

STATUTORY INSTRUMENTS

1986 No. 2092

**LOCAL GOVERNMENT, ENGLAND AND WALES
LONDON GOVERNMENT
HOUSING, ENGLAND AND WALES****The Local Government Reorganisation (Preservation of Right
to Buy) Order 1986**

Made - - - - 2nd December 1986
Laid before Parliament 10th December 1986
Coming into Operation 31st December 1986

The Secretary of State for the Environment, in exercise of the powers conferred on him by section 101 of the Local Government Act 1985(a), and of all other powers enabling him in that behalf, hereby makes the following order:—

Citation and commencement

1. This order may be cited as the Local Government Reorganisation (Preservation of Right to Buy) Order 1986 and shall come into operation on 31st December 1986.

Interpretation

2.— (1) In this order—

“successor authority” means the Inner London Education Authority, an authority established under section 10(1) (joint arrangements for waste disposal functions), a joint authority established by Part IV (police, fire services, civil defence and transport) or a body established by Part VII (residuary bodies), of the Local Government Act 1985.

(2) This order shall be read as one with Part V of the Housing Act 1985(b) (the right to buy).

Preservation of right to buy

3.— (1) Subject to the provisions of this order, Part V continues to apply where a person ceases to be a secure tenant of a dwelling-house by reason of the disposal on or after the commencement of this order by a landlord which is a successor authority of an interest in the dwelling-house to a person who is not an authority or body within section 80 (the landlord condition for secure tenancies).

(a) 1985 c.51.
(b) 1985 c.68.

(2) References in this order—

- (a) to the preservation of the right to buy and to a person having the preserved right to buy are to the continued application of Part V by virtue of this order and to a person to whom Part V so applies;
- (b) to a qualifying disposal are to the disposal described in paragraph (1); and
- (c) to the former secure tenant and the former landlord are to the persons mentioned in paragraph (1).

Extent of preserved right: qualifying persons and dwelling-houses

4.— (1) A person to whom this article applies has the preserved right to buy so long as he occupies the relevant dwelling-house as his only or principal home, subject to the following provisions of this order.

(2) Unless otherwise expressly provided, references in this order to a qualifying person and qualifying dwelling-house, in relation to the preserved right to buy, are to a person who has that right and to a dwelling-house in relation to which a person has that right.

(3) The following are the persons to whom this article applies—

- (a) the former secure tenant, or in the case of a joint tenancy, each of them;
- (b) a qualifying successor as defined in paragraph (4);
- (c) a person to whom a tenancy of a dwelling-house is granted jointly with a person who has the preserved right to buy in relation to that dwelling-house.

(4) The following are qualifying successors for this purpose—

- (a) where the former secure tenancy was not a joint tenancy, a person who, on the death of the former secure tenant, becomes by virtue of paragraph 2 or 3 of Part I of Schedule 1 to the Rent Act 1977^(a) (surviving spouse or member of deceased tenant's family) the statutory tenant of a dwelling-house in relation to which the former secure tenant had the preserved right to buy immediately before his death;
- (b) a person who becomes the tenant of a dwelling-house in pursuance of—
 - (i) a property adjustment order under section 24 of the Matrimonial Causes Act 1973^(b), or
 - (ii) an order under Schedule 1 to the Matrimonial Homes Act 1983^(c) transferring the tenancy,

in place of a person who had the preserved right to buy in relation to that dwelling-house.

(a) 1977 c.42.

(b) 1973 c.18.

(c) 1983 c.19.

- (5) The relevant dwelling-house is in the first instance—
- (a) in relation to a person within article 4(3)(a), the dwelling-house which was the subject of the qualifying disposal;
 - (b) in relation to a person within article 4(3)(b), the dwelling-house of which he became the statutory tenant or tenant as mentioned in paragraph (4)(a) or (b) of that article;
 - (c) in relation to a person within article 4(3)(c), the dwelling-house of which he became a joint tenant as mentioned in that paragraph.

Change of dwelling-house by qualifying person

5— (1) If a person having the preserved right to buy becomes the tenant of another dwelling-house in place of the relevant dwelling-house (whether the new dwelling-house is entirely different from or partly or substantially the same as the previous dwelling-house) and the landlord is the same person as the landlord of the previous dwelling-house or, where that landlord was a company, is a connected company, the new dwelling-house becomes the relevant dwelling-house for the purposes of the preserved right to buy.

(2) For this purpose “connected company” means a subsidiary or holding company within the meaning of section 736 of the Companies Act 1985(a).

Application with modifications of Part V to preserved right

6. Where the right to buy is preserved, Part V applies subject to the modifications specified in Schedule 1 to this order.

Subsequent dealings: disposal of landlord's interest in qualifying dwelling-house

7. The disposal by the landlord of an interest in the qualifying dwelling-house, whether his whole interest or a lesser interest, does not affect the preserved right to buy, unless—

- (a) as a result of the disposal an authority or body within section 80(1) (the landlord condition for secure tenancies) becomes the landlord of the qualifying person or persons, or
- (b) paragraph 6 of Schedule 2 to this order applies (effect of failure to register entry protecting preserved right to buy);

in which case the right to buy ceases to be preserved.

Subsequent dealings: termination of landlord's interest in qualifying dwelling-house

8.— (1) On the termination of the landlord's interest in the qualifying dwelling-house—

- (a) on the occurrence of an event determining his estate or interest, or by re-entry on a breach of condition or forfeiture, or

(a) 1985 c.6.

- (b) where the interest is a leasehold interest, by notice given by him or a superior landlord, on the expiry or surrender of the term, or otherwise (subject to paragraph (2)),

the right to buy ceases to be preserved.

