

These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6

Section 222: Rights of pre-emption in connection with assured tenancies

527. **Section 222** enables landlords of shared ownership properties to include rights of first refusal in their shared ownership leases in order to help with the retention of affordable housing units.
528. Shared ownership is a part buy/part rent scheme, intended to help those on a low income into home ownership. Applicants buy a share of a property (typically between 25% to 75%) and pay rent to a housing association on the remaining share. The purchaser is granted a long lease and becomes the sole legal owner of the property, but the landlord retains a share of the equity equal to the percentage of the purchase price that was unpaid (e.g. 50%, if the purchaser bought a 50% share). The scheme provides a means of buying a home in stages at a lower initial cost than purchasing a property outright. Shared owners may, if they wish, purchase further shares in the property (a process known as "staircasing") when they can afford to do so and eventually own their home outright.
529. Enabling the landlord to buy back the property, where the tenant wishes to dispose of it, would prevent the loss of affordable housing stock to the open market, particularly in rural areas where replacement is difficult, and would allow the housing association to re-sell the unit in more affordable tranches.
530. Section 5 of the Housing Act 1988 would previously have operated so as to make a right of first refusal unenforceable. Shared ownership leases are generally assured tenancies, as because of the rental element they are not long leases at low rent.
531. **Section 222**, by excluding rights of first refusal from section 5 of the Housing Act 1988, will allow landlords to insert and enforce rights of first refusal in shared ownership leases to assist with the retention of affordable housing units. If included in the lease, a right of first refusal will simply require the shared owner to offer the property back to the original landlord. There will be no obligation on the landlord to accept.