsection (5) shall apply to any option to purchase exercised under such a condition.

#### Textual Amendments

**F49** Words in s. 64(6) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(3)**; S.I. 1996/323, **art. 4**

**F50** Words inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(2), **Sch. 9 para. 11(a)**

**F51** S. 64(7)(b) substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(2), **Sch. 9 para. 11(b)**

#### Modifications etc. (not altering text)

**C4** S. 64 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, **Sch. 1**

#### Marginal Citations

**M15** 1984 c.58.

## 65 Variation of conditions.

- (1) Where an offer to sell is served on a tenant and he wishes to exercise his right to purchase, but—
- (a) he considers that a condition contained in the offer to sell is unreasonable; or
  - (b) he wishes to have a new condition included in it; or
  - (c) he has not previously notified the landlord of his intention to exercise that right together with a joint purchaser, but now wishes to do so; or
  - (d) he has previously notified the landlord of his intention to exercise that right together with any joint purchaser but now wishes to exercise the right without that joint purchaser,

he may request the landlord to strike out or vary the condition, or to include the new condition, or to make the offer to sell to the tenant and the joint purchaser, or to withdraw the offer to sell in respect of the joint purchaser, as the case may be, by serving on the landlord within one month after service of the offer to sell a notice in writing setting out his request; and if the landlord agrees, it shall accordingly serve an amended offer to sell on the tenant within one month of service of the notice setting out the request.

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- (2) A tenant who is aggrieved by the refusal of the landlord to agree to strike out or vary a condition, or to include a new condition, or to make the offer to sell to the tenant and the joint purchaser, or to withdraw the offer to sell in respect of any joint purchaser under subsection (1), or by his failure timeously to serve an amended offer to sell under the said subsection, may, within one month or, with the consent of the landlord given in writing before the expiry of the said period of one month, within two months of the refusal or failure, refer the matter to the Lands Tribunal for determination.
- (3) In proceedings under subsection (2), the Lands Tribunal may, as it thinks fit, uphold the condition or strike it out or vary it, or insert the new condition or order that the offer to sell be made to the tenant and the joint purchaser, or order that the offer to sell be withdrawn in respect of any joint purchaser, and where its determination results in a variation of the terms of the offer to sell, it shall order the landlord to serve on the tenant an amended offer to sell accordingly within 2 months thereafter.

**Modifications etc. (not altering text)**

C5 S. 65 modified (13.3.1992) by S.I. 1992/325, regs.3, 5, 7, Sch. 1

**66 Notice of acceptance.**

- (1) Where an offer to sell is served on a tenant and he wishes to exercise his right to purchase and—
  - (a) he does not dispute the terms of the offer to sell by timeously serving a notice setting out a request under section 65(1) or by referring the matter to the Lands Tribunal under subsection (1)(d) of section 71; or
  - (b) any such dispute has been resolved;
 the tenant shall, subject to section 67(1), serve a notice of acceptance on the landlord within 2 months of whichever is the latest of—
  - (i) the service on him of the offer to sell;
  - (ii) the service on him of an amended offer to sell (or if there is more than one, of the latest amended offer to sell);
  - (iii) a determination by the Lands Tribunal under section 65(3) which does not require service of an amended offer to sell;
  - (iv) a finding or determination of the Lands Tribunal in a matter referred to it under section 71(1)(d) where no order is made under section 71(2)(b);
  - (v) the service of an offer to sell on him by virtue of subsection (2)(b) of section 71;
  - (vi) where a loan application under subsection (2)(a)(i) of section 216 (loans) has been served on the landlord, the service of a relative offer or refusal of loan; or
  - (vii) where section 216(7) (loans) is invoked, the decision of the court.
- (2) Where an offer to sell (or an amended offer to sell) has been served on the tenant and a relative notice of acceptance has been duly served on the landlord, a contract of sale of the house shall be constituted between the landlord and the tenant on the terms contained in the offer (or amended offer) to sell.

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**Modifications etc. (not altering text)**

C6 S. 66 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

[<sup>F52</sup> **66A Abatement of purchase price on landlord's failure before contract of sale.**

- (1) Where a tenant who seeks to exercise a right to purchase a house under section 61 has served an application to purchase on the landlord and the landlord—
- (a) not having served a notice of refusal, has failed to serve an offer to sell on the tenant within 2 months of the application or, where an amended offer to sell falls to be served on the tenant under subsection (3) of section 63, has failed to do so within the time limit specified in that subsection;
  - (b) having agreed to serve an amended offer to sell on the tenant in response to a request under section 65(1), has failed to do so within one month of the request;
  - (c) following an order by the Lands Tribunal to serve an amended offer to sell on the tenant under section 65(3), has failed to do so within 2 months of the date of the order;
  - (d) following a finding by the Lands Tribunal under section 68(4), has failed to serve an offer to sell within 2 months of the date of the finding; or
  - (e) following an order by the Lands Tribunal under section 71(2)(b), has failed to serve an offer or amended offer to sell within the time specified in the order,
- the tenant may serve on the landlord a notice in writing requiring the landlord to serve on him, within one month of the date of the notice, the offer to sell or (as the case may be) the amended offer to sell which the landlord has failed to serve.
- (2) Where the landlord fails to serve the offer to sell or the amended offer to sell within one month of the date of the notice in writing under subsection (1), the price fixed under section 62 shall be reduced by the amount of rent paid by the tenant during the period commencing with the date on which the one month period expired and ending with the date on which the offer is served.]

**Textual Amendments**

F52 Ss. 66A-66C inserted (27.9.1993) by 1993 c. 28, s. 144; S.I. 1993/2163, art. 2, Sch. 1.

**66B** <sup>F53</sup> **Abatement of purchase price on landlord's failure after contract of sale.**

- (1) Where the landlord has failed and continues to fail to deliver a good and marketable title to the tenant in accordance with the contract of sale, the tenant may at any time serve on the landlord a notice (the “initial notice of delay”) setting out the landlord's failure and specifying—
- (a) the most recent action of which the tenant is aware which has been taken by the landlord in fulfilment of his duties under this Part;
  - (b) a period (the “response period”), of not less than one month beginning on the date of service of the notice, within which the service by the landlord of a counter notice under subsection (2) will have the effect of cancelling the initial notice of delay.