(2) The termination of the landlord's interest by merger on his acquiring a superior interest, or on the acquisition by another person of the landlord's interest together with a superior interest, does not affect the preserved right to buy, unless—

- (a) as a result of the acquisition an authority or body within section 80(1) (the landlord condition for secure tenancies) becomes the landlord of the qualifying person or persons, or
- (b) paragraph 6 of Schedule 2 to this order applies (effect of failure to register entry protecting preserved right to buy);

in which case the right to buy ceases to be preserved.

(3) Where the termination of the landlord's interest as mentioned in paragraph (1) is caused by the act or omission of the landlord, a qualifying person who is thereby deprived of the preserved right to buy is entitled to be compensated by him.

Subsequent dealings: transfer of qualifying person to alternative accommodation

9. The court shall not order a qualifying person to give up possession of the qualifying dwelling-house in pursuance of section 98(1)(a) of the Rent Act 1977 (suitable alternative accommodation) unless the court is satisfied—

- (a) that the preserved right to buy will, by virtue of article 5 (change of dwelling-house by qualifying person), continue to be exercisable in relation to the dwelling-house offered by way of alternative accommodation and that the interest of the landlord in the new dwelling-house will be—
- (i) where the new dwelling-house is a house, not less than the interest of the landlord in the existing dwelling-house, or
 - (ii) where the new dwelling-house is a flat, not less than the interest of the landlord in the existing dwelling-house or a term of years of which 80 years or more remain unexpired, whichever is the less; or
- (b) that the landlord of the new dwelling-house will be an authority or body within section 80(1) (the landlord condition for secure tenancies).

Land registration and related matters

10. Schedule 2 to this order has effect with respect to registration of title and related matters arising in connection with the preservation of the right to buy.

Disposal after notice claiming to exercise right to buy, etc.

11.— (1) Where notice has been given in respect of a dwelling-house claiming to exercise the right to buy or the right to a mortgage and before the completion of the exercise of that right the dwelling-house is the subject of—

- (a) a qualifying disposal, or

(b) a disposal to which article 7(a) or 8(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies),

all parties shall, subject to paragraph (2), be in the same position as if the disponent had become the landlord before the notice was given and had been given that notice and any further notice given by the tenant to the landlord and had taken all steps which the landlord had taken.

(2) If the circumstances after the disposal differ in any material respect, as for example where—

- (a) the interest of the disponent in the dwelling-house after the disposal differs from that of the disponent before the disposal, or
- (b) the right to a mortgage becomes exercisable against the Housing Corporation rather than the former landlord, or *vice versa*, or
- (c) any of the provisions of Schedule 5 (exceptions to the right to buy) becomes or ceases to be applicable,

all those concerned shall, as soon as practicable after the disposal, take all such steps (whether by way of amending or withdrawing and re-serving any notice or extending any period or otherwise) as may be requisite for the purpose of securing that all parties are, as nearly as may be, in the same position as they would have been if those circumstances had obtained before the disposal.

Stamp duty on disposal at a discount

12. Section 107 of the Finance Act 1981(a) (stamp duty payable on disposal of a dwelling-house at a discount by certain authorities) applies to a conveyance or transfer on sale (including the grant of a lease) by a person against whom the preserved right to buy is exercisable by virtue of this order to a person who is a qualifying person for the purposes of this order and in relation to whom that dwelling-house is the qualifying dwelling-house.

SCHEDULE 1

Article 6

MODIFICATIONS TO PART V AS APPLIED TO THE PRESERVED RIGHT TO BUY

PART I

EXCEPTIONS AND ADAPTATIONS

1.— (1) Throughout for the expressions “secure tenant” and “tenant” substitute the expression “qualifying person”.

(2) Sub-paragraph (1) does not apply—

- (a) to the references to secure tenant in—
 - section 127(4) (as substituted by paragraph 7 of this Schedule), or
 - section 185;

(a) 1981 c.35.

(b) to the references to tenant in—
section 138(2) (the second reference only),
section 175(1),
Schedule 4, paragraphs 2 (the final word), 6(1), 9 and 10, or
Schedule 6; or

(c) to the expressions “former secure tenant”, “joint tenant”, “new tenant”, “public sector tenant”, “tenant condition” and “tenant’s incumbrances”.

2. In section 118 (the right to buy)—

(a) in subsection (1), in paragraphs (a) and (b), for the word “dwelling-house” in the first place where it occurs substitute the words “qualifying dwelling-house”; and

(b) omit subsection (2).

3. In section 119 (qualifying period for right to buy), in subsection (2), for the words “Where the secure tenancy is a joint tenancy” substitute the words “Where the tenancy held by the qualifying person is a joint tenancy”.

4. In section 122 (tenant’s notice claiming to exercise right to buy), after subsection (3), insert—

“(4) Where the dwelling-house is occupied by two or more qualifying persons as joint tenants the right to buy may be exercised by such one or more of them as may be agreed between them.”.

5. In section 123 (claim to share right to buy with members of family), for subsection (3) substitute—

“(3) Where by such a notice any members of the qualifying person’s family are validly required to share the right to buy with him, the right to buy the qualifying dwelling-house belongs to the qualifying person and those members jointly and they shall be treated as joint tenants for the purposes, in relation to that dwelling-house, of the right to buy and the right to a mortgage.”.

6. In section 125 (landlord’s notice of purchase price and other matters), in subsection (5)—

(a) at the end of paragraph (b) insert the word “and”, and

(b) omit the word “and” at the end of paragraph (c) and omit paragraph (d).

7. In section 127 (value of dwelling-house), for subsection (4) substitute—

“(4) The persons referred to in subsection (1)(b) are—

(a) the qualifying person or, where the qualifying person is a qualifying successor, the person who was the qualifying person before him,

- (b) where the qualifying person is the former secure tenant, any person who, under the same tenancy, was a secure tenant before him, and
- (c) where the qualifying person is the former secure tenant, any member of his family who, immediately before the grant of the secure tenancy, was the secure tenant of the same dwelling-house under another tenancy,

but do not include, in a case where the qualifying person is a former secure tenant whose tenancy has at any time been assigned by virtue of section 92 (assignments by way of exchange), a person who under that tenancy was a secure tenant before the assignment.”.

