

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6

Section 188: Right of first refusal for landlord etc.

437. **Section 188** requires that a covenant be inserted into all conveyances or grants to tenants requiring that, during the period of 10 years from the date of the conveyance or grant, the tenant purchaser (or any successor in title) must make an offer of first refusal to his former landlord, or such other person as the Secretary of State prescribes, before he can make a relevant disposal of the property (other than an exempted disposal) - this generally means a resale. The Secretary of State's functions in respect of Wales have been transferred to the National Assembly for Wales.
438. Such a covenant will be a local land charge and must be entered into the property's register of title by the Chief Land Registrar. This means that the covenant cannot be overlooked when resale is under consideration.
439. The Secretary of State has the power to prescribe by regulations such conditions as he considers appropriate for and in connection with the right of first refusal. He can:
- make provision to ensure that offers are made to a prescribed person. This is because the former landlord may not always be the most appropriate body to receive an offer of first refusal, as it may have transferred its remaining interest in that property, or in related properties (e.g. the other properties on an estate of which the property forms a part), to another body;
 - make provision which will allow other persons, such as other social landlords in the area, to be nominated to receive an offer of first refusal in place of the former landlord. This is so that if the former landlord does not wish to accept the offer, an alternative social housing provider will have the opportunity to purchase the property, thus maximising the chances that the property will be brought back into social housing; and
 - provide for time limits within which offers must be accepted, and for the circumstances in which the right of first refusal will lapse, so as to protect the interests of tenant purchasers wishing to sell their properties.
440. **Section 188** does not remove the current option under section 157 of the Housing Act 1985, in respect of properties in National Parks, areas designated under section 82 of the Countryside and Rights of Way Act 2000 as being of outstanding natural beauty, and areas designated as rural under section 157 itself, for landlords to require tenant purchasers to resell only to persons who have lived or worked locally for at least three years, as an alternative to imposing a right of first refusal covenant.