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- (2) If there is no action under this Part which, at the beginning of the response period it was for the landlord to take in order to grant a good and marketable title to the tenant in implementation of the contract of sale, the landlord may serve on the tenant a counter notice either during or after the response period.
- (3) At any time when—
- (a) the response period specified in the initial notice of delay has expired; and
  - (b) the landlord has not served a counter notice under subsection (2),
- the tenant may serve on the landlord a notice (the “operative notice of delay”) that this subsection shall apply to the price fixed under section 62; and thereupon the price fixed under section 62 shall be reduced by the amount of rent paid by the tenant during the period commencing with the date of service of the operative notice of delay and ending with whichever is the earlier of the following dates—
- (i) the date of service by the landlord of a counter notice; or
  - (ii) the date of delivery by the landlord of a good and marketable title in implementation of the contract of sale.
- (4) Where the landlord has served a counter notice under subsection (2) the tenant (together with any joint purchaser) may, by serving on the clerk to the Lands Tribunal a copy of the initial notice of delay and of the landlord’s counter notice together with a request for the matter to be so referred, refer the matter to the Tribunal for its consideration under subsection (5).
- (5) Where the matter has been so referred to the Lands Tribunal it shall consider whether or not in its opinion action which would have enabled a good and marketable title to be delivered in implementation of the contract of sale could have been taken by the landlord and shall find accordingly.
- (6) Where the Lands Tribunal finds that action could have been taken by the landlord the tenant shall be entitled to serve an operative notice of delay as if the landlord had not served a counter notice and in that event the commencement date for the purposes of subsection (3) shall be the date on which an operative notice of delay could first have been served if no counter notice had been served.

#### Textual Amendments

**F53** Ss. 66A-66C inserted (27.9.1993) by 1993 c. 28, s. 144; S.I. 1993/2163, art. 2, Sch. 1.

#### **66C** <sup>F54</sup>Provisions relating to sections 66A and 66B.

- (1) Where there is more than one period in respect of which the price fixed under section 62 can be reduced under section 66A(2) or 66B(3), the periods may be aggregated and the price reduced by the total amount of the rent.
- (2) If the period in respect of which the price fixed can be so reduced is, or if the periods aggregated under subsection (1) together amount to, more than twelve months, the amount by which the price fixed under section 62 would, apart from this subsection, fall to be reduced shall be increased by 50% or such other percentage as the Secretary of State may by order made by statutory instrument and subject to annulment in pursuance of a resolution of either House of Parliament provide.

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#### Textual Amendments

**F54** Ss. 66A-66C inserted (27.9.1993) by 1993 c. 28, s. 144; S.I. 1993/2163, art. 2, Sch. 1.

### 67 Fixed price option.

- (1) Where an offer to sell (or an amended offer to sell) is served on a tenant, but he is unable by reason of the application of regulations made under section 216(3) (loans) to obtain a loan of the amount for which he has applied, he may, within 2 months of service on him of an offer of loan, or (as the case may be) of the date of a declarator by the sheriff under section 216(7) (loans), whichever is the later, serve on the landlord a notice to the effect that he wishes to have a fixed price option, which notice shall be accompanied by a payment to the landlord of £100, and in that event he shall be entitled to serve a notice of acceptance on the landlord at any time within 2 years of the service of the application to purchase:

Provided that where, as regards the house, the tenant has served a loan application in accordance with subsection (2)(a)(ii) of section 216 (loans), he shall be entitled (even if the said period of 2 years has expired) to serve a notice of acceptance on the landlord within 2 months of whichever is the later of—

- (a) the service of a relative offer, or refusal, of loan; or
  - (b) where section 216(7) is invoked, the decision of the court.
- (2) The payment of £100 mentioned in subsection (1) shall be recoverable—
- (a) by the tenant, when he purchases the house in accordance with that subsection or, if he does not, at the expiry of the period of 2 years mentioned therein;
  - (b) by the tenant, when the landlord recovers possession of the house under subsection (3); or
  - (c) by his personal representatives, if he dies without purchasing the house in accordance with that subsection.
- (3) The existence of a fixed price option under subsection (1) shall not prevent the landlord from recovering possession of the property in any manner which may be lawful, and in that event the option shall be terminated.

[<sup>F55</sup>(4) This section does not apply where the tenant is exercising his right to purchase under section 61 by way of the rent to loan scheme.]

#### Textual Amendments

**F55** S. 67(4) inserted (27.9.1993) by 1993 c. 28, s. 143(3); S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

**C7** S. 67 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

### 68 Refusal of applications.

- (1) Where a landlord on which an application to purchase has been served disputes the tenant's right to purchase a house under section 61, it shall by notice (referred to in this Part as a "notice of refusal") served within one month after service of the application to purchase—

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- (a) refuse the application; or
  - (b) offer to sell the house to the tenant under section 14, or under any other power which the landlord has to sell the house.
- (2) Where a landlord on which an application to purchase has been served, after reasonable enquiry (which shall include reasonable opportunity for the tenant to amend his application), is of the opinion that information contained in the application is incorrect in a material respect it shall issue a notice of refusal within 2 months of the application to purchase.
- (3) A notice of refusal shall specify the grounds on which the landlord disputes the tenant's right to purchase or, as the case may be, the accuracy of the information.
- (4) Where a landlord serves a notice of refusal on a tenant under this section, the tenant may within one month thereafter apply to the Lands Tribunal for a finding that he has a right to purchase the house under section 61 on such terms as it may determine.

**Modifications etc. (not altering text)**

**C8** S. 68 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

*Houses provided for special purposes*

**69 Secretary of State's power to authorise refusal to sell certain houses provided for persons of pensionable age.**

- (1) This section applies to a house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age whose special needs require accommodation of the kind provided by the house.
- [<sup>F56</sup>(1A) This section applies only to houses first let on a secure tenancy before 1st January 1990.]
- (2) Where an application to purchase a house is served on a landlord and it appears to the landlord that—
- (a) the house is one to which this section applies; and
  - (b) the tenant would, apart from this section, have a right under section 61 to purchase the house,
- the landlord may, within one month after service of the application to purchase, instead of serving an offer to sell on the tenant, make an application to the Secretary of State under this section.
- (3) An application under subsection (2) shall specify the facilities and features of design or adaptation which in the view of the landlord cause the house to be a house to which this section applies.
- (4) Where the Secretary of State has received an application under this section and it appears to him that the house concerned is one to which this section applies, he shall authorise the landlord to serve on the tenant a notice of refusal under this section, which shall be served as soon as is practicable after the authority is given and in any event within one month thereafter.



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- (5) A notice of refusal served under subsection (4) shall specify the facilities and features specified for the purposes of subsection (3) and that the Secretary of State's authority for service of the said notice has been given.
- (6) Where the Secretary of State refuses an application made under subsection (2), the landlord shall serve on the tenant an offer to sell under section 63(2)—
- (a) within the period mentioned in that section; or
  - (b) where the unexpired portion of that period is less than one month or there is not an unexpired portion of that period, within one month of the Secretary of State's refusal.