8. In section 130 (reduction of discount where previous discount given)—

- (a) in subsection (2), in paragraph (a), for the words “or, in such circumstances as may be prescribed by order of the Secretary of State, by a person so prescribed” substitute the words “or by a person who was the landlord of a qualifying person treated as a public sector tenant by virtue of paragraph 10A of Schedule 4”; and
- (b) omit subsection (5).

9. For section 131 (limits on amount of discount) substitute the following—

“131. Unless the landlord otherwise agrees—

- (a) the discount shall not reduce the price below the amount which, in accordance with Schedule 5A, is to be taken as representing so much of the costs incurred in respect of the dwelling-house as, in accordance with the Schedule, is to be treated as incurred after 31st March 1974 and is to be treated as relevant for the purposes of this section, and if the price before discount is below that amount, there shall be no discount; and
- (b) the discount shall not in any case reduce the price by more than £25,000.”.

10. In section 132 (the right to a mortgage), for subsection (1) substitute—

“(1) A qualifying person who has the right to buy has the right, subject to the following provisions of this Part, to have the whole or part of the aggregate amount mentioned in section 133(1) advanced to him by the former landlord on the security of a first mortgage of the dwelling-house; and in this Part that right is referred to as “the right to a mortgage.””.

11. In section 133 (the amount to be secured)—

- (a) in subsection (1)—
 - (i) omit the words “leave outstanding, or”, and
 - (ii) in paragraphs (b) and (c), for the words “the landlord or the Housing Corporation” substitute the words “the former landlord”;

(b) in subsection (2)—

- (i) in the opening words, omit the words “leave outstanding or”,
- (ii) in paragraph (a), for the words “in accordance with regulations under this section” substitute the words “in accordance with Schedule 5B” and for the words “under the regulations” substitute the words “under the Schedule”, and
- (iii) in paragraph (b), for the words “in accordance with the regulations” substitute the words “in accordance with the Schedule” and for the words “under the regulations” substitute the words “under the Schedule”;

(c) omit subsections (3) and (4);

(d) in subsection (5), omit the words “leave outstanding or”; and

(e) omit subsection (6).

12. In section 134 (tenant’s notice claiming to exercise right to a mortgage)—

- (a) in subsection (1), for the words “the landlord, or, if the landlord is a housing association, on the Housing Corporation” substitute the words “the former landlord”;
- (b) in subsection (3), for the words “the landlord or, as the case may be, the Housing Corporation” substitute the words “the former landlord”; and
- (c) in subsection (4), for the words “the landlord or Housing Corporation” substitute the words “the former landlord”.

13. In section 135 (landlord’s notice of amount and terms of mortgage)—

- (a) in subsection (1), for the words “the landlord or Housing Corporation” in each place in which they occur substitute the words “the former landlord”;
- (b) omit subsection (3); and
- (c) in subsection (4), for the words “The Housing Corporation” substitute the words “The former landlord”.

14. In section 136 (change of secure tenant after notice claiming right to buy)—

(a) for subsection (1) substitute—

“(1) Where, after a qualifying person has given a notice claiming the right to buy, a qualifying successor becomes the qualifying person in relation to the dwelling-house, the qualifying successor shall be in the same position as if the notice had been given by him and he had been the qualifying person at the time it was given.”;

(b) in subsection (2), for the words “former tenant” substitute the words “qualifying person” and for the words “new tenant” substitute the words “qualifying successor”;

- (c) in subsection (3), for the words “new tenant” substitute the words “qualifying successor”;
 - (d) in subsection (4), for the words “the landlord or, as the case may be, the Housing Corporation” substitute the words “the former landlord” and for the words “new tenant” substitute the words “qualifying successor”;
 - (e) in subsection (5), for the words “the landlord or Housing Corporation” substitute the words “the former landlord”; and
 - (f) in subsection (6), for the words “new tenant” substitute the words “qualifying successor”.
15. In section 137 (change of landlord after notice claiming right to buy)—
- (a) the words from “Where the interest of the landlord” to the end of the section become subsection (1) and the following subsection is added—
 - “(2) Subsection (1) does not apply to a disposal to which article 7(a) or 8(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies)”; and
 - (b) in subsection (1) for the word “body” in each place in which that word occurs substitute the word “person”.
16. In section 138 (duty of landlord to convey freehold or grant lease), in subsection (1), omit the words “left outstanding or”.
17. In section 139 (terms and effect of conveyance or grant and mortgage), in subsection (2), for the words before the semi-colon substitute the following words—
- “The tenancy held by the qualifying person comes to an end on the grant to him of an estate in fee simple, or of a lease, in pursuance of the provisions of this Part”.
18. In section 140 (landlord’s first notice to complete), in subsection (5), omit the words “left outstanding or”.
19. Omit sections 143 to 153 and Schedules 8 and 9 (the right to a shared ownership lease).
20. In section 154 (registration of title)—
- (a) in subsection (1)—
 - (i) omit the word “or” at the end of paragraph (a) and omit paragraph (b), and
 - (ii) for the words “not less than 40 years” substitute the words “more than 21 years”; and
 - (b) in subsection (5), for “1971” substitute “1986”.
21. In section 155 (repayment of discount on early disposal)—
- (a) in subsection (1), for the words from “shall contain” to “no discount)” substitute the words “may, at the discretion of the landlord, contain,

unless there is no discount” and add at the end of the subsection the words “but not one the effect of which would be more onerous”;

- (b) in subsection (2), omit the words “In the case of a conveyance or grant in pursuance of the right to buy”; and
- (c) omit subsection (3).

