



# Housing Act 2004

## 2004 CHAPTER 34

### PART 6

#### OTHER PROVISIONS ABOUT HOUSING

#### CHAPTER 1

#### SECURE TENANCIES

#### *Right to buy: landlord's right of first refusal*

#### **188 Right of first refusal for landlord etc.**

(1) After section 156 of the Housing Act 1985 (c. 68) insert—

#### **“156A Right of first refusal for landlord etc.**

(1) A conveyance of the freehold or grant of a lease in pursuance of this Part shall contain the following covenant, which shall be binding on the secure tenant and his successors in title.

This is subject to subsection (8).

(2) The covenant shall be to the effect that, until the end of the period of ten years beginning with the conveyance or grant, there will be no relevant disposal which is not an exempted disposal, unless the prescribed conditions have been satisfied in relation to that or a previous such disposal.

(3) In subsection (2) “the prescribed conditions” means such conditions as are prescribed by regulations under this section at the time when the conveyance or grant is made.

(4) The Secretary of State may by regulations prescribe such conditions as he considers appropriate for and in connection with conferring on—

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- (a) a landlord who has conveyed a freehold or granted a lease to a person (“the former tenant”) in pursuance of this Part, or
  - (b) such other person as is determined in accordance with the regulations, a right of first refusal to have a disposal within subsection (5) made to him for such consideration as is mentioned in section 158.
- (5) The disposals within this subsection are—
- (a) a reconveyance or conveyance of the dwelling-house; and
  - (b) a surrender or assignment of the lease.
- (6) Regulations under this section may, in particular, make provision—
- (a) for the former tenant to offer to make such a disposal to such person or persons as may be prescribed;
  - (b) for a prescribed recipient of such an offer to be able either to accept the offer or to nominate some other person as the person by whom the offer may be accepted;
  - (c) for the person who may be so nominated to be either a person of a prescribed description or a person whom the prescribed recipient considers, having regard to any prescribed matters, to be a more appropriate person to accept the offer;
  - (d) for a prescribed recipient making such a nomination to give a notification of the nomination to the person nominated, the former tenant and any other prescribed person;
  - (e) for authorising a nominated person to accept the offer and for determining which acceptance is to be effective where the offer is accepted by more than one person;
  - (f) for the period within which the offer may be accepted or within which any other prescribed step is to be, or may be, taken;
  - (g) for the circumstances in which the right of first refusal lapses (whether following the service of a notice to complete or otherwise) with the result that the former tenant is able to make a disposal on the open market;
  - (h) for the manner in which any offer, acceptance or notification is to be communicated.
- (7) In subsection (6) any reference to the former tenant is a reference to the former tenant or his successor in title.
- Nothing in that subsection affects the generality of subsection (4).
- (8) In a case to which section 157(1) applies—
- (a) the conveyance or grant may contain a covenant such as is mentioned in subsections (1) and (2) above instead of a covenant such as is mentioned in section 157(1), but
  - (b) it may do so only if the Secretary of State or, where the conveyance or grant is executed by a housing association within section 6A(3) or (4), the Relevant Authority consents.
- (9) Consent may be given in relation to—
- (a) a particular disposal, or
  - (b) disposals by a particular landlord or disposals by landlords generally, and may, in any case, be given subject to conditions.

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- (10) Regulations under this section—
- (a) may make different provision with respect to different cases or descriptions of case; and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) The limitation imposed by a covenant within subsection (2) (whether the covenant is imposed in pursuance of subsection (1) or (8)) is a local land charge.
- (12) The Chief Land Registrar must enter in the register of title a restriction reflecting the limitation imposed by any such covenant.”
- (2) In section 157 of that Act (restriction on disposal of dwelling-houses in National Parks etc.)—
- (a) in subsection (1), after “the conveyance or grant may” insert “(subject to section 156A(8))”;
  - (b) in subsection (2), omit “, subject to subsection (4),”;
  - (c) omit subsections (4) and (5) (which provide for a landlord’s right of first refusal).
- (3) In section 158 of that Act (consideration for conveyance or surrender under section 157)—
- (a) in the sidenote, for “reconveyance or surrender under section 157” substitute “disposal under section 156A”;
  - (b) for subsection (1) substitute—
    - “(1) The consideration for such a disposal as is mentioned in section 156A(4) shall be such amount as may be agreed between the parties, or determined by the district valuer, as being the amount which is to be taken to be the value of the dwelling-house at the time when the offer is made (as determined in accordance with regulations under that section).”;
  - (c) in subsection (2), for “or surrendered” substitute “, conveyed, surrendered or assigned”;
  - (d) in subsection (3), for “the landlord accepts the offer,” substitute “the offer is accepted in accordance with regulations under section 156A,”; and
  - (e) in subsection (4), for “to reconvey or surrender” substitute “(as determined in accordance with regulations under section 156A).”
- (4) In section 162 of that Act (exempted disposals which end liability under covenants), after paragraph (a) insert—
- “(aa) the covenant required by section 156A (right of first refusal for landlord etc.) is not binding on the person to whom the disposal is made or any successor in title of his, and that covenant ceases to apply in relation to the property disposed of, and”.
- (5) The amendments made by this section do not apply in relation to a conveyance of the freehold or grant of a lease in pursuance of Part 5 of that Act if the notice under section 122 of the Act (tenant’s notice claiming to exercise right to buy) was served before the day on which this section comes into force.
- (6) Accordingly, nothing in this section affects—

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- (a) the operation of a limitation contained in such a conveyance or grant in accordance with section 157(4) of that Act, or
- (b) the operation, in relation to such a limitation, of section 157(6) (so far as it renders a disposal in breach of covenant void) or section 158 (consideration payable) of that Act.