#### Textual Amendments

**F56** Word substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), [s. 178\(1\)\(a\)\(i\)](#)

#### Modifications etc. (not altering text)

**C9** [S. 69](#) modified (13.3.1992) by [S.I. 1992/325](#), [regs. 3, 5, 7](#), [Sch. 1](#)

## 70 Power to refuse to sell certain houses required for educational purposes.

- (1) Where an application to purchase a house is served on [<sup>F57</sup>a] council as landlord and—
- (a) the house is—
    - (i) held by the council for the purposes of its functions as education authority; and
    - (ii) required for the accommodation of a person who is or will be employed by the council for those purposes;
  - (b) the council is not likely to be able reasonably to provide other suitable accommodation for the person mentioned in paragraph (a)(ii); and
  - (c) the tenant would, apart from this section, have a right under section 61 to purchase the house,
- the landlord may, within one month of service of the application to purchase, serve a notice of refusal on the tenant.
- (2) A refusal by the landlord under subsection (1) shall contain sufficient information to demonstrate that the conditions mentioned in paragraphs (a) and (b) of that subsection are fulfilled in relation to the house.

[<sup>F58</sup>(3) In this section “council” means the local authority for Orkney Islands, Shetland Islands or Western Isles.]

#### Textual Amendments

**F57** Words in [s. 70\(1\)](#) substituted (1.4.1996) by [1994 c. 39](#), [s. 180\(1\)](#), [Sch. 13 para. 152\(4\)\(a\)](#); [S.I. 1996/323](#), [art. 4](#)

**F58** [S. 70\(3\)](#) inserted (1.4.1996) by [1994 c. 39](#), [s. 180\(1\)](#), [Sch. 13 para. 152\(4\)\(b\)](#); [S.I. 1996/323](#), [art. 4](#)

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VALID FROM 30/09/2002

### *[<sup>F59</sup> Houses liable to demolition*

#### **Textual Amendments**

**F59** S. 70A and cross-heading inserted (30.9.2002) by 2001 asp 10, s. 48; S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

#### **<sup>F60</sup>70A Authorisation of refusal to sell houses liable to demolition**

- (1) Where—
  - (a) an application to purchase a house liable to demolition is served on a landlord, and
  - (b) it appears to the landlord that the tenant would, apart from this section, have a right under section 61 to purchase the house,
 the landlord may, within one month of service of the application to purchase, instead of serving an offer to sell on the tenant, apply to the Scottish Ministers for authority to serve a notice of refusal.
- (2) For the purposes of this section a house is liable to demolition if the landlord has made a decision to demolish the house.
- (3) An application to the Scottish Ministers under subsection (1) shall be accompanied by such information in support of the application as the Scottish Ministers may prescribe by order made by statutory instrument.
- (4) The Scottish Ministers may grant such an application if they consider it reasonable to do so in all the circumstances; and in deciding whether to grant the application they shall have regard in particular to—
  - (a) the period which is expected to elapse before the landlord demolishes the house in question; and
  - (b) the extent to which, before deciding to demolish the house, the landlord consulted the tenant about the proposal to demolish it and the effect of the proposal on the tenant's right under section 61 to purchase it.
- (5) Where the Scottish Ministers grant such an application the landlord shall serve on the tenant a notice of refusal under this section as soon as practicable, and in any event within one month of the granting of the application.
- (6) Where the Scottish Ministers refuse such an application the landlord shall serve on the tenant an offer to sell under section 63(2) before—
  - (a) the expiry of the period of one month beginning with the refusal; or
  - (b) if later, the expiry of the period mentioned in that section.
- (7) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

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### Textual Amendments

**F60** S. 70A and cross-heading inserted (30.9.2002) by 2001 asp 10, s. 48; S.S.I. 2002/321, art. 2, Sch. (subject to transitional provisions and savings in arts. 3-5)

## Lands Tribunal

### 71 Reference to Lands Tribunal.

(1) Where—

- (a) a landlord who has been duly served with an application to purchase fails to issue timeously either an offer [<sup>F61</sup>or amended offer] to sell (even if only such offer [<sup>F61</sup>or amended offer] to sell as is mentioned in paragraph (d)) or a notice of refusal; or
- (b) the Lands Tribunal has made a determination under section 65(3) (variation of terms of offer to sell) and the landlord has failed to issue an amended offer to sell within 2 months thereafter; or
- (c) the Lands Tribunal has made a finding under section 68(4) (refusal of right to purchase) or has made an order under subsection (2)(b) of this section and the landlord has not duly progressed the application to purchase in accordance with that finding or, as the case may be, order, within 2 months thereafter; or
- (d) a landlord has served an offer [<sup>F61</sup>or amended offer] to sell whose contents do not conform with the requirements of paragraphs (a) to (e) of section 63(2) (or where such contents were not obtained in accordance with the provisions specified in those paragraphs) [<sup>F61</sup>and, in the case of an amended offer, they do not conform with the requirements of section 63(3)]

the tenant (together with any joint purchaser) may refer the matter to the Lands Tribunal by serving on the clerk to that body a copy of any notice served and of any finding or determination made under this Part, together with a statement of his grievance.

(2) Where a matter has been referred to the Lands Tribunal under subsection (1), the Tribunal shall consider whether in its opinion—

- (a) any of paragraphs (a) to (c) of that subsection apply, and if it so finds it may—
  - (i) give any consent, exercise any discretion, or do anything which the landlord may give, exercise or do under or for the purposes of sections 61 to 84; and
  - (ii) issue such notices and undertake such other steps as may be required to complete the procedure provided for in sections 63 and 65 to 67; and any consent given, any discretion exercised, or anything done, under the foregoing provisions of this subsection shall have effect as if it had been duly given, exercised or done by the landlord; or
- (b) paragraph (d) of that subsection applies, and if it so finds it may order the landlord to serve on the tenant an offer [<sup>F61</sup>or amended offer] to sell, in proper form, under section 63(2) [<sup>F61</sup>and, in the case of an amended offer, under section 63(3)] within such time (not exceeding 2 months) as it may specify.

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- (3) Nothing in this section shall affect the operation of the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

#### Textual Amendments

**F61** Words in s. 71(1)(a)(d)(2)(b) inserted (27.9.1993) by 1993 c. 28, s. 143(4); S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

**C10** S. 71 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

### *Recoverability of discount*

## 72 Recovery of discount on early re-sale.

- (1) A person who has purchased a house in exercise of a right to purchase under section 61, or any of his successors in title, who sells or otherwise disposes of the house (except as provided for in section 73) before the expiry of 3 years from the date of service of a notice of acceptance by the tenant under section 66, shall be liable to repay to the landlord, in accordance with subsection (3), a proportion of the difference between the market value determined, in respect of the house, under section 62(2) and the price at which the house was so purchased.