22. In section 156 (liability to repay is a charge on the premises)—

- (a) in subsection (1), for the words “required by” substitute the words “imposed by virtue of”;
- (b) for subsection (2) substitute—
 - “(2) The charge has priority immediately after any legal charge securing an amount—
 - (a) advanced to the qualifying person for the purpose of enabling him to exercise the right to buy, or
 - (b) further advanced to him by the person who made that advance.”; and
- (c) omit subsections (4) to (6).

23. Omit sections 157 and 158 (restrictions on disposal of dwelling-houses in National Parks, etc.).

24. In section 162 (exempted disposals which end liability under covenants)—

- (a) in paragraph (a), for the words “required by” substitute the words “imposed by virtue of” and omit the word “and” at the end of the paragraph, and
- (b) omit paragraph (b).

25. In section 163 (treatment of options), omit subsection (2).

26. Omit sections 164 to 169 (various powers of Secretary of State).

27. In section 170 (power to give assistance in connection with legal proceedings), in subsection (2)—

- (a) in paragraph (a), omit the words “or the right to be granted a shared ownership lease”, and
- (b) in paragraph (b), for the words “either of those rights” substitute the words “that right”.

28. Omit section 171 (power to extend right to buy, etc.).

29. Omit section 173 (exclusion of shared ownership leases granted under this Part).

30. In section 174 (leases granted under this Part to be treated as long leases at a low rent), omit the word “and” at the end of paragraph (a) and omit paragraph (b).

31. In section 176 (notices), omit subsections (1), (2) and (5).
32. Omit section 177 (errors and omissions in notices).
33. In section 178 (costs)—
- (a) in subsection (1)—
 - (i) in paragraph (a), omit the words “the right to be granted a shared ownership lease” to the words “conveyance of freehold”;
 - (ii) in paragraph (b), for the words “the landlord or, as the case may be, the Housing Corporation” substitute the words “the former landlord” and omit the words from “or such a right” to the end of the paragraph, and
 - (iii) in the words following paragraph (b), for the words “Housing Corporation” substitute the words “former landlord”;
 - (b) in subsection (2)—
 - (i) for the words from “or such a right” to the words “Housing Corporation” substitute the words “the former landlord”, and
 - (ii) in paragraph (b), for the words “such amount as the Secretary of State may by order specify” substitute the words “the sum of £50”; and
 - (c) omit subsection (3).
34. In section 179 (provisions restricting right to buy, etc. of no effect)—
- (a) in subsection (1), for paragraph (a) substitute—
 - “(a) the grant of a lease in pursuance of the preserved right to buy, or”; and
 - (b) omit subsection (2).
35. In section 180 (statutory declarations)—
- (a) for the words “the Housing Corporation or the Secretary of State” substitute the words “or a former landlord”, and
 - (b) for the words “Corporation or Secretary of State” substitute the words “or the former landlord”.
36. In section 181 (jurisdiction of county court)—
- (a) in subsection (1)—
 - (i) in paragraph (b) omit the words “or under a shared ownership lease granted in pursuance of this Part”, and
 - (ii) for the words following paragraph (b) substitute the words “but subject to section 128 (which provides for matters of valuation to be determined by the district valuer)”; and
 - (b) omit subsections (4) and (5).
37. Omit section 182 (power to repeal or amend local Acts).
38. In section 184 (land let with or used for purposes of dwelling-house), in subsection (2) and in subsection (3), omit the words “or the right to be granted a shared ownership lease”.

39. In section 187 (minor definitions), for the definition of “total share” substitute the following definition—

““tenant” (without more) includes a qualifying person who is a statutory tenant and “tenancy” (without more) shall be construed accordingly, save in—
sections 172, 174 and 175 (modification of Leasehold Reform Act 1967(a)),
section 185 (meaning of “secure tenancy” and “secure tenant”),
the definition of “long tenancy” in this section, and
paragraph 12 of Schedule 5 (dwelling-houses held on crown tenancies excepted from right to buy).”.

40. After section 187 (minor definitions) insert—

“187A. In this Part a reference to a numbered article is a reference to the article bearing that number in the Local Government Reorganisation (Preservation of Right to Buy) Order 1986.

41. In section 188 (the index to Part V)—

(a) omit from the first column of the Table the following expressions together with the corresponding entries in the second column—

“additional share” etc.
“bank”
“building society”
“cemetery”
“effective discount” etc.
“friendly society”
“housing trust”
“initial share” etc.
“insurance company”
“prescribed percentage” etc.
“right to be granted a shared ownership lease”
“right to further advances”
“total share” etc.
“trustee savings bank”;

(b) at the appropriate places in the Table insert—

“former landlord	article 3(2)”
“qualifying disposal	article 3(2)”
“qualifying dwelling-house	article 4(2)”
“qualifying person (other than in section 160 and Schedule 5B)	article 4(2)”
“qualifying successor	article 4(4)”
“relevant dwelling-house	articles 4(5) and 5(1)”
“statutory tenant	section 622”
“tenant (and tenancy)	section 187”; and

(c) for the entry in the second column of the Table corresponding to the expression “public sector tenancy (and public sector tenant)” substitute—

“paragraphs 6, 7, 9, 10 and 10A of Schedule 4”.