[<sup>F62</sup>(1A) Where a tenant has served on the landlord a notice under section 66A(1), the commencement of the period of 3 years referred to in subsection (1) shall be backdated by a period equal to the time (or, where section 66C(1) applies, the aggregate of the times) during which, by virtue of section 66A(2), any payment of rent falls to be taken into account.]

- (2) Subsection (1) applies to the disposal of part of a house except in a case where—
- (a) it is a disposal by one of the parties to the original sale to one of the other parties; or
  - (b) the remainder of the house continues to be the only or principal home of the person disposing of the part.
- (3) The proportion of the difference which shall be paid to the landlord shall be—
- (a) 100 per cent. where the disposal occurs within the first year after the date of service of notice,
  - (b) 66 per cent. where it occurs in the second such year, and
  - (c) 33 per cent. where it occurs in the third such year.
- (4) Where as regards a house or part of a house there is, within the period mentioned in subsection (1), more than one disposal to which that subsection would (apart from the provisions of this subsection) apply, that subsection shall apply only in relation to the first such disposal of the house, or part of the house.
- (5) Where a landlord secures the liability to make a repayment under subsection (1) the security shall, notwithstanding section 13 of the <sup>M16</sup>Conveyancing and Feudal Reform (Scotland) Act 1970, have priority immediately after—
- (a) any standard security granted in security of a loan either—

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- (i) for the purchase of the house, or
  - (ii) for the improvement of the house, and any interest present or future due thereon (including any such interest which has accrued or may accrue) and any expenses or outlays (including interest thereon) which may be, or may have been, reasonably incurred in the exercise of any power conferred on the lender by the deed expressing the said standard security; and
- (b) if the landlord consents, a standard security over the house granted in security of any other loan, and in relation thereto any such interest, expenses or outlays as aforesaid.
- (6) For the avoidance of doubt, paragraph (a) of subsection (5) applies to a standard security granted in security both for the purpose mentioned in sub-paragraph (i) and for that mentioned in sub-paragraph (ii) as it applies to a standard security so granted for only one of those purposes.
- (7) The liability to make a repayment under subsection (1) shall not be imposed as a real burden in a disposition of any interest in the house.

#### Textual Amendments

**F62** S. 72(1A) inserted (27.9.1993) by 1993 c. 28, s. 145; S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

**C11** S. 72 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

#### Marginal Citations

**M16** 1970 c. 35.

### 73 Cases where discount etc. is not recoverable .

- (1) There shall be no liability to make a repayment under section 72(1) where the disposal is made—
- (a) by the executor of the deceased owner acting in that capacity; or
  - (b) as a result of a compulsory purchase order; or
  - (c) in the circumstances specified in subsection (2).
- (2) The circumstances mentioned in subsection(1)(c) are that the disposal—
- (a) is to member of the owner’s family who has lived with him for a period of 12 months before the disposal; and
  - (b) is for no consideration:

Provided that, if the donee disposes of the house before the expiry of the 3 year period mentioned in section 72(1), the provisions of tht section will apply to him as if this was the first disposal and he was the original purchaser.

#### Modifications etc. (not altering text)

**C12** S. 73 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

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*[<sup>F63</sup> Rent to loan scheme]*

**Textual Amendments**

**F63** Ss. 73A-73D and crossnote inserted (27.9.1993) by 1993 c. 28, s. 142; S.I. 1993/2163, art. 2, Sch. 1.

**<sup>F64</sup>73A The rent to loan scheme.**

- (1) Under the rent to loan scheme, the price fixed for a house under section 62 shall be payable in two elements, viz—
  - (a) the initial capital payment; and
  - (b) the deferred financial commitment.
- (2) In the application of subsection (3) of section 62 to the price of a house being purchased by way of the rent to loan scheme, each of the percentage figures specified in that subsection shall be reduced by 15 or such other number as may, with the consent of the Treasury, be prescribed.
- (3) The conditions which are, under section 64, to be contained in an offer to sell under section 63(2) shall, in the case of a house which is to be purchased by way of the rent to loan scheme, include a condition providing that the tenant will be entitled to ownership of the house in exchange for the initial capital payment.
- (4) The deferred financial commitment shall be secured by a standard security over the house.

**Textual Amendments**

**F64** Ss. 73A-73D inserted (27.9.1993) by 1993 c. 28, s. 142; S.I. 1993/2163, art. 2, Sch. 1.

**<sup>F65</sup>73B The initial capital payment.**

- (1) The initial capital payment in respect of a house is a sum determined by the tenant, being of an amount not less than the maximum amount of loan which could be repaid at the statutory rate of interest over the loan period by weekly payments each equal to the adjusted weekly rent for the house.
- (2) In this section—
  - (a) the “statutory rate of interest” is the rate of interest which would be charged under section 219(4) on the application date by the local authority for the area in which the house is situated;
  - (b) the “loan period” is the period beginning on the application date and ending on whichever of the following is the earlier—
    - (i) the expiry of a period of 25 years starting on that date; and
    - (ii) the date when the applicant will (if he survives) reach pensionable age within the meaning [<sup>F66</sup>given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995)] or, in the case of joint applicants, the date when the one who will (if they both or all survive) reach pensionable age later than the other or the others reaches that age,
 but if the period arrived at under sub-paragraph (ii) is less than 10 years, then the loan period shall be a period of 10 years beginning on the application date;

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- (c) the “adjusted weekly rent” is an amount equal to 90 per cent of the weekly rent for the house payable as at the application date; and
- (d) the “application date” is the date of the application to purchase the house.

#### Textual Amendments

**F65** Ss. 73A-73D inserted (27.9.1993) by 1993 c. 28, s. 142; S.I. 1993/2163, art. 2, Sch. 1.

**F66** Words in s. 73B(2)(b)(ii) substituted (19.7.1995) by 1995 c. 26, ss. 126, 180(2), Sch. 4 Pt. III para. 11

#### <sup>F67</sup>73C The deferred financial commitment.

- (1) The deferred financial commitment in respect of a house is the sum arrived at by—
  - (a) finding the difference between—
    - (i) the price which was fixed for the purchase of the house under section 62(1); and
    - (ii) the initial capital payment;
  - (b) expressing that difference as a percentage of the market value which was determined under section 62(2) for the purpose of fixing the price of the house;
  - (c) reducing that percentage figure by—
    - (i) 7 or such other number as may, with the consent of the Treasury, be prescribed; and
    - (ii) in a case where payment has been made under subsection (4), the percentage figure which the amount so paid represents in relation to the market value mentioned in paragraph (b);
  - (d) finding the sum which is equal to that resultant percentage of the resale value of the house; and
  - (e) in a case to which subsection (5) of section 73D applies, adding to that sum the amount which falls to be added under subsection (6) of that section.
- (2) No interest shall accrue on the deferred financial commitment.
- (3) Payment of the deferred financial commitment—
  - (a) shall, subject to section 73D, be made to the original seller of the house—
    - (i) on the sale or other disposal of the house by the rent to loan purchaser; or
    - (ii) if the rent to loan purchaser does not sell or dispose of it, on his death; and
  - (b) may be so made in whole at any earlier time.
- (4) Subject to section 73D(3), payment may be made at any time for the purpose of reducing the deferred financial commitment in accordance with subsection (1)(c)(ii).
- (5) Subject to subsection (6), payment of the deferred financial commitment shall be made as soon as may be after the destruction of or damage to the house by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.
- (6) Subsection (5) does not apply where, following the destruction of or damage to a house, it is rebuilt or reinstated.
- (7) A standard security granted in security of the deferred financial commitment shall, notwithstanding section 13 of the Conveyancing and Feudal Reform (Scotland) Act

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1970, have priority before any standard security securing the liability to make a repayment under section 72(1) but immediately after—

- (a) any standard security granted in security of any amount advanced by a recognised lending institution—
  - (i) to enable payment of the initial capital payment or payment under subsection (4);
  - (ii) for the improvement of the house; or
  - (iii) for any combination of those purposes,
 (together with any interest, expenses and outlays payable thereunder); and
- (b) with the consent of the original seller, a standard security over the house granted in security of any other loan (together with any such interest, expenses and outlays).

In this subsection—

a “recognised lending institution” is one which is recognised for the purposes of section 222;

references to interest payable under a standard security are references both to present and future interest payable thereunder including interest which has accrued or may accrue; and

references to expenses and outlays include interest thereon.

(8) In this section—

- (a) the “resale value” of a house is, subject to subsections (9) and (10)—
  - (i) where it is being sold by the rent to loan purchaser on the open market with vacant possession and a good and marketable title, the price at which it is being so sold;
  - (ii) where the rent to loan purchaser has died not having sold or disposed of it, its value for the purpose of confirmation to his estate;
  - (iii) in any other case, such amount as is agreed for the purposes of this sub-paragraph between the rent to loan purchaser and the original seller or, failing such agreement, such amount as is determined for those purposes by an independent valuer as the value of the house, assuming it to be available for sale in the circumstances specified in sub-paragraph (i) on a date as near as may be to the date when payment of the deferred financial commitment is to be made; and
- (b) the “original seller” of a house is the body which, as the landlord of the house, sold it in pursuance of this Part to the rent to loan purchaser or, where another body has succeeded to the rights and duties of that body in relation to the house, that other body.

(9) In arriving at the resale value of a house no account shall be taken of—

- (a) anything done by the rent to loan purchaser (or any predecessor of his as secure tenant of the house) which has added to the value of the house; or
- (b) any failure by him (but not by any such predecessor) to keep the house in good repair (including decorative repair).

(10) For the purposes of agreeing or determining the amount of the resale value of a house under subsection (8)(a)(iii) in a case where it has been destroyed or damaged by a cause referred to in subsection (5), that value shall be taken as including the value of any sums paid or falling to be paid to the rent to loan purchaser under a policy insuring against the risk of the cause of destruction of or damage to the house except to the



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extent that they have been or fall to be applied in meeting the cost of any rebuilding or reinstatement which has been carried out.

#### Textual Amendments

**F67** Ss. 73A-73D inserted (27.9.1993) by 1993 c. 28, s. 142; S.I. 1993/2163, art. 2, Sch. 1.

#### [<sup>F68</sup>73D Deferred financial commitment: further provisions.

- (1) This subsection applies where—
  - (a) the person who has purchased a house by way of the rent to loan scheme sells or otherwise disposes of it to his spouse or any other person with whom he is living as if they were husband and wife and the house is, at the time of the sale or disposal, the spouse's or other person's only or principal home;
  - (b) the person who has so purchased the house dies and there succeeds to the house, by operation of the law of succession, a person for whom or persons for whom or for one or more of whom the house was, for the period of 12 months immediately preceding the death, his or their only or principal home; or
  - (c) in the case of a house which was so purchased jointly, one of the joint purchasers dies and, at the time of the death, the house was the only or principal home of the survivor or the survivors or one or more of them.
- (2) Where subsection (1) applies—
  - (a) the deferred financial commitment shall not be payable on the sale, disposal or death referred to in paragraph (a) of subsection (3) of section 73C but on the sale or other disposal of the house by the person or persons acquiring it, succeeding to it or surviving in the circumstances whereby subsection (1) applies or on the death of such person or of the last of them for whom the house was, both at the time of such acquisition, succession or survival and at the time of his death, his only or principal home; and
  - (b) paragraph (b) of the said subsection (3) shall have effect accordingly.
- (3) A payment made under section 73C(4) shall not—
  - (a) be less than £1500 or such other sum as may, with the consent of the Treasury, be prescribed;
  - (b) exceed the statutory maximum; or
  - (c) be made within the period of one year after any previous such payment in respect of the same transaction.
- (4) In subsection (3)(b), the “statutory maximum” is the amount by which the initial capital payment would be required to be augmented so as to produce, by operation of the calculations specified in paragraphs (a) to (c) of section 73C(1), a resultant percentage of 7.5% or such other percentage as may, with the consent of the Treasury, be prescribed.
- (5) This subsection applies where—
  - (a) the subtraction of discount for the purposes of section 62(1) falls to be limited or excluded by operation of subsection (6A) of that section; and
  - (b) any part of those costs which, in accordance with that subsection, are to be represented by an amount arrived at under that subsection, was incurred in the period commencing with the beginning of the financial year of the landlord

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which was current 5 years prior to the date of payment in whole of the deferred financial commitment.

- (6) Where subsection (5) applies, the amount which is, under section 73C(1)(e), to be added is an amount equal to the difference between the aggregate of the amounts mentioned in paragraph (a) and the amount mentioned in paragraph (b)—
- (a) the initial capital payment and the deferred financial commitment (including any payment under section 73C(4)) which would be payable apart from this subsection;
  - (b) the price which would have been payable under section 62 had the purchase of the house proceeded otherwise than by way of the rent to loan scheme.]

#### Textual Amendments

**F68** Ss. 73A-73D inserted (27.9.1993) by 1993 c. 28, s. 142; S.I. 1993/2163, art. 2, Sch. 1.

#### 74 Duties of landlords.

It shall be the duty of every landlord of a house to which sections 61 to 84 and section 216 apply to make provision for the progression of applications under those sections in such manner as may be necessary to enable any tenant who wishes to exercise his rights under this Part to do so, and to comply with any regulations which may be made by statutory instrument by the Secretary of State in that regard.