42. In Schedule 4 (qualifying period for right to buy and discount)—

(a) in paragraph 7—

(i) in sub-paragraph (1) omit the words “subject to any order under paragraph 8,” and

(ii) after sub-paragraph (3) insert—

“(4) The landlord condition is also satisfied if the interest of the landlord belonged to, or a predecessor of—

an area board established by section 1(2) of the Electricity Act 1947(a),

a community council,

an education and library board established under the Education and Libraries (Northern Ireland) Order 1972(b),

a fire authority for the purposes of the Fire Services Acts 1947 to 1959,

a government department,

an internal drainage board within the meaning of section 6 of the Land Drainage Act 1976(c),

a Minister of the Crown,

a parish council and the trustees of a parish without a parish council,

a passenger transport executive established under Part II of the Transport Act 1968(d),

a police authority,

a water authority established in accordance with section 2 of the Water Act 1973(e) and a water authority in Scotland as constituted under section 3 of the Water (Scotland) Act 1980(f),

the Agricultural and Food Research Council,

the British Airports Authority,

the British Broadcasting Corporation,

the British Gas Corporation,

the British Railways Board,

the British Steel Corporation,

the British Waterways Board,

the Central Electricity Generating Board,

the Civil Aviation Authority,

the Commissioners of Northern Lighthouses,

the Countryside Commission for Scotland,

the Electricity Council,

the Fire Authority for Northern Ireland established under the Fire Services (Northern Ireland) Order 1973(g),

the Highlands and Islands Development Board,

the Lake District Special Planning Board,

London Regional Transport,

the Medical Research Council,

the National Bus Company,

the National Coal Board,

the National Library of Wales,

the National Museum of Wales,

(a) 1947 c.54.

(c) 1976 c.70.

(e) 1973 c.37.

(g) S.I. 1973/601 (N.I. 9).

(b) S.I. 1972/1263 (N.I. 12).

(d) 1968 c.73.

(f) 1980 c.45.

the Natural Environment Research Council,
the Nature Conservancy Council,
the North of Scotland Hydro-Electric Board,
the Northern Ireland Electricity Service established under the
Electricity Supply (Northern Ireland) Order 1972(a),
the Northern Ireland Transport Holding Company established
under the Transport Act (Northern Ireland) 1967(b),
the Peak Park Joint Planning Board,
the Police Authority for Northern Ireland,
the Post Office,
the Science and Engineering Research Council,
the Scottish Sports Council,
the South of Scotland Electricity Board,
the Sports Council,
the Sports Council for Wales,
the Trinity House,
the United Kingdom Atomic Energy Authority,
the Welsh Development Agency.

(5) The landlord condition is not satisfied in the following cases—

- (a) if the interest of the landlord belonged to a Minister of the Crown or government department, where the dwelling-house was let to a person appointed under section 3(1) of the Prison Act 1952(c); and
- (b) if the interest of the landlord belonged to the Trinity House, where the dwelling-house was held otherwise than in connection with its functions as a general lighthouse authority within the meaning of section 634 of the Merchant Shipping Act 1894(d)."

(b) omit paragraph 8; and

(c) after paragraph 10 insert—

“Application to preserved right to buy

10A. For the purposes of this Schedule, a qualifying person or the spouse of a qualifying person shall be treated as a public sector tenant for any period after the qualifying disposal during which he has occupied a relevant dwelling-house and references to a public sector tenancy shall be construed accordingly.”.

43. In Schedule 5 (exceptions to the right to buy)—

(a) in paragraph 1, omit the words “a housing trust or”, and

(b) omit paragraph 5.

44. In Schedule 6 (conveyance of freehold and grant of lease in pursuance of right to buy)—

(a) S.I. 1972/1072 (N.I. 9).

(b) 1967 c.37 (N.I.).

(c) 1952 c.52; section 3(1) was amended by S.I. 1963/597, Schedule 1, and S.I. 1968/1656, article 2(1)(a).

(d) 1894 c.60.

- (a) in Part I (common provisions), in paragraphs 2(2)(a) and (b) and 4, for the words “the secure tenancy” substitute the words “his tenancy” and in paragraph 7, in the definition of “tenant’s incumbrance”, for the words “the secure tenancy”, in paragraph (a) substitute the words “the qualifying person’s tenancy” and in paragraph (b) the words “that tenancy”; and
- (b) in Part III (leases), in paragraph 13, for the words “the secure tenancy” substitute the words “his tenancy” and omit paragraph 17(2).

45. In Schedule 7 (mortgage in pursuance of right to a mortgage), omit paragraph 3.

PART II

SCHEDULES TO BE INSERTED AFTER SCHEDULE 5

After Schedule 5 insert the following Schedules—

“SCHEDULE 5A

Section 131

LIMITS ON AMOUNT OF DISCOUNT RELEVANT COSTS INCURRED AFTER 31ST MARCH 1974

Introductory

1. In this Schedule—

“cost floor” means the amount mentioned in paragraph (a) of section 131 (limits on amount of discount), and

“relevant costs” means costs to be taken into account for the purposes of paragraph (a) of section 131.

Relevant costs and relevant works

2. Costs shall be treated—

(a) as relevant costs if, and only to the extent that, they are not administrative costs or interest, and

(b) as incurred after a particular date if, and only if, payment for them was made after the date in question.

3.—(1) Subject to sub-paragraph (2) any works to a dwelling-house are relevant works other than works of repair or maintenance or works to deal with any defect affecting the dwelling-house.

(2) Works initially required following the acquisition of a dwelling-house—

(a) to put the dwelling-house into good repair, or

(b) to deal with any defect affecting the dwelling-house,

are relevant works.

4. Costs incurred on any relevant works shall not be treated as relevant costs if payment for them is made on or after the date of service of the qualifying person's notice under section 122 (notice claiming to exercise right to buy) unless—

- (a) the landlord has before that date entered into a written contract for the carrying out of the works; or
- (b) the qualifying person has agreed in writing to the carrying out of the works and either the works have been carried out not later than the date of service of the landlord's notice under section 125 (notice of purchase price and right to a mortgage) or the works will be carried out under the proposed terms of the conveyance or grant.

Companies

5.—(1) In a case where a landlord is, or a previous landlord for the purposes of paragraph 6 was, a company, references to the landlord or previous landlord include references to a connected company.

(2) For this purpose "connected company" means a subsidiary or holding company within the meaning of section 736 of the Companies Act 1985(a).

Ascertainment of cost floor

6.—(1) In a case where the qualifying dwelling-house is the one which was the subject of the qualifying disposal by virtue of, or by reference to, which the qualifying person has the preserved right to buy, the cost floor is an amount equal to the aggregate of—

- (a) the amount which, immediately before the date of the qualifying disposal, would have been the amount mentioned in section 131(1), as enacted, (limits on amount of discount), as ascertained in accordance with the determination of the Secretary of State in force on 31st December 1986, and
- (b) such amount, if any, as represents so much of the costs incurred in respect of the dwelling-house after the date of the qualifying disposal as, under sub-paragraph 2, may be treated as relevant costs.

(2) Costs may be treated as relevant costs if they have been incurred by the landlord or a previous landlord on relevant works.

(3) In this paragraph "previous landlord" means a predecessor in title of the landlord who has acquired his interest in the dwelling-house on or after the qualifying disposal.

7.—(1) In a case where the dwelling-house—

- (a) has become the qualifying dwelling-house by virtue of article 5 (change of dwelling-house by qualifying person), and
- (b) was acquired by the landlord after 31st March 1974 from an authority or body to which section 80 applies (the landlord condition for secure tenancies),

(a) 1985 c.6.

the cost floor shall be ascertained in accordance with paragraph 6, subject to the following modifications.

(2) In paragraph 6—

- (a) in sub-paragraph (1)(a) and (b), for the reference to the date of the qualifying disposal substitute a reference to the date of the acquisition mentioned in sub-paragraph (1)(b) of this paragraph,
- (b) omit the reference to a previous landlord in sub-paragraph (2), and
- (c) omit sub-paragraph (3).

(3) For the purposes of paragraph 6(1)(a) it shall be assumed (where this was not the case) that section 131(1), as enacted, and the Secretary of State's determination (subject to any necessary modifications) were in force on the date of the acquisition mentioned in sub-paragraph (1)(b) of this paragraph.

8.—(1) In a case where the qualifying dwelling-house does not fall within the terms of paragraph 6 or paragraph 7, the cost floor is an amount equal to the aggregate of the costs which under sub-paragraph (2) may be treated as relevant costs.

(2) The costs which may be treated as relevant costs are the costs incurred by the landlord after 31st March 1974 in respect of—

- (a) the construction of the dwelling-house (including development works and the acquisition of land), or
- (b) the acquisition of the dwelling-house, and
- (c) relevant works to the dwelling-house.

(3) Where the landlord has previously disposed of the dwelling-house and has subsequently re-acquired it in circumstances in which discount was recovered in whole or part, only the costs of re-acquisition net of any discount recovered shall be taken into account for the purposes of sub-paragraph (2)(b).

Estimates

9. An estimate may be made for the purposes of arriving at the cost floor for a dwelling-house where the amount of any relevant costs or payments for them cannot readily be ascertained.

Cost floor less than £5,000

10. There shall be exempted from the requirements of section 131 (limits on amount of discount) any case where the cost floor for the dwelling-house is less than £5,000.

SCHEDULE 5B

Section 133(2)

LIMIT ON AMOUNT QUALIFYING PERSON IS ENTITLED
TO HAVE ADVANCED ON MORTGAGEAVAILABLE ANNUAL INCOME
AND
APPROPRIATE FACTOR*Introductory*

1.— (1) This Schedule has effect with respect to the calculation of a qualifying person's available annual income and specifies the appropriate factor by which it is to be multiplied for the purpose of ascertaining the limit on the amount which a qualifying person exercising the right to a mortgage is entitled to have advanced to him on the security of the qualifying dwelling-house.

(2) In this Schedule—

“admissible source” means a source of income of the qualifying person which is to be taken into account for the purposes of this Schedule; and

“qualifying person” means a person to whom the right to a mortgage belongs.

Available annual income

2. The amount to be taken into account as the qualifying person's available annual income under section 133 (the amount to be secured) is to be calculated by taking the amount which in accordance with paragraphs 3 to 6 is to be taken into account as his annual income and deducting from it in accordance with paragraph 7 sums related to his commitments.

Income from employment

3.— (1) This paragraph applies to income from an employment.

(2) The amount to be taken into account as income to which this paragraph applies is the qualifying person's current annual pay, namely his current pay expressed as an annual amount or, where that amount does not fairly represent his current annual pay, such amount as does.

(3) In this paragraph—

“employment” includes a part-time employment and an office but does not include a casual or temporary employment; and

“pay” includes any commission, bonus, allowance (but not an expense allowance), tip, gratuity or other payment made to the qualifying person in connection with his employment but does not include any benefit in kind; and references to pay are references to it before any statutory or other deduction has been made.

Income from a business

4.— (1) This paragraph applies to income from a business carried on by the qualifying person (whether or not with any other person).

(2) The amount to be taken into account as the qualifying person's annual income from the business is an amount which, having regard to the latest available information, fairly represents the current annual net profit of the business or, if the qualifying person shares the net profit with any other person, his share of the net profit.

(3) In this paragraph "business" includes any trade, profession or vocation.

Other income

5.— (1) This paragraph applies to income from a source to which paragraphs 3 and 4 do not apply.

- (2) No account shall be taken of state benefits other than benefits under—
- (a) sections 36 and 37 of the National Insurance Act 1965(a) (graduated retirement benefits);
 - (b) sections 8, 15 and 16 of the Social Security Pensions Act 1975(b) (widower's retirement pensions, widow's and widower's invalidity pensions); and
 - (c) the following provisions of the Social Security Act 1975(c) to the extent that they relate to any benefit by way of pension or other periodical payments—
 - sections 15, 16 and 36 (invalidity and severe disablement benefits),
 - sections 24 to 26 (widow's benefits),
 - sections 28, 29, 39 and 40 (retirement pensions),
 - section 57 (1) (disability benefits),
 - sections 67 (1), 69, 70, 71 (1) and 72 (1) (industrial death benefits),
 - and
 - section 76 (industrial disease benefits).