#### Modifications etc. (not altering text)

**C13** S. 74 modified (13.3.1992) by S.I. 1992/325, regs.3, 5, 7, Sch. 1

#### 75 Agreements affecting right to purchase.

- (1) Subject to sections 61(1), 67(1) and 72(1)—
- (a) no person exercising or seeking to exercise a right to purchase under section 61(1) shall be obliged, notwithstanding any agreement to the contrary, to make any payment to or lodge any deposit with the landlord which he would not have been obliged to make, or as the case may be lodge, had he not exercised (or sought to exercise) the right to purchase;
  - (b) a landlord mentioned in section 61(2)(a)(i) or (ii) is required neither to enter into, nor to induce (or seek to induce) any person to enter into, such agreement as is mentioned in paragraph (a), or into any agreement which purports to restrict that person's rights under this Part.
- (2) Paragraph (a) of subsection (1) does not apply to the expenses in any court proceedings.

#### Modifications etc. (not altering text)

**C14** S. 75 modified (13.3.1992) by S.I. 1992/325, regs.3, 5, 7, Sch. 1

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### [<sup>F69</sup>75A Duty of local authority landlord to provide information about right to buy.

- (1) A landlord which is one of those mentioned in section 61(2)(a)(i) or (ii) shall supply each of its secure tenants at least once every year with information about his right to purchase his house under this Part.
- (2) The information supplied under subsection (1) shall be in such form as the landlord considers best suited to explain in simple terms and so far as it considers appropriate the right referred to in that subsection.]

#### Textual Amendments

**F69** S. 75A inserted (27.9.1993) by 1993 c. 28, s. 148; S.I. 1993/2163, art. 2, Sch. 1.

### 76 Duty of landlords to provide information to secure tenants.

- (1) Whenever a new secure tenancy is to be created, if—
  - (a) the landlord is [<sup>F70</sup>neither] the heritable proprietor of the house [<sup>F71</sup>nor holds the interest of the landlord under a registered lease of the house or of land which includes it]; or
  - (b) by virtue of section 61(4), the house is not one to which that section applies; or
  - [<sup>F72</sup>(c) section 62(6A) may affect any price fixed as regards the house under section 62(1),]the landlord shall so inform the prospective tenant by written notice.
- (2) Where in the course of a secure tenancy the landlord ceases to be the [<sup>F73</sup>either the heritable proprietor of the house or the holder of the interest of the landlord under a registered lease of the house or of land which includes it] or the house, by virtue of section 61(4), ceases to be one to which that section applies, the landlord shall forthwith so inform the tenant by written notice.
- (3) Subsections (1) and (2) do not apply if—
  - (a) the landlord is a housing co-operative within the meaning of section 22, and
  - (b) the heritable proprietor is a local authority [<sup>F74</sup>or a local authority is the holder of the interest of the landlord under a registered lease of the house or of land which includes it.]

#### [<sup>F75</sup>(4) Where—

- (a) by way of any enactment (including an enactment made under this Act), any change is to be made in the law relating to the calculation of the price at which the tenant of a house is entitled under this Act to purchase it, being a change which does not come into force upon the passing or making of that enactment but which, when it does come into force will affect the price of the house, and
- (b) the house is one in respect of which an application to purchase has, in the period ending with the coming into force of the change, been served under section 63(1) and not withdrawn but no contract of sale of the house has been constituted under section 66(2),

the landlord shall, upon the passing or making of that enactment or, if later, upon the service of the application to purchase, forthwith give written notice to the tenant stating the nature of the change and how it will affect the price and suggesting that the tenant should seek appropriate advice.

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- (5) For the purposes of subsection (4), a change in the law will affect the price of a house if, on the day it falls to be calculated under the law as changed, the price will be different from what it would have been that day had there been no such change.]

#### Textual Amendments

- F70** Word substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\), s. 178\(1\)\(a\)\(i\)](#)  
**F71** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\), s. 178\(1\)\(a\)\(ii\)](#)  
**F72** [S. 76\(1\)\(c\)](#) substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 65\(5\)\(6\)](#)  
**F73** Words substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\), s. 178\(1\)\(b\)](#)  
**F74** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\), s. 178\(1\)\(c\)](#)  
**F75** [S. 76\(4\)\(5\)](#) added by [Local Government and Housing Act 1989 \(c. 42, SIF 61\), s. 181](#)

### *Powers of Secretary of State*

#### **77 Secretary of State may make provision for vesting in landlord to bring into being tenant's right to purchase house.**

- (1) Subject to subsection (2), where, but for the fact that a landlord is not the heritable proprietor of land on which houses have been let (or made available for letting) by it, one or more of its tenants would have a right to purchase under section 61, the Secretary of State may by order made by statutory instrument provide that the whole of the heritable proprietor's interest in the land shall vest in the landlord.
- (2) An order under this section shall only be made where—
- (a) heritable proprietor is a body mentioned in paragraph (a) of section 61(2); and
  - (b) the Secretary of State is of the opinion, after consultation with the heritable proprietor and with the landlord, that the order is necessary if the right to purchase is to come into being.
- (3) An order under this section shall have the same effect as a declaration under <sup>F76</sup>section 195 of the Town and Country Planning (Scotland) Act 1997] (general vesting declarations), except that, in relation to such an order, the enactments mentioned in Schedule 6 shall have effect subject to the modifications specified in that Schedule.
- (4) Compensation under the <sup>M17</sup>Land Compensation (Scotland) Act 1963, as applied by subsection (3) and Schedule 6 shall be assessed by reference to values current on the date the order under this section comes into force.
- (5) An order under this section shall have no effect until approved by resolution of each House of Parliament.
- (6) An order under this section which would, apart from the provisions of this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument shall proceed in that House as if it were not such an instrument.
- (7) An order under this section may include such incidental, consequential or supplementary provisions as may appear to the Secretary of State to be necessary or expedient for the purposes of this Act.

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#### Textual Amendments

**F76** Words in s. 77(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 40(1)

#### Marginal Citations

**M17** 1963 c. 51.

### 78 Secretary of State may give directions to modify conditions of sale.

- (1) Where it appears to the Secretary of State that the inclusion of conditions of a particular kind in offers to sell would be unreasonable he may by direction require landlords generally, landlords of a particular description, or particular landlords not to include conditions of that kind (or not to include conditions of that kind unless modified in such manner as may be specified in the direction) in offers to sell served on or after a date so specified.
- (2) Where a condition's inclusion in an offer to sell—
  - (a) is in contravention of a direction under subsection (1) or
  - (b) in a case where the tenant has not by the date specified in such a direction served a relative notice of acceptance on the landlord, would have been in such contravention had the offer to sell been served on or after that date,the condition shall have no effect as regards the offer to sell.
- (3) A direction under subsection (1) may—
  - (a) make different provision in relation to different areas, cases or classes of case and may exclude certain areas, cases or classes of case; and
  - (b) be varied or withdrawn by a subsequent direction so given.
- (4) Section 211 of the <sup>M18</sup>Local Government (Scotland) Act 1973 (provision for default of local authority) shall apply as regards a failure to comply with a requirement in a direction under subsection (1) as that section applies as regards such failure as is mentioned in subsection (1) thereof.