(3) The amount to be taken into account as the qualifying person's annual income from a source to which this paragraph applies, which is not excluded from account by sub-paragraph (2), is an amount which before any statutory or other deduction represents the qualifying person's current income from that source expressed as an annual amount.

(4) In this paragraph "state benefits" means any benefits under the Family Income Supplements Act 1970(d), the Social Security Acts 1975 to 1985(e), the Child Benefit Act 1975(f) and the Supplementary Benefits Act 1976(g).

Income from more than one source

6. If the qualifying person has income from more than one admissible source, the amount to be taken into account as his annual income shall be the

(a) 1965 c.51, as continued in force by regulation 3 of the Social Security (Graduated Retirement Benefit) (No.2) Regulations 1978 (S.I. 1978/393).

(b) 1975 c.60.

(c) 1975 c.14.

(d) 1970 c.55.

(e) 1975 c.14, c.60, 1977 c.5, 1979 c.18, 1980 c.30, c.39, 1981 c.33, 1982 c.24, 1984 c.48, 1985 c.53.

(f) 1975 c.61.

(g) 1976 c.71.

total amount of his annual income from all admissible sources determined in accordance with the provisions of this Schedule.

Deduction for commitments

7.— (1) Sums related to the qualifying person's commitments are to be deducted from the amount to be taken into account as his annual income if he is liable to make—

- (a) any maintenance payments, or
- (b) any payments under a credit agreement, or
- (c) any payments under a court order,

and the payments are likely to continue for more than 18 months.

(2) The sums which are to be deducted are sums equal in total to the total of the annual amounts currently payable, for which the conditions in subparagraph (1) are satisfied.

(3) In this paragraph—

“credit agreement” means a local agreement, hire purchase agreement or other agreement for credit; and

“maintenance payment” means any payment by the qualifying person for the maintenance of a dependent child under the age of 16 or for the maintenance of his spouse or former spouse.

Estimates

8. The former landlord may accept any estimate made for the purposes of paragraphs 3 to 7.

Joint tenants

9. Where the right to a mortgage belongs to more than one qualifying person, the preceding provisions of this Schedule shall be applied separately to determine the amount of each person's available annual income.

Multipliers

10.— (1) This paragraph specifies the appropriate factor to be applied as a multiplier of the qualifying person's available annual income to arrive at the limit imposed by section 133.

(2) If the qualifying person's income is the principal income, the appropriate factor in relation to his available annual income is the multiplier shown in the following Table corresponding to his age on the date of service of the notice under section 122 claiming to exercise the right to buy.

TABLE

Qualifying person's age on the date of service of the notice	Multiplier
Under 60	2.5
60 and over but under 65	2.0
65 and over	1.0

(3) If the qualifying person's income is not the principal income, the appropriate factor in relation to his available annual income is 1.

(4) Subject to sub-paragraph (5), the qualifying person's income is the principal income for the purposes of this paragraph if he is the only qualifying person with income or there is more than one qualifying person with income and they require the former landlord to treat his income as the principal income.

(5) The income of only one qualifying person shall be treated as the principal income for the purposes of this paragraph."

SCHEDULE 2

Article 10

LAND REGISTRATION AND RELATED MATTERS WHERE RIGHT TO BUY PRESERVED

Statement to be contained in instrument effecting qualifying disposal

1. On a qualifying disposal, the disponent shall secure that the instrument effecting the disposal—

- (a) states that the disposal is, so far as it relates to dwelling-houses occupied by secure tenants, a disposal to which article 3 applies (preservation of right to buy), and
- (b) lists, to the best of the disponent's knowledge and belief, the dwelling-houses to which the disposal relates which are occupied by secure tenants.

Registration of title on qualifying disposal

2.— (1) Where on a qualifying disposal the disponent's title to the dwelling-house is not registered, section 123 of the Land Registration Act 1925(a) (compulsory registration of title) applies—

- (a) whether or not the dwelling-house is in an area in which an Order in Council under section 120 of that Act (areas of compulsory registration) is in force, and
- (b) whether or not, where the disposal takes the form of the grant or assignment of a lease, the lease is granted for a term of more than 21 years or, as the case may be, is a lease granted for a term of which more than 21 years are unexpired.

(2) In such a case the disponent shall give the disponent a certificate stating that the disponent is entitled to effect the disposal subject only to such incumbrances, rights and interests as are stated in the instrument effecting the disposal or summarised in the certificate.

(3) Where the disponent's interest in the dwelling-house is a lease, the certificate shall also state particulars of the lease and, with respect to each superior title—

(a) 1925 c.21.

- (a) where it is registered, the title number;
- (b) where it is not registered, whether it was investigated in the usual way on the grant of the disponor's lease.

(4) The certificate shall be—

- (a) in a form approved by the Chief Land Registrar, and
- (b) signed by such officer of the disponor or such other person as may be approved by the Chief Land Registrar,

and the Chief Registrar shall, for the purpose of registration of title, accept the certificate as sufficient evidence of the facts stated in it.

3. Where a qualifying disposal takes the form of the grant or assignment of a lease, sections 8 and 22 of the Land Registration Act 1925 (application for registration of leasehold land and registration of dispositions of leasehold) apply notwithstanding that it is a lease for a term of which not more than 21 years are unexpired or, as the case may be, a lease granted for a term not exceeding 21 years; and accordingly section 70(1)(k) of that Act (leases which are overriding interests) does not apply.

Entries on register protecting preserved right to buy

4. The Chief Land Registrar on application being made for registration of a disposition of registered land or, as the case may be, of the disponee's title under a disposition of unregistered land, shall, if the instrument effecting the disposal contains the statement required by paragraph 1, enter in the register a notice protecting the rights of qualifying persons under this order in relation to dwelling-houses comprised in the disposal.

Change of qualifying dwelling-house

5.— (1) This paragraph applies where by virtue of article 5 a new dwelling-house becomes the qualifying dwelling-house which—

- (a) is entirely different from the previous qualifying dwelling-house, or
- (b) includes new land,

and applies to the new dwelling-house or the new land, as the case may be.

(2) If the landlord's title is registered, the landlord shall apply for the entry on the register of a notice protecting the rights of the qualifying person or persons under the provisions of this order.

(3) A qualifying person may apply for the entry of such a notice and section 64(1) of the Land Registration Act 1925 (production of land certificate) does not apply to the entry of a notice or restriction on such an application; but without prejudice to the power of the Chief Land Registrar to call for the production of the certificate by the landlord.

(4) If the landlord's title is not registered, the rights of the qualifying person or persons under the provisions of this order are registrable under the Land Charges Act 1972(a) in the same way as an estate contract and the landlord shall, and a qualifying person may, apply for such registration.

(a) 1972 c.61.

Effect of non-registration

6.— (1) The rights of a qualifying person under this order in relation to the qualifying dwelling-house—

- (a) shall be treated as interests to which sections 20 and 23 of the Land Registration Act 1925 apply (under which the transferee or grantee under a registered disposition takes free from estates and interests which are not protected on the register and are not overriding interests), and
- (b) shall not be treated as overriding interests for the purposes of that Act, notwithstanding that the qualifying person is in actual occupation of the land.

(2) Where by virtue of paragraph 5(4) the rights of a qualifying person under this order in relation to the qualifying dwelling-house are registrable under the Land Charges Act 1972 in the same way as an estate contract, section 4(6) of that Act (under which such a contract may be void against a purchaser unless registered) applies accordingly, with the substitution for the reference to the contract being void of a reference to the right to buy ceasing to be preserved.

Statement required on certain disposals on which right to buy ceases to be preserved

7.— (1) A conveyance of the freehold or grant of a lease of the qualifying dwelling-house to a qualifying person in pursuance of the right to buy shall state that it is made in pursuance of the provisions of Part V as they apply by virtue of article 3 (preservation of the right to buy).

(2) Where on a conveyance of the freehold or grant of a lease of the qualifying dwelling-house to a qualifying person otherwise than in pursuance of the right to buy the dwelling-house ceases to be subject to any rights arising under Part V, the conveyance or grant shall contain a statement to that effect.

(3) Where on a disposal of an interest in a qualifying dwelling-house the dwelling-house ceases to be subject to the rights of a qualifying person under Part V by virtue of article 7(a) or 8(2)(a) (qualifying person becoming tenant of authority or body satisfying landlord condition for secure tenancies), the instrument by which the disposal is effected shall state that the dwelling-house ceases as a result of the disposal to be subject to any rights arising by virtue of article 3 (preservation of the right to buy).

Removal of entries on land register

8. Where the registered title to land contains an entry made by virtue of this Schedule, the Chief Land Registrar shall, for the purpose of removing or amending the entry, accept as sufficient evidence of the facts stated in it a certificate by the registered proprietor that the whole or a specified part of the land is not subject to any rights of a qualifying person under this order.

Liability to compensate or indemnify

9.— (1) An action for breach of statutory duty lies where—

- (a) the disponent on a qualifying disposal fails to comply with paragraph 1 (duty to secure inclusion of statement in instrument effecting disposal), or

- (b) the landlord on a change of the qualifying dwelling-house fails to comply with paragraph 5(2) or (4) (duty to apply for registration protecting preserved right to buy),

and a qualifying person is deprived of the preserved right to buy by reason of the non-registration of the matters which would have been registered if that duty had been complied with.

(2) If the Chief Land Registrar has to meet a claim under the Land Registration Acts 1925 to 1986 as a result of acting upon—

- (a) a certificate given in pursuance of paragraph 2 (certificate of title on first registration),
- (b) a statement made in pursuance of paragraph 7 (statements required on disposal on which right to buy ceases to be preserved), or
- (c) a certificate given in pursuance of paragraph 8 (certificate that dwelling-house has ceased to be subject to rights under this order),

the person who gave the certificate or made the statement shall indemnify him.

Meaning of "disposal" and "instrument effecting disposal"

10. References in this Schedule to a disposal or to the instrument effecting a disposal are to the conveyance, transfer, grant or assignment, as the case may be.

2nd December 1986.

Nicholas Ridley,
Secretary of State for the Environment.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This order applies to the residential tenants of residuary bodies and other authorities established by or under the Local Government Act 1985. Such a tenant is a "secure tenant" for the purposes of Part IV of the Housing Act 1985 and consequently has the right to buy the dwelling-house he occupies under the provisions of Part V of that Act.

Under the terms of the order, on a disposal by such an authority of a dwelling-house occupied by a secure tenant (a "qualifying disposal"), the tenant will continue to have the right to buy even though he ceases by virtue of the disposal to be a secure tenant. This preserved right to buy will pass to certain successors of the tenant specified in article 4(4).

If the former secure tenant (or a successor) moves to another dwelling-house owned by the same landlord, the new dwelling-house will become subject to the tenant's right to buy in the same way as the previous dwelling-house.

The terms and conditions of the preserved right to buy differ in certain respects from those in Part V of the Housing Act 1985. The principal differences are that the right to a mortgage is exercisable against the authority which disposes of the dwelling-house on the qualifying disposal and not against the person who is the tenant's landlord at the time he exercises the right to buy and the second major difference is that the tenant is not entitled to claim a shared ownership lease (sections 143 to 153 of the Housing Act 1985).

Schedule 2 to the order provides, on a qualifying disposal, for a notice to be entered on the Land Register protecting the rights given to a tenant by the order. Provided this is done, the tenant's preserved right to buy will continue to be exercisable against future landlords should there be further disposals of the qualifying dwelling-house. In certain cases where a tenant loses the preserved right to buy as a result of an act or omission on the part of the landlord he may be able to claim compensation from the landlord.

SI 1986/2092
ISBN 0-11-068092-8