#### Modifications etc. (not altering text)

**C15** S. 78 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

#### Marginal Citations

**M18** 1973 c. 65.

### 79 Secretary of State may give financial and other assistance for tenants involved in proceedings.

- (1) Where, in relation to any proceedings, or prospective proceedings, to which this section applies, a tenant or purchaser is an actual or prospective party, the Secretary of State may on written application to him by the tenant or purchaser give financial or other assistance to the applicant, if the Secretary of State thinks fit to do so:

Provided that assistance under this section shall be given only where the Secretary of State considers—

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- (a) that the case raises a question of principle and that it is in the public interest to give the applicant such assistance; or
  - (b) that there is some other special consideration.
- (2) This section applies to—
- (a) any proceedings under sections 61 to 84 and section 216; and
  - (b) any proceedings to determine any question arising under or in connection with those sections other than a question as to market value for the purposes of section 62.
- (3) 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;
  - (e) any other form of assistance which the Secretary of State may consider appropriate.
- (4) In so far as expenses are incurred by the Secretary of State in providing the applicant with assistance under this section, any sums recovered by virtue of an award of expenses, or of an agreement as to expenses, in the applicant's favour with respect to the matter in connection with which the assistance is given shall, subject to any charge or obligation for payment in priority to other debts under the <sup>M19</sup>Legal Aid (Scotland) Act 1986 and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund, be paid to the Secretary of State in priority to any other debts.
- (5) Any expenses incurred by the Secretary of State in providing assistance under this section shall be paid out of money provided by Parliament; and any sums received by the Secretary of State under subsection (4) shall be paid into the Consolidated Fund.

**Modifications etc. (not altering text)**

**C16** S. 79 modified (13.3.1992) by S.I. 1992/325, regs.3, 5, 7, **Sch. 1**

**Marginal Citations**

**M19** 1986 c.47.

**80 Secretary of State may make contributions towards the cost of transfers and exchanges.**

F77

**Textual Amendments**

**F77** S. 80 repealed by **Local Government and Housing Act 1989** (c. 42, SIF 61), ss. 168(4), 194(4), **Sch. 12 Pt. II**

**81 Information from landlords in relation to Secretary of State's powers.**

- (1) Without prejudice to section 199 of the <sup>M20</sup>Local Government (Scotland) Act 1973 (reports and returns by local authorities etc.), where it appears to the Secretary of State

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necessary or expedient, in relation to the exercise of his powers under sections 61 to 84 and section 216, 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.

#### Marginal Citations

M20 1973 c.65.

#### <sup>F78</sup> Preservation of right to buy on disposal to private sector landlord]

#### Textual Amendments

F78 S. 81A and cross heading inserted (21.2.1992) by Housing Act 1988 (c. 50, SIF 61), s. 128; S.I. 1992/324, art. 2

#### <sup>F79</sup> 81A Preservation of right to buy on disposal to private sector landlord.

- (1) The right to buy provisions shall continue to apply where a person ceases to be a secure tenant of a house by reason of the disposal by the landlord of an interest in the house to a private sector landlord.
- (2) The right to buy provisions shall not, however, continue to apply under subsection (1) in such circumstances as may be prescribed.
- (3) The continued application under subsection (1) of the right to buy provisions shall be in accordance with and subject to such provision as is prescribed which may—
  - (a) include—
    - (i) such additions and exceptions to, and adaptations and modifications of, the right to buy provisions in their continued application by virtue of this section; and
    - (ii) such incidental, supplementary and transitional provisions;  
as the Secretary of State considers appropriate;
  - (b) differ as between different cases or descriptions of case and as between different areas;
  - (c) relate to a particular disposal.
- (4) Without prejudice to the generality of subsection (3), provision may be made by virtue of it—
  - (a) specifying the persons entitled to the benefit of the right to buy provisions in their continued application by virtue of this section;

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- (b) preventing, except with the consent of the Secretary of State, the disposal by the private sector landlord of less than his whole interest in a house in relation to which the right to buy provisions continue to apply by virtue of this section;
  - (c) ensuring that where, under Ground 9 of Schedule 5 to the Housing (Scotland) Act 1988 (availability of suitable alternative accommodation), the sheriff makes an order for possession of a house in relation to which the right to buy provisions continue to apply by virtue of this section and the tenant would not have the right under this Part (other than this section) to buy the house which is or will be available by way of alternative accommodation, these provisions as so continued will apply in relation to the house which is or will be so available.
- (5) In this section—
- (a) “secure tenant” means a tenant under a secure tenancy;
  - (b) “private sector landlord” means a landlord other than one of those set out in sub-paragraphs (i) to (iv) and (viii) and (ix) of paragraph (a) of subsection (2) of section 61;
  - (c) the “right to buy provisions” means the provisions of this Act relating to the right of a tenant of a house to purchase it under this Part and to his rights in respect of a loan.]

**Textual Amendments**

**F79** S. 81A inserted (21.2.1992) by [Housing Act 1988 \(c. 50, SIF 61\)](#), **s. 128**; S.I. 1992/324, **art. 2**

**Modifications etc. (not altering text)**

**C17** S. 81A(1) modified (13.3.1992) by S.I. 1992/325, regs.3, 5, 7, **Sch. 1**.  
S. 81A(1) modified (27.9.1993) by S.I. 1993/2164, regs.3, 4, **Schs. 1, 2**.

*[<sup>F80</sup>Consultation before disposal to private sector landlord]*

**Textual Amendments**

**F80** S. 81B and cross heading inserted (21.2.1992) by [Housing Act 1988 \(c. 50, SIF 61\)](#), **s. 135(1)(3)**; S.I. 1992/324, **art. 2**

**[<sup>F81</sup>81B Consultation before disposal to private sector landlord.**

The provisions of Schedule 6A have effect with respect to the duties of—

- (a) a local authority proposing to dispose of houses let on secure tenancies;
- (b) the Secretary of State in considering whether to give his consent under section 12(7) to such a disposal,

to have regard to the views of tenants liable as a result of the disposal to cease to be secure tenants (that is to say, tenants under secure tenancies).]

**Textual Amendments**

**F81** S. 81B inserted (21.2.1992) by [Housing Act 1988 \(c. 50, SIF 61\)](#), **s. 135(1)(3)**; S.I. 1992/324, **art.2**



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## General

### 82 Interpretation of this Part.

In this Part and in sections 14, 19, 20 [<sup>F82</sup>214] and 216, except where provision is made to the contrary,

“application to purchase” has the meaning assigned to it by section 63;

“family” and any reference to membership thereof shall be construed in accordance with section 83;

“fire authority” means a fire authority for the purposes of the <sup>M21</sup>Fire Services Acts 1947 to 1959 or a joint committee constituted by virtue of section 36(4)(b) of the Fire Services Act 1947;

“heritable proprietor”, in relation to a house, includes any landlord entitled under section 3 of the <sup>M22</sup>Conveyancing (Scotland) Act 1924 (disposition of the dwelling-house etc. by persons uninfert) to grant a disposition of the house;

“housing co-operative” has the meaning assigned to it by section 22;

“landlord” means a person who lets a house to a tenant for human habitation, and includes his successors in title;

“offer to sell” has the meaning assigned to it by section 63(2) and includes such offer to sell as is mentioned in section 71(1)(d);

“police authority” means a police authority in Scotland within the meaning of section 2(1) or 19(9)(b) of the <sup>M23</sup>Police (Scotland) Act 1967 or a joint police committee constituted by virtue of subsection (2)(b) of the said section 19 and any police authority constituted in England and Wales or Northern Ireland under corresponding legislation;

[<sup>F83</sup>the “rent to loan purchaser” of a house is the person who exercised his right to purchase it under section 61 by way of the rent to loan scheme or, where section 73D(1) applies, the person whose selling or otherwise disposing of the house or whose death is, by virtue of subsection (2) of that section, the occasion for payment of the deferred financial commitment, that person;

“rent to loan scheme” means the provisions of sections 62A and 73A to 73D.]

“secure tenancy” means a secure tenancy within the meaning of section 44;

“tenancy” means any agreement under which a house is made available for occupation for human habitation, and “leases”, “let” and “lets” shall be construed accordingly;

“tenant” means a person who leases a house from a landlord and who derives his right therein directly from the landlord, and in the case of joint tenancies means all the tenants.

#### Textual Amendments

**F82** Figure in s. 82 inserted (27.9.1993) by 1993 c. 28, s. 143(5)(a); S.I. 1993/2163, art. 2, Sch. 1.

**F83** Definitions in s. 82 inserted (27.9.1993) by 1993 c. 28, s. 143(5)(b); S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

**C18** S. 82 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

#### Marginal Citations

**M21** 1947 c.41.

**M22** 1924 c. 27.

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**M23** 1967 c.77.

### 83 Members of a person's family.

- (1) A person is a member of another's family for the purposes of this Act if—
- (a) he is the spouse of that person or he and that person live together as husband and wife; or
  - (b) he is that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.
- (2) For the purposes of subsection (1)(b)—
- (a) a relationship by marriage shall be treated as a relationship by blood;
  - (b) a relationship of the half-blood shall be treated as a relationship of the whole blood;
  - (c) the stepchild of a person shall be treated as his child; and
  - (d) a child shall be treated as such whether or not his parents are married.

#### Modifications etc. (not altering text)

**C19** S. 83 applied by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), **ss. 37(4), 52**

**C20** S. 83 modified (13.3.1992) by [S.I. 1992/325, regs.3, 5, 7](#), **Sch. 1**

### 84 Service of notices.

- (1) A notice or other document which requires to be served on a person under any provision of this Part or of section 216 may be given to him—
- (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by recorded delivery post to him at that address.
- (2) For the purposes of this section and of section 7 of the <sup>M24</sup>Interpretation Act 1978 (references to service by post) in its application to this section, a person's proper address shall be his last known address.

#### Modifications etc. (not altering text)

**C21** S. 84 modified (13.3.1992) by [S.I. 1992/325, regs.3, 5, 7](#), **Sch. 1**

#### Marginal Citations

**M24** 1978 c. 30.

### <sup>F84</sup>84A Application of right to buy to cases where landlord is lessee.

- (1) Sections 61 to 84 (but not 76 or 77) and 216 (the "right to buy" provisions) shall, with the modifications set out in this section, apply so as to provide for—
- (a) the acquisition by the tenant of a house let on a secure tenancy of the landlord's interest in the house as lessee under a registered lease of the house or of land which includes it or as assignee of that interest; and
  - (b) the obtaining of a loan by the tenant in that connection,

*Status:* Point in time view as at 01/10/1998. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Housing (Scotland) Act 1987, PART III is up to date with all changes known to be in force on or before 07 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

as these sections apply for the purposes of the purchase of a house by the tenant from the landlord as heritable proprietor of it and the obtaining by the tenant of a loan in that connection.

- (2) References in the right to buy provisions to the purchase or sale of a house shall be construed respectively as references to the acquisition or disposal of the landlord's interest in the house by way of a registered assignation of that interest and cognate expressions shall be construed accordingly.
- (3) The reference in section 61(2)(b) to the landlord's being the heritable proprietor of the house shall be construed as a reference to the landlord's being the holder of the interest of the lessee under a registered lease of the house or of land which includes it.
- (4) References in the right to buy provisions to the market value of or price to be paid for a house shall be construed respectively as references to the market value of the landlord's interest in the house and to the price to be paid for acquiring that interest.
- (5) References in section 64(1) to the tenant's enjoyment and use of a house as owner shall be construed as references to his enjoyment and use of it as assignee of the landlord's interest in the house.
- (6) The reference in subsection (4) of section 64 to an option being offered to the landlord or to any other person to purchase the house in advance of its sale to a third party shall be construed as a reference to an option being offered to have the interest acquired by the tenant re-assigned to the landlord or assigned to the other person in advance of its being disposed of to a third party; and the references in subsection (5) and (9) of that section to an option to purchase shall be construed accordingly.
- (7) In this section and section 76—
  - “registered lease” means a lease—
    - (a) which is recorded in the general register of sasines; or
    - (b) in respect of which the interest of the lessee is registered in the Land Register of Scotlandunder the Registration of Leases (Scotland) Act 1857; and  
“registered assignation” means, in relation to such a lease, an assignation thereof which is so recorded or in respect of which the interest of the assignee has been so registered.]

#### Textual Amendments

**F84** S. 84(A) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 178(2)

#### Modifications etc. (not altering text)

**C22** S. 84A modified (13.3.1992) by [S.I. 1992/325](#), regs. 3, 5, 7, [Sch. 1](#)

**Status:**

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**Changes to legislation:**

Housing (Scotland) Act 1987, PART III is up to date with all changes known to be in force on or before 07 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.